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111TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
111–16

MAKING SUPPLEMENTAL APPROPRIATIONS FOR JOB PRESERVATION AND CREATION, INFRASTRUCTURE INVESTMENT, ENERGY EFFICIENCY AND SCIENCE, ASSISTANCE TO THE UNEMPLOYED, AND STATE AND LOCAL FISCAL STABILIZATION, FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2009, AND FOR OTHER PURPOSES

CONFERENCE REPORT

TO ACCOMPANY

H.R. 1

FEBRUARY 12, 2009.—Ordered to be printed

MAKING SUPPLEMENTAL APPROPRIATIONS FOR JOB PRESERVATION AND CREATION, INFRASTRUCTURE INVESTMENT, ENERGY EFFICIENCY AND SCIENCE, ASSISTANCE TO THE UNEMPLOYED, AND STATE AND LOCAL FISCAL STABILIZATION, FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2009, AND FOR OTHER PURPOSES

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FEBRUARY 12, 2009.—Ordered to be printed

Mr. OBEY, from the Committee of Conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 1]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1) "making supplemental appropriations for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and State and local fiscal stabilization, for the fiscal year ending September 30, 2009, and for other purposes", having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert:

SECTION 1. SHORT TITLE.

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

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

DIVISION A—APPROPRIATIONS PROVISIONS

TITLE I—AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES
TITLE II—COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES
TITLE III—DEPARTMENT OF DEFENSE
TITLE IV—ENERGY AND WATER DEVELOPMENT
TITLE V—FINANCIAL SERVICES AND GENERAL GOVERNMENT
TITLE VI—DEPARTMENT OF HOMELAND SECURITY
TITLE VII—INTERIOR, ENVIRONMENT, AND RELATED AGENCIES

TITLE VIII—DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES
TITLE IX—LEGISLATIVE BRANCH
TITLE X—MILITARY CONSTRUCTION AND VETERANS AFFAIRS AND RELATED AGENCIES
TITLE XI—STATE, FOREIGN OPERATIONS, AND RELATED PROGRAMS
TITLE XII—TRANSPORTATION, HOUSING AND URBAN DEVELOPMENT, AND RELATED AGENCIES
TITLE XIII—HEALTH INFORMATION TECHNOLOGY
TITLE XIV—STATE FISCAL STABILIZATION FUND
TITLE XV—ACCOUNTABILITY AND TRANSPARENCY
TITLE XVI—GENERAL PROVISIONS—THIS ACT

DIVISION B—TAX, UNEMPLOYMENT, HEALTH, STATE FISCAL RELIEF, AND OTHER PROVISIONS

TITLE I—TAX PROVISIONS
TITLE II—ASSISTANCE FOR UNEMPLOYED WORKERS AND STRUGGLING FAMILIES
TITLE III—PREMIUM ASSISTANCE FOR COBRA BENEFITS
TITLE IV—MEDICARE AND MEDICAID HEALTH INFORMATION TECHNOLOGY; MISCELLANEOUS MEDICARE PROVISIONS
TITLE V—STATE FISCAL RELIEF
TITLE VI—BROADBAND TECHNOLOGY OPPORTUNITIES PROGRAM
TITLE VII—LIMITS ON EXECUTIVE COMPENSATION

SEC. 3. PURPOSES AND PRINCIPLES.

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

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

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

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

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

(5) To stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases.

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

SEC. 4. REFERENCES.

Except as expressly provided otherwise, any reference to "this Act" contained in any division of this Act shall be treated as referring only to the provisions of that division.

SEC. 5. EMERGENCY DESIGNATIONS.

(a) IN GENERAL.—Each amount in this Act is designated as an emergency requirement and necessary to meet emergency needs pursuant to section 204(a) of S. Con. Res. 21 (110th Congress) and section 301(b)(2) of S. Con. Res. 70 (110th Congress), the concurrent resolutions on the budget for fiscal years 2008 and 2009.

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

DIVISION A—APPROPRIATIONS PROVISIONS

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2009, and for other purposes, namely:

TITLE I—AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES

DEPARTMENT OF AGRICULTURE

AGRICULTURE BUILDINGS AND FACILITIES AND RENTAL PAYMENTS

For an additional amount for "Agriculture Buildings and Facilities and Rental Payments", $24,000,000, for necessary construction, repair, and improvement activities.

OFFICE OF INSPECTOR GENERAL

For an additional amount for "Office of Inspector General", $22,500,000, to remain available until September 30, 2013, for oversight and audit of programs, grants, and activities funded by this Act and administered by the Department of Agriculture.

AGRICULTURAL RESEARCH SERVICE

BUILDINGS AND FACILITIES

For an additional amount for "Buildings and Facilities", $176,000,000, for work on deferred maintenance at Agricultural Research Service facilities: Provided, That priority in the use of such funds shall be given to critical deferred maintenance, to projects that can be completed, and to activities that can commence promptly following enactment of this Act.

FARM SERVICE AGENCY

SALARIES AND EXPENSES

For an additional amount for "Farm Service Agency, Salaries and Expenses," $50,000,000, for the purpose of maintaining and modernizing the information technology system.

NATURAL RESOURCES CONSERVATION SERVICE

WATERSHED AND FLOOD PREVENTION OPERATIONS

For an additional amount for "Watershed and Flood Prevention Operations", $290,000,000, of which $145,000,000 is for necessary expenses to purchase and restore floodplain easements as authorized by section 403 of the Agricultural Credit Act of 1978 (16 U.S.C. 2203) (except that no more than $30,000,000 of the amount provided for the purchase of floodplain easements may be obligated for projects in any one State): Provided, That such funds shall be allocated to projects that can be fully funded and completed with the funds appropriated in this Act, and to activities that can commence promptly following enactment of this Act.

WATERSHED REHABILITATION PROGRAM

For an additional amount for "Watershed Rehabilitation Program", $50,000,000: Provided, That such funds shall be allocated to projects that can be fully funded and completed with the funds appropriated in this Act, and to activities that can commence promptly following enactment of this Act.

RURAL HOUSING SERVICE

RURAL HOUSING INSURANCE FUND PROGRAM ACCOUNT

For an additional amount for gross obligations for the principal amount of direct and guaranteed loans as authorized by title V of the Housing Act of 1949, to be available from funds in the rural housing insurance fund, as follows: $1,000,000,000 for section 502 direct loans; and $10,472,000,000 for section 502 unsubsidized guaranteed loans.

For an additional amount for the cost of direct and guaranteed loans, including the cost of modifying loans, as defined in section 502 of the Congressional Budget Act of 1974, as follows: $67,000,000 for section 502 direct loans; and $133,000,000 for section 502 unsubsidized guaranteed loans.

RURAL COMMUNITY FACILITIES PROGRAM ACCOUNT

For an additional amount for the cost of direct loans and grants for rural community facilities programs as authorized by section 306 and described in section 381E(d)(1) of the Consolidated Farm and Rural Development Act, $130,000,000.

RURAL BUSINESS—COOPERATIVE SERVICE

RURAL BUSINESS PROGRAM ACCOUNT

For an additional amount for the cost of guaranteed loans and grants as authorized by sections 310B(a)(2)(A) and 310B(c) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932), $150,000,000.

RURAL UTILITIES SERVICE

RURAL WATER AND WASTE DISPOSAL PROGRAM ACCOUNT

For an additional amount for the cost of direct loans and grants for the rural water, waste water, and waste disposal programs authorized by sections 306 and 310B and described in section 381E(d)(2) of the Consolidated Farm and Rural Development Act, $1,380,000,000.

DISTANCE LEARNING, TELEMEDICINE, AND BROADBAND PROGRAM

For an additional amount for the cost of broadband loans and loan guarantees, as authorized by the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) and for grants (including for technical assistance), $2,500,000,000: Provided, That the cost of direct and guaranteed loans shall be as defined in section 502 of the Congressional Budget Act of 1974: Provided further, That, notwithstanding title VI of the Rural Electrification Act of 1936, this amount is

available for grants, loans and loan guarantees for broadband infrastructure in any area of the United States: Provided further, That at least 75 percent of the area to be served by a project receiving funds from such grants, loans or loan guarantees shall be in a rural area without sufficient access to high speed broadband service to facilitate rural economic development, as determined by the Secretary of Agriculture: Provided further, That priority for awarding such funds shall be given to project applications for broadband systems that will deliver end users a choice of more than one service provider: Provided further, That priority for awarding funds made available under this paragraph shall be given to projects that provide service to the highest proportion of rural residents that do not have access to broadband service: Provided further, That priority shall be given for project applications from borrowers or former borrowers under title II of the Rural Electrification Act of 1936 and for project applications that include such borrowers or former borrowers: Provided further, That priority for awarding such funds shall be given to project applications that demonstrate that, if the application is approved, all project elements will be fully funded: Provided further, That priority for awarding such funds shall be given to project applications for activities that can be completed if the requested funds are provided: Provided further, That priority for awarding such funds shall be given to activities that can commence promptly following approval: Provided further, That no area of a project funded with amounts made available under this paragraph may receive funding to provide broadband service under the Broadband Technology Opportunities Program: Provided further, That the Secretary shall submit a report on planned spending and actual obligations describing the use of these funds not later than 90 days after the date of enactment of this Act, and quarterly thereafter until all funds are obligated, to the Committees on Appropriations of the House of Representatives and the Senate.

FOOD AND NUTRITION SERVICE

CHILD NUTRITION PROGRAMS

For an additional amount for the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.), except section 21, and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), except sections 17 and 21, $100,000,000, to carry out a grant program for National School Lunch Program equipment assistance: Provided, That such funds shall be provided to States administering a school lunch program in a manner proportional with each State's administrative expense allocation: Provided further, That the States shall provide competitive grants to school food authorities based upon the need for equipment assistance in participating schools with priority given to schools in which not less than 50 percent of the students are eligible for free or reduced price meals under the Richard B. Russell National School Lunch Act.

SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC)

For an additional amount for the special supplemental nutrition program as authorized by section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), $500,000,000, of which $400,000,000 shall

be placed in reserve to be allocated as the Secretary deems necessary, notwithstanding section 17(i) of such Act, to support participation should cost or participation exceed budget estimates, and of which $100,000,000 shall be for the purposes specified in section 17(h)(10)(B)(ii): Provided, That up to one percent of the funding provided for the purposes specified in section 17(h)(10)(B)(ii) may be reserved by the Secretary for Federal administrative activities in support of those purposes.

COMMODITY ASSISTANCE PROGRAM

For an additional amount for the emergency food assistance program as authorized by section 27(a) of the Food and Nutrition Act of 2008 (7 U.S.C. 2036(a)) and section 204(a)(1) of the Emergency Food Assistance Act of 1983 (7 U.S.C. 7508(a)(1)), $150,000,000: Provided, That of the funds made available, the Secretary may use up to $50,000,000 for costs associated with the distribution of commodities, of which up to $25,000,000 shall be made available in fiscal year 2009.

GENERAL PROVISIONS—THIS TITLE

SEC. 101. TEMPORARY INCREASE IN BENEFITS UNDER THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM. (a) MAXIMUM BENEFIT INCREASE.—

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

(2) TERMINATION.—

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

(B) Notwithstanding subparagraph (A), the Secretary of Agriculture may not reduce the value of the maximum allotments, minimum allotments or consolidated block grants for Puerto Rico and American Samoa below the level in effect for fiscal year 2009 as a result of paragraph (1).

(b) REQUIREMENTS FOR THE SECRETARY.—In carrying out this section, the Secretary shall—

(1) consider the benefit increases described in subsection (a) to be a "mass change";

(2) require a simple process for States to notify households of the increase in benefits;

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

(4) disregard the additional amount of benefits that a household receives as a result of this section in determining the amount of overissuances under section 13 of the Food and Nutrition Act of 2008 (7 U.S.C. 2022); and

(5) set the tolerance level for excluding small errors for the purposes of section 16(c) of the Food and Nutrition Act of 2008 (7 U.S.C. 2025(c)) at $50 through September 30, 2009.

(c) ADMINISTRATIVE EXPENSES.—

(1) IN GENERAL.—For the costs of State administrative expenses associated with carrying out this section and administering the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.), the Secretary shall make available $145,000,000 in fiscal year 2009 and $150,000,000 in fiscal year 2010, of which $4,500,000 is for necessary expenses of the Food and Nutrition Service for management and oversight of the program and for monitoring the integrity and evaluating the effects of the payments made under this section.

(2) TIMING FOR FISCAL YEAR 2009.—Not later than 60 days after the date of enactment of this Act, the Secretary shall make available to States amounts for fiscal year 2009 under paragraph (1).

(3) ALLOCATION OF FUNDS.—Except as provided for management and oversight, funds described in paragraph (1) shall be made available as grants to State agencies for each fiscal year as follows:

(A) 75 percent of the amounts available for each fiscal year shall be allocated to States based on the share of each State of households that participate in the supplemental nutrition assistance program as reported to the Department of Agriculture for the most recent 12-month period for which data are available, adjusted by the Secretary (as of the date of enactment) for participation in disaster programs under section 5(h) of the Food and Nutrition Act of 2008 (7 U.S.C. 2014(h)); and

(B) 25 percent of the amounts available for each fiscal year shall be allocated to States based on the increase in the number of households that participate in the supplemental nutrition assistance program as reported to the Department of Agriculture over the most recent 12-month period for which data are available, adjusted by the Secretary (as of the date of enactment) for participation in disaster programs under section 5(h) of the Food and Nutrition Act of 2008 (7 U.S.C. 2014(h)).

(d) FOOD DISTRIBUTION PROGRAM ON INDIAN RESERVATIONS.—For the costs relating to facility improvements and equipment upgrades associated with the Food Distribution Program on Indian Reservations, as established under section 4(b) of the Food and Nutrition Act of 2008 (7 U.S.C. 2013(b)), the Secretary shall make available $5,000,000: Provided, That administrative cost-sharing requirements are not applicable to funds provided in accordance with this provision.

(e) TREATMENT OF JOBLESS WORKERS.—

(1) REMAINDER OF FISCAL YEAR 2009 THROUGH FISCAL YEAR 2010.—Beginning with the first month that begins not less than 25 days after the date of enactment of this Act and for each subsequent month through September 30, 2010, eligibility for supplemental nutrition assistance program benefits shall not be limited under section 6(o)(2) of the Food and Nutrition Act of

2008 unless an individual does not comply with the requirements of a program offered by the State agency that meets the standards of subparagraphs (B) or (C) of that paragraph.

(2) FISCAL YEAR 2011 AND THEREAFTER.—Beginning on October 1, 2010, for the purposes of section 6(o) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(o)), a State agency shall disregard any period during which an individual received benefits under the supplemental nutrition assistance program prior to October 1, 2010.

(f) FUNDING.—There are appropriated to the Secretary out of funds of the Treasury not otherwise appropriated such sums as are necessary to carry out this section.

SEC. 102. AGRICULTURAL DISASTER ASSISTANCE TRANSITION.(a) FEDERAL CROP INSURANCE ACT.— Section 531(g) of the Federal Crop Insurance Act (7 U.S.C. 1531(g)) is amended by adding at the end the following:

"(7) 2008 TRANSITION ASSISTANCE.—

"(A) IN GENERAL.—Eligible producers on a farm described in subparagraph (A) of paragraph (4) that failed to timely pay the appropriate fee described in that subparagraph shall be eligible for assistance under this section in accordance with subparagraph (B) if the eligible producers on the farm—

"(i) pay the appropriate fee described in paragraph (4)(A) not later than 90 days after the date of enactment of this paragraph; and

"(ii)(I) in the case of each insurable commodity of the eligible producers on the farm, excluding grazing land, agree to obtain a policy or plan of insurance under subtitle A (excluding a crop insurance pilot program under that subtitle) for the next insurance year for which crop insurance is available to the eligible producers on the farm at a level of coverage equal to 70 percent or more of the recorded or appraised average yield indemnified at 100 percent of the expected market price, or an equivalent coverage; and

"(II) in the case of each noninsurable commodity of the eligible producers on the farm, agree to file the required paperwork, and pay the administrative fee by the applicable State filing deadline, for the noninsured crop assistance program for the next year for which a policy is available.

"(B) AMOUNT OF ASSISTANCE.—Eligible producers on a farm that meet the requirements of subparagraph (A) shall be eligible to receive assistance under this section as if the eligible producers on the farm—

"(i) in the case of each insurable commodity of the eligible producers on the farm, had obtained a policy or plan of insurance for the 2008 crop year at a level of coverage not to exceed 70 percent or more of the recorded or appraised average yield indemnified at 100 percent of the expected market price, or an equivalent coverage; and

"(ii) in the case of each noninsurable commodity of the eligible producers on the farm, had filed the re-

quired paperwork, and paid the administrative fee by the applicable State filing deadline, for the noninsured crop assistance program for the 2008 crop year, except that in determining the level of coverage, the Secretary shall use 70 percent of the applicable yield.

"(C) EQUITABLE RELIEF.—Except as provided in subparagraph (D), eligible producers on a farm that met the requirements of paragraph (1) before the deadline described in paragraph (4)(A) and are eligible to receive, a disaster assistance payment under this section for a production loss during the 2008 crop year shall be eligible to receive an amount equal to the greater of—

"(i) the amount that would have been calculated under subparagraph (B) if the eligible producers on the farm had paid the appropriate fee under that subparagraph; or

"(ii) the amount that would have been calculated under subparagraph (A) of subsection (b)(3) if—

"(I) in clause (i) of that subparagraph, '120 percent' is substituted for '115 percent'; and

"(II) in clause (ii) of that subparagraph, '125 percent' is substituted for '120 percent'.

"(D) LIMITATION.—For amounts made available under this paragraph, the Secretary may make such adjustments as are necessary to ensure that no producer receives a payment under this paragraph for an amount in excess of the assistance received by a similarly situated producer that had purchased the same or higher level of crop insurance prior to the date of enactment of this paragraph.

"(E) AUTHORITY OF THE SECRETARY.—The Secretary may provide such additional assistance as the Secretary considers appropriate to provide equitable treatment for eligible producers on a farm that suffered production losses in the 2008 crop year that result in multiyear production losses, as determined by the Secretary.

"(F) LACK OF ACCESS.—Notwithstanding any other provision of this section, the Secretary may provide assistance under this section to eligible producers on a farm that—

"(i) suffered a production loss due to a natural cause during the 2008 crop year; and

"(ii) as determined by the Secretary—

"(I)(aa) except as provided in item (bb), lack access to a policy or plan of insurance under subtitle A; or

"(bb) do not qualify for a written agreement because 1 or more farming practices, which the Secretary has determined are good farming practices, of the eligible producers on the farm differ significantly from the farming practices used by producers of the same crop in other regions of the United States; and

"(II) are not eligible for the noninsured crop disaster assistance program established by section 196 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7333).".

(b) TRADE ACT OF 1974.—Section 901(g) of the Trade Act of 1974 (19 U.S.C. 2497(g)) is amended by adding at the end the following:

"(7) 2008 TRANSITION ASSISTANCE.—

"(A) IN GENERAL.—Eligible producers on a farm described in subparagraph (A) of paragraph (4) that failed to timely pay the appropriate fee described in that subparagraph shall be eligible for assistance under this section in accordance with subparagraph (B) if the eligible producers on the farm—

"(i) pay the appropriate fee described in paragraph (4)(A) not later than 90 days after the date of enactment of this paragraph; and

"(ii)(I) in the case of each insurable commodity of the eligible producers on the farm, excluding grazing land, agree to obtain a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) (excluding a crop insurance pilot program under that Act) for the next insurance year for which crop insurance is available to the eligible producers on the farm at a level of coverage equal to 70 percent or more of the recorded or appraised average yield indemnified at 100 percent of the expected market price, or an equivalent coverage; and

"(II) in the case of each noninsurable commodity of the eligible producers on the farm, agree to file the required paperwork, and pay the administrative fee by the applicable State filing deadline, for the noninsured crop assistance program for the next year for which a policy is available.

"(B) AMOUNT OF ASSISTANCE.—Eligible producers on a farm that meet the requirements of subparagraph (A) shall be eligible to receive assistance under this section as if the eligible producers on the farm—

"(i) in the case of each insurable commodity of the eligible producers on the farm, had obtained a policy or plan of insurance for the 2008 crop year at a level of coverage not to exceed 70 percent or more of the recorded or appraised average yield indemnified at 100 percent of the expected market price, or an equivalent coverage; and

"(ii) in the case of each noninsurable commodity of the eligible producers on the farm, had filed the required paperwork, and paid the administrative fee by the applicable State filing deadline, for the noninsured crop assistance program for the 2008 crop year, except that in determining the level of coverage, the Secretary shall use 70 percent of the applicable yield.

"(C) EQUITABLE RELIEF.—Except as provided in subparagraph (D), eligible producers on a farm that met the requirements of paragraph (1) before the deadline described in paragraph (4)(A) and are eligible to receive, a disaster assistance payment under this section for a production loss during the 2008 crop year shall be eligible to receive an amount equal to the greater of—

"(i) the amount that would have been calculated under subparagraph (B) if the eligible producers on the farm had paid the appropriate fee under that subparagraph; or

"(ii) the amount that would have been calculated under subparagraph (A) of subsection (b)(3) if—

"(I) in clause (i) of that subparagraph, '120 percent' is substituted for '115 percent'; and

"(II) in clause (ii) of that subparagraph, '125 percent' is substituted for '120 percent'.

"(D) LIMITATION.—For amounts made available under this paragraph, the Secretary may make such adjustments as are necessary to ensure that no producer receives a payment under this paragraph for an amount in excess of the assistance received by a similarly situated producer that had purchased the same or higher level of crop insurance prior to the date of enactment of this paragraph.

"(E) AUTHORITY OF THE SECRETARY.—The Secretary may provide such additional assistance as the Secretary considers appropriate to provide equitable treatment for eligible producers on a farm that suffered production losses in the 2008 crop year that result in multiyear production losses, as determined by the Secretary.

"(F) LACK OF ACCESS.—Notwithstanding any other provision of this section, the Secretary may provide assistance under this section to eligible producers on a farm that—

"(i) suffered a production loss due to a natural cause during the 2008 crop year; and

"(ii) as determined by the Secretary—

"(I)(aa) except as provided in item (bb), lack access to a policy or plan of insurance under subtitle A; or

"(bb) do not qualify for a written agreement because 1 or more farming practices, which the Secretary has determined are good farming practices, of the eligible producers on the farm differ significantly from the farming practices used by producers of the same crop in other regions of the United States; and

"(II) are not eligible for the noninsured crop disaster assistance program established by section 196 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7333).".

(c) FARM OPERATING LOANS.—

(1) IN GENERAL.—For the principal amount of direct farm operating loans under section 311 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1941), $173,367,000.

(2) DIRECT FARM OPERATING LOANS.—For the cost of direct farm operating loans, including the cost of modifying loans, as defined in section 502 of the Congressional Budget Act of 1974 (2 U.S.C. 661a), $20,440,000.

(d) 2008 AQUACULTURE ASSISTANCE.—

(1) DEFINITIONS.—In this subsection:

(A) ELIGIBLE AQUACULTURE PRODUCER.—The term "eligible aquaculture producer" means an aquaculture pro-

ducer that during the 2008 calendar year, as determined by the Secretary—

(i) produced an aquaculture species for which feed costs represented a substantial percentage of the input costs of the aquaculture operation; and

(ii) experienced a substantial price increase of feed costs above the previous 5-year average.

(B) SECRETARY.—The term "Secretary" means the Secretary of Agriculture.

(2) GRANT PROGRAM.—

(A) IN GENERAL.—Of the funds of the Commodity Credit Corporation, the Secretary shall use not more than $50,000,000, to remain available until September 30, 2010, to carry out a program of grants to States to assist eligible aquaculture producers for losses associated with high feed input costs during the 2008 calendar year.

(B) NOTIFICATION.—Not later than 60 days after the date of enactment of this Act, the Secretary shall notify the State department of agriculture (or similar entity) in each State of the availability of funds to assist eligible aquaculture producers, including such terms as determined by the Secretary to be necessary for the equitable treatment of eligible aquaculture producers.

(C) PROVISION OF GRANTS.—

(i) IN GENERAL.—The Secretary shall make grants to States under this subsection on a pro rata basis based on the amount of aquaculture feed used in each State during the 2007 calendar year, as determined by the Secretary.

(ii) TIMING.—Not later than 120 days after the date of enactment of this Act, the Secretary shall make grants to States to provide assistance under this subsection.

(D) REQUIREMENTS.—The Secretary shall make grants under this subsection only to States that demonstrate to the satisfaction of the Secretary that the State will—

(i) use grant funds to assist eligible aquaculture producers;

(ii) provide assistance to eligible aquaculture producers not later than 60 days after the date on which the State receives grant funds; and

(iii) not later than 30 days after the date on which the State provides assistance to eligible aquaculture producers, submit to the Secretary a report that describes—

(I) the manner in which the State provided assistance;

(II) the amounts of assistance provided per species of aquaculture; and

(III) the process by which the State determined the levels of assistance to eligible aquaculture producers.

(3) REDUCTION IN PAYMENTS.—An eligible aquaculture producer that receives assistance under this subsection shall not be eligible to receive any other assistance under the supplemental

agricultural disaster assistance program established under section 531 of the Federal Crop Insurance Act (7 U.S.C. 1531) and section 901 of the Trade Act of 1974 (19 U.S.C. 2497) for any losses in 2008 relating to the same species of aquaculture.

(4) REPORT TO CONGRESS.—Not later than 180 days after the date of enactment of this Act, the Secretary shall submit to the appropriate committees of Congress a report that—

(A) describes in detail the manner in which this subsection has been carried out; and

(B) includes the information reported to the Secretary under paragraph (2)(D)(iii).

SEC. 103. For fiscal years 2009 and 2010, in the case of each program established or amended by the Food, Conservation, and Energy Act of 2008 (Public Law 110–246), other than by title I of such Act, that is authorized or required to be carried out using funds of the Commodity Credit Corporation—

(1) such funds shall be available for the purpose of covering salaries and related administrative expenses, including technical assistance, associated with the implementation of the program, without regard to the limitation on the total amount of allotments and fund transfers contained in section 11 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714i); and

(2) the use of such funds for such purpose shall not be considered to be a fund transfer or allotment for purposes of applying the limitation on the total amount of allotments and fund transfers contained in such section.

SEC. 104. In addition to other available funds, of the funds made available to the Rural Development mission area in this title, not more than 3 percent of the funds can be used for administrative costs to carry out loan, loan guarantee and grant activities funded in this title, which shall be transferred to and merged with the appropriation for "Rural Development, Salaries and Expenses": Provided, That of this amount $1,750,000 shall be committed to agency projects associated with maintaining the compliance, safety, and soundness of the portfolio of loans guaranteed through the section 502 guaranteed loan program.

SEC. 105. Of the amounts appropriated in this title to the "Rural Housing Service, Rural Community Facilities Program Account", the "Rural Business-Cooperative Service, Rural Business Program Account", and the "Rural Utilities Service, Rural Water and Waste Disposal Program Account", at least 10 percent shall be allocated for assistance in persistent poverty counties: Provided, That for the purposes of this section, the term "persistent poverty counties" means any county that has had 20 percent or more of its population living in poverty over the past 30 years, as measured by the 1980, 1990, and 2000 decennial censuses.

TITLE II—COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES

DEPARTMENT OF COMMERCE

ECONOMIC DEVELOPMENT ADMINISTRATION

ECONOMIC DEVELOPMENT ASSISTANCE PROGRAMS

For an additional amount for "Economic Development Assistance Programs", $150,000,000: Provided, That $50,000,000 shall be for economic adjustment assistance as authorized by section 209 of the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3149): Provided further, That in allocating the funds provided in the previous proviso, the Secretary of Commerce shall give priority consideration to areas of the Nation that have experienced sudden and severe economic dislocation and job loss due to corporate restructuring: Provided further, That not to exceed 2 percent of the funds provided under this heading may be transferred to and merged with the appropriation for "Salaries and Expenses" for purposes of program administration and oversight: Provided further, That up to $50,000,000 of the funds provided under this heading may be transferred to federally authorized regional economic development commissions.

BUREAU OF THE CENSUS

PERIODIC CENSUSES AND PROGRAMS

For an additional amount for "Periodic Censuses and Programs", $1,000,000,000.

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

BROADBAND TECHNOLOGY OPPORTUNITIES PROGRAM

For an amount for "Broadband Technology Opportunities Program", $4,700,000,000: Provided, That of the funds provided under this heading, not less than $4,350,000,000 shall be expended pursuant to division B of this Act, of which: not less than $200,000,000 shall be available for competitive grants for expanding public computer center capacity, including at community colleges and public libraries; not less than $250,000,000 shall be available for competitive grants for innovative programs to encourage sustainable adoption of broadband service; and $10,000,000 shall be transferred to "Department of Commerce, Office of Inspector General" for the purposes of audits and oversight of funds provided under this heading and such funds shall remain available until expended: Provided further, That of the funds provided under this heading, up to $350,000,000 may be expended pursuant to Public Law 110–385 (47 U.S.C. 1301 note) and for the purposes of developing and maintaining a broadband inventory map pursuant to division B of this Act: Provided further, That of the funds provided under this heading, amounts deemed necessary and appropriate by the Secretary of Commerce, in consultation with the Federal Communications Commission (FCC), may be transferred to the FCC for the purposes of developing a national broadband plan or for carrying out any other

FCC responsibilities pursuant to division B of this Act, and only if the Committees on Appropriations of the House and the Senate are notified not less than 15 days in advance of the transfer of such funds: Provided further, That not more than 3 percent of funds provided under this heading may be used for administrative costs, and this limitation shall apply to funds which may be transferred to the FCC.

DIGITAL-TO-ANALOG CONVERTER BOX PROGRAM

For an amount for "Digital-to-Analog Converter Box Program", $650,000,000, for additional coupons and related activities under the program implemented under section 3005 of the Digital Television Transition and Public Safety Act of 2005: Provided, That of the amounts provided under this heading, $90,000,000 may be for education and outreach, including grants to organizations for programs to educate vulnerable populations, including senior citizens, minority communities, people with disabilities, low-income individuals, and people living in rural areas, about the transition and to provide one-on-one assistance to vulnerable populations, including help with converter box installation: Provided further, That the amounts provided in the previous proviso may be transferred to the Federal Communications Commission (FCC) if deemed necessary and appropriate by the Secretary of Commerce in consultation with the FCC, and only if the Committees on Appropriations of the House and the Senate are notified not less than 5 days in advance of transfer of such funds.

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

SCIENTIFIC AND TECHNICAL RESEARCH AND SERVICES

For an additional amount for "Scientific and Technical Research and Services", $220,000,000.

CONSTRUCTION OF RESEARCH FACILITIES

For an additional amount for "Construction of Research Facilities", $360,000,000, of which $180,000,000 shall be for a competitive construction grant program for research science buildings.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

OPERATIONS, RESEARCH, AND FACILITIES

For an additional amount for "Operations, Research, and Facilities", $230,000,000.

PROCUREMENT, ACQUISITION AND CONSTRUCTION

For an additional amount for "Procurement, Acquisition and Construction", $600,000,000.

OFFICE OF INSPECTOR GENERAL

For an additional amount for "Office of Inspector General", $6,000,000, to remain available until September 30, 2013.

DEPARTMENT OF JUSTICE

GENERAL ADMINISTRATION

OFFICE OF INSPECTOR GENERAL

For an additional amount for "Office of Inspector General", $2,000,000, to remain available until September 30, 2013.

STATE AND LOCAL LAW ENFORCEMENT ACTIVITIES

OFFICE ON VIOLENCE AGAINST WOMEN

VIOLENCE AGAINST WOMEN PREVENTION AND PROSECUTION PROGRAMS

For an additional amount for "Violence Against Women Prevention and Prosecution Programs", $225,000,000 for grants to combat violence against women, as authorized by part T of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg et seq.): Provided, That, $50,000,000 shall be for transitional housing assistance grants for victims of domestic violence, stalking or sexual assault as authorized by section 40299 of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322).

OFFICE OF JUSTICE PROGRAMS

STATE AND LOCAL LAW ENFORCEMENT ASSISTANCE

For an additional amount for "State and Local Law Enforcement Assistance", $2,000,000,000, for the Edward Byrne Memorial Justice Assistance Grant program as authorized by subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 ("1968 Act"), (except that section 1001(c), and the special rules for Puerto Rico under section 505(g), of the 1968 Act, shall not apply for purposes of this Act).

For an additional amount for "State and Local Law Enforcement Assistance", $225,000,000, for competitive grants to improve the functioning of the criminal justice system, to assist victims of crime (other than compensation), and youth mentoring grants.

For an additional amount for "State and Local Law Enforcement Assistance", $40,000,000, for competitive grants to provide assistance and equipment to local law enforcement along the Southern border and in High-Intensity Drug Trafficking Areas to combat criminal narcotics activity stemming from the Southern border, of which $10,000,000 shall be transferred to "Bureau of Alcohol, Tobacco, Firearms and Explosives, Salaries and Expenses" for the ATF Project Gunrunner.

For an additional amount for "State and Local Law Enforcement Assistance", $225,000,000, for assistance to Indian tribes, notwithstanding Public Law 108–199, division B, title I, section 112(a)(1) (118 Stat. 62), which shall be available for grants under section 20109 of subtitle A of title II of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322).

For an additional amount for "State and Local Law Enforcement Assistance", $100,000,000, to be distributed by the Office for Victims of Crime in accordance with section 1402(d)(4) of the Victims of Crime Act of 1984 (Public Law 98–473).

For an additional amount for "State and Local Law Enforcement Assistance", $125,000,000, for assistance to law enforcement in rural States and rural areas, to prevent and combat crime, especially drug-related crime.

For an additional amount for "State and Local Law Enforcement Assistance", $50,000,000, for Internet Crimes Against Children (ICAC) initiatives.

COMMUNITY ORIENTED POLICING SERVICES

For an additional amount for "Community Oriented Policing Services", for grants under section 1701 of title I of the 1968 Omnibus Crime Control and Safe Streets Act (42 U.S.C. 3796dd) for hiring and rehiring of additional career law enforcement officers under part Q of such title, notwithstanding subsection (i) of such section, $1,000,000,000.

SALARIES AND EXPENSES

For an additional amount, not elsewhere specified in this title, for management and administration and oversight of programs within the Office on Violence Against Women, the Office of Justice Programs, and the Community Oriented Policing Services Office, $10,000,000.

SCIENCE

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

SCIENCE

For an additional amount for "Science", $400,000,000.

AERONAUTICS

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

EXPLORATION

For an additional amount for "Exploration", $400,000,000.

CROSS AGENCY SUPPORT

For an additional amount for "Cross Agency Support", $50,000,000.

OFFICE OF INSPECTOR GENERAL

For an additional amount for "Office of Inspector General", $2,000,000, to remain available until September 30, 2013.

NATIONAL SCIENCE FOUNDATION

RESEARCH AND RELATED ACTIVITIES

For an additional amount for "Research and Related Activities", $2,500,000,000: Provided, That $300,000,000 shall be available solely for the Major Research Instrumentation program and $200,000,000 shall be for activities authorized by title II of Public Law 100–570 for academic research facilities modernization.

EDUCATION AND HUMAN RESOURCES

For an additional amount for "Education and Human Resources", $100,000,000.

MAJOR RESEARCH EQUIPMENT AND FACILITIES CONSTRUCTION

For an additional amount for "Major Research Equipment and Facilities Construction", $400,000,000.

OFFICE OF INSPECTOR GENERAL

For an additional amount for "Office of Inspector General", $2,000,000, to remain available until September 30, 2013.

GENERAL PROVISION—THIS TITLE

SEC. 201. Sections 1701(g) and 1704(c) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd(g) and 3796dd–3(c)) shall not apply with respect to funds appropriated in this or any other Act making appropriations for fiscal year 2009 or 2010 for Community Oriented Policing Services authorized under part Q of such Act of 1968.

TITLE III—DEPARTMENT OF DEFENSE

OPERATION AND MAINTENANCE

OPERATION AND MAINTENANCE, ARMY

For an additional amount for "Operation and Maintenance, Army", $1,474,525,000, to remain available for obligation until September 30, 2010, to improve, repair and modernize Department of Defense facilities, restore and modernize real property to include barracks, and invest in the energy efficiency of Department of Defense facilities.

OPERATION AND MAINTENANCE, NAVY

For an additional amount for "Operation and Maintenance, Navy", $657,051,000, to remain available for obligation until September 30, 2010, to improve, repair and modernize Department of Defense facilities, restore and modernize real property to include barracks, and invest in the energy efficiency of Department of Defense facilities.

OPERATION AND MAINTENANCE, MARINE CORPS

For an additional amount for "Operation and Maintenance, Marine Corps", $113,865,000, to remain available for obligation until September 30, 2010, to improve, repair and modernize Department of Defense facilities, restore and modernize real property to include barracks, and invest in the energy efficiency of Department of Defense facilities.

OPERATION AND MAINTENANCE, AIR FORCE

For an additional amount for "Operation and Maintenance, Air Force", $1,095,959,000, to remain available for obligation until September 30, 2010, to improve, repair and modernize Department of

Defense facilities, restore and modernize real property to include barracks, and invest in the energy efficiency of Department of Defense facilities.

OPERATION AND MAINTENANCE, ARMY RESERVE

For an additional amount for "Operation and Maintenance, Army Reserve", $98,269,000, to remain available for obligation until September 30, 2010, to improve, repair and modernize Department of Defense facilities, restore and modernize real property to include barracks, and invest in the energy efficiency of Department of Defense facilities.

OPERATION AND MAINTENANCE, NAVY RESERVE

For an additional amount for "Operation and Maintenance, Navy Reserve", $55,083,000, to remain available for obligation until September 30, 2010, to improve, repair and modernize Department of Defense facilities, restore and modernize real property to include barracks, and invest in the energy efficiency of Department of Defense facilities.

OPERATION AND MAINTENANCE, MARINE CORPS RESERVE

For an additional amount for "Operation and Maintenance, Marine Corps Reserve", $39,909,000, to remain available for obligation until September 30, 2010, to improve, repair and modernize Department of Defense facilities, restore and modernize real property to include barracks, and invest in the energy efficiency of Department of Defense facilities.

OPERATION AND MAINTENANCE, AIR FORCE RESERVE

For an additional amount for "Operation and Maintenance, Air Force Reserve", $13,187,000, to remain available for obligation until September 30, 2010, to improve, repair and modernize Department of Defense facilities, restore and modernize real property to include barracks, and invest in the energy efficiency of Department of Defense facilities.

OPERATION AND MAINTENANCE, ARMY NATIONAL GUARD

For an additional amount for "Operation and Maintenance, Army National Guard", $266,304,000, to remain available for obligation until September 30, 2010, to improve, repair and modernize Department of Defense facilities, restore and modernize real property to include barracks, and invest in the energy efficiency of Department of Defense facilities.

OPERATION AND MAINTENANCE, AIR NATIONAL GUARD

For an additional amount for "Operation and Maintenance, Air National Guard", $25,848,000, to remain available for obligation until September 30, 2010, to improve, repair and modernize Department of Defense facilities, restore and modernize real property to include barracks, and invest in the energy efficiency of Department of Defense facilities.

RESEARCH, DEVELOPMENT, TEST AND EVALUATION

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, ARMY

For an additional amount for "Research, Development, Test and Evaluation, Army", $75,000,000, to remain available for obligation until September 30, 2010.

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, NAVY

For an additional amount for "Research, Development, Test and Evaluation, Navy", $75,000,000, to remain available for obligation until September 30, 2010.

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, AIR FORCE

For an additional amount for "Research, Development, Test and Evaluation, Air Force", $75,000,000, to remain available for obligation until September 30, 2010.

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, DEFENSE-WIDE

For an additional amount for "Research, Development, Test and Evaluation, Defense-Wide", $75,000,000, to remain available for obligation until September 30, 2010.

OTHER DEPARTMENT OF DEFENSE PROGRAMS

DEFENSE HEALTH PROGRAM

For an additional amount for "Defense Health Program", $400,000,000 for operation and maintenance, to remain available for obligation until September 30, 2010, to improve, repair and modernize military medical facilities, and invest in the energy efficiency of military medical facilities.

OFFICE OF THE INSPECTOR GENERAL

For an additional amount for "Office of the Inspector General", $15,000,000 for operation and maintenance, to remain available for obligation until September 30, 2011.

TITLE IV—ENERGY AND WATER DEVELOPMENT

DEPARTMENT OF DEFENSE—CIVIL

DEPARTMENT OF THE ARMY

CORPS OF ENGINEERS—CIVIL

INVESTIGATIONS

For an additional amount for "Investigations", $25,000,000: Provided, That funds provided under this heading in this title shall only be used for programs, projects or activities that heretofore or hereafter receive funds provided in Acts making appropriations available for Energy and Water Development: Provided further, That funds provided under this heading in this title shall be used for programs, projects or activities or elements of programs, projects or activities that can be completed within the funds made available

in that account and that will not require new budget authority to complete: Provided further, That for projects that are being completed with funds appropriated in this Act that would otherwise be expired for obligation, expired funds appropriated in this Act may be used to pay the cost of associated supervision, inspection, overhead, engineering and design on those projects and on subsequent claims, if any: Provided further, That the Secretary of the Army shall submit a quarterly report to the Committees on Appropriations of the House of Representatives and the Senate detailing the allocation, obligation and expenditures of these funds, beginning not later than 45 days after enactment of this Act: Provided further, That the Secretary shall have unlimited reprogramming authority for these funds provided under this heading.

CONSTRUCTION

For an additional amount for "Construction", $2,000,000,000: Provided, That not less than $200,000,000 of the funds provided shall be for water-related environmental infrastructure assistance: Provided further, That section 102 of Public Law 109–103 (33 U.S.C. 2221) shall not apply to funds provided in this title: Provided further, That notwithstanding any other provision of law, funds provided in this paragraph shall not be cost shared with the Inland Waterways Trust Fund as authorized in Public Law 99–662: Provided further, That funds provided under this heading in this title shall only be used for programs, projects or activities that heretofore or hereafter receive funds provided in Acts making appropriations available for Energy and Water Development: Provided further, That funds provided under this heading in this title shall be used for programs, projects or activities or elements of programs, projects or activities that can be completed within the funds made available in that account and that will not require new budget authority to complete: Provided further, That the limitation concerning total project costs in section 902 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 2280), shall not apply during fiscal year 2009 to any project that received funds provided in this title: Provided further, That funds appropriated under this heading may be used by the Secretary of the Army, acting through the Chief of Engineers, to undertake work authorized to be carried out in accordance with section 14 of the Flood Control Act of 1946 (33 U.S.C. 701r); section 205 of the Flood Control Act of 1948 (33 U.S.C. 701s); section 206 of the Water Resources Development Act of 1996 (33 U.S.C. 2330); or section 1135 of the Water Resources Development Act of 1986 (33 U.S.C. 2309a), notwithstanding the program cost limitations set forth in those sections: Provided further, That for projects that are being completed with funds appropriated in this Act that would otherwise be expired for obligation, expired funds appropriated in this Act may be used to pay the cost of associated supervision, inspection, overhead, engineering and design on those projects and on subsequent claims, if any: Provided further, That the Secretary of the Army shall submit a quarterly report to the Committees on Appropriations of the House of Representatives and the Senate detailing the allocation, obligation and expenditures of these funds, beginning not later than 45 days after enactment of this Act: Provided further, That the Secretary shall have unlimited

reprogramming authority for these funds provided under this heading.

MISSISSIPPI RIVER AND TRIBUTARIES

For an additional amount for "Mississippi River and Tributaries", $375,000,000: Provided, That funds provided under this heading in this title shall only be used for programs, projects or activities that heretofore or hereafter receive funds provided in Acts making appropriations available for Energy and Water Development: Provided further, That funds provided under this heading in this title shall be used for programs, projects or activities or elements of programs, projects or activities that can be completed within the funds made available in that account and that will not require new budget authority to complete: Provided further, That the limitation concerning total project costs in section 902 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 2280), shall not apply during fiscal year 2009 to any project that received funds provided in this title: Provided further, That for projects that are being completed with funds appropriated in this Act that would otherwise be expired for obligation, expired funds appropriated in this Act may be used to pay the cost of associated supervision, inspection, overhead engineering, and design on those projects and on subsequent claims, if any: Provided further, That the Secretary of the Army shall submit a quarterly report to the Committees on Appropriations of the House of Representatives and the Senate detailing the allocation, obligation and expenditures of these funds, beginning not later than 45 days after enactment of this Act: Provided further, That the Secretary shall have unlimited reprogramming authority for these funds provided under this heading.

OPERATION AND MAINTENANCE

For an additional amount for "Operation and Maintenance", $2,075,000,000: Provided, That funds provided under this heading in this title shall only be used for programs, projects or activities that heretofore or hereafter receive funds provided in Acts making appropriations available for Energy and Water Development: Provided further, That funds provided under this heading in this title shall be used for programs, projects or activities or elements of programs, projects or activities that can be completed within the funds made available in that account and that will not require new budget authority to complete: Provided further, That section 9006 of Public Law 110–114 shall not apply to funds provided in this title: Provided further, That for projects that are being completed with funds appropriated in this Act that would otherwise be expired for obligation, expired funds appropriated in this Act may be used to pay the cost of associated supervision, inspection, overhead, engineering and design on those projects and on subsequent claims, if any: Provided further, That the Secretary of the Army shall submit a quarterly report to the Committees on Appropriations of the House of Representatives and the Senate detailing the allocation, obligation and expenditures of these funds, beginning not later than 45 days after enactment of this Act: Provided further, That the Secretary shall have unlimited reprogramming authority for these funds provided under this heading.

REGULATORY PROGRAM

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

FORMERLY UTILIZED SITES REMEDIAL ACTION PROGRAM

For an additional amount for "Formerly Utilized Sites Remedial Action Program", $100,000,000: Provided, That funds provided under this heading in this title shall be used for programs, projects or activities or elements of programs, projects or activities that can be completed within the funds made available in that account and that will not require new budget authority to complete: Provided further, That for projects that are being completed with funds appropriated in this Act that would otherwise be expired for obligation, expired funds appropriated in this Act may be used to pay the cost of associated supervision, inspection, overhead, engineering and design on those projects and on subsequent claims, if any: Provided further, That the Secretary of the Army shall submit a quarterly report to the Committees on Appropriations of the House of Representatives and the Senate detailing the allocation, obligation and expenditures of these funds, beginning not later than 45 days after enactment of this Act: Provided further, That the Secretary shall have unlimited reprogramming authority for these funds provided under this heading.

DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION

WATER AND RELATED RESOURCES

For an additional amount for "Water and Related Resources", $1,000,000,000: Provided, That of the amount appropriated under this heading, not less than $126,000,000 shall be used for water reclamation and reuse projects authorized under title XVI of Public Law 102–575: Provided further, That funds provided in this Act shall be used for elements of projects, programs or activities that can be completed within these funding amounts and not create budgetary obligations in future fiscal years: Provided further, That $50,000,000 of the funds provided under this heading may be transferred to the Department of the Interior for programs, projects and activities authorized by the Central Utah Project Completion Act (titles II–V of Public Law 102–575): Provided further, That $50,000,000 of the funds provided under this heading may be used for programs, projects, and activities authorized by the California Bay-Delta Restoration Act (Public Law 108–361): Provided further, That not less than $60,000,000 of the funds provided under this heading shall be used for rural water projects and shall be expended primarily on water intake and treatment facilities of such projects: Provided further, That not less than $10,000,000 of the funds provided under this heading shall be used for a bureau-wide inspection of canals program in urbanized areas: Provided further, That the costs of extraordinary maintenance and replacement activities carried out with funds provided in this Act shall be repaid pursuant to existing authority, except the length of repayment period shall be as determined by the Commissioner, but in no case shall

the repayment period exceed 50 years and the repayment shall include interest, at a rate determined by the Secretary of the Treasury as of the beginning of the fiscal year in which the work is commenced, on the basis of average market yields on outstanding marketable obligations of the United States with the remaining periods of maturity comparable to the applicable reimbursement period of the project adjusted to the nearest one-eighth of 1 percent on the unamortized balance of any portion of the loan: Provided further, That for projects that are being completed with funds appropriated in this Act that would otherwise be expired for obligation, expired funds appropriated in this Act may be used to pay the cost of associated supervision, inspection, overhead, engineering and design on those projects and on subsequent claims, if any: Provided further, That the Secretary of the Interior shall submit a quarterly report to the Committees on Appropriations of the House of Representatives and the Senate detailing the allocation, obligation and expenditures of these funds, beginning not later than 45 days after enactment of this Act: Provided further, That the Secretary shall have unlimited reprogramming authority for these funds provided under this heading.

DEPARTMENT OF ENERGY

ENERGY PROGRAMS

ENERGY EFFICIENCY AND RENEWABLE ENERGY

For an additional amount for "Energy Efficiency and Renewable Energy", $16,800,000,000: Provided, That $3,200,000,000 shall be available for Energy Efficiency and Conservation Block Grants for implementation of programs authorized under subtitle E of title V of the Energy Independence and Security Act of 2007 (42 U.S.C. 17151 et seq.), of which $2,800,000,000 is available through the formula in subtitle E: Provided further, That the Secretary may use the most recent and accurate population data available to satisfy the requirements of section 543(b) of the Energy Independence and Security Act of 2007: Provided further, That the remaining $400,000,000 shall be awarded on a competitive basis: Provided further, That $5,000,000,000 shall be for the Weatherization Assistance Program under part A of title IV of the Energy Conservation and Production Act (42 U.S.C. 6861 et seq.): Provided further, That $3,100,000,000 shall be for the State Energy Program authorized under part D of title III of the Energy Policy and Conservation Act (42 U.S.C. 6321): Provided further, That $2,000,000,000 shall be available for grants for the manufacturing of advanced batteries and components and the Secretary shall provide facility funding awards under this section to manufacturers of advanced battery systems and vehicle batteries that are produced in the United States, including advanced lithium ion batteries, hybrid electrical systems, component manufacturers, and software designers: Provided further, That notwithstanding section 3304 of title 5, United States Code, and without regard to the provisions of sections 3309 through 3318 of such title 5, the Secretary of Energy, upon a determination that there is a severe shortage of candidates or a critical hiring need for particular positions, may from within the funds provided, recruit and directly appoint highly qualified individuals into the com-

petitive service: Provided further, That such authority shall not apply to positions in the Excepted Service or the Senior Executive Service: Provided further, That any action authorized herein shall be consistent with the merit principles of section 2301 of such title 5, and the Department shall comply with the public notice requirements of section 3327 of such title 5.

ELECTRICITY DELIVERY AND ENERGY RELIABILITY

For an additional amount for "Electricity Delivery and Energy Reliability," $4,500,000,000: Provided, That funds shall be available for expenses necessary for electricity delivery and energy reliability activities to modernize the electric grid, to include demand responsive equipment, enhance security and reliability of the energy infrastructure, energy storage research, development, demonstration and deployment, and facilitate recovery from disruptions to the energy supply, and for implementation of programs authorized under title XIII of the Energy Independence and Security Act of 2007 (42 U.S.C. 17381 et seq.): Provided further, That $100,000,000 shall be available for worker training activities: Provided further, That notwithstanding section 3304 of title 5, United States Code, and without regard to the provisions of sections 3309 through 3318 of such title 5, the Secretary of Energy, upon a determination that there is a severe shortage of candidates or a critical hiring need for particular positions, may from within the funds provided, recruit and directly appoint highly qualified individuals into the competitive service: Provided further, That such authority shall not apply to positions in the Excepted Service or the Senior Executive Service: Provided further, That any action authorized herein shall be consistent with the merit principles of section 2301 of such title 5, and the Department shall comply with the public notice requirements of section 3327 of such title 5: Provided further, That for the purpose of facilitating the development of regional transmission plans, the Office of Electricity Delivery and Energy Reliability within the Department of Energy is provided $80,000,000 within the available funds to conduct a resource assessment and an analysis of future demand and transmission requirements after consultation with the Federal Energy Regulatory Commission: Provided further, That the Office of Electricity Delivery and Energy Reliability in coordination with the Federal Energy Regulatory Commission will provide technical assistance to the North American Electric Reliability Corporation, the regional reliability entities, the States, and other transmission owners and operators for the formation of interconnection-based transmission plans for the Eastern and Western Interconnections and ERCOT: Provided further, That such assistance may include modeling, support to regions and States for the development of coordinated State electricity policies, programs, laws, and regulations: Provided further, That $10,000,000 is provided to implement section 1305 of Public Law 110–140: Provided further, That the Secretary of Energy may use or transfer amounts provided under this heading to carry out new authority for transmission improvements, if such authority is enacted in any subsequent Act, consistent with existing fiscal management practices and procedures.

FOSSIL ENERGY RESEARCH AND DEVELOPMENT

For an additional amount for "Fossil Energy Research and Development", $3,400,000,000.

NON-DEFENSE ENVIRONMENTAL CLEANUP

For an additional amount for "Non-Defense Environmental Cleanup", $483,000,000.

URANIUM ENRICHMENT DECONTAMINATION AND DECOMMISSIONING FUND

For an additional amount for "Uranium Enrichment Decontamination and Decommissioning Fund", $390,000,000, of which $70,000,000 shall be available in accordance with title X, subtitle A of the Energy Policy Act of 1992.

SCIENCE

For an additional amount for "Science", $1,600,000,000.

ADVANCED RESEARCH PROJECTS AGENCY—ENERGY

For the Advanced Research Projects Agency—Energy, $400,000,000, as authorized under section 5012 of the America COMPETES Act (42 U.S.C. 16538).

TITLE 17—INNOVATIVE TECHNOLOGY LOAN GUARANTEE PROGRAM

For an additional amount for the cost of guaranteed loans authorized by section 1705 of the Energy Policy Act of 2005, $6,000,000,000, available until expended, to pay the costs of guarantees made under this section: Provided, That of the amount provided for title XVII, $25,000,000 shall be used for administrative expenses in carrying out the guaranteed loan program: Provided further, That of the amounts provided for title XVII, $10,000,000 shall be transferred to and available for administrative expenses for the Advanced Technology Vehicles Manufacturing Loan Program.

OFFICE OF THE INSPECTOR GENERAL

For necessary expenses of the Office of the Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, $15,000,000, to remain available until September 30, 2012.

ENVIRONMENTAL AND OTHER DEFENSE ACTIVITIES

DEFENSE ENVIRONMENTAL CLEANUP

For an additional amount for "Defense Environmental Cleanup," $5,127,000,000.

CONSTRUCTION, REHABILITATION, OPERATION, AND MAINTENANCE, WESTERN AREA POWER ADMINISTRATION

For carrying out the functions authorized by title III, section 302(a)(1)(E) of the Act of August 4, 1977 (42 U.S.C. 7152), and other related activities including conservation and renewable re-

sources programs as authorized, $10,000,000, to remain available until expended: Provided, That the Administrator shall establish such personnel staffing levels as he deems necessary to economically and efficiently complete the activities pursued under the authority granted by section 402 of this Act: Provided further, That this appropriation is non-reimbursable.

GENERAL PROVISIONS—THIS TITLE

SEC. 401. BONNEVILLE POWER ADMINISTRATION BORROWING AUTHORITY.—For the purposes of providing funds to assist in financing the construction, acquisition, and replacement of the transmission system of the Bonneville Power Administration and to implement the authority of the Administrator of the Bonneville Power Administration under the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839 et seq.), an additional $3,250,000,000 in borrowing authority is made available under the Federal Columbia River Transmission System Act (16 U.S.C. 838 et seq.), to remain outstanding at any time.

SEC. 402. WESTERN AREA POWER ADMINISTRATION BORROWING AUTHORITY.—The Hoover Power Plant Act of 1984 (Public Law 98–381) is amended by adding at the end the following:

"TITLE III—BORROWING AUTHORITY

"SEC. 301. WESTERN AREA POWER ADMINISTRATION BORROWING AUTHORITY.

"(a) DEFINITIONS.—In this section:

"(1) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Western Area Power Administration.

"(2) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury.

"(b) AUTHORITY.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, subject to paragraphs (2) through (5)—

"(A) the Western Area Power Administration may borrow funds from the Treasury; and

"(B) the Secretary shall, without further appropriation and without fiscal year limitation, loan to the Western Area Power Administration, on such terms as may be fixed by the Administrator and the Secretary, such sums (not to exceed, in the aggregate (including deferred interest), $3,250,000,000 in outstanding repayable balances at any one time) as, in the judgment of the Administrator, are from time to time required for the purpose of—

"(i) constructing, financing, facilitating, planning, operating, maintaining, or studying construction of new or upgraded electric power transmission lines and related facilities with at least one terminus within the area served by the Western Area Power Administration; and

"(ii) delivering or facilitating the delivery of power generated by renewable energy resources constructed or reasonably expected to be constructed after the date of enactment of this section.

"(2) INTEREST.—The rate of interest to be charged in connection with any loan made pursuant to this subsection shall be fixed by the Secretary, taking into consideration market yields on outstanding marketable obligations of the United States of comparable maturities as of the date of the loan.

"(3) REFINANCING.—The Western Area Power Administration may refinance loans taken pursuant to this section within the Treasury.

"(4) PARTICIPATION.—The Administrator may permit other entities to participate in the financing, construction and ownership projects financed under this section.

"(5) CONGRESSIONAL REVIEW OF DISBURSEMENT.—Effective upon the date of enactment of this section, the Administrator shall have the authority to have utilized $1,750,000,000 at any one time. If the Administrator seeks to borrow funds above $1,750,000,000, the funds will be disbursed unless there is enacted, within 90 calendar days of the first such request, a joint resolution that rescinds the remainder of the balance of the borrowing authority provided in this section.

"(c) TRANSMISSION LINE AND RELATED FACILITY PROJECTS.—

"(1) IN GENERAL.—For repayment purposes, each transmission line and related facility project in which the Western Area Power Administration participates pursuant to this section shall be treated as separate and distinct from—

"(A) each other such project; and

"(B) all other Western Area Power Administration power and transmission facilities.

"(2) PROCEEDS.—The Western Area Power Administration shall apply the proceeds from the use of the transmission capacity from an individual project under this section to the repayment of the principal and interest of the loan from the Treasury attributable to that project, after reserving such funds as the Western Area Power Administration determines are necessary—

"(A) to pay for any ancillary services that are provided; and

"(B) to meet the costs of operating and maintaining the new project from which the revenues are derived.

"(3) SOURCE OF REVENUE.—Revenue from the use of projects under this section shall be the only source of revenue for—

"(A) repayment of the associated loan for the project; and

"(B) payment of expenses for ancillary services and operation and maintenance.

"(4) LIMITATION ON AUTHORITY.—Nothing in this section confers on the Administrator any additional authority or obligation to provide ancillary services to users of transmission facilities developed under this section.

"(5) TREATMENT OF CERTAIN REVENUES.—Revenue from ancillary services provided by existing Federal power systems to users of transmission projects funded pursuant to this section shall be treated as revenue to the existing power system that provided the ancillary services.

"(d) CERTIFICATION.—

"(1) IN GENERAL.—For each project in which the Western Area Power Administration participates pursuant to this section, the Administrator shall certify, prior to committing funds for any such project, that—

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

"(B) the project will not adversely impact system reliability or operations, or other statutory obligations; and

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

"(2) FORGIVENESS OF BALANCES.—

"(A) IN GENERAL.—If, at the end of the useful life of a project, there is a remaining balance owed to the Treasury under this section, the balance shall be forgiven.

"(B) UNCONSTRUCTED PROJECTS.—Funds expended to study projects that are considered pursuant to this section but that are not constructed shall be forgiven.

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

"(e) PUBLIC PROCESSES.—

"(1) POLICIES AND PRACTICES.—Prior to requesting any loans under this section, the Administrator shall use a public process to develop practices and policies that implement the authority granted by this section.

"(2) REQUESTS FOR INTEREST.—In the course of selecting potential projects to be funded under this section, the Administrator shall seek Requests For Interest from entities interested in identifying potential projects through one or more notices published in the Federal Register."

SEC. 403. SET-ASIDE FOR MANAGEMENT AND OVERSIGHT. Up to 0.5 percent of each amount appropriated in this title may be used for the expenses of management and oversight of the programs, grants, and activities funded by such appropriation, and may be transferred by the head of the Federal department or agency involved to any other appropriate account within the department or agency for that purpose: Provided, That the Secretary will provide a report to the Committees on Appropriations of the House of Representatives and the Senate 30 days prior to the transfer: Provided further, That funds set aside under this section shall remain available for obligation until September 30, 2012.

SEC. 404. TECHNICAL CORRECTIONS TO THE ENERGY INDEPENDENCE AND SECURITY ACT OF 2007. (a) Section 543(a) of the Energy Independence and Security Act of 2007 (42 U.S.C. 17153(a)) is amended—

(1) by redesignating paragraphs (2) through (4) as paragraphs (3) through (5), respectively; and

(2) by striking paragraph (1) and inserting the following:

"(1) 34 percent to eligible units of local government—alternative 1, in accordance with subsection (b);

"(2) 34 percent to eligible units of local government—alternative 2, in accordance with subsection (b);".

(b) Section 543(b) of the Energy Independence and Security Act of 2007 (42 U.S.C. 17153(b)) is amended by striking "subsection (a)(1)" and inserting "subsection (a)(1) or (2)".

(c) Section 548(a)(1) of the Energy Independence and Security Act of 2007 (42 U.S.C. 17158(a)(1)) is amending by striking "; provided" and all that follows through "541(3)(B)".

SEC. 405. AMENDMENTS TO TITLE XIII OF THE ENERGY INDEPENDENCE AND SECURITY ACT OF 2007. Title XIII of the Energy Independence and Security Act of 2007 (42 U.S.C. 17381 and following) is amended as follows:

(1) By amending subparagraph (A) of section 1304(b)(3) to read as follows:

"(A) IN GENERAL.—In carrying out the initiative, the Secretary shall provide financial support to smart grid demonstration projects in urban, suburban, tribal, and rural areas, including areas where electric system assets are controlled by nonprofit entities and areas where electric system assets are controlled by investor-owned utilities.".

(2) By amending subparagraph (C) of section 1304(b)(3) to read as follows:

"(C) FEDERAL SHARE OF COST OF TECHNOLOGY INVESTMENTS.—The Secretary shall provide to an electric utility described in subparagraph (B) or to other parties financial assistance for use in paying an amount equal to not more than 50 percent of the cost of qualifying advanced grid technology investments made by the electric utility or other party to carry out a demonstration project.".

(3) By inserting after section 1304(b)(3)(D) the following new subparagraphs:

"(E) AVAILABILITY OF DATA.—The Secretary shall establish and maintain a smart grid information clearinghouse in a timely manner which will make data from smart grid demonstration projects and other sources available to the public. As a condition of receiving financial assistance under this subsection, a utility or other participant in a smart grid demonstration project shall provide such information as the Secretary may require to become available through the smart grid information clearinghouse in the form and within the timeframes as directed by the Secretary. The Secretary shall assure that business proprietary information and individual customer information is not included in the information made available through the clearinghouse.

"(F) OPEN PROTOCOLS AND STANDARDS.—The Secretary shall require as a condition of receiving funding under this subsection that demonstration projects utilize open protocols and standards (including Internet-based protocols and standards) if available and appropriate.".

(4) By amending paragraph (2) of section 1304(c) to read as follows:

"(2) to carry out subsection (b), such sums as may be necessary.".

(5) By amending subsection (a) of section 1306 by striking "reimbursement of one-fifth (20 percent)" and inserting "grants of up to one-half (50 percent)".

(6) By striking the last sentence of subsection (b)(9) of section 1306.

(7) By striking "are eligible for" in subsection (c)(1) of section 1306 and inserting "utilize".

(8) By amending subsection (e) of section 1306 to read as follows:

"(e) PROCEDURES AND RULES.—(1) The Secretary shall, within 60 days after the enactment of the American Recovery and Reinvestment Act of 2009, by means of a notice of intent and subsequent solicitation of grant proposals—

"(A) establish procedures by which applicants can obtain grants of not more than one-half of their documented costs;

"(B) require as a condition of receiving funding under this subsection that demonstration projects utilize open protocols and standards (including Internet-based protocols and standards) if available and appropriate;

"(C) establish procedures to ensure that there is no duplication or multiple payment for the same investment or costs, that the grant goes to the party making the actual expenditures for the qualifying Smart Grid investments, and that the grants made have a significant effect in encouraging and facilitating the development of a smart grid;

"(D) establish procedures to ensure there will be public records of grants made, recipients, and qualifying Smart Grid investments which have received grants; and

"(E) establish procedures to provide advance payment of moneys up to the full amount of the grant award.

"(2) The Secretary shall have discretion and exercise reasonable judgment to deny grants for investments that do not qualify.".

SEC. 406. RENEWABLE ENERGY AND ELECTRIC POWER TRANSMISSION LOAN GUARANTEE PROGRAM. (a) AMENDMENT.—Title XVII of the Energy Policy Act of 2005 (42 U.S.C. 16511 et seq.) is amended by adding the following at the end:

"SEC. 1705. TEMPORARY PROGRAM FOR RAPID DEPLOYMENT OF RENEWABLE ENERGY AND ELECTRIC POWER TRANSMISSION PROJECTS.

"(a) IN GENERAL.—Notwithstanding section 1703, the Secretary may make guarantees under this section only for the following categories of projects that commence construction not later than September 30, 2011:

"(1) Renewable energy systems, including incremental hydropower, that generate electricity or thermal energy, and facilities that manufacture related components.

"(2) Electric power transmission systems, including upgrading and reconductoring projects.

"(3) Leading edge biofuel projects that will use technologies performing at the pilot or demonstration scale that the Secretary determines are likely to become commercial technologies and will produce transportation fuels that substantially reduce life-cycle greenhouse gas emissions compared to other transportation fuels.

"(b) FACTORS RELATING TO ELECTRIC POWER TRANSMISSION SYSTEMS.—In determining to make guarantees to projects described in subsection (a)(2), the Secretary may consider the following factors:

"(1) The viability of the project without guarantees.

"(2) The availability of other Federal and State incentives.

"(3) The importance of the project in meeting reliability needs.

"(4) The effect of the project in meeting a State or region's environment (including climate change) and energy goals.

"(c) WAGE RATE REQUIREMENTS.—The Secretary shall require that each recipient of support under this section provide reasonable assurance that all laborers and mechanics employed in the performance of the project for which the assistance is provided, including those employed by contractors or subcontractors, will be paid wages at rates not less than those prevailing on similar work in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of part A of subtitle II of title 40, United States Code (commonly referred to as the 'Davis-Bacon Act').

"(d) LIMITATION.—Funding under this section for projects described in subsection (a)(3) shall not exceed $500,000,000.

"(e) SUNSET.—The authority to enter into guarantees under this section shall expire on September 30, 2011.".

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents for the Energy Policy Act of 2005 is amended by inserting after the item relating to section 1704 the following new item:

"Sec. 1705. Temporary program for rapid deployment of renewable energy and electric power transmission projects.".

SEC. 407. WEATHERIZATION ASSISTANCE PROGRAM AMENDMENTS. (a) INCOME LEVEL.—Section 412(7) of the Energy Conservation and Production Act (42 U.S.C. 6862(7)) is amended by striking "150 percent" both places it appears and inserting "200 percent".

(b) ASSISTANCE LEVEL PER DWELLING UNIT.—Section 415(c)(1) of the Energy Conservation and Production Act (42 U.S.C. 6865(c)(1)) is amended by striking "$2,500" and inserting "$6,500".

(c) EFFECTIVE USE OF FUNDS.—In providing funds made available by this Act for the Weatherization Assistance Program, the Secretary may encourage States to give priority to using such funds for the most cost-effective efficiency activities, which may include insulation of attics, if, in the Secretary's view, such use of funds would increase the effectiveness of the program.

(d) TRAINING AND TECHNICAL ASSISTANCE.—Section 416 of the Energy Conservation and Production Act (42 U.S.C. 6866) is amended by striking "10 percent" and inserting "up to 20 percent".

(e) ASSISTANCE FOR PREVIOUSLY WEATHERIZED DWELLING UNITS.—Section 415(c)(2) of the Energy Conservation and Production Act (42 U.S.C. 6865(c)(2)) is amended by striking "September 30, 1979" and inserting "September 30, 1994".

SEC. 408. TECHNICAL CORRECTIONS TO PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978. (a) Section 111(d) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)) is amended by redesignating paragraph (16) relating to consideration of smart grid investments (added by section 1307(a) of Public Law 110–140) as paragraph (18) and by redesignating paragraph (17) relating to smart grid information (added by section 1308(a) of Public Law 110–140) as paragraph (19).

(b) Subsections (b) and (d) of section 112 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2622) are each amended by striking "(17) through (18)" in each place it appears and inserting "(16) through (19)".

SEC. 409. RENEWABLE ELECTRICITY TRANSMISSION STUDY. In completing the 2009 National Electric Transmission Congestion Study, the Secretary of Energy shall include—

(1) an analysis of the significant potential sources of renewable energy that are constrained in accessing appropriate market areas by lack of adequate transmission capacity;

(2) an analysis of the reasons for failure to develop the adequate transmission capacity;

(3) recommendations for achieving adequate transmission capacity;

(4) an analysis of the extent to which legal challenges filed at the State and Federal level are delaying the construction of transmission necessary to access renewable energy; and

(5) an explanation of assumptions and projections made in the Study, including—

(A) assumptions and projections relating to energy efficiency improvements in each load center;

(B) assumptions and projections regarding the location and type of projected new generation capacity; and

(C) assumptions and projections regarding projected deployment of distributed generation infrastructure.

SEC. 410. ADDITIONAL STATE ENERGY GRANTS. (a) IN GENERAL.—Amounts appropriated under the heading "Department of Energy—Energy Programs—Energy Efficiency and Renewable Energy" in this title shall be available to the Secretary of Energy for making additional grants under part D of title III of the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.). The Secretary shall make grants under this section in excess of the base allocation established for a State under regulations issued pursuant to the authorization provided in section 365(f) of such Act only if the governor of the recipient State notifies the Secretary of Energy in writing that the governor has obtained necessary assurances that each of the following will occur:

(1) The applicable State regulatory authority will seek to implement, in appropriate proceedings for each electric and gas utility, with respect to which the State regulatory authority has ratemaking authority, a general policy that ensures that utility financial incentives are aligned with helping their customers use energy more efficiently and that provide timely cost recovery and a timely earnings opportunity for utilities associated with cost-effective measurable and verifiable efficiency savings, in a way that sustains or enhances utility customers' incentives to use energy more efficiently.

(2) The State, or the applicable units of local government that have authority to adopt building codes, will implement the following:

(A) A building energy code (or codes) for residential buildings that meets or exceeds the most recently published International Energy Conservation Code, or achieves equivalent or greater energy savings.

(B) A building energy code (or codes) for commercial buildings throughout the State that meets or exceeds the ANSI/ASHRAE/IESNA Standard 90.1–2007, or achieves equivalent or greater energy savings.

(C) A plan for the jurisdiction achieving compliance with the building energy code or codes described in subparagraphs (A) and (B) within 8 years of the date of enactment of this Act in at least 90 percent of new and renovated residential and commercial building space. Such plan shall include active training and enforcement programs and measurement of the rate of compliance each year.

(3) The State will to the extent practicable prioritize the grants toward funding energy efficiency and renewable energy programs, including—

(A) the expansion of existing energy efficiency programs approved by the State or the appropriate regulatory authority, including energy efficiency retrofits of buildings and industrial facilities, that are funded—

(i) by the State; or

(ii) through rates under the oversight of the applicable regulatory authority, to the extent applicable;

(B) the expansion of existing programs, approved by the State or the appropriate regulatory authority, to support renewable energy projects and deployment activities, including programs operated by entities which have the authority and capability to manage and distribute grants, loans, performance incentives, and other forms of financial assistance; and

(C) cooperation and joint activities between States to advance more efficient and effective use of this funding to support the priorities described in this paragraph.

(b) STATE MATCH.—The State cost share requirement under the item relating to "Department of Energy; Energy Conservation" in title II of the Department of the Interior and Related Agencies Appropriations Act, 1985 (42 U.S.C. 6323a; 98 Stat. 1861) shall not apply to assistance provided under this section.

(c) EQUIPMENT AND MATERIALS FOR ENERGY EFFICIENCY MEASURES AND RENEWABLE ENERGY MEASURES.—No limitation on the percentage of funding that may be used for the purchase and installation of equipment and materials for energy efficiency measures and renewable energy measures under grants provided under part D of title III of the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.) shall apply to assistance provided under this section.

TITLE V—FINANCIAL SERVICES AND GENERAL GOVERNMENT

DEPARTMENT OF THE TREASURY

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION

SALARIES AND EXPENSES

For an additional amount for necessary expenses of the Treasury Inspector General for Tax Administration in carrying out the Inspector General Act of 1978, $7,000,000, to remain available until September 30, 2013, for oversight and audits of the administration of the making work pay tax credit and economic recovery payments under the American Recovery and Reinvestment Act of 2009.

COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS FUND
PROGRAM ACCOUNT

For an additional amount for "Community Development Financial Institutions Fund Program Account", $100,000,000, to remain available until September 30, 2010, for qualified applicants under the fiscal year 2009 funding round of the Community Development Financial Institutions Program, of which up to $8,000,000 may be for financial assistance, technical assistance, training and outreach programs designed to benefit Native American, Native Hawaiian, and Alaskan Native communities and provided primarily through qualified community development lender organizations with experience and expertise in community development banking and lending in Indian country, Native American organizations, tribes and tribal organizations and other suitable providers and up to $2,000,000 may be used for administrative expenses: Provided, That for the purpose of the fiscal year 2009 funding round, the following statutory provisions are hereby waived: 12 U.S.C. 4707(e) and 12 U.S.C. 4707(d): Provided further, That no awardee, together with its subsidiaries and affiliates, may be awarded more than 5 percent of the aggregate funds available during fiscal year 2009 from the Community Development Financial Institutions Program: Provided further, That no later than 60 days after the date of enactment of this Act, the Department of the Treasury shall submit to the Committees on Appropriations of the House of Representatives and the Senate a detailed expenditure plan for funds provided under this heading.

INTERNAL REVENUE SERVICE

HEALTH INSURANCE TAX CREDIT ADMINISTRATION

For an additional amount to implement the health insurance tax credit under the TAA Health Coverage Improvement Act of 2009, $80,000,000, to remain available until September 30, 2010.

GENERAL SERVICES ADMINISTRATION

REAL PROPERTY ACTIVITIES

FEDERAL BUILDINGS FUND

LIMITATIONS ON AVAILABILITY OF REVENUE

(INCLUDING TRANSFER OF FUNDS)

For an additional amount to be deposited in the Federal Buildings Fund, $5,550,000,000, to carry out the purposes of the Fund, of which not less than $750,000,000 shall be available for Federal buildings and United States courthouses, not less than $300,000,000 shall be available for border stations and land ports of entry, and not less than $4,500,000,000 shall be available for measures necessary to convert GSA facilities to High-Performance Green Buildings, as defined in section 401 of Public Law 110–140: Provided, That not to exceed $108,000,000 of the amounts provided under this heading may be expended for rental of space, related to leasing of temporary space in connection with projects funded under this heading: Provided further, That not to exceed $127,000,000 of the amounts provided under this heading may be expended for

building operations, for the administrative costs of completing projects funded under this heading: Provided further, That not to exceed $3,000,000 of the funds provided shall be for on-the-job preapprenticeship and apprenticeship training programs registered with the Department of Labor, for the construction, repair, and alteration of Federal buildings: Provided further, That not less than $5,000,000,000 of the funds provided under this heading shall be obligated by September 30, 2010, and the remainder of the funds provided under this heading shall be obligated not later than September 30, 2011: Provided further, That the Administrator of General Services is authorized to initiate design, construction, repair, alteration, and other projects through existing authorities of the Administrator: Provided further, That the General Services Administration shall submit a detailed plan, by project, regarding the use of funds made available in this Act to the Committees on Appropriations of the House of Representatives and the Senate within 45 days of enactment of this Act, and shall provide notification to the Committees within 15 days prior to any changes regarding the use of these funds: Provided further, That, hereafter, the Administrator shall report to the Committees on the obligation of these funds on a quarterly basis beginning on June 30, 2009: Provided further, That of the amounts provided, $4,000,000 shall be transferred to and merged with "Government-Wide Policy", for the Office of Federal High-Performance Green Buildings as authorized in the Energy Independence and Security Act of 2007 (Public Law 110–140): Provided further, That amounts provided under this heading that are savings or cannot be used for the activity for which originally obligated may be deobligated and, notwithstanding any other provision of law, reobligated for the purposes identified in the plan required under this heading not less than 15 days after notification has been provided to the Committees on Appropriations of the House of Representatives and the Senate.

ENERGY-EFFICIENT FEDERAL MOTOR VEHICLE FLEET PROCUREMENT

For capital expenditures and necessary expenses of acquiring motor vehicles with higher fuel economy, including: hybrid vehicles; electric vehicles; and commercially-available, plug-in hybrid vehicles, $300,000,000, to remain available until September 30, 2011: Provided, That none of these funds may be obligated until the Administrator of General Services submits to the Committees on Appropriations of the House of Representatives and the Senate, within 90 days after enactment of this Act, a plan for expenditure of the funds that details the current inventory of the Federal fleet owned by the General Services Administration, as well as other Federal agencies, and the strategy to expend these funds to replace a portion of the Federal fleet with the goal of substantially increasing energy efficiency over the current status, including increasing fuel efficiency and reducing emissions: Provided further, That, hereafter, the Administrator shall report to the Committees on the obligation of these funds on a quarterly basis beginning on September 30, 2009.

OFFICE OF INSPECTOR GENERAL

For an additional amount for the Office of the Inspector General, to remain available until September 30, 2013, for oversight

and audit of programs, grants, and projects funded under this title, $7,000,000.

RECOVERY ACT ACCOUNTABILITY AND TRANSPARENCY BOARD

For necessary expenses of the Recovery Act Accountability and Transparency Board to carry out the provisions of title XV of this Act, $84,000,000, to remain available until September 30, 2011.

SMALL BUSINESS ADMINISTRATION

SALARIES AND EXPENSES

For an additional amount, to remain available until September 30, 2010, $69,000,000, of which $24,000,000 is for marketing, management, and technical assistance under section 7(m) of the Small Business Act (15 U.S.C. 636(m)(4)) by intermediaries that make microloans under the microloan program, and of which $20,000,000 is for improving, streamlining, and automating information technology systems related to lender processes and lender oversight: Provided, That no later than 60 days after the date of enactment of this Act, the Small Business Administration shall submit to the Committees on Appropriations of the House of Representatives and the Senate a detailed expenditure plan for funds provided under the heading "Small Business Administration" in this Act.

OFFICE OF INSPECTOR GENERAL

For an additional amount for the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, $10,000,000, to remain available until September 30, 2013, for oversight and audit of programs, grants, and projects funded under this title.

SURETY BOND GUARANTEES REVOLVING FUND

For additional capital for the Surety Bond Guarantees Revolving Fund, authorized by the Small Business Investment Act of 1958, $15,000,000, to remain available until expended.

BUSINESS LOANS PROGRAM ACCOUNT

For an additional amount for the cost of direct loans, $6,000,000, to remain available until September 30, 2010, and for an additional amount for the cost of guaranteed loans, $630,000,000, to remain available until September 30, 2010: Provided, That of the amount for the cost of guaranteed loans, $375,000,000 shall be for reimbursements, loan subsidies and loan modifications for loans to small business concerns authorized in section 501 of this title; and $255,000,000 shall be for loan subsidies and loan modifications for loans to small business concerns authorized in section 506 of this title: Provided further, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974.

ADMINISTRATIVE PROVISIONS—SMALL BUSINESS ADMINISTRATION

SEC. 501. FEE REDUCTIONS. (a) ADMINISTRATIVE PROVISIONS—SMALL BUSINESS ADMINISTRATION.—Until September 30, 2010, and to the extent that the cost of such elimination or reduction of fees is offset by appropriations, with respect to each loan guaranteed under section 7(a) of the Small Business Act (15 U.S.C. 636(a)) and section 502 of this title, for which the application is approved on or after the date of enactment of this Act, the Administrator shall—

(1) in lieu of the fee otherwise applicable under section 7(a)(23)(A) of the Small Business Act (15 U.S.C. 636(a)(23)(A)), collect no fee or reduce fees to the maximum extent possible; and

(2) in lieu of the fee otherwise applicable under section 7(a)(18)(A) of the Small Business Act (15 U.S.C. 636(a)(18)(A)), collect no fee or reduce fees to the maximum extent possible.

(b) TEMPORARY FEE ELIMINATION FOR THE 504 LOAN PROGRAM.—

(1) IN GENERAL.—Until September 30, 2010, and to the extent the cost of such elimination in fees is offset by appropriations, with respect to each project or loan guaranteed by the Administrator pursuant to title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.) for which an application is approved or pending approval on or after the date of enactment of this Act—

(A) the Administrator shall, in lieu of the fee otherwise applicable under section 503(d)(2) of the Small Business Investment Act of 1958 (15 U.S.C. 697(d)(2)), collect no fee;

(B) a development company shall, in lieu of the processing fee under section 120.971(a)(1) of title 13, Code of Federal Regulations (relating to fees paid by borrowers), or any successor thereto, collect no fee.

(2) REIMBURSEMENT FOR WAIVED FEES.—

(A) IN GENERAL.—To the extent that the cost of such payments is offset by appropriations, the Administrator shall reimburse each development company that does not collect a processing fee pursuant to paragraph (1)(B).

(B) AMOUNT.—The payment to a development company under subparagraph (A) shall be in an amount equal to 1.5 percent of the net debenture proceeds for which the development company does not collect a processing fee pursuant to paragraph (1)(B).

(c) APPLICATION OF FEE ELIMINATIONS.—

(1) To the extent that amounts are made available to the Administrator for the purpose of fee eliminations or reductions under subsection (a), the Administrator shall—

(A) first use any amounts provided to eliminate or reduce fees paid by small business borrowers under clauses (i) through (iii) of paragraph (18)(A), to the maximum extent possible; and

(B) then use any amounts provided to eliminate or reduce fees under paragraph (23)(A) paid by small business lenders with assets less than $1,000,000,000 as of the date of enactment; and

(C) then use any remaining amounts appropriated under this title to reduce fees paid by small business lenders other than those with assets less than $1,000,000,000.

(2) The Administrator shall eliminate fees under subsections (a) and (b) until the amount provided for such purposes, as applicable, under the heading "Business Loans Program Account" under the heading "Small Business Administration" under this Act are expended.

SEC. 502. ECONOMIC STIMULUS LENDING PROGRAM FOR SMALL BUSINESSES. (a) PURPOSE.—The purpose of this section is to permit the Small Business Administration to guarantee up to 90 percent of qualifying small business loans made by eligible lenders.

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

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

(2) The term "qualifying small business loan" means any loan to a small business concern pursuant to section 7(a) of the Small Business Act (15 U.S.C. 636) or title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 and following) except for such loans made under section 7(a)(31).

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

(c) QUALIFIED BORROWERS.—

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

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

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

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

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

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

(f) SUNSET.—Loan guarantees may not be issued under this section after the date 12 months after the date of enactment of this Act.

(g) SMALL BUSINESS ACT PROVISIONS.—The provisions of the Small Business Act applicable to loan guarantees under section 7 of that Act and regulations promulgated thereunder as of the date

of enactment of this Act shall apply to loan guarantees under this section except as otherwise provided in this section.

(h) AUTHORIZATION.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 503. ESTABLISHMENT OF SBA SECONDARY MARKET GUARANTEE AUTHORITY. (a) PURPOSE.—The purpose of this section is to provide the Administrator with the authority to establish the SBA Secondary Market Guarantee Authority within the SBA to provide a Federal guarantee for pools of first lien 504 loans that are to be sold to third-party investors.

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

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

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

(c) ESTABLISHMENT OF AUTHORITY.—

(1) ORGANIZATION.—

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

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

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

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

(2) GUARANTEE PROCESS.—

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

(B) The Administrator is authorized to contract with private sector fiduciary and custom dial agents as necessary to operate the Authority.

(3) RESPONSIBILITIES.—

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

(B) The rule under this section shall provide for a process for the Administrator to consider and make decisions regarding whether to extend a Federal guarantee referred to in clause (i). Such rule shall also provide that:

(i) The seller of the pools purchasing a guarantee under this section retains not less than 5 percent of the dollar amount of the pools to be sold to third-party investors.

(ii) The Administrator shall charge fees, upfront or annual, at a specified percentage of the loan amount that is at such a rate that the cost of the program

under the Federal Credit Reform Act of 1990 (title V of the Congressional Budget and Impoundment Control Act of 1974; 2 U.S.C. 661) shall be equal to zero.

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

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

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

(d) LIMITATIONS.—

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

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

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

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

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

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

(2) The aggregate amount of guarantees outstanding.

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

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

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

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

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

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

(i) EMERGENCY RULEMAKING AUTHORITY.—The Administrator shall issue regulations under this section within 15 days after the date of enactment of this section. The notice requirements of section

553(b) of title 5, United States Code shall not apply to the promulgation of such regulations.

SEC. 504. STIMULUS FOR COMMUNITY DEVELOPMENT LENDING. (a) LOW INTEREST REFINANCING UNDER THE LOCAL DEVELOPMENT BUSINESS LOAN PROGRAM.—Section 502 of the Small Business Investment Act of 1958 (15 U.S.C. 696) is amended by adding at the end the following:

"(7) PERMISSIBLE DEBT REFINANCING.—

"(A) IN GENERAL.—Any financing approved under this title may include a limited amount of debt refinancing.

"(B) EXPANSIONS.—If the project involves expansion of a small business concern, any amount of existing indebtedness that does not exceed 50 percent of the project cost of the expansion may be refinanced and added to the expansion cost, if—

"(i) the proceeds of the indebtedness were used to acquire land, including a building situated thereon, to construct a building thereon, or to purchase equipment;

"(ii) the existing indebtedness is collateralized by fixed assets;

"(iii) the existing indebtedness was incurred for the benefit of the small business concern;

"(iv) the financing under this title will be used only for refinancing existing indebtedness or costs relating to the project financed under this title;

"(v) the financing under this title will provide a substantial benefit to the borrower when prepayment penalties, financing fees, and other financing costs are accounted for;

"(vi) the borrower has been current on all payments due on the existing debt for not less than 1 year preceding the date of refinancing; and

"(vii) the financing under section 504 will provide better terms or rate of interest than the existing indebtedness at the time of refinancing.".

(b) JOB CREATION GOALS.—Section 501(e)(1) and section 501(e)(2) of the Small Business Investment Act (15 U.S.C. 695) are each amended by striking "$50,000" and inserting "$65,000".

SEC. 505. INCREASING SMALL BUSINESS INVESTMENT. (a) SIMPLIFIED MAXIMUM LEVERAGE LIMITS.—Section 303(b) of the Small Business Investment Act of 1958 (15 U.S.C. 683(b)) is amended as follows:

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

"(2) MAXIMUM LEVERAGE.—

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

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

"(ii) $150,000,000.

"(B) MULTIPLE LICENSES UNDER COMMON CONTROL.—The maximum amount of outstanding leverage made available to two or more companies licensed under section 301(c)

of this Act that are commonly controlled (as determined by the Administrator) and not under capital impairment may not exceed $225,000,000.";

(2) By amending paragraph (2)(C) by inserting "(i)" before "In calculating" and adding the following at the end thereof:

"(ii) The maximum amount of outstanding leverage made available to—

"(I) any 1 company described in clause (iii) may not exceed the lesser of 300 percent of private capital of the company, or $175,000,000; and

"(II) 2 or more companies described in clause (iii) that are under common control (as determined by the Administrator) may not exceed $250,000,000.

"(iii) A company described in this clause is a company licensed under section 301(c) in the first fiscal year after the date of enactment of this clause or any fiscal year thereafter that certifies in writing that not less than 50 percent of the dollar amount of investments of that company shall be made in companies that are located in a low-income geographic area (as that term is defined in section 351).".

(3) By striking paragraph (4).

(b) SIMPLIFIED AGGREGATE INVESTMENT LIMITATIONS.—Section 306(a) of the Small Business Investment Act of 1958 (15 U.S.C. 686(a)) is amended to read as follows:

"(a) PERCENTAGE LIMITATION ON PRIVATE CAPITAL.—If any small business investment company has obtained financing from the Administrator and such financing remains outstanding, the aggregate amount of securities acquired and for which commitments may be issued by such company under the provisions of this title for any single enterprise shall not, without the approval of the Administrator, exceed 10 percent of the sum of—

"(1) the private capital of such company; and

"(2) the total amount of leverage projected by the company in the company's business plan that was approved by the Administrator at the time of the grant of the company's license.".

(c) INVESTMENTS IN SMALLER ENTERPRISES.—Section 303(d) of the Small Business Investment Act of 1958 (15 U.S.C. 683(d)) is amended to read as follows:

"(d) INVESTMENTS IN SMALLER ENTERPRISES.—The Administrator shall require each licensee, as a condition of approval of an application for leverage, to certify in writing that not less than 25 percent of the aggregate dollar amount of financings of that licensee shall be provided to smaller enterprises.".

SEC. 506. BUSINESS STABILIZATION PROGRAM. (a) IN GENERAL.—Subject to the availability of appropriations, the Administrator of the Small Business Administration shall carry out a program to provide loans on a deferred basis to viable (as such term is determined pursuant to regulation by the Administrator of the Small Business Administration) small business concerns that have a qualifying small business loan and are experiencing immediate financial hardship.

(b) ELIGIBLE BORROWER.—A small business concern as defined under section 3 of the Small Business Act (15 U.S.C. 632).

(c) QUALIFYING SMALL BUSINESS LOAN.—A loan made to a small business concern that meets the eligibility standards in section 7(a) of the Small Business Act (15 U.S.C. 636(a)) but shall not include loans guarantees (or loan guarantee commitments made) by the Administrator prior to the date of enactment of this Act.

(d) LOAN SIZE.—Loans guaranteed under this section may not exceed $35,000.

(e) PURPOSE.—Loans guaranteed under this program shall be used to make periodic payment of principal and interest, either in full or in part, on an existing qualifying small business loan for a period of time not to exceed 6 months.

(f) LOAN TERMS.—Loans made under this section shall:

(1) carry a 100 percent guaranty; and

(2) have interest fully subsidized for the period of repayment.

(g) REPAYMENT.—Repayment for loans made under this section shall—

(1) be amortized over a period of time not to exceed 5 years; and

(2) not begin until 12 months after the final disbursement of funds is made.

(h) COLLATERAL.—The Administrator of the Small Business Administration may accept any available collateral, including subordinated liens, to secure loans made under this section.

(i) FEES.—The Administrator of the Small Business Administration is prohibited from charging any processing fees, origination fees, application fees, points, brokerage fees, bonus points, prepayment penalties, and other fees that could be charged to a loan applicant for loans under this section.

(j) SUNSET.—The Administrator of the Small Business Administration shall not issue loan guarantees under this section after September 30, 2010.

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

SEC. 507. GAO REPORT.

(a) REPORT.—Not later than 60 days after the enactment of this Act, the Comptroller General of the United States shall report to the Congress on the actions of the Administrator in implementing the authorities established in the administrative provisions of this title.

(b) INCLUDED ITEM.—The report under this section shall include a summary of the activity of the Administrator under this title and an analysis of whether he is accomplishing the purpose of increasing liquidity in the secondary market for Small Business Administration loans.

SEC. 508. SURETY BONDS.

(a) MAXIMUM BOND AMOUNT.—Section 4119(a)(1) of the Small Business Investment Act of 1958 (15 U.S.C. 694b(a)(1)) is amended—

(1) by inserting "(A)" after "(1)";

(2) by striking "$2,000,000" and inserting "$5,000,000"; and

(3) by adding at the end the following:

"(B) The Administrator may guarantee a surety under subparagraph (A) for a total work order or contract amount that does not exceed $10,000,000, if a contracting officer of a Federal agency certifies that such a guarantee is necessary.".

(b) DENIAL OF LIABILITY.—Section 411 of the Small Business Investment Act of 1958 (15 U.S.C. 694b) is amended—

(1) by striking subsection (e) and inserting the following:

"(e) REIMBURSEMENT OF SURETY; CONDITIONS.—Pursuant to any such guarantee or agreement, the Administration shall reimburse the surety, as provided in subsection (c) of this section, except that the Administration shall be relieved of liability (in whole or in part within the discretion of the Administration) if—

"(1) the surety obtained such guarantee or agreement, or applied for such reimbursement, by fraud or material misrepresentation,

"(2) the total contract amount at the time of execution of the bond or bonds exceeds $5,000,000,

"(3) the surety has breached a material term or condition of such guarantee agreement, or

"(4) the surety has substantially violated the regulations promulgated by the Administration pursuant to subsection (d).".

(2) by adding at the end the following:

"(k) For bonds made or executed with the prior approval of the Administration, the Administration shall not deny liability to a surety based upon material information that was provided as part of the guaranty application.".

(c) SIZE STANDARDS.—Section 410 of the Small Business Investment Act of 1958 (15 U.S.C. 694a) is amended by adding at the end the following:

"(9) Notwithstanding any other provision of law or any rule, regulation, or order of the Administration, for purposes of sections 410, 411, and 412 the term 'small business concern' means a business concern that meets the size standard for the primary industry in which such business concern, and the affiliates of such business concern, is engaged, as determined by the Administrator in accordance with the North American Industry Classification System.".

(d) STUDY.—The Administrator of the Small Business Administration shall conduct a study of the current funding structure of the surety bond program carried out under part B (15 U.S.C. 694a et seq.) of title IV of the Small Business Investment Act of 1958. The study shall include—

(1) an assessment of whether the program's current funding framework and program fees are inhibiting the program's growth; and

(2) an assessment of whether surety companies and small business concerns could benefit from an alternative funding structure.

(e) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Administrator shall submit to Congress a report on the results of the study required under subsection (d).

(f) SUNSET.—The amendments made by this section shall remain in effect until September 30, 2010.

SEC. 509. ESTABLISHMENT OF SBA SECONDARY MARKET LENDING AUTHORITY.

(a) PURPOSE.—The purpose of this section is to provide the Small Business Administration with the authority to establish a Secondary Market Lending Authority within the SBA to make loans to the systemically important SBA secondary market broker-dealers who operate the SBA secondary market.

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

(1) The term " Administrator" means the Administrator of the SBA.

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

(3) The terms "Secondary Market Lending Authority" and "Authority" mean the office established under subsection (c).

(4) The term "SBA secondary market" means the market for the purchase and sale of loans originated, underwritten, and closed under the Small Business Act.

(5) The term "Systemically Important Secondary Market Broker-Dealers" mean those entities designated under subsection (c)(1) as vital to the continued operation of the SBA secondary market by reason of their purchase and sale of the government guaranteed portion of loans, or pools of loans, originated, underwritten, and closed under the Small Business Act.

(c) RESPONSIBILITIES, AUTHORITIES, ORGANIZATION, AND LIMITATIONS.—

(1) DESIGNATION OF SYSTEMICALLY IMPORTANT SBA SECONDARY MARKET BROKER-DEALERS.—The Administrator shall establish a process to designate, in consultation with the Board of Governors of the Federal Reserve and the Secretary of the Treasury, Systemically Important Secondary Market Broker-Dealers.

(2) ESTABLISHMENT OF SBA SECONDARY MARKET LENDING AUTHORITY.—

(A) ORGANIZATION.—

(i) The Administrator shall establish within the SBA an office to provide loans to Systemically Important Secondary Market Broker-dealers to be used for the purpose of financing the inventory of the government guaranteed portion of loans, originated, underwritten, and closed under the Small Business Act or pools of such loans.

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

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

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

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

(B) LOANS.—

(i) The Administrator shall establish by rule a process under which Systemically Important SBA Secondary Market Broker-Dealers designated under para-

graph (1) may apply to the Administrator for loans under this section.

(ii) The rule under clause (i) shall provide a process for the Administrator to consider and make decisions regarding whether or not to extend a loan applied for under this section. Such rule shall include provisions to assure each of the following:

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

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

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

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

(iii) Interest on loans under this section shall not exceed the Federal Funds target rate as established by the Federal Reserve Board of Governors plus 25 basis points.

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

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

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

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

(i) require immediate repayment of outstanding loans;

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

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

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

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

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

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

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

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

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

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

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

(f) FEES.—The Administrator shall charge fees, up front, annual or both, at a specified percentage of the loan amount that is at such a rate that the cost of the program under the Federal Credit Reform Act of 1990 (title V of the Congressional Budget and Impoundment Control Act of 1974; 2 U.S.C. 661) shall be equal to zero.

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

(h) EMERGENCY RULEMAKING AUTHORITY.—The Administrator shall promulgate regulations under this section within 30 days after the date of enactment of this section. In promulgating these regulations, the notice requirements of section 553(b) of title 5 of the United States Code shall not apply.

TITLE VI—DEPARTMENT OF HOMELAND SECURITY

OFFICE OF THE UNDER SECRETARY FOR MANAGEMENT

For an additional amount for the "Office of the Under Secretary for Management", $200,000,000 for planning, design, construction costs, site security, information technology infrastructure, fixtures, and related costs to consolidate the Department of Homeland Security headquarters: Provided, That no later than 60 days after the date of enactment of this Act, the Secretary of Homeland Security, in consultation with the Administrator of General Services, shall submit to the Committees on Appropriations of the Senate and the House of Representatives a plan for the expenditure of these funds.

OFFICE OF INSPECTOR GENERAL

For an additional amount for the "Office of Inspector General", $5,000,000, to remain available until September 30, 2012, for oversight and audit of programs, grants, and projects funded under this title.

U.S. CUSTOMS AND BORDER PROTECTION

SALARIES AND EXPENSES

For an additional amount for "Salaries and Expenses", $160,000,000, of which $100,000,000 shall be for the procurement and deployment of non-intrusive inspection systems; and of which $60,000,000 shall be for procurement and deployment of tactical communications equipment and radios: Provided, That no later than 45 days after the date of enactment of this Act, the Secretary of Homeland Security shall submit to the Committees on Appropriations of the Senate and the House of Representatives a plan for expenditure of these funds.

BORDER SECURITY FENCING, INFRASTRUCTURE, AND TECHNOLOGY

For an additional amount for "Border Security Fencing, Infrastructure, and Technology", $100,000,000 for expedited development and deployment of border security technology on the Southwest border: Provided, That no later than 45 days after the date of enactment of this Act, the Secretary of Homeland Security shall submit to the Committees on Appropriations of the Senate and the House of Representatives a plan for expenditure of these funds.

CONSTRUCTION

For an additional amount for "Construction", $420,000,000 solely for planning, management, design, alteration, and construction of U.S. Customs and Border Protection owned land border ports of entry: Provided, That no later than 45 days after the date of enactment of this Act, the Secretary of Homeland Security shall submit to the Committees on Appropriations of the Senate and the House of Representatives a plan for expenditure of these funds.

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

AUTOMATION MODERNIZATION

For an additional amount for "Automation Modernization", $20,000,000 for the procurement and deployment of tactical communications equipment and radios: Provided, That no later than 45 days after the date of enactment of this Act, the Secretary of Homeland Security shall submit to the Committees on Appropriations of the Senate and the House of Representatives a plan for expenditure of these funds.

TRANSPORTATION SECURITY ADMINISTRATION

AVIATION SECURITY

For an additional amount for "Aviation Security", $1,000,000,000 for procurement and installation of checked baggage explosives detection systems and checkpoint explosives detection equipment: Provided, That the Assistant Secretary of Homeland Security (Transportation Security Administration) shall prioritize the award of these funds to accelerate the installations at locations with completed design plans: Provided further, That no later than 45 days after the date of enactment of this Act, the Secretary of Home-

land Security shall submit to the Committees on Appropriations of the Senate and the House of Representatives a plan for the expenditure of these funds.

COAST GUARD

ACQUISITION, CONSTRUCTION, AND IMPROVEMENTS

For an additional amount for "Acquisition, Construction, and Improvements", $98,000,000 for shore facilities and aids to navigation facilities; for priority procurements due to materials and labor cost increases; and for costs to repair, renovate, assess, or improve vessels: Provided, That no later than 45 days after the date of enactment of this Act, the Secretary of Homeland Security shall submit to the Committees on Appropriations of the Senate and the House of Representatives a plan for the expenditure of these funds.

ALTERATION OF BRIDGES

For an additional amount for "Alteration of Bridges", $142,000,000 for alteration or removal of obstructive bridges, as authorized by section 6 of the Truman-Hobbs Act (33 U.S.C. 516): Provided, That the Coast Guard shall award these funds to those bridges that are ready to proceed to construction: Provided further, That no later than 45 days after the date of enactment of this Act, the Secretary of Homeland Security shall submit to the Committees on Appropriations of the Senate and the House of Representatives a plan for the expenditure of these funds.

FEDERAL EMERGENCY MANAGEMENT AGENCY

STATE AND LOCAL PROGRAMS

For an additional amount for grants, $300,000,000, to be allocated as follows:

(1) $150,000,000 for Public Transportation Security Assistance and Railroad Security Assistance under sections 1406 and 1513 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Public Law 110–53; 6 U.S.C. 1135 and 1163).

(2) $150,000,000 for Port Security Grants in accordance with 46 U.S.C. 70107, notwithstanding 46 U.S.C. 70107(c).

FIREFIGHTER ASSISTANCE GRANTS

For an additional amount for competitive grants, $210,000,000 for modifying, upgrading, or constructing non-Federal fire stations: Provided, That up to 5 percent shall be for program administration: Provided further, That no grant shall exceed $15,000,000.

DISASTER ASSISTANCE DIRECT LOAN PROGRAM ACCOUNT

Notwithstanding section 417(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, the amount of any such loan issued pursuant to this section for major disasters occurring in calendar year 2008 may exceed $5,000,000, and may be equal to not more than 50 percent of the annual operating budget of the local government in any case in which that local government has suffered

a loss of 25 percent or more in tax revenues: Provided, That the cost of modifying such loans shall be as defined in section 502 of the Congressional Budget Act of 1974 (2 U.S.C. 661a).

EMERGENCY FOOD AND SHELTER

For an additional amount to carry out the emergency food and shelter program pursuant to title III of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11331 et seq.), $100,000,000: Provided, That total administrative costs shall not exceed 3.5 percent of the total amount made available under this heading.

GENERAL PROVISIONS—THIS TITLE

SEC. 601. Notwithstanding any other provision of law, the President shall establish an arbitration panel under the Federal Emergency Management Agency public assistance program to expedite the recovery efforts from Hurricanes Katrina and Rita within the Gulf Coast Region. The arbitration panel shall have sufficient authority regarding the award or denial of disputed public assistance applications for covered hurricane damage under section 403, 406, or 407 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170b, 5172, or 5173) for a project the total amount of which is more than $500,000.

SEC. 602. The Administrator of the Federal Emergency Management Agency may not prohibit or restrict the use of funds designated under the hazard mitigation grant program for damage caused by Hurricanes Katrina and Rita if the homeowner who is an applicant for assistance under such program commenced work otherwise eligible for hazard mitigation grant program assistance under section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170c) without approval in writing from the Administrator.

SEC. 603. Subparagraph (E) of section 34(a)(1) of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229a(a)(1)(E)) shall not apply with respect to funds appropriated in this or any other Act making appropriations for fiscal year 2009 or 2010 for grants under such section 34.

SEC. 604. (a) REQUIREMENT.—Except as provided in subsections (c) through (g), funds appropriated or otherwise available to the Department of Homeland Security may not be used for the procurement of an item described in subsection (b) if the item is not grown, reprocessed, reused, or produced in the United States.

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

(1) An article or item of—

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

(B) tents, tarpaulins, covers, textile belts, bags, protective equipment (including but not limited to body armor), sleep systems, load carrying equipment (including but not limited to fieldpacks), textile marine equipment, parachutes, or bandages;

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

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

(c) AVAILABILITY EXCEPTION.—Subsection (a) does not apply to the extent that the Secretary of Homeland Security determines that satisfactory quality and sufficient quantity of any such article or item described in subsection (b)(1) grown, reprocessed, reused, or produced in the United States cannot be procured as and when needed at United States market prices. This section is not applicable to covered items that are, or include, materials determined to be non-available in accordance with Federal Acquisition Regulation 25.104 Nonavailable Articles.

(d) DE MINIMIS EXCEPTION.—Notwithstanding subsection (a), the Secretary of Homeland Security may accept delivery of an item covered by subsection (b) that contains non-compliant fibers if the total value of non-compliant fibers contained in the end item does not exceed 10 percent of the total purchase price of the end item.

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

(1) Procurements by vessels in foreign waters.

(2) Emergency procurements.

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

(g) APPLICABILITY TO CONTRACTS AND SUBCONTRACTS FOR PROCUREMENT OF COMMERCIAL ITEMS.—This section is applicable to contracts and subcontracts for the procurement of commercial items not withstanding section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430), with the exception of commercial items listed under subsections (b)(1)(C) and (b)(1)(D) above. For the purposes of this section, "commercial" shall be as defined in the Federal Acquisition Regulation—Part 2.

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

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

(j) TRAINING DURING FISCAL YEAR 2009.—

(1) IN GENERAL.—The Secretary of Homeland Security shall ensure that each member of the acquisition workforce in the Department of Homeland Security who participates personally and substantially in the acquisition of textiles on a regular

basis receives training during fiscal year 2009 on the requirements of this section and the regulations implementing this section.

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

(k) CONSISTENCY WITH INTERNATIONAL AGREEMENTS.—This section shall be applied in a manner consistent with United States obligations under international agreements.

(l) EFFECTIVE DATE.—This section applies with respect to contracts entered into by the Department of Homeland Security 180 days after the date of the enactment of this Act.

TITLE VII—INTERIOR, ENVIRONMENT, AND RELATED AGENCIES

DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

MANAGEMENT OF LANDS AND RESOURCES

For an additional amount for "Management of Lands and Resources", for activities on all Bureau of Land Management lands including maintenance, rehabilitation, and restoration of facilities, property, trails and lands and for remediation of abandoned mines and wells, $125,000,000.

CONSTRUCTION

For an additional amount for "Construction", for activities on all Bureau of Land Management lands including construction, reconstruction, decommissioning and repair of roads, bridges, trails, property, and facilities and for energy efficient retrofits of existing facilities, $180,000,000.

WILDLAND FIRE MANAGEMENT

For an additional amount for "Wildland Fire Management", for hazardous fuels reduction, $15,000,000.

UNITED STATES FISH AND WILDLIFE SERVICE

RESOURCE MANAGEMENT

For an additional amount for "Resource Management", for deferred maintenance, construction, and capital improvement projects on national wildlife refuges and national fish hatcheries and for high priority habitat restoration projects, $165,000,000.

CONSTRUCTION

For an additional amount for "Construction", for construction, reconstruction, and repair of roads, bridges, property, and facilities and for energy efficient retrofits of existing facilities, $115,000,000.

NATIONAL PARK SERVICE

OPERATION OF THE NATIONAL PARK SYSTEM

For an additional amount for "Operation of the National Park System", for deferred maintenance of facilities and trails and for other critical repair and rehabilitation projects, $146,000,000.

HISTORIC PRESERVATION FUND

For an additional amount for "Historic Preservation Fund", for historic preservation projects at historically black colleges and universities as authorized by the Historic Preservation Fund Act of 1996 and the Omnibus Parks and Public Lands Act of 1996, $15,000,000: Provided, That any matching requirements otherwise required for such projects are waived.

CONSTRUCTION

For an additional amount for "Construction", for repair and restoration of roads; construction of facilities, including energy efficient retrofits of existing facilities; equipment replacement; preservation and repair of historical resources within the National Park System; cleanup of abandoned mine sites on park lands; and other critical infrastructure projects, $589,000,000.

UNITED STATES GEOLOGICAL SURVEY

SURVEYS, INVESTIGATIONS, AND RESEARCH

For an additional amount for "Surveys, Investigations, and Research", $140,000,000, for repair, construction and restoration of facilities; equipment replacement and upgrades including stream gages, and seismic and volcano monitoring systems; national map activities; and other critical deferred maintenance and improvement projects.

BUREAU OF INDIAN AFFAIRS

OPERATION OF INDIAN PROGRAMS

For an additional amount for "Operation of Indian Programs", for workforce training programs and the housing improvement program, $40,000,000.

CONSTRUCTION

For an additional amount for "Construction", for repair and restoration of roads; replacement school construction; school improvements and repairs; and detention center maintenance and repairs, $450,000,000: Provided, That section 1606 of this Act shall not apply to tribal contracts entered into by the Bureau of Indian Affairs with this appropriation.

INDIAN GUARANTEED LOAN PROGRAM ACCOUNT

For an additional amount for "Indian Guaranteed Loan Program Account", $10,000,000.

OFFICE OF INSPECTOR GENERAL

SALARIES AND EXPENSES

For an additional amount for "Office of Inspector General", $15,000,000, to remain available until September 30, 2012.

ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

For an additional amount for "Office of Inspector General", $20,000,000, to remain available until September 30, 2012.

HAZARDOUS SUBSTANCE SUPERFUND

For an additional amount for "Hazardous Substance Superfund", $600,000,000, which shall be for the Superfund Remedial program: Provided, That the Administrator of the Environmental Protection Agency (Administrator) may retain up to 3 percent of the funds appropriated herein for management and oversight purposes.

LEAKING UNDERGROUND STORAGE TANK TRUST FUND PROGRAM

For an additional amount for "Leaking Underground Storage Tank Trust Fund Program", $200,000,000, which shall be for cleanup activities authorized by section 9003(h) of the Solid Waste Disposal Act: Provided, That none of these funds shall be subject to cost share requirements under section 9003(h)(7)(B) of such Act: Provided further, That the Administrator may retain up to 1.5 percent of the funds appropriated herein for management and oversight purposes.

STATE AND TRIBAL ASSISTANCE GRANTS

(INCLUDING TRANSFERS OF FUNDS)

For an additional amount for "State and Tribal Assistance Grants", $6,400,000,000, which shall be allocated as follows:

(1) $4,000,000,000 shall be for capitalization grants for the Clean Water State Revolving Funds under title VI of the Federal Water Pollution Control Act and $2,000,000,000 shall be for capitalization grants under section 1452 of the Safe Drinking Water Act: Provided, That the Administrator may retain up to 1 percent of the funds appropriated herein for management and oversight purposes: Provided further, That funds appropriated herein shall not be subject to the matching or cost share requirements of sections 602(b)(2), 602(b)(3) or 202 of the Federal Water Pollution Control Act nor the matching requirements of section 1452(e) of the Safe Drinking Water Act: Provided further, That the Administrator shall reallocate funds appropriated herein for the Clean and Drinking Water State Revolving Funds (Revolving Funds) where projects are not under contract or construction within 12 months of the date of enactment of this Act: Provided further, That notwithstanding the priority rankings they would otherwise receive under each program, priority for funds appropriated herein shall be given to projects on a State priority list that are ready to proceed to construction

within 12 months of the date of enactment of this Act: Provided further, That notwithstanding the requirements of section 603(d) of the Federal Water Pollution Control Act or section 1452(f) of the Safe Drinking Water Act, for the funds appropriated herein, each State shall use not less than 50 percent of the amount of its capitalization grants to provide additional subsidization to eligible recipients in the form of forgiveness of principal, negative interest loans or grants or any combination of these: Provided further, That, to the extent there are sufficient eligible project applications, not less than 20 percent of the funds appropriated herein for the Revolving Funds shall be for projects to address green infrastructure, water or energy efficiency improvements or other environmentally innovative activities: Provided further, That notwithstanding the limitation on amounts specified in section 518(c) of the Federal Water Pollution Control Act, up to 1.5 percent of the funds appropriated herein for the Clean Water State Revolving Funds may be reserved by the Administrator for tribal grants under section 518(c) of such Act: Provided further, That up to 4 percent of the funds appropriated herein for tribal set-asides under the Revolving Funds may be transferred to the Indian Health Service to support management and oversight of tribal projects: Provided further, That none of the funds appropriated herein shall be available for the purchase of land or easements as authorized by section 603(c) of the Federal Water Pollution Control Act or for activities authorized by section 1452(k) of the Safe Drinking Water Act: Provided further, That notwithstanding section 603(d)(2) of the Federal Water Pollution Control Act and section 1452(f)(2) of the Safe Drinking Water Act, funds may be used to buy, refinance or restructure the debt obligations of eligible recipients only where such debt was incurred on or after October 1, 2008;

(2) $100,000,000 shall be to carry out Brownfields projects authorized by section 104(k) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980: Provided, That the Administrator may reserve up to 3.5 percent of the funds appropriated herein for management and oversight purposes: Provided further, That none of the funds appropriated herein shall be subject to cost share requirements under section 104(k)(9)(B)(iii) of such Act; and

(3) $300,000,000 shall be for Diesel Emission Reduction Act grants pursuant to title VII, subtitle G of the Energy Policy Act of 2005: Provided, That the Administrator may reserve up to 2 percent of the funds appropriated herein for management and oversight purposes: Provided further, That none of the funds appropriated herein for Diesel Emission Reduction Act grants shall be subject to the State Grant and Loan Program Matching Incentive provisions of section 793(c)(3) of such Act.

ADMINISTRATIVE PROVISION, ENVIRONMENTAL PROTECTION AGENCY

(INCLUDING TRANSFERS OF FUNDS)

Funds made available to the Environmental Protection Agency by this Act for management and oversight purposes shall remain

available until September 30, 2011, and may be transferred to the "Environmental Programs and Management" account as needed.

DEPARTMENT OF AGRICULTURE

FOREST SERVICE

CAPITAL IMPROVEMENT AND MAINTENANCE

For an additional amount for "Capital Improvement and Maintenance", $650,000,000, for priority road, bridge and trail maintenance and decommissioning, including related watershed restoration and ecosystem enhancement projects; facilities improvement, maintenance and renovation; remediation of abandoned mine sites; and support costs necessary to carry out this work.

WILDLAND FIRE MANAGEMENT

For an additional amount for "Wildland Fire Management", $500,000,000, of which $250,000,000 is for hazardous fuels reduction, forest health protection, rehabilitation and hazard mitigation activities on Federal lands and of which $250,000,000 is for State and private forestry activities including hazardous fuels reduction, forest health and ecosystem improvement activities on State and private lands using all authorities available to the Forest Service: Provided, That up to $50,000,000 of the total funding may be used to make wood-to-energy grants to promote increased utilization of biomass from Federal, State and private lands: Provided further, That funds provided for activities on State and private lands shall not be subject to matching or cost share requirements.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

INDIAN HEALTH SERVICE

INDIAN HEALTH SERVICES

For an additional amount for "Indian Health Services", for health information technology activities, $85,000,000: Provided, That such funds may be used for both telehealth services development and related infrastructure requirements that are typically funded through the "Indian Health Facilities" account: Provided further, That notwithstanding any other provision of law, health information technology funds provided within this title shall be allocated at the discretion of the Director of the Indian Health Service.

INDIAN HEALTH FACILITIES

For an additional amount for "Indian Health Facilities", for facilities construction projects, deferred maintenance and improvement projects, the backlog of sanitation projects and the purchase of equipment, $415,000,000, of which $227,000,000 is provided within the health facilities construction activity for the completion of up to two facilities from the current priority list for which work has already been initiated: Provided, That for the purposes of this Act, spending caps included within the annual appropriation for "Indian Health Facilities" for the purchase of medical equipment shall not apply: Provided further, That section 1606 of this Act

shall not apply to tribal contracts entered into by the Service with this appropriation.

OTHER RELATED AGENCIES

SMITHSONIAN INSTITUTION

FACILITIES CAPITAL

For an additional amount for "Facilities Capital", for repair and revitalization of existing facilities, $25,000,000.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

NATIONAL ENDOWMENT FOR THE ARTS

GRANTS AND ADMINISTRATION

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

GENERAL PROVISIONS—THIS TITLE

SEC. 701. (a) Within 30 days of enactment of this Act, each agency receiving funds under this title shall submit a general plan for the expenditure of such funds to the House and Senate Committees on Appropriations.

(b) Within 90 days of enactment of this Act, each agency receiving funds under this title shall submit to the Committees a report containing detailed project level information associated with the general plan submitted pursuant to subsection (a).

SEC. 702. In carrying out the work for which funds in this title are being made available, the Secretary of the Interior and the Secretary of Agriculture shall utilize, where practicable, the Public Lands Corps, Youth Conservation Corps, Student Conservation Association, Job Corps and other related partnerships with Federal, State, local, tribal or non-profit groups that serve young adults.

SEC. 703. Each agency receiving funds under this title may transfer up to 10 percent of the funds in any account to other appropriation accounts within the agency, if the head of the agency (1) determines that the transfer will enhance the efficiency or effectiveness of the use of the funds without changing the intended purpose; and (2) notifies the Committees on Appropriations of the House of Representatives and the Senate 10 days prior to the transfer.

TITLE VIII—DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES

DEPARTMENT OF LABOR

EMPLOYMENT AND TRAINING ADMINISTRATION

TRAINING AND EMPLOYMENT SERVICES

For an additional amount for "Training and Employment Services" for activities under the Workforce Investment Act of 1998 ("WIA"), $3,950,000,000, which shall be available for obligation on the date of enactment of this Act, as follows:

(1) $500,000,000 for grants to the States for adult employment and training activities, including supportive services and needs-related payments described in section 134(e)(2) and (3) of the WIA: Provided, That a priority use of these funds shall be services to individuals described in 134(d)(4)(E) of the WIA;

(2) $1,200,000,000 for grants to the States for youth activities, including summer employment for youth: Provided, That no portion of such funds shall be reserved to carry out section 127(b)(1)(A) of the WIA: Provided further, That for purposes of section 127(b)(1)(C)(iv) of the WIA, funds available for youth activities shall be allotted as if the total amount available for youth activities in the fiscal year does not exceed $1,000,000,000: Provided further, That with respect to the youth activities provided with such funds, section 101(13)(A) of the WIA shall be applied by substituting "age 24" for "age 21": Provided further, That the work readiness performance indicator described in section 136(b)(2)(A)(ii)(I) of the WIA shall be the only measure of performance used to assess the effectiveness of summer employment for youth provided with such funds;

(3) $1,250,000,000 for grants to the States for dislocated worker employment and training activities;

(4) $200,000,000 for the dislocated workers assistance national reserve;

(5) $50,000,000 for YouthBuild activities: Provided, That for program years 2008 and 2009, the YouthBuild program may serve an individual who has dropped out of high school and re-enrolled in an alternative school, if that re-enrollment is part of a sequential service strategy; and

(6) $750,000,000 for a program of competitive grants for worker training and placement in high growth and emerging industry sectors: Provided, That $500,000,000 shall be for research, labor exchange and job training projects that prepare workers for careers in energy efficiency and renewable energy as described in section 171(e)(1)(B) of the WIA: Provided further, That in awarding grants from those funds not designated in the preceding proviso, the Secretary of Labor shall give priority to projects that prepare workers for careers in the health care sector:

Provided, That funds made available in this paragraph shall remain available through June 30, 2010: Provided further, That a local board may award a contract to an institution of higher education or other eligible training provider if the local board deter-

mines that it would facilitate the training of multiple individuals in high-demand occupations, if such contract does not limit customer choice.

COMMUNITY SERVICE EMPLOYMENT FOR OLDER AMERICANS

For an additional amount for "Community Service Employment for Older Americans" to carry out title V of the Older Americans Act of 1965, $120,000,000, which shall be available for obligation on the date of enactment of this Act and shall remain available through June 30, 2010: Provided, That funds shall be allotted within 30 days of such enactment to current grantees in proportion to their allotment in program year 2008: Provided further, That funds made available under this heading in this Act may, in accordance with section 517(c) of the Older Americans Act of 1965, be recaptured and reobligated.

STATE UNEMPLOYMENT INSURANCE AND EMPLOYMENT SERVICE OPERATIONS

For an additional amount for "State Unemployment Insurance and Employment Service Operations" for grants to States in accordance with section 6 of the Wagner-Peyser Act, $400,000,000, which may be expended from the Employment Security Administration Account in the Unemployment Trust Fund, and which shall be available for obligation on the date of enactment of this Act: Provided, That such funds shall remain available to the States through September 30, 2010: Provided further, That $250,000,000 of such funds shall be used by States for reemployment services for unemployment insurance claimants (including the integrated Employment Service and Unemployment Insurance information technology required to identify and serve the needs of such claimants): Provided further, That the Secretary of Labor shall establish planning and reporting procedures necessary to provide oversight of funds used for reemployment services.

DEPARTMENTAL MANAGEMENT

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for "Departmental Management", $80,000,000, for the enforcement of worker protection laws and regulations, oversight, and coordination activities related to the infrastructure and unemployment insurance investments in this Act: Provided, That the Secretary of Labor may transfer such sums as necessary to "Employment and Standards Administration", "Employee Benefits Security Administration", "Occupational Safety and Health Administration", and "Employment and Training Administration—Program Administration" for enforcement, oversight, and coordination activities: Provided further, That prior to obligating any funds proposed to be transferred from this account, the Secretary shall provide to the Committees on Appropriations of the House of Representatives and the Senate an operating plan describing the planned uses of each amount proposed to be transferred.

OFFICE OF JOB CORPS

For an additional amount for "Office of Job Corps", $250,000,000, for construction, rehabilitation and acquisition of Job Corps Centers, which shall be available upon the date of enactment of this Act and remain available for obligation through June 30, 2010: Provided, That section 1552(a) of title 31, United States Code shall not apply if funds are used for a multi-year lease agreement that will result in construction activities that can commence within 120 days of enactment of this Act: Provided further, That notwithstanding section 3324(a) of title 31, United States Code, the funds used for an agreement under the preceding proviso may be used for advance, progress, and other payments: Provided further, That the Secretary of Labor may transfer up to 15 percent of such funds to meet the operational needs of such centers, which may include training for careers in the energy efficiency, renewable energy, and environmental protection industries: Provided further, That the Secretary shall provide to the Committees on Appropriations of the House of Representatives and the Senate an operating plan describing the allocation of funds, and a report on the actual obligations, expenditures, and unobligated balances for each activity funded under this heading not later than September 30, 2009 and quarterly thereafter as long as funding provided under this heading is available for obligation or expenditure.

OFFICE OF INSPECTOR GENERAL

For an additional amount for the "Office of Inspector General", $6,000,000, which shall remain available through September 30, 2012, for salaries and expenses necessary for oversight and audit of programs, grants, and projects funded in this Act.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HEALTH RESOURCES AND SERVICES ADMINISTRATION

HEALTH RESOURCES AND SERVICES

For an additional amount for "Health Resources and Services", $2,500,000,000 which shall be used as follows:

(1) $500,000,000 shall be for grants to health centers authorized under section 330 of the Public Health Service Act ("PHS Act");

(2) $1,500,000,000 shall be available for grants for construction, renovation and equipment, and for the acquisition of health information technology systems, for health centers including health center controlled networks receiving operating grants under section 330 of the PHS Act, notwithstanding the limitation in section 330(e)(3); and

(3) $500,000,000 to address health professions workforce shortages, of which $75,000,000 for the National Health Service Corps shall remain available through September 30, 2011: Provided, That funds may be used to provide scholarships, loan repayment, and grants to training programs for equipment as authorized in the PHS Act, and grants authorized in sections 330L, 747, 767 and 768 of the PHS Act: Provided further, That

20 percent of the funds allocated to the National Health Service Corps shall be used for field operations:

Provided, That up to 0.5 percent of funds provided in this paragraph may be used for administration of such funds: Provided further, That the Secretary shall provide to the Committees on Appropriations of the House of Representatives and the Senate an operating plan detailing activities to be supported and timelines for expenditure prior to making any Federal obligations of funds provided in this paragraph but not later than 90 days after the date of enactment of this Act: Provided further, That the Secretary shall provide to the Committees on Appropriations of the House of Representatives and the Senate a report on the actual obligations, expenditures, and unobligated balances for each activity funded in this paragraph not later than November 1, 2009 and every 6 months thereafter as long as funding provided in this paragraph is available for obligation or expenditure.

NATIONAL INSTITUTES OF HEALTH

NATIONAL CENTER FOR RESEARCH RESOURCES

For an additional amount for "National Center for Research Resources", $1,300,000,000, of which $1,000,000,000 shall be for grants or contracts under section 481A of the Public Health Service Act to construct, renovate or repair existing non-Federal research facilities: Provided, That sections 481A(c)(1)(B)(ii), paragraphs (1), (3), and (4) of section 481A(e), and section 481B of such Act shall not apply to the use of such funds: Provided further, That the references to "20 years" in subsections (c)(1)(B)(i) and (f) of section 481A of such Act are deemed to be references to "10 years" for purposes of using such funds: Provided further, That the National Center for Research Resources may also use $300,000,000 to provide, under the authority of section 301 and title IV of such Act, shared instrumentation and other capital research equipment to recipients of grants and contracts under section 481A of such Act and other appropriate entities: Provided further, That the Director of the Center shall provide to the Committees on Appropriations of the House of Representatives and the Senate an annual report indicating the number of institutions receiving awards of a grant or contract under section 481A of such Act, the proposed use of the funding, the average award size, a list of grant or contract recipients, and the amount of each award.

OFFICE OF THE DIRECTOR

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for "Office of the Director", $8,200,000,000: Provided, That $7,400,000,000 shall be transferred to the Institutes and Centers of the National Institutes of Health ("NIH") and to the Common Fund established under section 402A(c)(1) of the Public Health Service Act in proportion to the appropriations otherwise made to such Institutes, Centers, and Common Fund for fiscal year 2009: Provided further, That these funds shall be used to support additional scientific research and shall be merged with and be available for the same purposes as the appropriation or fund to which transferred: Provided further, That this

transfer authority is in addition to any other transfer authority available to the NIH: Provided further, That none of these funds may be transferred to "National Institutes of Health—Buildings and Facilities", the Center for Scientific Review, the Center for Information Technology, the Clinical Center, or the Global Fund for HIV/AIDS, Tuberculosis and Malaria: Provided further, That the funds provided in this Act to the NIH shall not be subject to the provisions of 15 U.S.C. 638(f)(1) and 15 U.S.C. 638(n)(1): Provided further, That $400,000,000 may be used to carry out section 215 of division G of Public Law 110–161.

BUILDINGS AND FACILITIES

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

AGENCY FOR HEALTHCARE RESEARCH AND QUALITY

HEALTHCARE RESEARCH AND QUALITY

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for "Healthcare Research and Quality" to carry out titles III and IX of the Public Health Service Act, part A of title XI of the Social Security Act, and section 1013 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, $700,000,000 for comparative effectiveness research: Provided, That of the amount appropriated in this paragraph, $400,000,000 shall be transferred to the Office of the Director of the National Institutes of Health ("Office of the Director") to conduct or support comparative effectiveness research under section 301 and title IV of the Public Health Service Act: Provided further, That funds transferred to the Office of the Director may be transferred to the Institutes and Centers of the National Institutes of Health and to the Common Fund established under section 402A(c)(1) of the Public Health Service Act: Provided further, That this transfer authority is in addition to any other transfer authority available to the National Institutes of Health: Provided further, That within the amount available in this paragraph for the Agency for Healthcare Research and Quality, not more than 1 percent shall be made available for additional full-time equivalents.

In addition, $400,000,000 shall be available for comparative effectiveness research to be allocated at the discretion of the Secretary of Health and Human Services ("Secretary"): Provided, That the funding appropriated in this paragraph shall be used to accelerate the development and dissemination of research assessing the comparative effectiveness of health care treatments and strategies, through efforts that: (1) conduct, support, or synthesize research that compares the clinical outcomes, effectiveness, and appropriateness of items, services, and procedures that are used to prevent, diagnose, or treat diseases, disorders, and other health conditions; and (2) encourage the development and use of clinical registries, clinical data networks, and other forms of electronic health data that can be used to generate or obtain outcomes data: Provided further, That the Secretary shall enter into a contract with the Institute

of Medicine, for which no more than $1,500,000 shall be made available from funds provided in this paragraph, to produce and submit a report to the Congress and the Secretary by not later than June 30, 2009, that includes recommendations on the national priorities for comparative effectiveness research to be conducted or supported with the funds provided in this paragraph and that considers input from stakeholders: Provided further, That the Secretary shall consider any recommendations of the Federal Coordinating Council for Comparative Effectiveness Research established by section 804 of this Act and any recommendations included in the Institute of Medicine report pursuant to the preceding proviso in designating activities to receive funds provided in this paragraph and may make grants and contracts with appropriate entities, which may include agencies within the Department of Health and Human Services and other governmental agencies, as well as private sector entities, that have demonstrated experience and capacity to achieve the goals of comparative effectiveness research: Provided further, That the Secretary shall publish information on grants and contracts awarded with the funds provided under this heading within a reasonable time of the obligation of funds for such grants and contracts and shall disseminate research findings from such grants and contracts to clinicians, patients, and the general public, as appropriate: Provided further, That, to the extent feasible, the Secretary shall ensure that the recipients of the funds provided by this paragraph offer an opportunity for public comment on the research: Provided further, That research conducted with funds appropriated under this paragraph shall be consistent with Departmental policies relating to the inclusion of women and minorities in research: Provided further, That the Secretary shall provide the Committees on Appropriations of the House of Representatives and the Senate, the Committee on Energy and Commerce and the Committee on Ways and Means of the House of Representatives, and the Committee on Health, Education, Labor, and Pensions and the Committee on Finance of the Senate with an annual report on the research conducted or supported through the funds provided under this heading: Provided further, That the Secretary, jointly with the Directors of the Agency for Healthcare Research and Quality and the National Institutes of Health, shall provide the Committees on Appropriations of the House of Representatives and the Senate a fiscal year 2009 operating plan for the funds appropriated under this heading prior to making any Federal obligations of such funds in fiscal year 2009, but not later than July 30, 2009, and a fiscal year 2010 operating plan for such funds prior to making any Federal obligations of such funds in fiscal year 2010, but not later than November 1, 2009, that detail the type of research being conducted or supported, including the priority conditions addressed; and specify the allocation of resources within the Department of Health and Human Services: Provided further, That the Secretary, jointly with the Directors of the Agency for Healthcare Research and Quality and the National Institutes of Health, shall provide to the Committees on Appropriations of the House of Representatives and the Senate a report on the actual obligations, expenditures, and unobligated balances for each activity funded under this heading not later than November 1, 2009, and every 6 months thereafter as long as funding provided under this heading is available for obligation or expenditure.

ADMINISTRATION FOR CHILDREN AND FAMILIES

PAYMENTS TO STATES FOR THE CHILD CARE AND DEVELOPMENT BLOCK GRANT

For an additional amount for "Payments to States for the Child Care and Development Block Grant", $2,000,000,000, which shall be used to supplement, not supplant State general revenue funds for child care assistance for low-income families: Provided, That, in addition to the amounts required to be reserved by the States under section 658G of the Child Care and Development Block Grant Act of 1990, $255,186,000 shall be reserved by the States for activities authorized under section 658G, of which $93,587,000 shall be for activities that improve the quality of infant and toddler care.

CHILDREN AND FAMILIES SERVICES PROGRAMS

For an additional amount for "Children and Families Services Programs", $3,150,000,000, which shall be used as follows:

(1) $1,000,000,000 for carrying out activities under the Head Start Act.

(2) $1,100,000,000 for expansion of Early Head Start programs, as described in section 645A of the Head Start Act: Provided, That of the funds provided in this paragraph, up to 10 percent shall be available for the provision of training and technical assistance to such programs consistent with section 645A(g)(2) of such Act, and up to 3 percent shall be available for monitoring the operation of such programs consistent with section 641A of such Act.

(3) $1,000,000,000 for carrying out activities under sections 674 through 679 of the Community Services Block Grant Act, of which no part shall be subject to section 674(b)(3) of such Act: Provided, That notwithstanding section 675C(a)(1) and 675C(b) of such Act, 1 percent of the funds made available to each State from this additional amount shall be used for benefits enrollment coordination activities relating to the identification and enrollment of eligible individuals and families in Federal, State, and local benefit programs: Provided further, That all funds remaining available to a State from this additional amount after application of the previous proviso shall be distributed to eligible entities as defined in section 673(1) of such Act: Provided further, That for services furnished under such Act during fiscal years 2009 and 2010, States may apply the last sentence of section 673(2) of such Act by substituting "200 percent" for "125 percent".

(4) $50,000,000 for carrying out activities under section 1110 of the Social Security Act.

ADMINISTRATION ON AGING

AGING SERVICES PROGRAMS

For an additional amount for "Aging Services Programs" under subparts 1 and 2 of part C, of title III, and under title VI, of the Older Americans Act of 1965, $100,000,000, of which $65,000,000 shall be for Congregate Nutrition Services, $32,000,000 shall be for

Home-Delivered Nutrition Services and $3,000,000 shall be for Nutrition Services for Native Americans.

OFFICE OF THE SECRETARY

OFFICE OF THE NATIONAL COORDINATOR FOR HEALTH INFORMATION TECHNOLOGY

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for "Office of the National Coordinator for Health Information Technology", $2,000,000,000, to carry out title XIII of this Act, to remain available until expended: Provided, That of such amount, the Secretary of Health and Human Services shall transfer $20,000,000 to the Director of the National Institute of Standards and Technology in the Department of Commerce for continued work on advancing health care information enterprise integration through activities such as technical standards analysis and establishment of conformance testing infrastructure, so long as such activities are coordinated with the Office of the National Coordinator for Health Information Technology: Provided further, That $300,000,000 is to support regional or sub-national efforts toward health information exchange: Provided further, That 0.25 percent of the funds provided in this paragraph may be used for administration of such funds: Provided further, That funds available under this heading shall become available for obligation only upon submission of an annual operating plan by the Secretary to the Committees on Appropriations of the House of Representatives and the Senate: Provided further, That the fiscal year 2009 operating plan shall be provided not later than 90 days after enactment of this Act and that subsequent annual operating plans shall be provided not later than November 1 of each year: Provided further, That these operating plans shall describe how expenditures are aligned with the specific objectives, milestones, and metrics of the Federal Health Information Technology Strategic Plan, including any subsequent updates to the Plan; the allocation of resources within the Department of Health and Human Services and other Federal agencies; and the identification of programs and activities that are supported: Provided further, That the Secretary shall provide to the Committees on Appropriations of the House of Representatives and the Senate a report on the actual obligations, expenditures, and unobligated balances for each major set of activities not later than November 1, 2009, and every 6 months thereafter as long as funding provided under this heading is available for obligation or expenditure.

OFFICE OF INSPECTOR GENERAL

For an additional amount for the "Office of Inspector General", $17,000,000 which shall remain available until September 30, 2012.

PUBLIC HEALTH AND SOCIAL SERVICES EMERGENCY FUND

For an additional amount for "Public Health and Social Services Emergency Fund" to improve information technology security at the Department of Health and Human Services, $50,000,000.

PREVENTION AND WELLNESS FUND

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses for a "Prevention and Wellness Fund" to be administered through the Department of Health and Human Services, Office of the Secretary, $1,000,000,000: Provided, That of the amount provided in this paragraph, $300,000,000 shall be transferred to the Centers for Disease Control and Prevention ("CDC") as an additional amount to carry out the immunization program ("section 317 immunization program") authorized by section 317(a), (j), and (k)(1) of the Public Health Service Act ("PHS Act"): Provided further, That of the amount provided in this paragraph, $650,000,000 shall be to carry out evidence-based clinical and community-based prevention and wellness strategies authorized by the PHS Act, as determined by the Secretary, that deliver specific, measurable health outcomes that address chronic disease rates: Provided further, That funds appropriated in the preceding proviso may be transferred to other appropriation accounts of the Department of Health and Human Services, as determined by the Secretary to be appropriate: Provided further, That of the amount appropriated in this paragraph, $50,000,000 shall be provided to States for an additional amount to carry out activities to implement healthcare-associated infections reduction strategies: Provided further, That not more than 0.5 percent of funds made available in this paragraph may be used for management and oversight expenses in the office or division of the Department of Health and Human Services administering the funds: Provided further, That the Secretary shall, directly or through contracts with public or private entities, provide for annual evaluations of programs carried out with funds provided under this heading in order to determine the quality and effectiveness of the programs: Provided further, That the Secretary shall, not later than 1 year after the date of enactment of this Act, submit to the Committees on Appropriations of the House of Representatives and the Senate, the Committee on Energy and Commerce of the House of Representatives, and the Committee on Health, Education, Labor, and Pensions of the Senate, a report summarizing the annual evaluations of programs from the preceding proviso: Provided further, That the Secretary shall provide to the Committees on Appropriations of the House of Representatives and the Senate an operating plan for the Prevention and Wellness Fund prior to making any Federal obligations of funds provided in this paragraph (excluding funds to carry out the section 317 immunization program), but not later than 90 days after the date of enactment of this Act, that indicates the prevention priorities to be addressed; provides measurable goals for each prevention priority; details the allocation of resources within the Department of Health and Human Services; and identifies which programs or activities are supported, including descriptions of any new programs or activities: Provided further, That the Secretary shall provide to the Committees on Appropriations of the House of Representatives and the Senate a report on the actual obligations, expenditures, and unobligated balances for each activity funded under this heading not later than November 1, 2009, and every 6 months thereafter as long as funding provided under this heading is available for obligation or expenditure.

DEPARTMENT OF EDUCATION

EDUCATION FOR THE DISADVANTAGED

For an additional amount for "Education for the Disadvantaged" to carry out title I of the Elementary and Secondary Education Act of 1965 ("ESEA"), $13,000,000,000: Provided, That $5,000,000,000 shall be available for targeted grants under section 1125 of the ESEA: Provided further, That $5,000,000,000 shall be available for education finance incentive grants under section 1125A of the ESEA: Provided further, That $3,000,000,000 shall be for school improvement grants under section 1003(g) of the ESEA: Provided further, That each local educational agency receiving funds available under this paragraph shall be required to file with the State educational agency, no later than December 1, 2009, a school-by-school listing of per-pupil educational expenditures from State and local sources during the 2008–2009 academic year: Provided further, That each State educational agency shall report that information to the Secretary of Education by March 31, 2010.

IMPACT AID

For an additional amount for "Impact Aid" to carry out section 8007 of title VIII of the Elementary and Secondary Education Act of 1965, $100,000,000, which shall be expended pursuant to the requirements of section 805.

SCHOOL IMPROVEMENT PROGRAMS

For an additional amount for "School Improvement Programs" to carry out subpart 1, part D of title II of the Elementary and Secondary Education Act of 1965 ("ESEA"), and subtitle B of title VII of the McKinney-Vento Homeless Assistance Act, $720,000,000: Provided, That $650,000,000 shall be available for subpart 1, part D of title II of the ESEA: Provided further, That the Secretary shall allot $70,000,000 for grants under McKinney-Vento to each State in proportion to the number of homeless students identified by the State during the 2007–2008 school year relative to the number of such children identified nationally during that school year: Provided further, That State educational agencies shall subgrant the McKinney-Vento funds to local educational agencies on a competitive basis or according to a formula based on the number of homeless students identified by the local educational agencies in the State: Provided further, That the Secretary shall distribute the McKinney-Vento funds to the States not later than 60 days after the date of the enactment of this Act: Provided further, That each State shall subgrant the McKinney-Vento funds to local educational agencies not later than 120 days after receiving its grant from the Secretary.

INNOVATION AND IMPROVEMENT

For an additional amount for "Innovation and Improvement" to carry out subpart 1, part D of title V of the Elementary and Secondary Education Act of 1965 ("ESEA"), $200,000,000: Provided, That these funds shall be expended as directed in the fifth, sixth, and seventh provisos under the heading "Innovation and Improve-

ment" in the Department of Education Appropriations Act, 2008: Provided further, That a portion of these funds shall also be used for a rigorous national evaluation by the Institute of Education Sciences, utilizing randomized controlled methodology to the extent feasible, that assesses the impact of performance-based teacher and principal compensation systems supported by the funds provided in this Act on teacher and principal recruitment and retention in high-need schools and subjects: Provided further, That the Secretary may reserve up to 1 percent of the amount made available under this heading for management and oversight of the activities supported with those funds.

SPECIAL EDUCATION

For an additional amount for "Special Education" for carrying out parts B and C of the Individuals with Disabilities Education Act ("IDEA"), $12,200,000,000, of which $11,300,000,000 shall be available for section 611 of the IDEA: Provided, That if every State, as defined by section 602(31) of the IDEA, reaches its maximum allocation under section 611(d)(3)(B)(iii) of the IDEA, and there are remaining funds, such funds shall be proportionally allocated to each State subject to the maximum amounts contained in section 611(a)(2) of the IDEA: Provided further, That by July 1, 2009, the Secretary of Education shall reserve the amount needed for grants under section 643(e) of the IDEA, with any remaining funds to be allocated in accordance with section 643(c) of the IDEA: Provided further, That the total amount for each of sections 611(b)(2) and 643(b)(1) of the IDEA, under this and all other Acts, for fiscal year 2009, whenever enacted, shall be equal to the amounts respectively available for these activities under these sections during fiscal year 2008 increased by the amount of inflation as specified in section 619(d)(2)(B) of the IDEA: Provided further, That $400,000,000 shall be available for section 619 of the IDEA and $500,000,000 shall be available for part C of the IDEA.

REHABILITATION SERVICES AND DISABILITY RESEARCH

For an additional amount for "Rehabilitation Services and Disability Research" for providing grants to States to carry out the Vocational Rehabilitation Services program under part B of title I and parts B and C of chapter 1 and chapter 2 of title VII of the Rehabilitation Act of 1973, $680,000,000: Provided, That $540,000,000 shall be available for part B of title I of the Rehabilitation Act: Provided further, That funds provided herein shall not be considered in determining the amount required to be appropriated under section 100(b)(1) of the Rehabilitation Act of 1973 in any fiscal year: Provided further, That, notwithstanding section 7(14)(A), the Federal share of the costs of vocational rehabilitation services provided with the funds provided herein shall be 100 percent: Provided further, That $140,000,000 shall be available for parts B and C of chapter 1 and chapter 2 of title VII of the Rehabilitation Act: Provided further, That $18,200,000 shall be for State Grants, $87,500,000 shall be for independent living centers, and $34,300,000 shall be for services for older blind individuals.

STUDENT FINANCIAL ASSISTANCE

For an additional amount for "Student Financial Assistance" to carry out subpart 1 of part A and part C of title IV of the Higher Education Act of 1965 ("HEA"), $15,840,000,000, which shall remain available through September 30, 2011: Provided, That $15,640,000,000 shall be available for subpart 1 of part A of title IV of the HEA: Provided further, That $200,000,000 shall be available for part C of title IV of the HEA.

The maximum Pell Grant for which a student shall be eligible during award year 2009–2010 shall be $4,860.

STUDENT AID ADMINISTRATION

For an additional amount for "Student Aid Administration" to carry out part D of title I, and subparts 1, 3, and 4 of part A, and parts B, C, D, and E of title IV of the Higher Education Act of 1965, $60,000,000.

HIGHER EDUCATION

For an additional amount for "Higher Education" to carry out part A of title II of the Higher Education Act of 1965, $100,000,000.

INSTITUTE OF EDUCATION SCIENCES

For an additional amount for "Institute of Education Sciences" to carry out section 208 of the Educational Technical Assistance Act, $250,000,000, which may be used for Statewide data systems that include postsecondary and workforce information, of which up to $5,000,000 may be used for State data coordinators and for awards to public or private organizations or agencies to improve data coordination.

DEPARTMENTAL MANAGEMENT

OFFICE OF THE INSPECTOR GENERAL

For an additional amount for the "Office of the Inspector General", $14,000,000, which shall remain available through September 30, 2012, for salaries and expenses necessary for oversight and audit of programs, grants, and projects funded in this Act.

RELATED AGENCIES

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

OPERATING EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for "Operating Expenses" to carry out the Domestic Volunteer Service Act of 1973 ("1973 Act") and the National and Community Service Act of 1990 ("1990 Act"), $160,000,000: Provided, That $89,000,000 of the funds made available in this paragraph shall be used to make additional awards to existing AmeriCorps grantees and may be used to provide adjustments to awards under subtitle C of title I of the 1990 Act made prior to September 30, 2010 for which the Chief Executive Officer

of the Corporation for National and Community Service ("CEO") determines that a waiver of the Federal share limitation is warranted under section 2521.70 of title 45 of the Code of Federal Regulations: Provided further, That of the amount made available in this paragraph, not less than $6,000,000 shall be transferred to "Salaries and Expenses" for necessary expenses relating to information technology upgrades, of which up to $800,000 may be used to administer the funds provided in this paragraph: Provided further, That of the amount provided in this paragraph, not less than $65,000,000 shall be for programs under title I, part A of the 1973 Act: Provided further, That funds provided in the previous proviso shall not be made available in connection with cost-share agreements authorized under section 192A(g)(10) of the 1990 Act: Provided further, That of the funds available under this heading, up to 20 percent of funds allocated to grants authorized under section 124(b) of title I, subtitle C of the 1990 Act may be used to administer, reimburse, or support any national service program under section 129(d)(2) of the 1990 Act: Provided further, That, except as provided herein and in addition to requirements identified herein, funds provided in this paragraph shall be subject to the terms and conditions under which funds were appropriated in fiscal year 2008: Provided further, That the CEO shall provide the Committees on Appropriations of the House of Representatives and the Senate a fiscal year 2009 operating plan for the funds appropriated in this paragraph prior to making any Federal obligations of such funds in fiscal year 2009, but not later than 90 days after the date of enactment of this Act, and a fiscal year 2010 operating plan for such funds prior to making any Federal obligations of such funds in fiscal year 2010, but not later than November 1, 2009, that detail the allocation of resources and the increased number of members supported by the AmeriCorps programs: Provided further, That the CEO shall provide to the Committees on Appropriations of the House of Representatives and the Senate a report on the actual obligations, expenditures, and unobligated balances for each activity funded under this heading not later than November 1, 2009, and every 6 months thereafter as long as funding provided under this heading is available for obligation or expenditure.

OFFICE OF INSPECTOR GENERAL

For an additional amount for the "Office of Inspector General", $1,000,000, which shall remain available until September 30, 2012.

NATIONAL SERVICE TRUST

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for "National Service Trust" established under subtitle D of title I of the National and Community Service Act of 1990 ("1990 Act"), $40,000,000, which shall remain available until expended: Provided, That the Corporation for National and Community Service may transfer additional funds from the amount provided within "Operating Expenses" for grants made under subtitle C of title I of the 1990 Act to this appropriation upon determination that such transfer is necessary to support the activities of national service participants and after notice is transmitted

to the Committees on Appropriations of the House of Representatives and the Senate: Provided further, That the amount appropriated for or transferred to the National Service Trust may be invested under section 145(b) of the 1990 Act without regard to the requirement to apportion funds under 31 U.S.C. 1513(b).

SOCIAL SECURITY ADMINISTRATION

LIMITATION ON ADMINISTRATIVE EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for "Limitation on Administrative Expenses", $1,000,000,000 shall be available as follows:

(1) $500,000,000 shall remain available until expended for necessary expenses of the replacement of the National Computer Center and the information technology costs associated with such Center: Provided, That the Commissioner of Social Security shall notify the Committees on Appropriations of the House of Representatives and the Senate not later than 10 days prior to each public notice soliciting bids related to site selection and construction and prior to the lease or purchase of such site: Provided further, That the construction plan and site selection for such center shall be subject to review and approval by the Office of Management and Budget: Provided further, That such center shall continue to be a government-operated facility; and

(2) $500,000,000 for processing disability and retirement workloads, including information technology acquisitions and research in support of such activities: Provided, That up to $40,000,000 may be used by the Commissioner of Social Security for health information technology research and activities to facilitate the adoption of electronic medical records in disability claims, including the transfer of funds to "Supplemental Security Income Program" to carry out activities under section 1110 of the Social Security Act.

OFFICE OF INSPECTOR GENERAL

For an additional amount for the "Office of Inspector General", $2,000,000, which shall remain available through September 30, 2012, for salaries and expenses necessary for oversight and audit of programs, projects, and activities funded in this Act.

GENERAL PROVISIONS—THIS TITLE

SEC. 801. (a) Up to 1 percent of the funds made available to the Department of Labor in this title may be used for the administration, management, and oversight of the programs, grants, and activities funded by such appropriation, including the evaluation of the use of such funds.

(b) Funds designated for these purposes may be available for obligation through September 30, 2010.

(c) Not later than 30 days after enactment of this Act, the Secretary of Labor shall provide an operating plan describing the proposed use of funds for the purposes described in subsection (a).

SEC. 802. REPORT ON THE IMPACT OF PAST AND FUTURE MINIMUM WAGE INCREASES. (a) IN GENERAL.—Section 8104 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Ac-

countability Appropriations Act, 2007 (Public Law 110–28; 121 Stat. 189) is amended to read as follows:

"SEC. 8104. REPORT ON THE IMPACT OF PAST AND FUTURE MINIMUM WAGE INCREASES.

"(a) STUDY.—Beginning on the date that is 60 days after the date of enactment of this Act, and every year thereafter until the minimum wage in the respective territory is $7.25 per hour, the Government Accountability Office shall conduct a study to—

"(1) assess the impact of the minimum wage increases that occurred in American Samoa and the Commonwealth of the Northern Mariana Islands in 2007 and 2008, as required under Public Law 110–28, on the rates of employment and the living standards of workers, with full consideration of the other factors that impact rates of employment and the living standards of workers such as inflation in the cost of food, energy, and other commodities; and

"(2) estimate the impact of any further wage increases on rates of employment and the living standards of workers in American Samoa and the Commonwealth of the Northern Mariana Islands, with full consideration of the other factors that may impact the rates of employment and the living standards of workers, including assessing how the profitability of major private sector firms may be impacted by wage increases in comparison to other factors such as energy costs and the value of tax benefits.

"(b) REPORT.—No earlier than March 15, 2010, and not later than April 15, 2010, the Government Accountability Office shall transmit its first report to Congress concerning the findings of the study required under subsection (a). The Government Accountability Office shall transmit any subsequent reports to Congress concerning the findings of a study required by subsection (a) between March 15 and April 15 of each year.

"(c) ECONOMIC INFORMATION.—To provide sufficient economic data for the conduct of the study under subsection (a) the Bureau of the Census of the Department of Commerce shall include and separately report on American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the Virgin Islands in its County Business Patterns data with the same regularity and to the same extent as each Bureau collects and reports such data for the 50 States. In the event that the inclusion of American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the Virgin Islands in such surveys and data compilations requires time to structure and implement, the Bureau of the Census shall in the interim annually report the best available data that can feasibly be secured with respect to such territories. Such interim report shall describe the steps the Bureau will take to improve future data collection in the territories to achieve comparability with the data collected in the United States. The Bureau of the Census, together with the Department of the Interior, shall coordinate their efforts to achieve such improvements.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of enactment of this Act.

SEC. 803. ELIGIBLE EMPLOYEES IN THE RECREATIONAL MARINE INDUSTRY.—Section 2(3)(F) of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 902(3)(F)) is amended—

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

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

SEC. 804. FEDERAL COORDINATING COUNCIL FOR COMPARATIVE EFFECTIVENESS RESEARCH. (a) ESTABLISHMENT.—There is hereby established a Federal Coordinating Council for Comparative Effectiveness Research (in this section referred to as the "Council").

(b) PURPOSE.—The Council shall foster optimum coordination of comparative effectiveness and related health services research conducted or supported by relevant Federal departments and agencies, with the goal of reducing duplicative efforts and encouraging coordinated and complementary use of resources.

(c) DUTIES.—The Council shall—

(1) assist the offices and agencies of the Federal Government, including the Departments of Health and Human Services, Veterans Affairs, and Defense, and other Federal departments or agencies, to coordinate the conduct or support of comparative effectiveness and related health services research; and

(2) advise the President and Congress on—

(A) strategies with respect to the infrastructure needs of comparative effectiveness research within the Federal Government; and

(B) organizational expenditures for comparative effectiveness research by relevant Federal departments and agencies.

(d) MEMBERSHIP.—

(1) NUMBER AND APPOINTMENT.—The Council shall be composed of not more than 15 members, all of whom are senior Federal officers or employees with responsibility for health-related programs, appointed by the President, acting through the Secretary of Health and Human Services (in this section referred to as the "Secretary"). Members shall first be appointed to the Council not later than 30 days after the date of the enactment of this Act.

(2) MEMBERS.—

(A) IN GENERAL.—The members of the Council shall include one senior officer or employee from each of the following agencies:

(i) The Agency for Healthcare Research and Quality.

(ii) The Centers for Medicare and Medicaid Services.

(iii) The National Institutes of Health.

(iv) The Office of the National Coordinator for Health Information Technology.

(v) The Food and Drug Administration.

(vi) The Veterans Health Administration within the Department of Veterans Affairs.

(vii) The office within the Department of Defense responsible for management of the Department of Defense Military Health Care System.

(B) QUALIFICATIONS.—At least half of the members of the Council shall be physicians or other experts with clinical expertise.

(3) CHAIRMAN; VICE CHAIRMAN.—The Secretary shall serve as Chairman of the Council and shall designate a member to serve as Vice Chairman.

(e) REPORTS.—

(1) INITIAL REPORT.—Not later than June 30, 2009, the Council shall submit to the President and the Congress a report containing information describing current Federal activities on comparative effectiveness research and recommendations for such research conducted or supported from funds made available for allotment by the Secretary for comparative effectiveness research in this Act.

(2) ANNUAL REPORT.—The Council shall submit to the President and Congress an annual report regarding its activities and recommendations concerning the infrastructure needs, organizational expenditures and opportunities for better coordination of comparative effectiveness research by relevant Federal departments and agencies.

(f) STAFFING; SUPPORT.—From funds made available for allotment by the Secretary for comparative effectiveness research in this Act, the Secretary shall make available not more than 1 percent to the Council for staff and administrative support.

(g) RULES OF CONSTRUCTION.—

(1) COVERAGE.—Nothing in this section shall be construed to permit the Council to mandate coverage, reimbursement, or other policies for any public or private payer.

(2) REPORTS AND RECOMMENDATIONS.—None of the reports submitted under this section or recommendations made by the Council shall be construed as mandates or clinical guidelines for payment, coverage, or treatment.

SEC. 805. GRANTS FOR IMPACT AID CONSTRUCTION. (a) RESERVATION FOR MANAGEMENT AND OVERSIGHT.—From the funds appropriated to carry out this section, the Secretary may reserve up to 1 percent for management and oversight of the activities carried out with those funds.

(b) CONSTRUCTION PAYMENTS.—

(1) FORMULA GRANTS.—

(A) IN GENERAL.—From 40 percent of the amount not reserved under subsection (a), the Secretary shall make payments in accordance with section 8007(a) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7707(a)), except that the amount of such payments shall be determined in accordance with subparagraph (B).

(B) AMOUNT OF PAYMENTS.—The Secretary shall make a payment to each local educational agency eligible for a payment under section 8007(a) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7707(a)) in an amount that bears the same relationship to the funds made available under subparagraph (A) as the number of children determined under subparagraphs (B), (C), and (D)(i) of section 8003(a)(1) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703(a)(1)(B), (C), and (D)(i)) who were in average daily attendance in the local edu-

cational agency for the most recent year for which such information is available bears to the number of such children in all the local educational agencies eligible for a payment under section 8007(a) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7707(a)).

(2) COMPETITIVE GRANTS.—From 60 percent of the amount not reserved under subsection (a), the Secretary—

(A) shall award emergency grants in accordance with section 8007(b) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7707(b)) to eligible local educational agencies to enable the agencies to carry out emergency repairs of school facilities; and

(B) may award modernization grants in accordance with section 8007(b) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7707(b)) to eligible local educational agencies to enable the agencies to carry out the modernization of school facilities.

(3) PROVISIONS NOT TO APPLY.—Paragraphs (2), (3), (4), (5)(A)(i), and (5)(A)(vi) of section 8007(b) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7707(b)(2), (3), (4), (5)(A)(i), and (5)(A)(vi)) shall not apply to grants made under paragraph (2).

(4) ELIGIBILITY.—A local educational agency is eligible to receive a grant under paragraph (2) if the local educational agency—

(A) was eligible to receive a payment under section 8002 or 8003 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7702 and 7703) for fiscal year 2008; and

(B) has—

(i) a total taxable assessed value of real property that may be taxed for school purposes of less than $100,000,000; or

(ii) an assessed value of real property per student that may be taxed for school purposes that is less than the average of the assessed value of real property per student that may be taxed for school purposes in the State in which the local educational agency is located.

(5) CRITERIA FOR GRANTS.—In awarding grants under paragraph (2), the Secretary shall consider the following criteria:

(A) Whether the facility poses a health or safety threat to students and school personnel, including noncompliance with building codes and inaccessibility for persons with disabilities, or whether the existing building capacity meets the needs of the current enrollment and supports the provision of comprehensive educational services to meet current standards in the State in which the local educational agency is located.

(B) The extent to which the new design and proposed construction utilize energy efficient and recyclable materials.

(C) The extent to which the new design and proposed construction utilizes non-traditional or alternative building

methods to expedite construction and project completion and maximize cost efficiency.

(D) The feasibility of project completion within 24 months from award.

(E) The availability of other resources for the proposed project.

SEC. 806. MANDATORY PELL GRANTS.— Section 401(b)(9)(A) of the Higher Education Act of 1965 (20 U.S.C. 1070a(b)(9)(A)) is amended—

(1) in clause (ii), by striking "$2,090,000,000" and inserting "$2,733,000,000"; and

(2) in clause (iii), by striking "$3,030,000,000" and inserting "$3,861,000,000".

SEC. 807. (a) IN GENERAL.—Notwithstanding any other provision of law, and in order to begin expenditures and activities under this Act as quickly as possible consistent with prudent management, the Secretary of Education may—

(1) award fiscal year 2009 funds to States and local educational agencies on the basis of eligibility determinations made for the award of fiscal year 2008 funds; and

(2) require States to make prompt allocations to local educational agencies.

(b) INTEREST NOT TO ACCRUE.—Notwithstanding sections 3335 and 6503 of title 31, United States Code, or any other provision of law, the United States shall not be liable to any State or other entity for any interest or fee with respect to any funds under this Act that are allocated by the Secretary of Education to the State or other entity within 30 days of the date on which they are available for obligation.

TITLE IX—LEGISLATIVE BRANCH

GOVERNMENT ACCOUNTABILITY OFFICE

SALARIES AND EXPENSES

For an additional amount for "Salaries and Expenses" of the Government Accountability Office, $25,000,000, to remain available until September 30, 2010.

GENERAL PROVISIONS—THIS TITLE

SEC. 901. GOVERNMENT ACCOUNTABILITY OFFICE REVIEWS AND REPORTS. (a) REVIEWS AND REPORTS.—

(1) IN GENERAL.—The Comptroller General shall conduct bimonthly reviews and prepare reports on such reviews on the use by selected States and localities of funds made available in this Act. Such reports, along with any audits conducted by the Comptroller General of such funds, shall be posted on the Internet and linked to the website established under this Act by the Recovery Accountability and Transparency Board.

(2) REDACTIONS.—Any portion of a report or audit under this subsection may be redacted when made publicly available, if that portion would disclose information that is not subject to disclosure under section 552 of title 5, United States Code (commonly known as the Freedom of Information Act).

(b) EXAMINATION OF RECORDS.—The Comptroller General may examine any records related to obligations and use by any Federal, State, or local government agency of funds made available in this Act.

SEC. 902. ACCESS OF GOVERNMENT ACCOUNTABILITY OFFICE. (a) ACCESS.—Each contract awarded using funds made available in this Act shall provide that the Comptroller General and his representatives are authorized—

(1) to examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and

(2) to interview any officer or employee of the contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.

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

TITLE X—MILITARY CONSTRUCTION AND VETERANS AFFAIRS

DEPARTMENT OF DEFENSE

MILITARY CONSTRUCTION, ARMY

For an additional amount for "Military Construction, Army", $180,000,000, to remain available until September 30, 2013: Provided, That notwithstanding any other provision of law, such funds may be obligated and expended to carry out planning and design and military construction projects in the United States not otherwise authorized by law: Provided further, That of the amount provided under this heading, $80,000,000 shall be for child development centers, and $100,000,000 shall be for warrior transition complexes: Provided further, That not later than 30 days after the date of enactment of this Act, the Secretary of Defense shall submit to the Committees on Appropriations of both Houses of Congress an expenditure plan for funds provided under this heading.

MILITARY CONSTRUCTION, NAVY AND MARINE CORPS

For an additional amount for "Military Construction, Navy and Marine Corps", $280,000,000, to remain available until September 30, 2013: Provided, That notwithstanding any other provision of law, such funds may be obligated and expended to carry out planning and design and military construction projects in the United States not otherwise authorized by law: Provided further, That of the amount provided under this heading, $100,000,000 shall be for troop housing, $80,000,000 shall be for child development centers, and $100,000,000 shall be for energy conservation and alternative energy projects: Provided further, That not later than 30 days after the date of enactment of this Act, the Secretary of Defense shall submit to the Committees on Appropriations of both Houses of Congress an expenditure plan for funds provided under this heading.

MILITARY CONSTRUCTION, AIR FORCE

For an additional amount for "Military Construction, Air Force", $180,000,000, to remain available until September 30, 2013: Provided, That notwithstanding any other provision of law, such funds may be obligated and expended to carry out planning and design and military construction projects in the United States not otherwise authorized by law: Provided further, That of the amount provided under this heading, $100,000,000 shall be for troop housing and $80,000,000 shall be for child development centers: Provided further, That not later than 30 days after the date of enactment of this Act, the Secretary of Defense shall submit to the Committees on Appropriations of both Houses of Congress an expenditure plan for funds provided under this heading.

MILITARY CONSTRUCTION, DEFENSE-WIDE

For an additional amount for "Military Construction, Defense-Wide", $1,450,000,000, to remain available until September 30, 2013: Provided, That notwithstanding any other provision of law, such funds may be obligated and expended to carry out planning and design and military construction projects in the United States not otherwise authorized by law: Provided further, That of the amount provided under this heading, $1,330,000,000 shall be for the construction of hospitals and $120,000,000 shall be for the Energy Conservation Investment Program: Provided further, That not later than 30 days after the date of enactment of this Act, the Secretary of Defense shall submit to the Committees on Appropriations of both Houses of Congress an expenditure plan for funds provided under this heading.

MILITARY CONSTRUCTION, ARMY NATIONAL GUARD

For an additional amount for "Military Construction, Army National Guard", $50,000,000, to remain available until September 30, 2013: Provided, That notwithstanding any other provision of law, such funds may be obligated and expended to carry out planning and design and military construction projects in the United States not otherwise authorized by law: Provided further, That not later than 30 days after the date of enactment of this Act, the Secretary of Defense, in consultation with the Director of the Army National Guard, shall submit to the Committees on Appropriations of both Houses of Congress an expenditure plan for funds provided under this heading.

MILITARY CONSTRUCTION, AIR NATIONAL GUARD

For an additional amount for "Military Construction, Air National Guard", $50,000,000, to remain available until September 30, 2013: Provided, That notwithstanding any other provision of law, such funds may be obligated and expended to carry out planning and design and military construction projects in the United States not otherwise authorized by law: Provided further, That not later than 30 days after the date of enactment of this Act, the Secretary of Defense, in consultation with the Director of the Air National Guard, shall submit to the Committees on Appropriations of both

Houses of Congress an expenditure plan for funds provided under this heading.

FAMILY HOUSING CONSTRUCTION, ARMY

For an additional amount for "Family Housing Construction, Army", $34,507,000, to remain available until September 30, 2013: Provided, That notwithstanding any other provision of law, such funds may be obligated and expended to carry out planning and design and military construction projects in the United States not otherwise authorized by law: Provided further, That within 30 days of enactment of this Act, the Secretary of Defense shall submit to the Committees on Appropriations of both Houses of Congress an expenditure plan for funds provided under this heading.

FAMILY HOUSING OPERATION AND MAINTENANCE, ARMY

For an additional amount for "Family Housing Operation and Maintenance, Army", $3,932,000: Provided, That notwithstanding any other provision of law, such funds may be obligated and expended for maintenance and repair and minor construction projects in the United States not otherwise authorized by law.

FAMILY HOUSING CONSTRUCTION, AIR FORCE

For an additional amount for "Family Housing Construction, Air Force", $80,100,000, to remain available until September 30, 2013: Provided, That notwithstanding any other provision of law, such funds may be obligated and expended to carry out planning and design and military construction projects in the United States not otherwise authorized by law: Provided further, That within 30 days of enactment of this Act, the Secretary of Defense shall submit to the Committees on Appropriations of both Houses of Congress an expenditure plan for funds provided under this heading.

FAMILY HOUSING OPERATION AND MAINTENANCE, AIR FORCE

For an additional amount for "Family Housing Operation and Maintenance, Air Force", $16,461,000: Provided, That notwithstanding any other provision of law, such funds may be obligated and expended for maintenance and repair and minor construction projects in the United States not otherwise authorized by law.

HOMEOWNERS ASSISTANCE FUND

For an additional amount for "Homeowners Assistance Fund", established by section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended (42 U.S.C. 3374), $555,000,000, to remain available until expended: Provided, That the Secretary of Defense shall submit quarterly reports to the Committees on Appropriations of both Houses of Congress on the expenditure of funds made available under this heading in this or any other Act.

ADMINISTRATIVE PROVISION

SEC. 1001. (a) TEMPORARY EXPANSION OF HOMEOWNERS ASSISTANCE PROGRAM TO RESPOND TO MORTGAGE FORECLOSURE AND CREDIT CRISIS.— Section 1013 of the Demonstration Cities and

Metropolitan Development Act of 1966 (42 U.S.C. 3374) is amended—

(1) in subsection (a)—

(A) by redesignating paragraphs (1), (2), and (3) as clauses (i), (ii), and (iii), respectively, and indenting such subparagraphs, as so redesignated, 6 ems from the left margin;

(B) by striking "Notwithstanding any other provision of law" and inserting the following:

"(1) ACQUISITION OF PROPERTY AT OR NEAR MILITARY INSTALLATIONS THAT HAVE BEEN ORDERED TO BE CLOSED.—Notwithstanding any other provision of law";

(C) by striking "if he determines" and inserting "if—

"(A) the Secretary determines—";

(D) in clause (iii), as redesignated by subparagraph (A), by striking the period at the end and inserting "; or"; and

(E) by adding at the end the following:

"(B) the Secretary determines—

"(i) that the conditions in clauses (i) and (ii) of subparagraph (A) have been met;

"(ii) that the closing or realignment of the base or installation resulted from a realignment or closure carried out under the 2005 round of defense base closure and realignment under the Defense Base Closure and Realignment Act of 1990 (part XXIX of Public Law 101–510; 10 U.S.C. 2687 note);

"(iii) that the property was purchased by the owner before July 1, 2006;

"(iv) that the property was sold by the owner between July 1, 2006, and September 30, 2012, or an earlier end date designated by the Secretary;

"(v) that the property is the primary residence of the owner; and

"(vi) that the owner has not previously received benefit payments authorized under this subsection.

"(2) HOMEOWNER ASSISTANCE FOR WOUNDED MEMBERS OF THE ARMED FORCES, DEPARTMENT OF DEFENSE AND UNITED STATES COAST GUARD CIVILIAN EMPLOYEES, AND THEIR SPOUSES.—Notwithstanding any other provision of law, the Secretary of Defense is authorized to acquire title to, hold, manage, and dispose of, or, in lieu thereof, to reimburse for certain losses upon private sale of, or foreclosure against, any property improved with a one- or two-family dwelling which was at the time of the relevant wound, injury, or illness, the primary residence of—

"(A) any member of the Armed Forces in medical transition who—

"(i) incurred a wound, injury, or illness in the line of duty during a deployment in support of the Armed Forces;

"(ii) is disabled to a degree of 30 percent or more as a result of such wound, injury, or illness, as determined by the Secretary of Defense; and

"(iii) is reassigned in furtherance of medical treatment or rehabilitation, or due to medical retirement in connection with such disability;

"(B) any civilian employee of the Department of Defense or the United States Coast Guard who—

"(i) was wounded, injured, or became ill in the performance of his or her duties during a forward deployment occurring on or after September 11, 2001, in support of the Armed Forces; and

"(ii) is reassigned in furtherance of medical treatment, rehabilitation, or due to medical retirement resulting from the sustained disability; or

"(C) the spouse of a member of the Armed Forces or a civilian employee of the Department of Defense or the United States Coast Guard if—

"(i) the member or employee was killed in the line of duty or in the performance of his or her duties during a deployment on or after September 11, 2001, in support of the Armed Forces or died from a wound, injury, or illness incurred in the line of duty during such a deployment; and

"(ii) the spouse relocates from such residence within 2 years after the death of such member or employee.

"(3) TEMPORARY HOMEOWNER ASSISTANCE FOR MEMBERS OF THE ARMED FORCES PERMANENTLY REASSIGNED DURING SPECIFIED MORTGAGE CRISIS.—Notwithstanding any other provision of law, the Secretary of Defense is authorized to acquire title to, hold, manage, and dispose of, or, in lieu thereof, to reimburse for certain losses upon private sale of, or foreclosure against, any property improved with a one- or two-family dwelling situated at or near a military base or installation, if the Secretary determines—

"(A) that the owner is a member of the Armed Forces serving on permanent assignment;

"(B) that the owner is permanently reassigned by order of the United States Government to a duty station or home port outside a 50-mile radius of the base or installation;

"(C) that the reassignment was ordered between February 1, 2006, and September 30, 2012, or an earlier end date designated by the Secretary;

"(D) that the property was purchased by the owner before July 1, 2006;

"(E) that the property was sold by the owner between July 1, 2006, and September 30, 2012, or an earlier end date designated by the Secretary;

"(F) that the property is the primary residence of the owner; and

"(G) that the owner has not previously received benefit payments authorized under this subsection.";

(2) in subsection (b), by striking "this section" each place it appears and inserting "subsection (a)(1)";

(3) in subsection (c)—

(A) by striking "Such persons" and inserting the following:

"(1) HOMEOWNER ASSISTANCE RELATED TO CLOSED MILITARY INSTALLATIONS.—

"(A) IN GENERAL.—Such persons";

(B) by striking "set forth above shall elect either (1) to receive" and inserting the following: "set forth in subsection (a)(1) shall elect either—

"(i) to receive";

(C) by striking "difference between (A) 95 per centum" and all that follows through "(B) the fair market value" and inserting the following: "difference between—

"(I) 95 per centum of the fair market value of their property (as such value is determined by the Secretary of Defense) prior to public announcement of intention to close all or part of the military base or installation; and

"(II) the fair market value";

(D) by striking "time of the sale, or (2) to receive" and inserting the following: "time of the sale; or

"(ii) to receive";

(E) by striking "outstanding mortgages. The Secretary may also pay a person who elects to receive a cash payment under clause (1) of the preceding sentence an amount" and inserting "outstanding mortgages.

"(B) REIMBURSEMENT OF EXPENSES.—The Secretary may also pay a person who elects to receive a cash payment under subparagraph (A) an amount"; and

(F) by striking "best interest of the Federal Government. Cash payment" and inserting the following: "best interest of the United States.

"(2) HOMEOWNER ASSISTANCE FOR WOUNDED INDIVIDUALS AND THEIR SPOUSES.—

"(A) IN GENERAL.—Persons eligible under the criteria set forth in subsection (a)(2) may elect either—

"(i) to receive a cash payment as compensation for losses which may be or have been sustained in a private sale, in an amount not to exceed the difference between—

"(I) 95 per centum of prior fair market value of their property (as such value is determined by the Secretary of Defense); and

"(II) the fair market value of such property (as such value is determined by the Secretary of Defense) at the time of sale; or

"(ii) to receive, as purchase price for their property an amount not to exceed 90 per centum of prior fair market value as such value is determined by the Secretary of Defense, or the amount of the outstanding mortgages.

"(B) DETERMINATION OF BENEFITS.—The Secretary may also pay a person who elects to receive a cash payment under subparagraph (A) an amount that the Secretary determines appropriate to reimburse the person for the costs incurred by the person in the sale of the property if the Secretary determines that such payment will benefit the person and is in the best interest of the United States.

"(3) HOMEOWNER ASSISTANCE FOR PERMANENTLY REASSIGNED INDIVIDUALS.—

"(A) IN GENERAL.—Persons eligible under the criteria set forth in subsection (a)(3) may elect either—

"(i) to receive a cash payment as compensation for losses which may be or have been sustained in a private sale, in an amount not to exceed the difference between—

"(I) 95 per centum of prior fair market value of their property (as such value is determined by the Secretary of Defense); and

"(II) the fair market value of such property (as such value is determined by the Secretary of Defense) at the time of sale; or

"(ii) to receive, as purchase price for their property an amount not to exceed 90 per centum of prior fair market value as such value is determined by the Secretary of Defense, or the amount of the outstanding mortgages.

"(B) DETERMINATION OF BENEFITS.—The Secretary may also pay a person who elects to receive a cash payment under subparagraph (A) an amount that the Secretary determines appropriate to reimburse the person for the costs incurred by the person in the sale of the property if the Secretary determines that such payment will benefit the person and is in the best interest of the United States.

"(4) COMPENSATION AND LIMITATIONS RELATED TO FORECLOSURES AND ENCUMBRANCES.—Cash payment";

(4) by striking subsection (g);

(5) in subsection (l), by striking "(a)(2)" and inserting "(a)(1)(A)(ii)";

(6) in subsection (m), by striking "this section" and inserting "subsection (a)(1)";

(7) in subsection (n)—

(A) in paragraph (1), by striking "this section" and inserting "subsection (a)(1)"; and

(B) in paragraph (2), by striking "this section" and inserting "subsection (a)(1)";

(8) in subsection (o)—

(A) in paragraph (1), by striking "this section" and inserting "subsection (a)(1)";

(B) in paragraph (2), by striking "this section" and inserting "subsection (a)(1)"; and

(C) by striking paragraph (4); and

(9) by adding at the end the following new subsection:

"(p) DEFINITIONS.—In this section:

"(1) the term 'Armed Forces' has the meaning given the term 'armed forces' in section 101(a) of title 10, United States Code;

"(2) the term 'civilian employee' has the meaning given the term 'employee' in section 2105(a) of title 5, United States Code;

"(3) the term 'medical transition', in the case of a member of the Armed Forces, means a member who—

"(A) is in Medical Holdover status;

"(B) is in Active Duty Medical Extension status;

"(C) is in Medical Hold status;

"(D) is in a status pending an evaluation by a medical evaluation board;

"(E) has a complex medical need requiring six or more months of medical treatment; or

"(F) is assigned or attached to an Army Warrior Transition Unit, an Air Force Patient Squadron, a Navy Patient Multidisciplinary Care Team, or a Marine Patient Affairs Team/Wounded Warrior Regiment; and

"(4) the term 'nonappropriated fund instrumentality employee' means a civilian employee who—

"(A) is a citizen of the United States; and

"(B) is paid from nonappropriated funds of Army and Air Force Exchange Service, Navy Resale and Services Support Office, Marine Corps exchanges, or any other instrumentality of the United States under the jurisdiction of the Armed Forces which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the Armed Forces.".

(b) CLERICAL AMENDMENT.—Such section is further amended in the section heading by inserting "and certain property owned by members of the Armed Forces, Department of Defense and United States Coast Guard civilian employees, and surviving spouses" after "ordered to be closed".

(c) AUTHORITY TO USE APPROPRIATED FUNDS.—Notwithstanding subsection (i) of such section, amounts appropriated or otherwise made available by this title under the heading "Homeowners Assistance Fund" may be used for the Homeowners Assistance Fund established under such section.

DEPARTMENT OF VETERANS AFFAIRS

VETERANS HEALTH ADMINISTRATION

MEDICAL FACILITIES

For an additional amount for "Medical Facilities" for non-recurring maintenance, including energy projects, $1,000,000,000, to remain available until September 30, 2010: Provided, That not later than 30 days after the date of enactment of this Act, the Secretary of Veterans Affairs shall submit to the Committees on Appropriations of both Houses of Congress an expenditure plan for funds provided under this heading.

NATIONAL CEMETERY ADMINISTRATION

For an additional amount for "National Cemetery Administration" for monument and memorial repairs, including energy projects, $50,000,000, to remain available until September 30, 2010: Provided, That not later than 30 days after the date of enactment of this Act, the Secretary of Veterans Affairs shall submit to the Committees on Appropriations of both Houses of Congress an expenditure plan for funds provided under this heading.

DEPARTMENTAL ADMINISTRATION

GENERAL OPERATING EXPENSES

For an additional amount for "General Operating Expenses", $150,000,000, to remain available until September 30, 2010, for additional expenses related to hiring and training temporary surge claims processors.

INFORMATION TECHNOLOGY SYSTEMS

For an additional amount for "Information Technology Systems", $50,000,000, to remain available until September 30, 2010, for the Veterans Benefits Administration: Provided, That not later than 30 days after the enactment of this Act, the Secretary of Veterans Affairs shall submit to the Committees on Appropriations of both Houses of Congress an expenditure plan for funds provided under this heading.

OFFICE OF INSPECTOR GENERAL

For an additional amount for "Office of Inspector General", $1,000,000, to remain available until September 30, 2011, for oversight and audit of programs, grants and projects funded under this title.

GRANTS FOR CONSTRUCTION OF STATE EXTENDED CARE FACILITIES

For an additional amount for "Grants for Construction of State Extended Care Facilities", $150,000,000, to remain available until September 30, 2010, for grants to assist States to acquire or construct State nursing home and domiciliary facilities and to remodel, modify, or alter existing hospital, nursing home, and domiciliary facilities in State homes, for furnishing care to veterans as authorized by sections 8131 through 8137 of title 38, United States Code.

ADMINISTRATIVE PROVISION

SEC. 1002. PAYMENTS TO ELIGIBLE PERSONS WHO SERVED IN THE UNITED STATES ARMED FORCES IN THE FAR EAST DURING WORLD WAR II. (a) FINDINGS.—Congress makes the following findings:

(1) The Philippine islands became a United States possession in 1898 when they were ceded from Spain following the Spanish-American War.

(2) During World War II, Filipinos served in a variety of units, some of which came under the direct control of the United States Armed Forces.

(3) The regular Philippine Scouts, the new Philippine Scouts, the Guerrilla Services, and more than 100,000 members of the Philippine Commonwealth Army were called into the service of the United States Armed Forces of the Far East on July 26, 1941, by an executive order of President Franklin D. Roosevelt.

(4) Even after hostilities had ceased, wartime service of the new Philippine Scouts continued as a matter of law until the end of 1946, and the force gradually disbanded and was disestablished in 1950.

(5) Filipino veterans who were granted benefits prior to the enactment of the so-called Rescissions Acts of 1946 (Public Laws 79–301 and 79–391) currently receive full benefits under laws administered by the Secretary of Veterans Affairs, but under section 107 of title 38, United States Code, the service of certain other Filipino veterans is deemed not to be active service for purposes of such laws.

(6) These other Filipino veterans only receive certain benefits under title 38, United States Code, and, depending on where they legally reside, are paid such benefit amounts at reduced rates.

(7) The benefits such veterans receive include service-connected compensation benefits paid under chapter 11 of title 38, United States Code, dependency indemnity compensation survivor benefits paid under chapter 13 of title 38, United States Code, and burial benefits under chapters 23 and 24 of title 38, United States Code, and such benefits are paid to beneficiaries at the rate of $0.50 per dollar authorized, unless they lawfully reside in the United States.

(8) Dependents' educational assistance under chapter 35 of title 38, United States Code, is also payable for the dependents of such veterans at the rate of $0.50 per dollar authorized, regardless of the veterans' residency.

(b) COMPENSATION FUND.—

(1) IN GENERAL.—There is in the general fund of the Treasury a fund to be known as the "Filipino Veterans Equity Compensation Fund" (in this section referred to as the "compensation fund").

(2) AVAILABILITY OF FUNDS.—Subject to the availability of appropriations for such purpose, amounts in the fund shall be available to the Secretary of Veterans Affairs without fiscal year limitation to make payments to eligible persons in accordance with this section.

(c) PAYMENTS.—

(1) IN GENERAL.—The Secretary may make a payment from the compensation fund to an eligible person who, during the one-year period beginning on the date of the enactment of this Act, submits to the Secretary a claim for benefits under this section. The application for the claim shall contain such information and evidence as the Secretary may require.

(2) PAYMENT TO SURVIVING SPOUSE.—If an eligible person who has filed a claim for benefits under this section dies before payment is made under this section, the payment under this section shall be made instead to the surviving spouse, if any, of the eligible person.

(d) ELIGIBLE PERSONS.—An eligible person is any person who—

(1) served—

(A) before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines, while such forces were in the service of the Armed Forces of the United States pursuant to the military order of the President dated July 26, 1941, including among such military forces organized guerrilla forces under commanders appointed, designated, or subsequently recognized by the

Commander in Chief, Southwest Pacific Area, or other competent authority in the Army of the United States; or

(B) in the Philippine Scouts under section 14 of the Armed Forces Voluntary Recruitment Act of 1945 (59 Stat. 538); and

(2) was discharged or released from service described in paragraph (1) under conditions other than dishonorable.

(e) PAYMENT AMOUNTS.—Each payment under this section shall be—

(1) in the case of an eligible person who is not a citizen of the United States, in the amount of $9,000; and

(2) in the case of an eligible person who is a citizen of the United States, in the amount of $15,000.

(f) LIMITATION.—The Secretary may not make more than one payment under this section for each eligible person described in subsection (d).

(g) CLARIFICATION OF TREATMENT OF PAYMENTS UNDER CERTAIN LAWS.—Amounts paid to a person under this section—

(1) shall be treated for purposes of the internal revenue laws of the United States as damages for human suffering; and

(2) shall not be included in income or resources for purposes of determining—

(A) eligibility of an individual to receive benefits described in section 3803(c)(2)(C) of title 31, United States Code, or the amount of such benefits;

(B) eligibility of an individual to receive benefits under title VIII of the Social Security Act, or the amount of such benefits; or

(C) eligibility of an individual for, or the amount of benefits under, any other Federal or federally assisted program.

(h) RELEASE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the acceptance by an eligible person or surviving spouse, as applicable, of a payment under this section shall be final, and shall constitute a complete release of any claim against the United States by reason of any service described in subsection (d).

(2) PAYMENT OF PRIOR ELIGIBILITY STATUS.—Nothing in this section shall prohibit a person from receiving any benefit (including health care, survivor, or burial benefits) which the person would have been eligible to receive based on laws in effect as of the day before the date of the enactment of this Act.

(i) RECOGNITION OF SERVICE.—The service of a person as described in subsection (d) is hereby recognized as active military service in the Armed Forces for purposes of, and to the extent provided in, this section.

(j) ADMINISTRATION.—

(1) The Secretary shall promptly issue application forms and instructions to ensure the prompt and efficient administration of the provisions of this section.

(2) The Secretary shall administer the provisions of this section in a manner consistent with applicable provisions of title 38, United States Code, and other provisions of law, and shall apply the definitions in section 101 of such title in the ad-

ministration of such provisions, except to the extent otherwise provided in this section.

(k) REPORTS.—The Secretary shall include, in documents submitted to Congress by the Secretary in support of the President's budget for each fiscal year, detailed information on the operation of the compensation fund, including the number of applicants, the number of eligible persons receiving benefits, the amounts paid out of the compensation fund, and the administration of the compensation fund for the most recent fiscal year for which such data is available.

(l) AUTHORIZATION OF APPROPRIATION.—There is authorized to be appropriated to the compensation fund $198,000,000, to remain available until expended, to make payments under this section.

TITLE XI—STATE, FOREIGN OPERATIONS, AND RELATED PROGRAMS

DEPARTMENT OF STATE

ADMINISTRATION OF FOREIGN AFFAIRS

DIPLOMATIC AND CONSULAR PROGRAMS

For an additional amount for "Diplomatic and Consular Programs" for urgent domestic facilities requirements for passport and training functions, $90,000,000: Provided, That the Secretary of State shall submit to the Committees on Appropriations within 90 days of enactment of this Act a detailed spending plan for funds appropriated under this heading: Provided further, That with respect to the funds made available for passport agencies, such plan shall be developed in consultation with the Department of Homeland Security and the General Services Administration and shall coordinate and co-locate, to the extent feasible, passport agencies with other Federal facilities.

CAPITAL INVESTMENT FUND

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for "Capital Investment Fund", $290,000,000, for information technology security and upgrades to support mission-critical operations, of which up to $38,000,000 shall be transferred to, and merged with, funds made available under the heading "Capital Investment Fund" of the United States Agency for International Development: Provided, That the Secretary of State and the Administrator of the United States Agency for International Development shall coordinate information technology systems, where appropriate, to increase efficiencies and eliminate redundancies, to include co-location of backup information management facilities, and shall submit to the Committees on Appropriations within 90 days of enactment of this Act a detailed spending plan for funds appropriated under this heading.

OFFICE OF INSPECTOR GENERAL

For an additional amount for "Office of Inspector General" for oversight requirements, $2,000,000.

INTERNATIONAL COMMISSIONS

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

CONSTRUCTION

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for "Construction" for the water quantity program to meet immediate repair and rehabilitation requirements, $220,000,000: Provided, That up to $2,000,000 may be transferred to, and merged with, funds available under the heading "International Boundary and Water Commission, United States and Mexico—Salaries and Expenses": Provided further, That the Secretary of State shall submit to the Committees on Appropriations within 90 days of enactment of this Act a detailed spending plan for funds appropriated under this heading.

TITLE XII—TRANSPORTATION AND HOUSING AND URBAN DEVELOPMENT, AND RELATED AGENCIES

DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

SUPPLEMENTAL DISCRETIONARY GRANTS FOR A NATIONAL SURFACE TRANSPORTATION SYSTEM

For an additional amount for capital investments in surface transportation infrastructure, $1,500,000,000, to remain available through September 30, 2011: Provided, That the Secretary of Transportation shall distribute funds provided under this heading as discretionary grants to be awarded to State and local governments or transit agencies on a competitive basis for projects that will have a significant impact on the Nation, a metropolitan area, or a region: Provided further, That projects eligible for funding provided under this heading shall include, but not be limited to, highway or bridge projects eligible under title 23, United States Code, including interstate rehabilitation, improvements to the rural collector road system, the reconstruction of overpasses and interchanges, bridge replacements, seismic retrofit projects for bridges, and road realignments; public transportation projects eligible under chapter 53 of title 49, United States Code, including investments in projects participating in the New Starts or Small Starts programs that will expedite the completion of those projects and their entry into revenue service; passenger and freight rail transportation projects; and port infrastructure investments, including projects that connect ports to other modes of transportation and improve the efficiency of freight movement: Provided further, That of the amount made available under this paragraph, the Secretary may use an amount not to exceed $200,000,000 for the purpose of paying the subsidy and administrative costs of projects eligible for federal credit assistance under chapter 6 of title 23, United States Code, if the Secretary finds that such use of the funds would advance the purposes of this paragraph: Provided further, That in distributing funds provided under this heading, the Secretary shall take such measures so as to ensure an equitable geographic distribution of funds and an appropriate

balance in addressing the needs of urban and rural communities: Provided further, That a grant funded under this heading shall be not less than $20,000,000 and not greater than $300,000,000: Provided further, That the Secretary may waive the minimum grant size cited in the preceding proviso for the purpose of funding significant projects in smaller cities, regions, or States: Provided further, That not more than 20 percent of the funds made available under this paragraph may be awarded to projects in a single State: Provided further, That the Federal share of the costs for which an expenditure is made under this heading may be up to 100 percent: Provided further, That the Secretary shall give priority to projects that require a contribution of Federal funds in order to complete an overall financing package, and to projects that are expected to be completed within 3 years of enactment of this Act: Provided further, That the Secretary shall publish criteria on which to base the competition for any grants awarded under this heading not later than 90 days after enactment of this Act: Provided further, That the Secretary shall require applications for funding provided under this heading to be submitted not later than 180 days after the publication of such criteria, and announce all projects selected to be funded from such funds not later than 1 year after enactment of this Act: Provided further, That projects conducted using funds provided under this heading must comply with the requirements of subchapter IV of chapter 31 of title 40, United States Code: Provided further, That the Secretary may retain up to $1,500,000 of the funds provided under this heading, and may transfer portions of those funds to the Administrators of the Federal Highway Administration, the Federal Transit Administration, the Federal Railroad Administration and the Maritime Administration, to fund the award and oversight of grants made under this heading.

FEDERAL AVIATION ADMINISTRATION

SUPPLEMENTAL FUNDING FOR FACILITIES AND EQUIPMENT

For an additional amount for necessary investments in Federal Aviation Administration infrastructure, $200,000,000, to remain available through September 30, 2010: Provided, That funding provided under this heading shall be used to make improvements to power systems, air route traffic control centers, air traffic control towers, terminal radar approach control facilities, and navigation and landing equipment: Provided further, That priority be given to such projects or activities that will be completed within 2 years of enactment of this Act: Provided further, That amounts made available under this heading may be provided through grants in addition to the other instruments authorized under section 106(l)(6) of title 49, United States Code: Provided further, That the Federal share of the costs for which an expenditure is made under this heading shall be 100 percent: Provided further, That amounts provided under this heading may be used for expenses the agency incurs in administering this program: Provided further, That not more than 60 days after enactment of this Act, the Administrator shall establish a process for applying, reviewing and awarding grants and cooperative and other transaction agreements, including the form and content of an application, and requirements for the maintenance of records that are necessary to facilitate an effective

audit of the use of the funding provided: Provided further, That section 50101 of title 49, United States Code, shall apply to funds provided under this heading.

GRANTS-IN-AID FOR AIRPORTS

For an additional amount for "Grants-In-Aid for Airports", to enable the Secretary of Transportation to make grants for discretionary projects as authorized by subchapter 1 of chapter 471 and subchapter 1 of chapter 475 of title 49, United States Code, and for the procurement, installation and commissioning of runway incursion prevention devices and systems at airports of such title, $1,100,000,000, to remain available through September 30, 2010: Provided, That such funds shall not be subject to apportionment formulas, special apportionment categories, or minimum percentages under chapter 471: Provided further, That the Secretary shall distribute funds provided under this heading as discretionary grants to airports, with priority given to those projects that demonstrate to his satisfaction their ability to be completed within 2 years of enactment of this Act, and serve to supplement and not supplant planned expenditures from airport-generated revenues or from other State and local sources on such activities: Provided further, That the Secretary shall award grants totaling not less than 50 percent of the funds made available under this heading within 120 days of enactment of this Act, and award grants for the remaining amounts not later than 1 year after enactment of this Act: Provided further, That the Federal share payable of the costs for which a grant is made under this heading shall be 100 percent: Provided further, That the amount made available under this heading shall not be subject to any limitation on obligations for the Grants-in-Aid for Airports program set forth in any Act: Provided further, That the Administrator of the Federal Aviation Administration may retain up to 0.2 percent of the funds provided under this heading to fund the award and oversight by the Administrator of grants made under this heading.

FEDERAL HIGHWAY ADMINISTRATION

HIGHWAY INFRASTRUCTURE INVESTMENT

For an additional amount for restoration, repair, construction and other activities eligible under paragraph (b) of section 133 of title 23, United States Code, and for passenger and freight rail transportation and port infrastructure projects eligible for assistance under subsection 601(a)(8) of such title, $27,500,000,000, to remain available through September 30, 2010: Provided, That, after making the set-asides required under this heading, 50 percent of the funds made available under this heading shall be apportioned to States using the formula set forth in section 104(b)(3) of title 23, United States Code, and the remaining funds shall be apportioned to States in the same ratio as the obligation limitation for fiscal year 2008 was distributed among the States in accordance with the formula specified in section 120(a)(6) of division K of Public Law 110–161: Provided further, That funds made available under this heading shall be apportioned not later than 21 days after the date of enactment of this Act: Provided further, That in selecting projects to be carried out with funds apportioned under this heading, priority shall be given to projects that are projected for completion

within a 3-year time frame, and are located in economically distressed areas as defined by section 301 of the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3161): Provided further, That 120 days following the date of such apportionment, the Secretary of Transportation shall withdraw from each State an amount equal to 50 percent of the funds awarded to that State (excluding funds suballocated within the State) less the amount of funding obligated (excluding funds suballocated within the State), and the Secretary shall redistribute such amounts to other States that have had no funds withdrawn under this proviso in the manner described in section 120(c) of division K of Public Law 110–161: Provided further, That 1 year following the date of such apportionment, the Secretary shall withdraw from each recipient of funds apportioned under this heading any unobligated funds, and the Secretary shall redistribute such amounts to States that have had no funds withdrawn under this proviso (excluding funds suballocated within the State) in the manner described in section 120(c) of division K of Public Law 110–161: Provided further, That at the request of a State, the Secretary of Transportation may provide an extension of such 1-year period only to the extent that he feels satisfied that the State has encountered extreme conditions that create an unworkable bidding environment or other extenuating circumstances: Provided further, That before granting such an extension, the Secretary shall send a letter to the House and Senate Committees on Appropriations that provides a thorough justification for the extension: Provided further, That 3 percent of the funds apportioned to a State under this heading shall be set aside for the purposes described in subsection 133(d)(2) of title 23, United States Code (without regard to the comparison to fiscal year 2005): Provided further, That 30 percent of the funds apportioned to a State under this heading shall be suballocated within the State in the manner and for the purposes described in the first sentence of subsection 133(d)(3)(A), in subsection 133(d)(3)(B), and in subsection 133(d)(3)(D): Provided further, That such suballocation shall be conducted in every State: Provided further, That funds suballocated within a State to urbanized areas and other areas shall not be subject to the redistribution of amounts required 120 days following the date of apportionment of funds provided under this heading: Provided further, That of the funds provided under this heading, $105,000,000 shall be for the Puerto Rico highway program authorized under section 165 of title 23, United States Code, and $45,000,000 shall be for the territorial highway program authorized under section 215 of title 23, United States Code: Provided further, That of the funds provided under this heading, $60,000,000 shall be for capital expenditures eligible under section 147 of title 23, United States Code (without regard to subsection(d)): Provided further, That the Secretary of Transportation shall distribute such $60,000,000 as competitive discretionary grants to States, with priority given to those projects that demonstrate to his satisfaction their ability to be completed within 2 years of enactment of this Act: Provided further, That of the funds provided under this heading, $550,000,000 shall be for investments in transportation at Indian reservations and Federal lands: Provided further, That of the funds identified in the preceding proviso, $310,000,000 shall be for the Indian Reservation Roads program, $170,000,000 shall be for the

Park Roads and Parkways program, $60,000,000 shall be for the Forest Highway Program, and $10,000,000 shall be for the Refuge Roads program: Provided further, That for investments at Indian reservations and Federal lands, priority shall be given to capital investments, and to projects and activities that can be completed within 2 years of enactment of this Act: Provided further, That 1 year following the enactment of this Act, to ensure the prompt use of the $550,000,000 provided for investments at Indian reservations and Federal lands, the Secretary shall have the authority to redistribute unobligated funds within the respective program for which the funds were appropriated: Provided further, That up to 4 percent of the funding provided for Indian Reservation Roads may be used by the Secretary of the Interior for program management and oversight and project-related administrative expenses: Provided further, That section 134(f)(3)(C)(ii)(II) of title 23, United States Code, shall not apply to funds provided under this heading: Provided further, That of the funds made available under this heading, $20,000,000 shall be for highway surface transportation and technology training under section 140(b) of title 23, United States Code, and $20,000,000 shall be for disadvantaged business enterprises bonding assistance under section 332(e) of title 49, United States Code: Provided further, That funds made available under this heading shall be administered as if apportioned under chapter 1 of title 23, United States Code, except for funds made available for investments in transportation at Indian reservations and Federal lands, and for the territorial highway program, which shall be administered in accordance with chapter 2 of title 23, United States Code, and except for funds made available for disadvantaged business enterprises bonding assistance, which shall be administered in accordance with chapter 3 of title 49, United States Code: Provided further, That the Federal share payable on account of any project or activity carried out with funds made available under this heading shall be, at the option of the recipient, up to 100 percent of the total cost thereof: Provided further, That funds made available by this Act shall not be obligated for the purposes authorized under section 115(b) of title 23, United States Code: Provided further, That funding provided under this heading shall be in addition to any and all funds provided for fiscal years 2009 and 2010 in any other Act for "Federal-aid Highways" and shall not affect the distribution of funds provided for "Federal-aid Highways" in any other Act: Provided further, That the amount made available under this heading shall not be subject to any limitation on obligations for Federal-aid highways or highway safety construction programs set forth in any Act: Provided further, That section 1101(b) of Public Law 109–59 shall apply to funds apportioned under this heading: Provided further, That the Administrator of the Federal Highway Administration may retain up to $40,000,000 of the funds provided under this heading to fund the oversight by the Administrator of projects and activities carried out with funds made available to the Federal Highway Administration in this Act and such funds shall be available through September 30, 2012.

FEDERAL RAILROAD ADMINISTRATION

CAPITAL ASSISTANCE FOR HIGH SPEED RAIL CORRIDORS AND INTERCITY PASSENGER RAIL SERVICE

For an additional amount for section 501 of Public Law 110–432 and discretionary grants to States to pay for the cost of projects described in paragraphs (2)(A) and (2)(B) of section 24401 of title 49, United States Code, subsection (b) of section 24105 of such title, $8,000,000,000, to remain available through September 30, 2012: Provided, That the Secretary of Transportation shall give priority to projects that support the development of intercity high speed rail service: Provided further, That within 60 days of the enactment of this Act, the Secretary shall submit to the House and Senate Committees on Appropriations a strategic plan that describes how the Secretary will use the funding provided under this heading to improve and deploy high speed passenger rail systems: Provided further, That within 120 days of enactment of this Act, the Secretary shall issue interim guidance to applicants covering grant terms, conditions, and procedures until final regulations are issued: Provided further, That such interim guidance shall provide separate instructions for the high speed rail corridor program, capital assistance for intercity passenger rail service grants, and congestion grants: Provided further, That the Secretary shall waive the requirement that a project conducted using funds provided under this heading be in a State rail plan developed under chapter 227 of title 49, United States Code: Provided further, That the Federal share payable of the costs for which a grant is made under this heading shall be, at the option of the recipient, up to 100 percent: Provided further, That projects conducted using funds provided under this heading must comply with the requirements of subchapter IV of chapter 31 of title 40, United States Code: Provided further, That section 24405 of title 49, United States Code, shall apply to funds provided under this heading: Provided further, That the Administrator of the Federal Railroad Administration may retain up to one-quarter of 1 percent of the funds provided under this heading to fund the award and oversight by the Administrator of grants made under this heading, and funds retained for said purposes shall remain available through September 30, 2014.

CAPITAL GRANTS TO THE NATIONAL RAILROAD PASSENGER CORPORATION

For an additional amount for the National Railroad Passenger Corporation (Amtrak) to enable the Secretary of Transportation to make capital grants to Amtrak as authorized by section 101(c) of the Passenger Rail Investment and Improvement Act of 2008 (Public Law 110–432), $1,300,000,000, to remain available through September 30, 2010, of which $450,000,000 shall be used for capital security grants: Provided, That priority for the use of non-security funds shall be given to projects for the repair, rehabilitation, or upgrade of railroad assets or infrastructure, and for capital projects that expand passenger rail capacity including the rehabilitation of rolling stock: Provided further, That none of the funds under this heading shall be used to subsidize the operating losses of Amtrak: Provided further, That funds provided under this heading shall be awarded not later than 30 days after the date of enactment of this

Act: Provided further, That the Secretary shall take measures to ensure that projects funded under this heading shall be completed within 2 years of enactment of this Act, and shall serve to supplement and not supplant planned expenditures for such activities from other Federal, State, local and corporate sources: Provided further, That the Secretary shall certify to the House and Senate Committees on Appropriations in writing compliance with the preceding proviso: Provided further, That not more than 60 percent of the funds provided for non-security activities under this heading may be used for capital projects along the Northeast Corridor: Provided further, That of the funding provided under this heading, $5,000,000 shall be made available for the Amtrak Office of Inspector General and made available through September 30, 2013.

FEDERAL TRANSIT ADMINISTRATION

TRANSIT CAPITAL ASSISTANCE

For an additional amount for transit capital assistance grants authorized under section 5302(a)(1) of title 49, United States Code, $6,900,000,000, to remain available through September 30, 2010: Provided, That the Secretary of Transportation shall provide 80 percent of the funds appropriated under this heading for grants under section 5307 of title 49, United States Code, and apportion such funds in accordance with section 5336 of such title (other than subsections (i)(1) and (j)): Provided further, That the Secretary shall apportion 10 percent of the funds appropriated under this heading in accordance with section 5340 of such title: Provided further, That the Secretary shall provide 10 percent of the funds appropriated under this heading for grants under section 5311 of title 49, United States Code, and apportion such funds in accordance with such section: Provided further, That funds apportioned under this heading shall be apportioned not later than 21 days after the date of enactment of this Act: Provided further, That 180 days following the date of such apportionment, the Secretary shall withdraw from each urbanized area or State an amount equal to 50 percent of the funds apportioned to such urbanized areas or States less the amount of funding obligated, and the Secretary shall redistribute such amounts to other urbanized areas or States that have had no funds withdrawn under this proviso utilizing whatever method he deems appropriate to ensure that all funds redistributed under this proviso shall be utilized promptly: Provided further, That 1 year following the date of such apportionment, the Secretary shall withdraw from each urbanized area or State any unobligated funds, and the Secretary shall redistribute such amounts to other urbanized areas or States that have had no funds withdrawn under this proviso utilizing whatever method he deems appropriate to ensure that all funds redistributed under this proviso shall be utilized promptly: Provided further, That at the request of an urbanized area or State, the Secretary of Transportation may provide an extension of such 1-year period if he feels satisfied that the urbanized area or State has encountered an unworkable bidding environment or other extenuating circumstances: Provided further, That before granting such an extension, the Secretary shall send a letter to the House and Senate Committees on Appropriations that provides a thorough justification for the extension: Provided further, That of the funds provided for

section 5311 of title 49, United States Code, 2.5 percent shall be made available for section 5311(c)(1): Provided further, That of the funding provided under this heading, $100,000,000 shall be distributed as discretionary grants to public transit agencies for capital investments that will assist in reducing the energy consumption or greenhouse gas emissions of their public transportation systems: Provided further, That for such grants on energy-related investments, priority shall be given to projects based on the total energy savings that are projected to result from the investment, and projected energy savings as a percentage of the total energy usage of the public transit agency: Provided further, That applicable chapter 53 requirements shall apply to funding provided under this heading, except that the Federal share of the costs for which any grant is made under this heading shall be, at the option of the recipient, up to 100 percent: Provided further, That the amount made available under this heading shall not be subject to any limitation on obligations for transit programs set forth in any Act: Provided further, That section 1101(b) of Public Law 109–59 shall apply to funds appropriated under this heading: Provided further, That the funds appropriated under this heading shall not be commingled with any prior year funds: Provided further, That notwithstanding any other provision of law, three-quarters of 1 percent of the funds provided for grants under section 5307 and section 5340, and one-half of 1 percent of the funds provided for grants under section 5311, shall be available for administrative expenses and program management oversight, and such funds shall be available through September 30, 2012.

FIXED GUIDEWAY INFRASTRUCTURE INVESTMENT

For an amount for capital expenditures authorized under section 5309(b)(2) of title 49, United States Code, $750,000,000, to remain available through September 30, 2010: Provided, That the Secretary of Transportation shall apportion funds under this heading pursuant to the formula set forth in section 5337 of title 49, United States Code: Provided further, That the funds appropriated under this heading shall not be commingled with any prior year funds: Provided further, That funds made available under this heading shall be apportioned not later than 21 days after the date of enactment of this Act: Provided further, That 180 days following the date of such apportionment, the Secretary shall withdraw from each urbanized area an amount equal to 50 percent of the funds apportioned to such urbanized area less the amount of funding obligated, and the Secretary shall redistribute such amounts to other urbanized areas that have had no funds withdrawn under this proviso utilizing whatever method he or she deems appropriate to ensure that all funds redistributed under this proviso shall be utilized promptly: Provided further, That 1 year following the date of such apportionment, the Secretary shall withdraw from each urbanized area any unobligated funds, and the Secretary shall redistribute such amounts to other urbanized areas that have had no funds withdrawn under this proviso utilizing whatever method he or she deems appropriate to ensure that all funds redistributed under this proviso shall be utilized promptly: Provided further, That at the request of an urbanized area, the Secretary of Transportation may provide an extension of such 1-year period if he or she feels satisfied

that the urbanized area has encountered an unworkable bidding environment or other extenuating circumstances: Provided further, That before granting such an extension, the Secretary shall send a letter to the House and Senate Committees on Appropriations that provides a thorough justification for the extension: Provided further, That applicable chapter 53 requirements shall apply except that the Federal share of the costs for which a grant is made under this heading shall be, at the option of the recipient, up to 100 percent: Provided further, That the provisions of section 1101(b) of Public Law 109–59 shall apply to funds made available under this heading: Provided further, That notwithstanding any other provision of law, up to 1 percent of the funds under this heading shall be available for administrative expenses and program management oversight and shall remain available for obligation until September 30, 2012.

CAPITAL INVESTMENT GRANTS

For an additional amount for "Capital Investment Grants", as authorized under section 5338(c)(4) of title 49, United States Code, and allocated under section 5309(m)(2)(A) of such title, to enable the Secretary of Transportation to make discretionary grants as authorized by section 5309(d) and (e) of such title, $750,000,000, to remain available through September 30, 2010: Provided, That such amount shall be allocated without regard to the limitation under section 5309(m)(2)(A)(i): Provided further, That in selecting projects to be funded, priority shall be given to projects that are currently in construction or are able to obligate funds within 150 days of enactment of this Act: Provided further, That the provisions of section 1101(b) of Public Law 109–59 shall apply to funds made available under this heading: Provided further, That funds appropriated under this heading shall not be commingled with any prior year funds: Provided further, That applicable chapter 53 requirements shall apply, except that notwithstanding any other provision of law, up to 1 percent of the funds provided under this heading shall be available for administrative expenses and program management oversight, and shall remain available through September 30, 2012.

MARITIME ADMINISTRATION

SUPPLEMENTAL GRANTS FOR ASSISTANCE TO SMALL SHIPYARDS

To make grants to qualified shipyards as authorized under section 3508 of Public Law 110–417 or section 54101 of title 46, United States Code, $100,000,000, to remain available through September 30, 2010: Provided, That the Secretary of Transportation shall institute measures to ensure that funds provided under this heading shall be obligated within 180 days of the date of their distribution: Provided further, That the Maritime Administrator may retain and transfer to "Maritime Administration, Operations and Training" up to 2 percent of the funds provided under this heading to fund the award and oversight by the Administrator of grants made under this heading.

OFFICE OF INSPECTOR GENERAL

SALARIES AND EXPENSES

For an additional amount for necessary expenses of the Office of Inspector General to carry out the provisions of the Inspector General Act of 1978, as amended, $20,000,000, to remain available through September 30, 2013: Provided, That the funding made available under this heading shall be used for conducting audits and investigations of projects and activities carried out with funds made available in this Act to the Department of Transportation: Provided further, That the Inspector General shall have all necessary authority, in carrying out the duties specified in the Inspector General Act, as amended (5 U.S.C. App. 3), to investigate allegations of fraud, including false statements to the Government (18 U.S.C. 1001), by any person or entity that is subject to regulation by the Department.

GENERAL PROVISION—DEPARTMENT OF TRANSPORTATION

SEC. 1201. (a) MAINTENANCE OF EFFORT.—Not later than 30 days after the date of enactment of this Act, for each amount that is distributed to a State or agency thereof from an appropriation in this Act for a covered program, the Governor of the State shall certify to the Secretary of Transportation that the State will maintain its effort with regard to State funding for the types of projects that are funded by the appropriation. As part of this certification, the Governor shall submit to the Secretary of Transportation a statement identifying the amount of funds the State planned to expend from State sources as of the date of enactment of this Act during the period beginning on the date of enactment of this Act through September 30, 2010, for the types of projects that are funded by the appropriation.

(b) FAILURE TO MAINTAIN EFFORT.—If a State is unable to maintain the level of effort certified pursuant to subsection (a), the State will be prohibited by the Secretary of Transportation from receiving additional limitation pursuant to the redistribution of the limitation on obligations for Federal-aid highway and highway safety construction programs that occurs after August 1 for fiscal year 2011.

(c) PERIODIC REPORTS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, each grant recipient shall submit to the covered agency from which they received funding periodic reports on the use of the funds appropriated in this Act for covered programs. Such reports shall be collected and compiled by the covered agency and transmitted to Congress. Covered agencies may develop such reports on behalf of grant recipients to ensure the accuracy and consistency of such reports.

(2) CONTENTS OF REPORTS.—For amounts received under each covered program by a grant recipient under this Act, the grant recipient shall include in the periodic reports information tracking—

(A) the amount of Federal funds appropriated, allocated, obligated, and outlayed under the appropriation;

(B) the number of projects that have been put out to bid under the appropriation and the amount of Federal funds associated with such projects;

(C) the number of projects for which contracts have been awarded under the appropriation and the amount of Federal funds associated with such contracts;

(D) the number of projects for which work has begun under such contracts and the amount of Federal funds associated with such contracts;

(E) the number of projects for which work has been completed under such contracts and the amount of Federal funds associated with such contracts;

(F) the number of direct, on-project jobs created or sustained by the Federal funds provided for projects under the appropriation and, to the extent possible, the estimated indirect jobs created or sustained in the associated supplying industries, including the number of job-years created and the total increase in employment since the date of enactment of this Act; and

(G) for each covered program report information tracking the actual aggregate expenditures by each grant recipient from State sources for projects eligible for funding under the program during the period beginning on the date of enactment of this Act through September 30, 2010, as compared to the level of such expenditures that were planned to occur during such period as of the date of enactment of this Act.

(3) TIMING OF REPORTS.—Each grant recipient shall submit the first of the periodic reports required under this subsection not later than 90 days after the date of enactment of this Act and shall submit updated reports not later than 180 days, 1 year, 2 years, and 3 years after such date of enactment.

(d) DEFINITIONS.—In this section, the following definitions apply:

(1) COVERED AGENCY.—The term "covered agency" means the Office of the Secretary of Transportation, the Federal Aviation Administration, the Federal Highway Administration, the Federal Railroad Administration, the Federal Transit Administration and the Maritime Administration of the Department of Transportation.

(2) COVERED PROGRAM.—The term "covered program" means funds appropriated in this Act for "Supplemental Discretionary Grants for a National Surface Transportation System" to the Office of the Secretary of Transportation, for "Supplemental Funding for Facilities and Equipment" and "Grants-in-Aid for Airports" to the Federal Aviation Administration; for "Highway Infrastructure Investment" to the Federal Highway Administration; for "Capital Assistance for High Speed Rail Corridors and Intercity Passenger Rail Service" and "Capital Grants to the National Railroad Passenger Corporation" to the Federal Railroad Administration; for "Transit Capital Assistance", "Fixed Guideway Infrastructure Investment", and "Capital Investment Grants" to the Federal Transit Administration; and "Supplemental Grants for Assistance to Small Shipyards" to the Maritime Administration.

(3) GRANT RECIPIENT.—The term "grant recipient" means a State or other recipient of assistance provided under a covered program in this Act. Such term does not include a Federal department or agency.

(e) Notwithstanding any other provision of law, sections 3501–3521 of title 44, United States Code, shall not apply to the provisions of this section.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PUBLIC AND INDIAN HOUSING

PUBLIC HOUSING CAPITAL FUND

For an additional amount for the "Public Housing Capital Fund" to carry out capital and management activities for public housing agencies, as authorized under section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437g) (the "Act"), $4,000,000,000, to remain available until September 30, 2011: Provided, That the Secretary of Housing and Urban Development shall distribute $3,000,000,000 of this amount by the same formula used for amounts made available in fiscal year 2008, except that the Secretary may determine not to allocate funding to public housing agencies currently designated as troubled or to public housing agencies that elect not to accept such funding: Provided further, That the Secretary shall obligate funds allocated by formula within 30 days of enactment of this Act: Provided further, That the Secretary shall make available $1,000,000,000 by competition for priority investments, including investments that leverage private sector funding or financing for renovations and energy conservation retrofit investments: Provided further, That the Secretary shall obligate competitive funding by September 30, 2009: Provided further, That public housing authorities shall give priority to capital projects that can award contracts based on bids within 120 days from the date the funds are made available to the public housing authorities: Provided further, That public housing agencies shall give priority consideration to the rehabilitation of vacant rental units: Provided further, That public housing agencies shall prioritize capital projects that are already underway or included in the 5-year capital fund plans required by the Act (42 U.S.C. 1437c–1(a)): Provided further, That notwithstanding any other provision of law, (1) funding provided under this heading may not be used for operating or rental assistance activities, and (2) any restriction of funding to replacement housing uses shall be inapplicable: Provided further, That notwithstanding any other provision of law, the Secretary shall institute measures to ensure that funds provided under this heading shall serve to supplement and not supplant expenditures from other Federal, State, or local sources or funds independently generated by the grantee: Provided further, That notwithstanding section 9(j), public housing agencies shall obligate 100 percent of the funds within 1 year of the date on which funds become available to the agency for obligation, shall expend at least 60 percent of funds within 2 years of the date on which funds become available to the agency for obligation, and shall expend 100 percent of the funds within 3 years of such date: Provided further, That if a public housing agency fails to comply with the 1-year obligation requirement, the Secretary

shall recapture all remaining unobligated funds awarded to the public housing agency and reallocate such funds to agencies that are in compliance with those requirements: Provided further, That if a public housing agency fails to comply with either the 2-year or the 3-year expenditure requirement, the Secretary shall recapture the balance of the funds awarded to the public housing agency and reallocate such funds to agencies that are in compliance with those requirements: Provided further, That in administering funds appropriated or otherwise made available under this heading, the Secretary may waive or specify alternative requirements for any provision of any statute or regulation in connection with the obligation by the Secretary or the use of these funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment), upon a finding that such a waiver is necessary to expedite or facilitate the use of such funds: Provided further, That, in addition to waivers authorized under the previous proviso, the Secretary may direct that requirements relating to the procurement of goods and services arising under state and local laws and regulations shall not apply to amounts made available under this heading: Provided further, That of the funds made available under this heading, up to .5 percent shall be available for staffing, training, technical assistance, technology, monitoring, travel, enforcement, research and evaluation activities: Provided further, That funds set aside in the previous proviso shall remain available until September 30, 2012: Provided further, That any funds made available under this heading used by the Secretary for personnel expenses related to administering funding under this heading shall be transferred to "Personnel Compensation and Benefits, Office of Public and Indian Housing" and shall retain the terms and conditions of this account, including reprogramming provisions, except that the period of availability set forth in the previous proviso shall govern such transferred funds: Provided further, That any funds made available under this heading used by the Secretary for training or other administrative expenses shall be transferred to "Administration, Operations, and Management", for non-personnel expenses of the Department of Housing and Urban Development: Provided further, That any funds made available under this heading used by the Secretary for technology shall be transferred to "Working Capital Fund".

NATIVE AMERICAN HOUSING BLOCK GRANTS

For an additional amount for "Native American Housing Block Grants", as authorized under title I of the Native American Housing Assistance and Self-Determination Act of 1996 ("NAHASDA") (25 U.S.C. 4111 et seq.), $510,000,000 to remain available until September 30, 2011: Provided, That $255,000,000 of the amount provided under this heading shall be distributed according to the same funding formula used in fiscal year 2008: Provided further, That the Secretary shall obligate funds allocated by formula within 30 days of enactment of this Act: Provided further, That the amounts distributed through the formula shall be used for new construction, acquisition, rehabilitation including energy efficiency and conservation, and infrastructure development: Provided further, That in selecting projects to be funded, recipients shall give priority to projects for which contracts can be awarded within 180 days from the date that funds are available to the recipients: Provided further, that the

Secretary may obligate $255,000,000 of the amount provided under this heading for competitive grants to eligible entities that apply for funds authorized under NAHASDA: Provided further, That the Secretary shall obligate competitive funding by September 30, 2009: Provided further, That in awarding competitive funds, the Secretary shall give priority to projects that will spur construction and rehabilitation and will create employment opportunities for low-income and unemployed persons: Provided further, That recipients of funds under this heading shall obligate 100 percent of such funds within 1 year of the date funds are made available to a recipient, expend at least 50 percent of such funds within 2 years of the date on which funds become available to such recipients for obligation and expend 100 percent of such funds within 3 years of such date: Provided further, That if a recipient fails to comply with the 2-year expenditure requirement, the Secretary shall recapture all remaining funds awarded to the recipient and reallocate such funds through the funding formula to recipients that are in compliance with these requirements: Provided further, That if a recipient fails to comply with the 3-year expenditure requirement, the Secretary shall recapture the balance of the funds originally awarded to the recipient: Provided further, That notwithstanding any other provision of law, the Secretary may set aside up to 2 percent of funds made available under this paragraph for a housing entity eligible to receive funding under title VIII of NAHASDA (25 U.S.C. 4221 et seq.): Provided further, That in administering funds appropriated or otherwise made available under this heading, the Secretary may waive or specify alternative requirements for any provision of any statute or regulation in connection with the obligation by the Secretary or the use of these funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment), upon a finding that such a waiver is necessary to expedite or facilitate the use of such funds: Provided further, That of the funds made available under this heading, up to .5 percent shall be available for staffing, training, technical assistance, technology, monitoring, travel, enforcement, research and evaluation activities: Provided further, That funds set aside in the previous proviso shall remain available until September 30, 2012: Provided further, That any funds made available under this heading used by the Secretary for personnel expenses related to administering funding under this heading shall be transferred to "Personnel Compensation and Benefits, Office of Public and Indian Housing" and shall retain the terms and conditions of this account, including reprogramming provisions, except that the period of availability set forth in the previous proviso shall govern such transferred funds: Provided further, That any funds made available under this heading used by the Secretary for training or other administrative expenses shall be transferred to "Administration, Operations, and Management", for non-personnel expenses of the Department of Housing and Urban Development: Provided further, That any funds made available under this heading used by the Secretary for technology shall be transferred to "Working Capital Fund".

COMMUNITY PLANNING AND DEVELOPMENT

COMMUNITY DEVELOPMENT FUND

For an additional amount for "Community Development Fund" $1,000,000,000, to remain available until September 30, 2010 to carry out the community development block grant program under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.): Provided, That the amount appropriated in this paragraph shall be distributed pursuant to 42 U.S.C. 5306 to grantees that received funding in fiscal year 2008: Provided further, That in administering the funds appropriated in this paragraph, the Secretary of Housing and Urban Development shall establish requirements to expedite the use of the funds: Provided further, That in selecting projects to be funded, recipients shall give priority to projects that can award contracts based on bids within 120 days from the date the funds are made available to the recipients: Provided further, That in administering funds appropriated or otherwise made available under this heading, the Secretary may waive or specify alternative requirements for any provision of any statute or regulation in connection with the obligation by the Secretary or the use by the recipient of these funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment), upon a finding that such waiver is necessary to expedite or facilitate the timely use of such funds and would not be inconsistent with the overall purpose of the statute.

For the provision of emergency assistance for the redevelopment of abandoned and foreclosed homes, as authorized under division B, title III of the Housing and Economic Recovery Act of 2008 ("the Act") (Public Law 110–289) (42 U.S.C. 5301 note), $2,000,000,000, to remain available until September 30, 2010: Provided, That grantees shall expend at least 50 percent of allocated funds within 2 years of the date funds become available to the grantee for obligation, and 100 percent of such funds within 3 years of such date: Provided further, That unless otherwise noted herein, the provisions of the Act govern the use of the additional funds made available under this heading: Provided further, That notwithstanding the provisions of sections 2301(b) and (c)(1) and section 2302 of the Act, funding under this paragraph shall be allocated by competitions for which eligible entities shall be States, units of general local government, and nonprofit entities or consortia of nonprofit entities, which may submit proposals in partnership with for profit entities: Provided further, That in selecting grantees, the Secretary of Housing and Urban Development shall ensure that the grantees are in areas with the greatest number and percentage of foreclosures and can expend funding within the period allowed under this heading: Provided further, That additional award criteria for such competitions shall include demonstrated grantee capacity to execute projects, leveraging potential, concentration of investment to achieve neighborhood stabilization, and any additional factors determined by the Secretary of Housing and Urban Development: Provided further, That the Secretary may establish a minimum grant size: Provided further, That the Secretary shall publish criteria on which to base competition for any grants awarded under this heading not later than 75 days after the enactment of this Act and applications shall be due to HUD not later than 150 days after the enactment of this

Act: Provided further, That the Secretary shall obligate all funding within 1 year of enactment of this Act: Provided further, That section 2301(d)(4) of the Act is repealed: Provided further, That section 2301(c)(3)(C) of the Act is amended to read "establish and operate land banks for homes and residential properties that have been foreclosed upon": Provided further, That funding used for section 2301(c)(3)(E) of the Act shall be available only for the redevelopment of demolished or vacant properties as housing: Provided further, That no amounts made available from a grant under this heading may be used to demolish any public housing (as such term is defined in section 3 of the United States Housing Act of 1937 (42 U.S.C. 1437a)): Provided further, That a grantee may not use more than 10 percent of its grant under this heading for demolition activities under section 2301(c)(3)(C) and (D) unless the Secretary determines that such use represents an appropriate response to local market conditions: Provided further, That the recipient of any grant or loan from amounts made available under this heading or, after the date of enactment under division B, title III of the Housing and Economic Recovery Act of 2008, may not refuse to lease a dwelling unit in housing with such loan or grant to a participant under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) because of the status of the prospective tenant as such a participant: Provided further, That in addition to the eligible uses in section 2301, the Secretary may also use up to 10 percent of the funds provided under this heading for grantees for the provision of capacity building of and support for local communities receiving funding under section 2301 of the Act or under this heading: Provided further, That in administering funds appropriated or otherwise made available under this section, the Secretary may waive or specify alternative requirements for any provision of any statute or regulation in connection with the obligation by the Secretary or the use of funds except for requirements related to fair housing, nondiscrimination, labor standards and the environment, upon a finding that such a waiver is necessary to expedite or facilitate the use of such funds: Provided further, That in the case of any acquisition of a foreclosed upon dwelling or residential real property acquired after the date of enactment with any amounts made available under this heading or under division B, title III of the Housing and Economic Recovery Act of 2008 (Public Law 110–289), the initial successor in interest in such property pursuant to the foreclosure shall assume such interest subject to: (1) the provision by such successor in interest of a notice to vacate to any bona fide tenant at least 90 days before the effective date of such notice; and (2) the rights of any bona fide tenant, as of the date of such notice of foreclosure: (A) under any bona fide lease entered into before the notice of foreclosure to occupy the premises until the end of the remaining term of the lease, except that a successor in interest may terminate a lease effective on the date of sale of the unit to a purchaser who will occupy the unit as a primary residence, subject to the receipt by the tenant of the 90-day notice under this paragraph; or (B) without a lease or with a lease terminable at will under State law, subject to the receipt by the tenant of the 90-day notice under this paragraph, except that nothing in this paragraph shall affect the requirements for termination of any Federal- or State-subsidized tenancy or of any State or local law that provides longer time periods or other ad-

ditional protections for tenants: Provided further, That, for purposes of this paragraph, a lease or tenancy shall be considered bona fide only if: (1) the mortgagor under the contract is not the tenant; (2) the lease or tenancy was the result of an arms-length transaction; and (3) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property: Provided further, That the recipient of any grant or loan from amounts made available under this heading or, after the date of enactment, under division B, title III of the Housing and Economic Recovery Act of 2008 (Public Law 110–289) may not refuse to lease a dwelling unit in housing assisted with such loan or grant to a holder of a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) because of the status of the prospective tenant as such a holder: Provided further, That in the case of any qualified foreclosed housing for which funds made available under this heading or, after the date of enactment, under division B, title III of the Housing and Economic Recovery Act of 2008 (Public Law 110–289) are used and in which a recipient of assistance under section 8(o) of the U.S. Housing Act of 1937 resides at the time of foreclosure, the initial successor in interest shall be subject to the lease and to the housing assistance payments contract for the occupied unit: Provided further, That vacating the property prior to sale shall not constitute good cause for termination of the tenancy unless the property is unmarketable while occupied or unless the owner or subsequent purchaser desires the unit for personal or family use: Provided further, That if a public housing agency is unable to make payments under the contract to the immediate successor in interest after foreclosures, due to (1) an action or inaction by the successor in interest, including the rejection of payments or the failure of the successor to maintain the unit in compliance with section 8(o)(8) of the United States Housing Act of 1937 (42 U.S.C.1437f) or (2) an inability to identify the successor, the agency may use funds that would have been used to pay the rental amount on behalf of the family—(i) to pay for utilities that are the responsibility of the owner under the lease or applicable law, after taking reasonable steps to notify the owner that it intends to make payments to a utility provider in lieu of payments to the owner, except prior notification shall not be required in any case in which the unit will be or has been rendered uninhabitable due to the termination or threat of termination of service, in which case the public housing agency shall notify the owner within a reasonable time after making such payment; or (ii) for the family's reasonable moving costs, including security deposit costs: Provided further, That this paragraph shall not preempt any Federal, State or local law that provides more protections for tenants: Provided further, That of the funds made available under this heading, up to 1 percent shall be available for staffing, training, technical assistance, technology, monitoring, travel, enforcement, research and evaluation activities: Provided further, That funds set aside in the previous proviso shall remain available until September 30, 2012: Provided further, That any funds made available under this heading used by the Secretary for personnel expenses related to administering funding under this heading shall be transferred to "Personnel Compensation and Benefits, Community Planning and Development" and shall retain the terms and conditions of this account, including reprogramming provisions, except

that the period of availability set forth in the previous proviso shall govern such transferred funds: Provided further, That any funds made available under this heading used by the Secretary for training or other administrative expenses shall be transferred to "Administration, Operations, and Management", for non-personnel expenses of the Department of Housing and Urban Development: Provided further, That any funds made available under this heading used by the Secretary for technology shall be transferred to "Working Capital Fund".

HOME INVESTMENT PARTNERSHIPS PROGRAM

For an additional amount for capital investments in low-income housing tax credit projects, $2,250,000,000, to remain available until September 30, 2011: Provided, That such funds shall be made available to State housing credit agencies, as defined in section 42(h) of the Internal Revenue Code of 1986, and shall be apportioned among the States based on the percentage of HOME funds apportioned to each State and the participating jurisdictions therein for Fiscal Year 2008: Provided further, That the housing credit agencies in each State shall distribute these funds competitively under this heading and pursuant to their qualified allocation plan (as defined in section 42(m) of the Internal Revenue Code of 1986) to owners of projects who have received or receive simultaneously an award of low-income housing tax credits under section 42(h) of the Internal Revenue Code of 1986: Provided further, That housing credit agencies in each State shall commit not less than 75 percent of such funds within one year of the date of enactment of this Act, and shall demonstrate that the project owners shall have expended 75 percent of the funds made available under this heading within 2 years of the date of enactment of this Act, and shall have expended 100 percent of the funds within 3 years of the date of enactment of this Act: Provided further, That failure by an owner to expend funds within the parameters required within the previous proviso shall result in a redistribution of these funds by a housing credit agency to a more deserving project in such State, except any funds not expended after 3 years from enactment shall be redistributed by the Secretary to other States that have fully utilized the funds made available to them: Provided further, That projects awarded low income housing tax credits under section 42(h) of the IRC of 1986 in fiscal years 2007, 2008, or 2009 shall be eligible for funding under this heading: Provided further, That housing credit agencies shall give priority to projects that are expected to be completed within 3 years of enactment: Provided further, That any assistance provided to an eligible low income housing tax credit project under this heading shall be made in the same manner and be subject to the same limitations (including rent, income, and use restrictions, in lieu of corresponding limitations under the HOME program) as required by the State housing credit agency with respect to an award of low income housing credits under section 42 of the IRC of 1986: Provided further, That the housing credit agency shall perform asset management functions, or shall contract for the performance of such services, in either case, at the owner's expense, to ensure compliance with section 42 of the IRC of 1986, and the long term viability of buildings funded by assistance under this heading: Provided further, That the term eligible basis (as such

term is defined in such section 42) of a qualified low-income housing tax credit building receiving assistance under this heading shall not be reduced by the amount of any grant described under this heading: Provided further, That the Secretary shall be given access upon reasonable notice to a State housing credit agency to information related to the award of Federal funds from such housing credit agency pursuant to this heading and shall establish an Internet site that shall identify all projects selected for an award, including the amount of the award and such site shall provide linkage to the housing credit agency allocation plan which describes the process that was used to make the award decision: Provided further, That in administering funds under this heading, the Secretary may waive any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these funds except for requirements imposed by this heading and requirements related to fair housing, non-discrimination, labor standards and the environment, upon a finding that such waiver is required to expedite the use of such funds: Provided further, That for purposes of environmental compliance review, funds under this heading that are made available to State housing credit agencies for distribution to projects awarded low income housing tax credits shall be treated as funds under the HOME program and shall be subject to Section 288 of the HOME Investment Partnership Act.

HOMELESSNESS PREVENTION FUND

For homelessness prevention and rapid re-housing activities, $1,500,000,000, to remain available until September 30, 2011: Provided, That funds provided under this heading shall be used for the provision of short-term or medium-term rental assistance; housing relocation and stabilization services including housing search, mediation or outreach to property owners, credit repair, security or utility deposits, utility payments, rental assistance for a final month at a location, moving cost assistance, and case management; or other appropriate activities for homelessness prevention and rapid re-housing of persons who have become homeless: Provided further, That grantees receiving such assistance shall collect data on the use of the funds awarded and persons served with this assistance in the HUD Homeless Management Information System ("HMIS") or other comparable database: Provided further, That grantees may use up to 5 percent of any grant for administrative costs: Provided further, That funding made available under this heading shall be allocated to eligible grantees (as defined and designated in sections 411 and 412 of subtitle B of title IV of the McKinney-Vento Homeless Assistance Act, (the "Act")) pursuant to the formula authorized by section 413 of the Act: Provided further, That the Secretary may establish a minimum grant size: Provided further, That grantees shall expend at least 60 percent of funds within 2 years of the date that funds became available to them for obligation, and 100 percent of funds within 3 years of such date, and the Secretary may recapture unexpended funds in violation of the 2-year expenditure requirement and reallocate such funds to grantees in compliance with that requirement: Provided further, That the Secretary may waive statutory or regulatory provisions (except provisions for fair housing, nondiscrimination, labor standards, and the environment) necessary to

facilitate the timely expenditure of funds: Provided further, That the Secretary shall publish a notice to establish such requirements as may be necessary to carry out the provisions of this section within 30 days of enactment of this Act and that this notice shall take effect upon issuance: Provided further, That of the funds provided under this heading, up to .5 percent shall be available for staffing, training, technical assistance, technology, monitoring, research and evaluation activities: Provided further, That funds set aside under the previous proviso shall remain available until September 30, 2012: Provided further, That any funds made available under this heading used by the Secretary for personnel expenses related to administering funding under this heading shall be transferred to "Community Planning and Development Personnel Compensation and Benefits" and shall retain the terms and conditions of this account including reprogramming provisions except that the period of availability set forth in the previous proviso shall govern such transferred funds: Provided further, That any funds made available under this heading used by the Secretary for training or other administrative expenses shall be transferred to "Administration, Operations, and Management" for non-personnel expenses of the Department of Housing and Urban Development: Provided further, That any funding made available under this heading used by the Secretary for technology shall be transferred to "Working Capital Fund."

HOUSING PROGRAMS

ASSISTED HOUSING STABILITY AND ENERGY AND GREEN RETROFIT INVESTMENTS

For assistance to owners of properties receiving project-based assistance pursuant to section 202 of the Housing Act of 1959 (12 U.S.C. 17012), section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013), or section 8 of the United States Housing Act of 1937 as amended (42 U.S.C. 1437f), $2,250,000,000, of which $2,000,000,000 shall be for an additional amount for paragraph (1) under the heading "Project-Based Rental Assistance" in Public Law 110–161 for payments to owners for 12-month periods, and of which $250,000,000 shall be for grants or loans for energy retrofit and green investments in such assisted housing: Provided, That projects funded with grants or loans provided under this heading must comply with the requirements of subchapter IV of chapter 31 of title 40, United States Code: Provided further, That such grants or loans shall be provided through the policies, procedures, contracts, and transactional infrastructure of the authorized programs administered by the Office of Affordable Housing Preservation of the Department of Housing and Urban Development, on such terms and conditions as the Secretary of Housing and Urban Development deems appropriate to ensure the maintenance and preservation of the property, the continued operation and maintenance of energy efficiency technologies, and the timely expenditure of funds: Provided further, That the Secretary may provide incentives to owners to undertake energy or green retrofits as a part of such grant or loan terms, including, but not limited to, fees to cover investment oversight and implementation by said owner, or to encourage job creation for low-income or very low-in-

come individuals: Provided further, That the Secretary may share in a portion of future property utility savings resulting from improvements made by grants or loans made available under this heading: Provided further, That the grants or loans shall include a financial assessment and physical inspection of such property: Provided further, That eligible owners must have at least a satisfactory management review rating, be in substantial compliance with applicable performance standards and legal requirements, and commit to an additional period of affordability determined by the Secretary, but of not fewer than 15 years: Provided further, That the Secretary shall undertake appropriate underwriting and oversight with respect to grant and loan transactions and may set aside up to 5 percent of the funds made available under this heading for grants or loans for such purpose: Provided further, That the Secretary shall take steps necessary to ensure that owners receiving funding for energy and green retrofit investments under this heading shall expend such funding within 2 years of the date they received the funding: Provided further, That in administering funds appropriated or otherwise made available under this heading, the Secretary may waive or specify alternative requirements for any provision of any statute or regulation in connection with the obligation by the Secretary or the use of these funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment), upon a finding that such a waiver is necessary to expedite or facilitate the use of such funds: Provided further, That of the funds provided under this heading for grants and loans, up to 1 percent shall be available for staffing, training, technical assistance, technology, monitoring, research and evaluation activities: Provided further, That funds set aside in the previous proviso shall remain available until September 30, 2012: Provided further, That funding made available under this heading and used by the Secretary for personnel expenses related to administering funding under this heading shall be transferred to "Housing Personnel Compensation and Benefits" and shall retain the terms and conditions of this account including reprogramming provisos except that the period of availability set forth in the previous proviso shall govern such transferred funds: Provided further, That any funding made available under this heading used by the Secretary for training and other administrative expenses shall be transferred to "Administration, Operations and Management" for non-personnel expenses of the Department of Housing and Urban Development: Provided further, That any funding made available under this heading used by the Secretary for technology shall be transferred to "Working Capital Fund."

OFFICE OF LEAD HAZARD CONTROL AND HEALTHY HOMES

For an additional amount for the "Lead Hazard Reduction Program", as authorized by section 1011 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, and by sections 501 and 502 of the Housing and Urban Development Act of 1974, $100,000,000, to remain available until September 30, 2011: Provided, That for purposes of environmental review, pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and other provisions of law that further the purposes of such Act, a grant under the Healthy Homes Initiative, Operation Lead Elimination Action

Plan (LEAP), or the Lead Technical Studies program under this heading or under prior appropriations Acts for such purposes under this heading, shall be considered to be funds for a special project for purposes of section 305(e) of the Multifamily Housing Property Disposition Reform Act of 1994: Provided further, That funds shall be awarded first to applicants which had applied under the Lead Hazard Reduction Program Notices of Funding Availability for fiscal year 2008, and were found in the application review to be qualified for award, but were not awarded because of funding limitations, and that any funds which remain after reservation of funds for such grants shall be added to the amount of funds to be awarded under the Lead Hazard Reduction Program Notices of Funding Availability for fiscal year 2009: Provided further, That each applicant for the Lead Hazard Program Notices of Funding Availability for fiscal year 2009 shall submit a detailed plan and strategy that demonstrates adequate capacity that is acceptable to the Secretary to carry out the proposed use of funds: Provided further, That recipients of funds under this heading shall expend at least 50 percent of such funds within 2 years of the date on which funds become available to such jurisdictions for obligation, and expend 100 percent of such funds within 3 years of such date: Provided further, That if a recipient fails to comply with the 2-year expenditure requirement, the Secretary shall recapture all remaining funds awarded to the recipient and reallocate such funds to recipients that are in compliance with those requirements: Provided further, That if a recipient fails to comply with the 3-year expenditure requirement, the Secretary shall recapture the balance of the funds awarded to the recipient: Provided further, That in administering funds appropriated or otherwise made available under this heading, the Secretary may waive or specify alternative requirements for any provision of any statute or regulation in connection with the obligation by the Secretary or the use of these funds (except for requirements related to fair housing, nondiscrimination, labor standards and the environment), upon a finding that such a waiver is necessary to expedite or facilitate the use of such funds: Provided further, That of the funds made available under this heading, up to .5 percent shall be available for staffing, training, technical assistance, technology, monitoring, travel, enforcement, research and evaluation activities: Provided further, That funds set aside in the previous proviso shall remain available until September 30, 2012: Provided further, That any funds made available under this heading used by the Secretary for personnel expenses related to administering funding under this heading shall be transferred to "Personnel Compensation and Benefits, Office of Lead Hazard Control and Healthy Homes" and shall retain the terms and conditions of this account, including reprogramming provisions, except that the period of availability set forth in the previous proviso shall govern such transferred funds: Provided further, That any funds made available under this heading used by the Secretary for training or other administrative expenses shall be transferred to "Administration, Operations, and Management", for non-personnel expenses of the Department of Housing and Urban Development: Provided further, That any funds made available under this heading used by the Secretary for technology shall be transferred to "Working Capital Fund".

MANAGEMENT AND ADMINISTRATION

OFFICE OF INSPECTOR GENERAL

For an additional amount for the necessary salaries and expenses of the Office of Inspector General in carrying out the Inspector General Act of 1978, as amended, $15,000,000, to remain available until September 30, 2013: Provided, That the Inspector General shall have independent authority over all personnel issues within this office.

GENERAL PROVISIONS—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SEC. 1202. FHA LOAN LIMITS FOR 2009. (a) LOAN LIMIT FLOOR BASED ON 2008 LEVELS.—For mortgages for which the mortgagee issues credit approval for the borrower during calendar year 2009, if the dollar amount limitation on the principal obligation of a mortgage determined under section 203(b)(2) of the National Housing Act (12 U.S.C. 1709(b)(2)) for any size residence for any area is less than such dollar amount limitation that was in effect for such size residence for such area for 2008 pursuant to section 202 of the Economic Stimulus Act of 2008 (Public Law 110–185; 122 Stat. 620), notwithstanding any other provision of law, the maximum dollar amount limitation on the principal obligation of a mortgage for such size residence for such area for purposes of such section 203(b)(2) shall be considered (except for purposes of section 255(g) of such Act (12 U.S.C. 1715z–20(g))) to be such dollar amount limitation in effect for such size residence for such area for 2008.

(b) DISCRETIONARY AUTHORITY FOR SUB-AREAS.—Notwithstanding any other provision of law, if the Secretary of Housing and Urban Development determines, for any geographic area that is smaller than an area for which dollar amount limitations on the principal obligation of a mortgage are determined under section 203(b)(2) of the National Housing Act, that a higher such maximum dollar amount limitation is warranted for any particular size or sizes of residences in such sub-area by higher median home prices in such sub-area, the Secretary may, for mortgages for which the mortgagee issues credit approval for the borrower during calendar year 2009, increase the maximum dollar amount limitation for such size or sizes of residences for such sub-area that is otherwise in effect (including pursuant to subsection (a) of this section), but in no case to an amount that exceeds the amount specified in section 202(a)(2) of the Economic Stimulus Act of 2008.

SEC. 1203. GSE CONFORMING LOAN LIMITS FOR 2009. (a) LOAN LIMIT FLOOR BASED ON 2008 LEVELS.—For mortgages originated during calendar year 2009, if the limitation on the maximum original principal obligation of a mortgage that may be purchased by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation determined under section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)) or section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1754(a)(2)), respectively, for any size residence for any area is less than such maximum original principal obligation limitation that was in effect for such size residence for such area for 2008 pursuant to section 201 of the Economic Stim-

ulus Act of 2008 (Public Law 110–185; 122 Stat. 619), notwithstanding any other provision of law, the limitation on the maximum original principal obligation of a mortgage for such Association and Corporation for such size residence for such area shall be such maximum limitation in effect for such size residence for such area for 2008.

(b) DISCRETIONARY AUTHORITY FOR SUB-AREAS.—Notwithstanding any other provision of law, if the Director of the Federal Housing Finance Agency determines, for any geographic area that is smaller than an area for which limitations on the maximum original principal obligation of a mortgage are determined for the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, that a higher such maximum original principal obligation limitation is warranted for any particular size or sizes of residences in such sub-area by higher median home prices in such sub-area, the Director may, for mortgages originated during 2009, increase the maximum original principal obligation limitation for such size or sizes of residences for such sub-area that is otherwise in effect (including pursuant to subsection (a) of this section) for such Association and Corporation, but in no case to an amount that exceeds the amount specified in the matter following the comma in section 201(a)(1)(B) of the Economic Stimulus Act of 2008.

SEC. 1204. FHA REVERSE MORTGAGE LOAN LIMITS FOR 2009.—For mortgages for which the mortgagee issues credit approval for the borrower during calendar year 2009, the second sentence of section 255(g) of the National Housing Act (12 U.S.C. 1715z–20(g)) shall be considered to require that in no case may the benefits of insurance under such section 255 exceed 150 percent of the maximum dollar amount in effect under the sixth sentence of section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)).

TITLE XIII—HEALTH INFORMATION TECHNOLOGY

SEC. 13001. SHORT TITLE; TABLE OF CONTENTS OF TITLE.

(a) SHORT TITLE.—This title (and title IV of division B) may be cited as the "Health Information Technology for Economic and Clinical Health Act" or the "HITECH Act".

(b) TABLE OF CONTENTS OF TITLE.—The table of contents of this title is as follows:

Sec. 13001. Short title; table of contents of title.

Subtitle A—Promotion of Health Information Technology

Part 1—Improving Health Care Quality, Safety, and Efficiency

Sec. 13101. ONCHIT; standards development and adoption.

"TITLE XXX—HEALTH INFORMATION TECHNOLOGY AND QUALITY

"Sec. 3000. Definitions.

"Subtitle A—Promotion of Health Information Technology

"Sec. 3001. Office of the National Coordinator for Health Information Technology.

"Sec. 3002. HIT Policy Committee.
"Sec. 3003. HIT Standards Committee.
"Sec. 3004. Process for adoption of endorsed recommendations; adoption of initial set of standards, implementation specifications, and certification criteria.
"Sec. 3005. Application and use of adopted standards and implementation specifications by Federal agencies.
"Sec. 3006. Voluntary application and use of adopted standards and implementation specifications by private entities.
"Sec. 3007. Federal health information technology.
"Sec. 3008. Transitions.
"Sec. 3009. Miscellaneous provisions.
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PART 2—APPLICATION AND USE OF ADOPTED HEALTH INFORMATION TECHNOLOGY STANDARDS; REPORTS

Sec. 13111. Coordination of Federal activities with adopted standards and implementation specifications.
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Subtitle B—Testing of Health Information Technology

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Sec. 13301. Grant, loan, and demonstration programs.

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"Sec. 3011. Immediate funding to strengthen the health information technology infrastructure.
"Sec. 3012. Health information technology implementation assistance.
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"Sec. 3014. Competitive grants to States and Indian tribes for the development of loan programs to facilitate the widespread adoption of certified EHR technology.
"Sec. 3015. Demonstration program to integrate information technology into clinical education.
"Sec. 3016. Information technology professionals in health care.
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Subtitle D—Privacy

Sec. 13400. Definitions.

PART 1—IMPROVED PRIVACY PROVISIONS AND SECURITY PROVISIONS

Sec. 13401. Application of security provisions and penalties to business associates of covered entities; annual guidance on security provisions.
Sec. 13402. Notification in the case of breach.
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Sec. 13406. Conditions on certain contacts as part of health care operations.
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Sec. 13408. Business associate contracts required for certain entities.
Sec. 13409. Clarification of application of wrongful disclosures criminal penalties.
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PART 2—RELATIONSHIP TO OTHER LAWS; REGULATORY REFERENCES; EFFECTIVE DATE; REPORTS

Sec. 13421. Relationship to other laws.
Sec. 13422. Regulatory references.

Sec. 13423. Effective date.
Sec. 13424. Studies, reports, guidance.

Subtitle A—Promotion of Health Information Technology

PART 1—IMPROVING HEALTH CARE QUALITY, SAFETY, AND EFFICIENCY

SEC. 13101. ONCHIT; STANDARDS DEVELOPMENT AND ADOPTION.

The Public Health Service Act (42 U.S.C. 201 et seq.) is amended by adding at the end the following:

"TITLE XXX—HEALTH INFORMATION TECHNOLOGY AND QUALITY

"SEC. 3000. DEFINITIONS.

"In this title:

"(1) CERTIFIED EHR TECHNOLOGY.—The term 'certified EHR technology' means a qualified electronic health record that is certified pursuant to section 3001(c)(5) as meeting standards adopted under section 3004 that are applicable to the type of record involved (as determined by the Secretary, such as an ambulatory electronic health record for office-based physicians or an inpatient hospital electronic health record for hospitals).

"(2) ENTERPRISE INTEGRATION.—The term 'enterprise integration' means the electronic linkage of health care providers, health plans, the government, and other interested parties, to enable the electronic exchange and use of health information among all the components in the health care infrastructure in accordance with applicable law, and such term includes related application protocols and other related standards.

"(3) HEALTH CARE PROVIDER.—The term 'health care provider' includes a hospital, skilled nursing facility, nursing facility, home health entity or other long term care facility, health care clinic, community mental health center (as defined in section 1913(b)(1)), renal dialysis facility, blood center, ambulatory surgical center described in section 1833(i) of the Social Security Act, emergency medical services provider, Federally qualified health center, group practice, a pharmacist, a pharmacy, a laboratory, a physician (as defined in section 1861(r) of the Social Security Act), a practitioner (as described in section 1842(b)(18)(C) of the Social Security Act), a provider operated by, or under contract with, the Indian Health Service or by an Indian tribe (as defined in the Indian Self-Determination and Education Assistance Act), tribal organization, or urban Indian organization (as defined in section 4 of the Indian Health Care Improvement Act), a rural health clinic, a covered entity under section 340B, an ambulatory surgical center described in section 1833(i) of the Social Security Act, a therapist (as defined in section 1848(k)(3)(B)(iii) of the Social Security Act), and any other category of health care facility, entity, practitioner, or clinician determined appropriate by the Secretary.

"(4) HEALTH INFORMATION.—The term 'health information' has the meaning given such term in section 1171(4) of the Social Security Act.

"(5) HEALTH INFORMATION TECHNOLOGY.—The term 'health information technology' means hardware, software, integrated

technologies or related licenses, intellectual property, upgrades, or packaged solutions sold as services that are designed for or support the use by health care entities or patients for the electronic creation, maintenance, access, or exchange of health information.

"(6) HEALTH PLAN.—The term 'health plan' has the meaning given such term in section 1171(5) of the Social Security Act.

"(7) HIT POLICY COMMITTEE.—The term 'HIT Policy Committee' means such Committee established under section 3002(a).

"(8) HIT STANDARDS COMMITTEE.—The term 'HIT Standards Committee' means such Committee established under section 3003(a).

"(9) INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION.—The term 'individually identifiable health information' has the meaning given such term in section 1171(6) of the Social Security Act.

"(10) LABORATORY.—The term 'laboratory' has the meaning given such term in section 353(a).

"(11) NATIONAL COORDINATOR.—The term 'National Coordinator' means the head of the Office of the National Coordinator for Health Information Technology established under section 3001(a).

"(12) PHARMACIST.—The term 'pharmacist' has the meaning given such term in section 804(2) of the Federal Food, Drug, and Cosmetic Act.

"(13) QUALIFIED ELECTRONIC HEALTH RECORD.—The term 'qualified electronic health record' means an electronic record of health-related information on an individual that—

"(A) includes patient demographic and clinical health information, such as medical history and problem lists; and

"(B) has the capacity—

"(i) to provide clinical decision support;

"(ii) to support physician order entry;

"(iii) to capture and query information relevant to health care quality; and

"(iv) to exchange electronic health information with, and integrate such information from other sources.

"(14) STATE.—The term 'State' means each of the several States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

"Subtitle A—Promotion of Health Information Technology

"SEC. 3001. OFFICE OF THE NATIONAL COORDINATOR FOR HEALTH INFORMATION TECHNOLOGY.

"(a) ESTABLISHMENT.—There is established within the Department of Health and Human Services an Office of the National Coordinator for Health Information Technology (referred to in this section as the 'Office'). The Office shall be headed by a National Coor-

dinator who shall be appointed by the Secretary and shall report directly to the Secretary.

"(b) PURPOSE.—The National Coordinator shall perform the duties under subsection (c) in a manner consistent with the development of a nationwide health information technology infrastructure that allows for the electronic use and exchange of information and that—

"(1) ensures that each patient's health information is secure and protected, in accordance with applicable law;

"(2) improves health care quality, reduces medical errors, reduces health disparities, and advances the delivery of patient-centered medical care;

"(3) reduces health care costs resulting from inefficiency, medical errors, inappropriate care, duplicative care, and incomplete information;

"(4) provides appropriate information to help guide medical decisions at the time and place of care;

"(5) ensures the inclusion of meaningful public input in such development of such infrastructure;

"(6) improves the coordination of care and information among hospitals, laboratories, physician offices, and other entities through an effective infrastructure for the secure and authorized exchange of health care information;

"(7) improves public health activities and facilitates the early identification and rapid response to public health threats and emergencies, including bioterror events and infectious disease outbreaks;

"(8) facilitates health and clinical research and health care quality;

"(9) promotes early detection, prevention, and management of chronic diseases;

"(10) promotes a more effective marketplace, greater competition, greater systems analysis, increased consumer choice, and improved outcomes in health care services; and

"(11) improves efforts to reduce health disparities.

"(c) DUTIES OF THE NATIONAL COORDINATOR.—

"(1) STANDARDS.—The National Coordinator shall—

"(A) review and determine whether to endorse each standard, implementation specification, and certification criterion for the electronic exchange and use of health information that is recommended by the HIT Standards Committee under section 3003 for purposes of adoption under section 3004;

"(B) make such determinations under subparagraph (A), and report to the Secretary such determinations, not later than 45 days after the date the recommendation is received by the Coordinator; and

"(C) review Federal health information technology investments to ensure that Federal health information technology programs are meeting the objectives of the strategic plan published under paragraph (3).

"(2) HIT POLICY COORDINATION.—

"(A) IN GENERAL.—The National Coordinator shall coordinate health information technology policy and programs of the Department with those of other relevant execu-

tive branch agencies with a goal of avoiding duplication of efforts and of helping to ensure that each agency undertakes health information technology activities primarily within the areas of its greatest expertise and technical capability and in a manner towards a coordinated national goal.

"(B) HIT POLICY AND STANDARDS COMMITTEES.—The National Coordinator shall be a leading member in the establishment and operations of the HIT Policy Committee and the HIT Standards Committee and shall serve as a liaison among those two Committees and the Federal Government.

"(3) STRATEGIC PLAN.—

"(A) IN GENERAL.—The National Coordinator shall, in consultation with other appropriate Federal agencies (including the National Institute of Standards and Technology), update the Federal Health IT Strategic Plan (developed as of June 3, 2008) to include specific objectives, milestones, and metrics with respect to the following:

"(i) The electronic exchange and use of health information and the enterprise integration of such information.

"(ii) The utilization of an electronic health record for each person in the United States by 2014.

"(iii) The incorporation of privacy and security protections for the electronic exchange of an individual's individually identifiable health information.

"(iv) Ensuring security methods to ensure appropriate authorization and electronic authentication of health information and specifying technologies or methodologies for rendering health information unusable, unreadable, or indecipherable.

"(v) Specifying a framework for coordination and flow of recommendations and policies under this subtitle among the Secretary, the National Coordinator, the HIT Policy Committee, the HIT Standards Committee, and other health information exchanges and other relevant entities.

"(vi) Methods to foster the public understanding of health information technology.

"(vii) Strategies to enhance the use of health information technology in improving the quality of health care, reducing medical errors, reducing health disparities, improving public health, increasing prevention and coordination with community resources, and improving the continuity of care among health care settings.

"(viii) Specific plans for ensuring that populations with unique needs, such as children, are appropriately addressed in the technology design, as appropriate, which may include technology that automates enrollment and retention for eligible individuals.

"(B) COLLABORATION.—The strategic plan shall be updated through collaboration of public and private entities.

"(C) MEASURABLE OUTCOME GOALS.—The strategic plan update shall include measurable outcome goals.

"(D) PUBLICATION.—The National Coordinator shall republish the strategic plan, including all updates.

"(4) WEBSITE.—The National Coordinator shall maintain and frequently update an Internet website on which there is posted information on the work, schedules, reports, recommendations, and other information to ensure transparency in promotion of a nationwide health information technology infrastructure.

"(5) CERTIFICATION.—

"(A) IN GENERAL.—The National Coordinator, in consultation with the Director of the National Institute of Standards and Technology, shall keep or recognize a program or programs for the voluntary certification of health information technology as being in compliance with applicable certification criteria adopted under this subtitle. Such program shall include, as appropriate, testing of the technology in accordance with section 13201(b) of the Health Information Technology for Economic and Clinical Health Act.

"(B) CERTIFICATION CRITERIA DESCRIBED.—In this title, the term 'certification criteria' means, with respect to standards and implementation specifications for health information technology, criteria to establish that the technology meets such standards and implementation specifications.

"(6) REPORTS AND PUBLICATIONS.—

"(A) REPORT ON ADDITIONAL FUNDING OR AUTHORITY NEEDED.—Not later than 12 months after the date of the enactment of this title, the National Coordinator shall submit to the appropriate committees of jurisdiction of the House of Representatives and the Senate a report on any additional funding or authority the Coordinator or the HIT Policy Committee or HIT Standards Committee requires to evaluate and develop standards, implementation specifications, and certification criteria, or to achieve full participation of stakeholders in the adoption of a nationwide health information technology infrastructure that allows for the electronic use and exchange of health information.

"(B) IMPLEMENTATION REPORT.—The National Coordinator shall prepare a report that identifies lessons learned from major public and private health care systems in their implementation of health information technology, including information on whether the technologies and practices developed by such systems may be applicable to and usable in whole or in part by other health care providers.

"(C) ASSESSMENT OF IMPACT OF HIT ON COMMUNITIES WITH HEALTH DISPARITIES AND UNINSURED, UNDERINSURED, AND MEDICALLY UNDERSERVED AREAS.—The National Coordinator shall assess and publish the impact of health information technology in communities with health disparities and in areas with a high proportion of individuals who are uninsured, underinsured, and medically underserved individuals (including urban and rural areas) and identify practices to increase the adoption of such technology by

health care providers in such communities, and the use of health information technology to reduce and better manage chronic diseases.

"(D) EVALUATION OF BENEFITS AND COSTS OF THE ELECTRONIC USE AND EXCHANGE OF HEALTH INFORMATION.—The National Coordinator shall evaluate and publish evidence on the benefits and costs of the electronic use and exchange of health information and assess to whom these benefits and costs accrue.

"(E) RESOURCE REQUIREMENTS.—The National Coordinator shall estimate and publish resources required annually to reach the goal of utilization of an electronic health record for each person in the United States by 2014, including—

"(i) the required level of Federal funding;

"(ii) expectations for regional, State, and private investment;

"(iii) the expected contributions by volunteers to activities for the utilization of such records; and

"(iv) the resources needed to establish a health information technology workforce sufficient to support this effort (including education programs in medical informatics and health information management).

"(7) ASSISTANCE.—The National Coordinator may provide financial assistance to consumer advocacy groups and not-for-profit entities that work in the public interest for purposes of defraying the cost to such groups and entities to participate under, whether in whole or in part, the National Technology Transfer Act of 1995 (15 U.S.C. 272 note).

"(8) GOVERNANCE FOR NATIONWIDE HEALTH INFORMATION NETWORK.—The National Coordinator shall establish a governance mechanism for the nationwide health information network.

"(d) DETAIL OF FEDERAL EMPLOYEES.—

"(1) IN GENERAL.—Upon the request of the National Coordinator, the head of any Federal agency is authorized to detail, with or without reimbursement from the Office, any of the personnel of such agency to the Office to assist it in carrying out its duties under this section.

"(2) EFFECT OF DETAIL.—Any detail of personnel under paragraph (1) shall—

"(A) not interrupt or otherwise affect the civil service status or privileges of the Federal employee; and

"(B) be in addition to any other staff of the Department employed by the National Coordinator.

"(3) ACCEPTANCE OF DETAILEES.—Notwithstanding any other provision of law, the Office may accept detailed personnel from other Federal agencies without regard to whether the agency described under paragraph (1) is reimbursed.

"(e) CHIEF PRIVACY OFFICER OF THE OFFICE OF THE NATIONAL COORDINATOR.—Not later than 12 months after the date of the enactment of this title, the Secretary shall appoint a Chief Privacy Officer of the Office of the National Coordinator, whose duty it shall be to advise the National Coordinator on privacy, security, and data stewardship of electronic health information and to coordinate with

other Federal agencies (and similar privacy officers in such agencies), with State and regional efforts, and with foreign countries with regard to the privacy, security, and data stewardship of electronic individually identifiable health information.

"SEC. 3002. HIT POLICY COMMITTEE.

"(a) ESTABLISHMENT.—There is established a HIT Policy Committee to make policy recommendations to the National Coordinator relating to the implementation of a nationwide health information technology infrastructure, including implementation of the strategic plan described in section 3001(c)(3).

"(b) DUTIES.—

"(1) RECOMMENDATIONS ON HEALTH INFORMATION TECHNOLOGY INFRASTRUCTURE.—The HIT Policy Committee shall recommend a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the strategic plan under section 3001(c)(3) and that includes the recommendations under paragraph (2). The Committee shall update such recommendations and make new recommendations as appropriate.

"(2) SPECIFIC AREAS OF STANDARD DEVELOPMENT.—

"(A) IN GENERAL.—The HIT Policy Committee shall recommend the areas in which standards, implementation specifications, and certification criteria are needed for the electronic exchange and use of health information for purposes of adoption under section 3004 and shall recommend an order of priority for the development, harmonization, and recognition of such standards, specifications, and certification criteria among the areas so recommended. Such standards and implementation specifications shall include named standards, architectures, and software schemes for the authentication and security of individually identifiable health information and other information as needed to ensure the reproducible development of common solutions across disparate entities.

"(B) AREAS REQUIRED FOR CONSIDERATION.—For purposes of subparagraph (A), the HIT Policy Committee shall make recommendations for at least the following areas:

"(i) Technologies that protect the privacy of health information and promote security in a qualified electronic health record, including for the segmentation and protection from disclosure of specific and sensitive individually identifiable health information with the goal of minimizing the reluctance of patients to seek care (or disclose information about a condition) because of privacy concerns, in accordance with applicable law, and for the use and disclosure of limited data sets of such information.

"(ii) A nationwide health information technology infrastructure that allows for the electronic use and accurate exchange of health information.

"(iii) The utilization of a certified electronic health record for each person in the United States by 2014.

"(iv) Technologies that as a part of a qualified electronic health record allow for an accounting of disclo-

sures made by a covered entity (as defined for purposes of regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996) for purposes of treatment, payment, and health care operations (as such terms are defined for purposes of such regulations).

"(v) The use of certified electronic health records to improve the quality of health care, such as by promoting the coordination of health care and improving continuity of health care among health care providers, by reducing medical errors, by improving population health, by reducing health disparities, by reducing chronic disease, and by advancing research and education.

"(vi) Technologies that allow individually identifiable health information to be rendered unusable, unreadable, or indecipherable to unauthorized individuals when such information is transmitted in the nationwide health information network or physically transported outside of the secured, physical perimeter of a health care provider, health plan, or health care clearinghouse.

"(vii) The use of electronic systems to ensure the comprehensive collection of patient demographic data, including, at a minimum, race, ethnicity, primary language, and gender information.

"(viii) Technologies that address the needs of children and other vulnerable populations.

"(C) OTHER AREAS FOR CONSIDERATION.—In making recommendations under subparagraph (A), the HIT Policy Committee may consider the following additional areas:

"(i) The appropriate uses of a nationwide health information infrastructure, including for purposes of—

"(I) the collection of quality data and public reporting;

"(II) biosurveillance and public health;

"(III) medical and clinical research; and

"(IV) drug safety.

"(ii) Self-service technologies that facilitate the use and exchange of patient information and reduce wait times.

"(iii) Telemedicine technologies, in order to reduce travel requirements for patients in remote areas.

"(iv) Technologies that facilitate home health care and the monitoring of patients recuperating at home.

"(v) Technologies that help reduce medical errors.

"(vi) Technologies that facilitate the continuity of care among health settings.

"(vii) Technologies that meet the needs of diverse populations.

"(viii) Methods to facilitate secure access by an individual to such individual's protected health information.

"(ix) Methods, guidelines, and safeguards to facilitate secure access to patient information by a family

member, caregiver, or guardian acting on behalf of a patient due to age-related and other disability, cognitive impairment, or dementia.

"(x) Any other technology that the HIT Policy Committee finds to be among the technologies with the greatest potential to improve the quality and efficiency of health care.

"(3) FORUM.—The HIT Policy Committee shall serve as a forum for broad stakeholder input with specific expertise in policies relating to the matters described in paragraphs (1) and (2).

"(4) CONSISTENCY WITH EVALUATION CONDUCTED UNDER MIPPA.—

"(A) REQUIREMENT FOR CONSISTENCY.—The HIT Policy Committee shall ensure that recommendations made under paragraph (2)(B)(vi) are consistent with the evaluation conducted under section 1809(a) of the Social Security Act.

"(B) SCOPE.—Nothing in subparagraph (A) shall be construed to limit the recommendations under paragraph (2)(B)(vi) to the elements described in section 1809(a)(3) of the Social Security Act.

"(C) TIMING.—The requirement under subparagraph (A) shall be applicable to the extent that evaluations have been conducted under section 1809(a) of the Social Security Act, regardless of whether the report described in subsection (b) of such section has been submitted.

"(c) MEMBERSHIP AND OPERATIONS.—

"(1) IN GENERAL.—The National Coordinator shall take a leading position in the establishment and operations of the HIT Policy Committee.

"(2) MEMBERSHIP.—The HIT Policy Committee shall be composed of members to be appointed as follows:

"(A) 3 members shall be appointed by the Secretary, 1 of whom shall be appointed to represent the Department of Health and Human Services and 1 of whom shall be a public health official.

"(B) 1 member shall be appointed by the majority leader of the Senate.

"(C) 1 member shall be appointed by the minority leader of the Senate.

"(D) 1 member shall be appointed by the Speaker of the House of Representatives.

"(E) 1 member shall be appointed by the minority leader of the House of Representatives.

"(F) Such other members as shall be appointed by the President as representatives of other relevant Federal agencies.

"(G) 13 members shall be appointed by the Comptroller General of the United States of whom—

"(i) 3 members shall be advocates for patients or consumers;

"(ii) 2 members shall represent health care providers, one of which shall be a physician;

"(iii) 1 member shall be from a labor organization representing health care workers;

"(iv) 1 member shall have expertise in health information privacy and security;

"(v) 1 member shall have expertise in improving the health of vulnerable populations;

"(vi) 1 member shall be from the research community;

"(vii) 1 member shall represent health plans or other third-party payers;

"(viii) 1 member shall represent information technology vendors;

"(ix) 1 member shall represent purchasers or employers; and

"(x) 1 member shall have expertise in health care quality measurement and reporting.

"(3) PARTICIPATION.—The members of the HIT Policy Committee appointed under paragraph (2) shall represent a balance among various sectors of the health care system so that no single sector unduly influences the recommendations of the Policy Committee.

"(4) TERMS.—

"(A) IN GENERAL.—The terms of the members of the HIT Policy Committee shall be for 3 years, except that the Comptroller General shall designate staggered terms for the members first appointed.

"(B) VACANCIES.—Any member appointed to fill a vacancy in the membership of the HIT Policy Committee that occurs prior to the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of that member's term until a successor has been appointed. A vacancy in the HIT Policy Committee shall be filled in the manner in which the original appointment was made.

"(5) OUTSIDE INVOLVEMENT.—The HIT Policy Committee shall ensure an opportunity for the participation in activities of the Committee of outside advisors, including individuals with expertise in the development of policies for the electronic exchange and use of health information, including in the areas of health information privacy and security.

"(6) QUORUM.—A majority of the members of the HIT Policy Committee shall constitute a quorum for purposes of voting, but a lesser number of members may meet and hold hearings.

"(7) FAILURE OF INITIAL APPOINTMENT.—If, on the date that is 45 days after the date of enactment of this title, an official authorized under paragraph (2) to appoint one or more members of the HIT Policy Committee has not appointed the full number of members that such paragraph authorizes such official to appoint, the Secretary is authorized to appoint such members.

"(8) CONSIDERATION.—The National Coordinator shall ensure that the relevant and available recommendations and comments from the National Committee on Vital and Health Statistics are considered in the development of policies.

"(d) APPLICATION OF FACA.—The Federal Advisory Committee Act (5 U.S.C. App.), other than section 14 of such Act, shall apply to the HIT Policy Committee.

"(e) PUBLICATION.—The Secretary shall provide for publication in the Federal Register and the posting on the Internet website of the Office of the National Coordinator for Health Information Technology of all policy recommendations made by the HIT Policy Committee under this section.

"SEC. 3003. HIT STANDARDS COMMITTEE.

"(a) ESTABLISHMENT.—There is established a committee to be known as the HIT Standards Committee to recommend to the National Coordinator standards, implementation specifications, and certification criteria for the electronic exchange and use of health information for purposes of adoption under section 3004, consistent with the implementation of the strategic plan described in section 3001(c)(3) and beginning with the areas listed in section 3002(b)(2)(B) in accordance with policies developed by the HIT Policy Committee.

"(b) DUTIES.—

"(1) STANDARDS DEVELOPMENT.—

"(A) IN GENERAL.—The HIT Standards Committee shall recommend to the National Coordinator standards, implementation specifications, and certification criteria described in subsection (a) that have been developed, harmonized, or recognized by the HIT Standards Committee. The HIT Standards Committee shall update such recommendations and make new recommendations as appropriate, including in response to a notification sent under section 3004(a)(2)(B). Such recommendations shall be consistent with the latest recommendations made by the HIT Policy Committee.

"(B) HARMONIZATION.—The HIT Standards Committee shall recognize harmonized or updated standards from an entity or entities for the purpose of harmonizing or updating standards and implementation specifications in order to achieve uniform and consistent implementation of the standards and implementation specifications.

"(C) PILOT TESTING OF STANDARDS AND IMPLEMENTATION SPECIFICATIONS.—In the development, harmonization, or recognition of standards and implementation specifications, the HIT Standards Committee shall, as appropriate, provide for the testing of such standards and specifications by the National Institute for Standards and Technology under section 13201(a) of the Health Information Technology for Economic and Clinical Health Act.

"(D) CONSISTENCY.—The standards, implementation specifications, and certification criteria recommended under this subsection shall be consistent with the standards for information transactions and data elements adopted pursuant to section 1173 of the Social Security Act.

"(2) FORUM.—The HIT Standards Committee shall serve as a forum for the participation of a broad range of stakeholders to provide input on the development, harmonization, and recognition of standards, implementation specifications, and certification criteria necessary for the development and adoption of

a nationwide health information technology infrastructure that allows for the electronic use and exchange of health information.

"(3) SCHEDULE.—Not later than 90 days after the date of the enactment of this title, the HIT Standards Committee shall develop a schedule for the assessment of policy recommendations developed by the HIT Policy Committee under section 3002. The HIT Standards Committee shall update such schedule annually. The Secretary shall publish such schedule in the Federal Register.

"(4) PUBLIC INPUT.—The HIT Standards Committee shall conduct open public meetings and develop a process to allow for public comment on the schedule described in paragraph (3) and recommendations described in this subsection. Under such process comments shall be submitted in a timely manner after the date of publication of a recommendation under this subsection.

"(5) CONSIDERATION.—The National Coordinator shall ensure that the relevant and available recommendations and comments from the National Committee on Vital and Health Statistics are considered in the development of standards.

"(c) MEMBERSHIP AND OPERATIONS.—

"(1) IN GENERAL.—The National Coordinator shall take a leading position in the establishment and operations of the HIT Standards Committee.

"(2) MEMBERSHIP.—The membership of the HIT Standards Committee shall at least reflect providers, ancillary healthcare workers, consumers, purchasers, health plans, technology vendors, researchers, relevant Federal agencies, and individuals with technical expertise on health care quality, privacy and security, and on the electronic exchange and use of health information.

"(3) PARTICIPATION.—The members of the HIT Standards Committee appointed under this subsection shall represent a balance among various sectors of the health care system so that no single sector unduly influences the recommendations of such Committee.

"(4) OUTSIDE INVOLVEMENT.—The HIT Policy Committee shall ensure an opportunity for the participation in activities of the Committee of outside advisors, including individuals with expertise in the development of standards for the electronic exchange and use of health information, including in the areas of health information privacy and security.

"(5) BALANCE AMONG SECTORS.—In developing the procedures for conducting the activities of the HIT Standards Committee, the HIT Standards Committee shall act to ensure a balance among various sectors of the health care system so that no single sector unduly influences the actions of the HIT Standards Committee.

"(6) ASSISTANCE.—For the purposes of carrying out this section, the Secretary may provide or ensure that financial assistance is provided by the HIT Standards Committee to defray in whole or in part any membership fees or dues charged by such Committee to those consumer advocacy groups and not for profit entities that work in the public interest as a part of their mission.

"(d) APPLICATION OF FACA.—The Federal Advisory Committee Act (5 U.S.C. App.), other than section 14, shall apply to the HIT Standards Committee.

"(e) PUBLICATION.—The Secretary shall provide for publication in the Federal Register and the posting on the Internet website of the Office of the National Coordinator for Health Information Technology of all recommendations made by the HIT Standards Committee under this section.

"SEC. 3004. PROCESS FOR ADOPTION OF ENDORSED RECOMMENDATIONS; ADOPTION OF INITIAL SET OF STANDARDS, IMPLEMENTATION SPECIFICATIONS, AND CERTIFICATION CRITERIA.

"(a) PROCESS FOR ADOPTION OF ENDORSED RECOMMENDATIONS.—

"(1) REVIEW OF ENDORSED STANDARDS, IMPLEMENTATION SPECIFICATIONS, AND CERTIFICATION CRITERIA.—Not later than 90 days after the date of receipt of standards, implementation specifications, or certification criteria endorsed under section 3001(c), the Secretary, in consultation with representatives of other relevant Federal agencies, shall jointly review such standards, implementation specifications, or certification criteria and shall determine whether or not to propose adoption of such standards, implementation specifications, or certification criteria.

"(2) DETERMINATION TO ADOPT STANDARDS, IMPLEMENTATION SPECIFICATIONS, AND CERTIFICATION CRITERIA.—If the Secretary determines—

"(A) to propose adoption of any grouping of such standards, implementation specifications, or certification criteria, the Secretary shall, by regulation under section 553 of title 5, United States Code, determine whether or not to adopt such grouping of standards, implementation specifications, or certification criteria; or

"(B) not to propose adoption of any grouping of standards, implementation specifications, or certification criteria, the Secretary shall notify the National Coordinator and the HIT Standards Committee in writing of such determination and the reasons for not proposing the adoption of such recommendation.

"(3) PUBLICATION.—The Secretary shall provide for publication in the Federal Register of all determinations made by the Secretary under paragraph (1).

"(b) ADOPTION OF STANDARDS, IMPLEMENTATION SPECIFICATIONS, AND CERTIFICATION CRITERIA.—

"(1) IN GENERAL.—Not later than December 31, 2009, the Secretary shall, through the rulemaking process consistent with subsection (a)(2)(A), adopt an initial set of standards, implementation specifications, and certification criteria for the areas required for consideration under section 3002(b)(2)(B). The rulemaking for the initial set of standards, implementation specifications, and certification criteria may be issued on an interim, final basis.

"(2) APPLICATION OF CURRENT STANDARDS, IMPLEMENTATION SPECIFICATIONS, AND CERTIFICATION CRITERIA.—The standards, implementation specifications, and certification cri-

teria adopted before the date of the enactment of this title through the process existing through the Office of the National Coordinator for Health Information Technology may be applied towards meeting the requirement of paragraph (1).

"(3) SUBSEQUENT STANDARDS ACTIVITY.—The Secretary shall adopt additional standards, implementation specifications, and certification criteria as necessary and consistent with the schedule published under section 3003(b)(2).

"SEC. 3005. APPLICATION AND USE OF ADOPTED STANDARDS AND IMPLEMENTATION SPECIFICATIONS BY FEDERAL AGENCIES.

"For requirements relating to the application and use by Federal agencies of the standards and implementation specifications adopted under section 3004, see section 13111 of the Health Information Technology for Economic and Clinical Health Act.

"SEC. 3006. VOLUNTARY APPLICATION AND USE OF ADOPTED STANDARDS AND IMPLEMENTATION SPECIFICATIONS BY PRIVATE ENTITIES.

"(a) IN GENERAL.—Except as provided under section 13112 of the HITECH Act, nothing in such Act or in the amendments made by such Act shall be construed—

"(1) to require a private entity to adopt or comply with a standard or implementation specification adopted under section 3004; or

"(2) to provide a Federal agency authority, other than the authority such agency may have under other provisions of law, to require a private entity to comply with such a standard or implementation specification.

"(b) RULE OF CONSTRUCTION.—Nothing in this subtitle shall be construed to require that a private entity that enters into a contract with the Federal Government apply or use the standards and implementation specifications adopted under section 3004 with respect to activities not related to the contract.

"SEC. 3007. FEDERAL HEALTH INFORMATION TECHNOLOGY.

"(a) IN GENERAL.—The National Coordinator shall support the development and routine updating of qualified electronic health record technology (as defined in section 3000) consistent with subsections (b) and (c) and make available such qualified electronic health record technology unless the Secretary determines through an assessment that the needs and demands of providers are being substantially and adequately met through the marketplace.

"(b) CERTIFICATION.—In making such electronic health record technology publicly available, the National Coordinator shall ensure that the qualified electronic health record technology described in subsection (a) is certified under the program developed under section 3001(c)(3) to be in compliance with applicable standards adopted under section 3003(a).

"(c) AUTHORIZATION TO CHARGE A NOMINAL FEE.—The National Coordinator may impose a nominal fee for the adoption by a health care provider of the health information technology system developed or approved under subsection (a) and (b). Such fee shall take into account the financial circumstances of smaller providers, low income providers, and providers located in rural or other medically underserved areas.

"(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require that a private or government entity adopt or use the technology provided under this section.

"SEC. 3008. TRANSITIONS.

"(a) ONCHIT.—To the extent consistent with section 3001, all functions, personnel, assets, liabilities, and administrative actions applicable to the National Coordinator for Health Information Technology appointed under Executive Order No. 13335 or the Office of such National Coordinator on the date before the date of the enactment of this title shall be transferred to the National Coordinator appointed under section 3001(a) and the Office of such National Coordinator as of the date of the enactment of this title.

"(b) NATIONAL EHEALTH COLLABORATIVE.—Nothing in sections 3002 or 3003 or this subsection shall be construed as prohibiting the AHIC Successor, Inc. doing business as the National eHealth Collaborative from modifying its charter, duties, membership, and any other structure or function required to be consistent with section 3002 and 3003 so as to allow the Secretary to recognize such AHIC Successor, Inc. as the HIT Policy Committee or the HIT Standards Committee.

"(c) CONSISTENCY OF RECOMMENDATIONS.—In carrying out section 3003(b)(1)(A), until recommendations are made by the HIT Policy Committee, recommendations of the HIT Standards Committee shall be consistent with the most recent recommendations made by such AHIC Successor, Inc.

"SEC. 3009. MISCELLANEOUS PROVISIONS.

"(a) RELATION TO HIPAA PRIVACY AND SECURITY LAW.—

"(1) IN GENERAL.—With respect to the relation of this title to HIPAA privacy and security law:

"(A) This title may not be construed as having any effect on the authorities of the Secretary under HIPAA privacy and security law.

"(B) The purposes of this title include ensuring that the health information technology standards and implementation specifications adopted under section 3004 take into account the requirements of HIPAA privacy and security law.

"(2) DEFINITION.—For purposes of this section, the term 'HIPAA privacy and security law' means—

"(A) the provisions of part C of title XI of the Social Security Act, section 264 of the Health Insurance Portability and Accountability Act of 1996, and subtitle D of title IV of the Health Information Technology for Economic and Clinical Health Act; and

"(B) regulations under such provisions.

"(b) FLEXIBILITY.—In administering the provisions of this title, the Secretary shall have flexibility in applying the definition of health care provider under section 3000(3), including the authority to omit certain entities listed in such definition when applying such definition under this title, where appropriate.".

SEC. 13102. TECHNICAL AMENDMENT.

Section 1171(5) of the Social Security Act (42 U.S.C. 1320d) is amended by striking "or C" and inserting "C, or D".

PART 2—APPLICATION AND USE OF ADOPTED HEALTH INFORMATION TECHNOLOGY STANDARDS; REPORTS

SEC. 13111. COORDINATION OF FEDERAL ACTIVITIES WITH ADOPTED STANDARDS AND IMPLEMENTATION SPECIFICATIONS.

(a) SPENDING ON HEALTH INFORMATION TECHNOLOGY SYSTEMS.—As each agency (as defined by the Director of the Office of Management and Budget, in consultation with the Secretary of Health and Human Services) implements, acquires, or upgrades health information technology systems used for the direct exchange of individually identifiable health information between agencies and with non-Federal entities, it shall utilize, where available, health information technology systems and products that meet standards and implementation specifications adopted under section 3004 of the Public Health Service Act, as added by section 13101.

(b) FEDERAL INFORMATION COLLECTION ACTIVITIES.—With respect to a standard or implementation specification adopted under section 3004 of the Public Health Service Act, as added by section 13101, the President shall take measures to ensure that Federal activities involving the broad collection and submission of health information are consistent with such standard or implementation specification, respectively, within three years after the date of such adoption.

(c) APPLICATION OF DEFINITIONS.—The definitions contained in section 3000 of the Public Health Service Act, as added by section 13101, shall apply for purposes of this part.

SEC. 13112. APPLICATION TO PRIVATE ENTITIES.

Each agency (as defined in such Executive Order issued on August 22, 2006, relating to promoting quality and efficient health care in Federal government administered or sponsored health care programs) shall require in contracts or agreements with health care providers, health plans, or health insurance issuers that as each provider, plan, or issuer implements, acquires, or upgrades health information technology systems, it shall utilize, where available, health information technology systems and products that meet standards and implementation specifications adopted under section 3004 of the Public Health Service Act, as added by section 13101.

SEC. 13113. STUDY AND REPORTS.

(a) REPORT ON ADOPTION OF NATIONWIDE SYSTEM.—Not later than 2 years after the date of the enactment of this Act and annually thereafter, the Secretary of Health and Human Services shall submit to the appropriate committees of jurisdiction of the House of Representatives and the Senate a report that—

(1) describes the specific actions that have been taken by the Federal Government and private entities to facilitate the adoption of a nationwide system for the electronic use and exchange of health information;

(2) describes barriers to the adoption of such a nationwide system; and

(3) contains recommendations to achieve full implementation of such a nationwide system.

(b) REIMBURSEMENT INCENTIVE STUDY AND REPORT.—

(1) STUDY.—The Secretary of Health and Human Services shall carry out, or contract with a private entity to carry out, a study that examines methods to create efficient reimbursement

incentives for improving health care quality in Federally qualified health centers, rural health clinics, and free clinics.

(2) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit to the appropriate committees of jurisdiction of the House of Representatives and the Senate a report on the study carried out under paragraph (1).

(c) AGING SERVICES TECHNOLOGY STUDY AND REPORT.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall carry out, or contract with a private entity to carry out, a study of matters relating to the potential use of new aging services technology to assist seniors, individuals with disabilities, and their caregivers throughout the aging process.

(2) MATTERS TO BE STUDIED.—The study under paragraph (1) shall include—

(A) an evaluation of—

(i) methods for identifying current, emerging, and future health technology that can be used to meet the needs of seniors and individuals with disabilities and their caregivers across all aging services settings, as specified by the Secretary;

(ii) methods for fostering scientific innovation with respect to aging services technology within the business and academic communities; and

(iii) developments in aging services technology in other countries that may be applied in the United States; and

(B) identification of—

(i) barriers to innovation in aging services technology and devising strategies for removing such barriers; and

(ii) barriers to the adoption of aging services technology by health care providers and consumers and devising strategies to removing such barriers.

(3) REPORT.—Not later than 24 months after the date of the enactment of this Act, the Secretary shall submit to the appropriate committees of jurisdiction of the House of Representatives and of the Senate a report on the study carried out under paragraph (1).

(4) DEFINITIONS.—For purposes of this subsection:

(A) AGING SERVICES TECHNOLOGY.—The term "aging services technology" means health technology that meets the health care needs of seniors, individuals with disabilities, and the caregivers of such seniors and individuals.

(B) SENIOR.—The term "senior" has such meaning as specified by the Secretary.

Subtitle B—Testing of Health Information Technology

SEC. 13201. NATIONAL INSTITUTE FOR STANDARDS AND TECHNOLOGY TESTING.

(a) PILOT TESTING OF STANDARDS AND IMPLEMENTATION SPECIFICATIONS.—In coordination with the HIT Standards Committee established under section 3003 of the Public Health Service Act, as

added by section 13101, with respect to the development of standards and implementation specifications under such section, the Director of the National Institute for Standards and Technology shall test such standards and implementation specifications, as appropriate, in order to assure the efficient implementation and use of such standards and implementation specifications.

(b) VOLUNTARY TESTING PROGRAM.—In coordination with the HIT Standards Committee established under section 3003 of the Public Health Service Act, as added by section 13101, with respect to the development of standards and implementation specifications under such section, the Director of the National Institute of Standards and Technology shall support the establishment of a conformance testing infrastructure, including the development of technical test beds. The development of this conformance testing infrastructure may include a program to accredit independent, non-Federal laboratories to perform testing.

SEC. 13202. RESEARCH AND DEVELOPMENT PROGRAMS.

(a) HEALTH CARE INFORMATION ENTERPRISE INTEGRATION RESEARCH CENTERS.—

(1) IN GENERAL.—The Director of the National Institute of Standards and Technology, in consultation with the Director of the National Science Foundation and other appropriate Federal agencies, shall establish a program of assistance to institutions of higher education (or consortia thereof which may include nonprofit entities and Federal Government laboratories) to establish multidisciplinary Centers for Health Care Information Enterprise Integration.

(2) REVIEW; COMPETITION.—Grants shall be awarded under this subsection on a merit-reviewed, competitive basis.

(3) PURPOSE.—The purposes of the Centers described in paragraph (1) shall be—

(A) to generate innovative approaches to health care information enterprise integration by conducting cutting-edge, multidisciplinary research on the systems challenges to health care delivery; and

(B) the development and use of health information technologies and other complementary fields.

(4) RESEARCH AREAS.—Research areas may include—

(A) interfaces between human information and communications technology systems;

(B) voice-recognition systems;

(C) software that improves interoperability and connectivity among health information systems;

(D) software dependability in systems critical to health care delivery;

(E) measurement of the impact of information technologies on the quality and productivity of health care;

(F) health information enterprise management;

(G) health information technology security and integrity; and

(H) relevant health information technology to reduce medical errors.

(5) APPLICATIONS.—An institution of higher education (or a consortium thereof) seeking funding under this subsection shall submit an application to the Director of the National Institute

of Standards and Technology at such time, in such manner, and containing such information as the Director may require. The application shall include, at a minimum, a description of—

(A) the research projects that will be undertaken by the Center established pursuant to assistance under paragraph (1) and the respective contributions of the participating entities;

(B) how the Center will promote active collaboration among scientists and engineers from different disciplines, such as information technology, biologic sciences, management, social sciences, and other appropriate disciplines;

(C) technology transfer activities to demonstrate and diffuse the research results, technologies, and knowledge; and

(D) how the Center will contribute to the education and training of researchers and other professionals in fields relevant to health information enterprise integration.

(b) NATIONAL INFORMATION TECHNOLOGY RESEARCH AND DEVELOPMENT PROGRAM.—The National High-Performance Computing Program established by section 101 of the High-Performance Computing Act of 1991 (15 U.S.C. 5511) shall include Federal research and development programs related to health information technology.

Subtitle C—Grants and Loans Funding

SEC. 13301. GRANT, LOAN, AND DEMONSTRATION PROGRAMS.

Title XXX of the Public Health Service Act, as added by section 13101, is amended by adding at the end the following new subtitle:

"Subtitle B—Incentives for the Use of Health Information Technology

"SEC. 3011. IMMEDIATE FUNDING TO STRENGTHEN THE HEALTH INFORMATION TECHNOLOGY INFRASTRUCTURE.

"(a) IN GENERAL.—The Secretary shall, using amounts appropriated under section 3018, invest in the infrastructure necessary to allow for and promote the electronic exchange and use of health information for each individual in the United States consistent with the goals outlined in the strategic plan developed by the National Coordinator (and as available) under section 3001. The Secretary shall invest funds through the different agencies with expertise in such goals, such as the Office of the National Coordinator for Health Information Technology, the Health Resources and Services Administration, the Agency for Healthcare Research and Quality, the Centers of Medicare & Medicaid Services, the Centers for Disease Control and Prevention, and the Indian Health Service to support the following:

"(1) Health information technology architecture that will support the nationwide electronic exchange and use of health information in a secure, private, and accurate manner, including connecting health information exchanges, and which may include updating and implementing the infrastructure necessary within different agencies of the Department of Health

and Human Services to support the electronic use and exchange of health information.

"(2) Development and adoption of appropriate certified electronic health records for categories of health care providers not eligible for support under title XVIII or XIX of the Social Security Act for the adoption of such records.

"(3) Training on and dissemination of information on best practices to integrate health information technology, including electronic health records, into a provider's delivery of care, consistent with best practices learned from the Health Information Technology Research Center developed under section 3012(b), including community health centers receiving assistance under section 330, covered entities under section 340B, and providers participating in one or more of the programs under titles XVIII, XIX, and XXI of the Social Security Act (relating to Medicare, Medicaid, and the State Children's Health Insurance Program).

"(4) Infrastructure and tools for the promotion of telemedicine, including coordination among Federal agencies in the promotion of telemedicine.

"(5) Promotion of the interoperability of clinical data repositories or registries.

"(6) Promotion of technologies and best practices that enhance the protection of health information by all holders of individually identifiable health information.

"(7) Improvement and expansion of the use of health information technology by public health departments.

"(b) COORDINATION.—The Secretary shall ensure funds under this section are used in a coordinated manner with other health information promotion activities.

"(c) ADDITIONAL USE OF FUNDS.—In addition to using funds as provided in subsection (a), the Secretary may use amounts appropriated under section 3018 to carry out health information technology activities that are provided for under laws in effect on the date of the enactment of this title.

"(d) STANDARDS FOR ACQUISITION OF HEALTH INFORMATION TECHNOLOGY.—To the greatest extent practicable, the Secretary shall ensure that where funds are expended under this section for the acquisition of health information technology, such funds shall be used to acquire health information technology that meets applicable standards adopted under section 3004. Where it is not practicable to expend funds on health information technology that meets such applicable standards, the Secretary shall ensure that such health information technology meets applicable standards otherwise adopted by the Secretary.

"SEC. 3012. HEALTH INFORMATION TECHNOLOGY IMPLEMENTATION ASSISTANCE.

"(a) HEALTH INFORMATION TECHNOLOGY EXTENSION PROGRAM.—To assist health care providers to adopt, implement, and effectively use certified EHR technology that allows for the electronic exchange and use of health information, the Secretary, acting through the Office of the National Coordinator, shall establish a health information technology extension program to provide health information technology assistance services to be carried out through the Department of Health and Human Services. The National Coordinator shall consult with other Federal agencies with demonstrated

experience and expertise in information technology services, such as the National Institute of Standards and Technology, in developing and implementing this program.

"(b) HEALTH INFORMATION TECHNOLOGY RESEARCH CENTER.—

"(1) IN GENERAL.—The Secretary shall create a Health Information Technology Research Center (in this section referred to as the 'Center') to provide technical assistance and develop or recognize best practices to support and accelerate efforts to adopt, implement, and effectively utilize health information technology that allows for the electronic exchange and use of information in compliance with standards, implementation specifications, and certification criteria adopted under section 3004.

"(2) INPUT.—The Center shall incorporate input from—

"(A) other Federal agencies with demonstrated experience and expertise in information technology services such as the National Institute of Standards and Technology;

"(B) users of health information technology, such as providers and their support and clerical staff and others involved in the care and care coordination of patients, from the health care and health information technology industry; and

"(C) others as appropriate.

"(3) PURPOSES.—The purposes of the Center are to—

"(A) provide a forum for the exchange of knowledge and experience;

"(B) accelerate the transfer of lessons learned from existing public and private sector initiatives, including those currently receiving Federal financial support;

"(C) assemble, analyze, and widely disseminate evidence and experience related to the adoption, implementation, and effective use of health information technology that allows for the electronic exchange and use of information including through the regional centers described in subsection (c);

"(D) provide technical assistance for the establishment and evaluation of regional and local health information networks to facilitate the electronic exchange of information across health care settings and improve the quality of health care;

"(E) provide technical assistance for the development and dissemination of solutions to barriers to the exchange of electronic health information; and

"(F) learn about effective strategies to adopt and utilize health information technology in medically underserved communities.

"(c) HEALTH INFORMATION TECHNOLOGY REGIONAL EXTENSION CENTERS.—

"(1) IN GENERAL.—The Secretary shall provide assistance for the creation and support of regional centers (in this subsection referred to as 'regional centers') to provide technical assistance and disseminate best practices and other information learned from the Center to support and accelerate efforts to adopt, implement, and effectively utilize health information technology that allows for the electronic exchange and use of information in compliance with standards, implementation speci-

fications, and certification criteria adopted under section 3004. Activities conducted under this subsection shall be consistent with the strategic plan developed by the National Coordinator, (and, as available) under section 3001.

"(2) AFFILIATION.—Regional centers shall be affiliated with any United States-based nonprofit institution or organization, or group thereof, that applies and is awarded financial assistance under this section. Individual awards shall be decided on the basis of merit.

"(3) OBJECTIVE.—The objective of the regional centers is to enhance and promote the adoption of health information technology through—

"(A) assistance with the implementation, effective use, upgrading, and ongoing maintenance of health information technology, including electronic health records, to healthcare providers nationwide;

"(B) broad participation of individuals from industry, universities, and State governments;

"(C) active dissemination of best practices and research on the implementation, effective use, upgrading, and ongoing maintenance of health information technology, including electronic health records, to health care providers in order to improve the quality of healthcare and protect the privacy and security of health information;

"(D) participation, to the extent practicable, in health information exchanges;

"(E) utilization, when appropriate, of the expertise and capability that exists in Federal agencies other than the Department; and

"(F) integration of health information technology, including electronic health records, into the initial and ongoing training of health professionals and others in the healthcare industry that would be instrumental to improving the quality of healthcare through the smooth and accurate electronic use and exchange of health information.

"(4) REGIONAL ASSISTANCE.—Each regional center shall aim to provide assistance and education to all providers in a region, but shall prioritize any direct assistance first to the following:

"(A) Public or not-for-profit hospitals or critical access hospitals.

"(B) Federally qualified health centers (as defined in section 1861(aa)(4) of the Social Security Act).

"(C) Entities that are located in rural and other areas that serve uninsured, underinsured, and medically underserved individuals (regardless of whether such area is urban or rural).

"(D) Individual or small group practices (or a consortium thereof) that are primarily focused on primary care.

"(5) FINANCIAL SUPPORT.—The Secretary may provide financial support to any regional center created under this subsection for a period not to exceed four years. The Secretary may not provide more than 50 percent of the capital and annual operating and maintenance funds required to create and maintain such a center, except in an instance of national economic condi-

tions which would render this cost-share requirement detrimental to the program and upon notification to Congress as to the justification to waive the cost-share requirement.

"(6) NOTICE OF PROGRAM DESCRIPTION AND AVAILABILITY OF FUNDS.—The Secretary shall publish in the Federal Register, not later than 90 days after the date of the enactment of this title, a draft description of the program for establishing regional centers under this subsection. Such description shall include the following:

"(A) A detailed explanation of the program and the programs goals.

"(B) Procedures to be followed by the applicants.

"(C) Criteria for determining qualified applicants.

"(D) Maximum support levels expected to be available to centers under the program.

"(7) APPLICATION REVIEW.—The Secretary shall subject each application under this subsection to merit review. In making a decision whether to approve such application and provide financial support, the Secretary shall consider at a minimum the merits of the application, including those portions of the application regarding—

"(A) the ability of the applicant to provide assistance under this subsection and utilization of health information technology appropriate to the needs of particular categories of health care providers;

"(B) the types of service to be provided to health care providers;

"(C) geographical diversity and extent of service area; and

"(D) the percentage of funding and amount of in-kind commitment from other sources.

"(8) BIENNIAL EVALUATION.—Each regional center which receives financial assistance under this subsection shall be evaluated biennially by an evaluation panel appointed by the Secretary. Each evaluation panel shall be composed of private experts, none of whom shall be connected with the center involved, and of Federal officials. Each evaluation panel shall measure the involved center's performance against the objective specified in paragraph (3). The Secretary shall not continue to provide funding to a regional center unless its evaluation is overall positive.

"(9) CONTINUING SUPPORT.—After the second year of assistance under this subsection, a regional center may receive additional support under this subsection if it has received positive evaluations and a finding by the Secretary that continuation of Federal funding to the center was in the best interest of provision of health information technology extension services.

"SEC. 3013. STATE GRANTS TO PROMOTE HEALTH INFORMATION TECHNOLOGY.

"(a) IN GENERAL.—The Secretary, acting through the National Coordinator, shall establish a program in accordance with this section to facilitate and expand the electronic movement and use of health information among organizations according to nationally recognized standards.

"(b) PLANNING GRANTS.—The Secretary may award a grant to a State or qualified State-designated entity (as described in subsection (f)) that submits an application to the Secretary at such time, in such manner, and containing such information as the Secretary may specify, for the purpose of planning activities described in subsection (d).

"(c) IMPLEMENTATION GRANTS.—The Secretary may award a grant to a State or qualified State designated entity that—

"(1) has submitted, and the Secretary has approved, a plan described in subsection (e) (regardless of whether such plan was prepared using amounts awarded under subsection (b); and

"(2) submits an application at such time, in such manner, and containing such information as the Secretary may specify.

"(d) USE OF FUNDS.—Amounts received under a grant under subsection (c) shall be used to conduct activities to facilitate and expand the electronic movement and use of health information among organizations according to nationally recognized standards through activities that include—

"(1) enhancing broad and varied participation in the authorized and secure nationwide electronic use and exchange of health information;

"(2) identifying State or local resources available towards a nationwide effort to promote health information technology;

"(3) complementing other Federal grants, programs, and efforts towards the promotion of health information technology;

"(4) providing technical assistance for the development and dissemination of solutions to barriers to the exchange of electronic health information;

"(5) promoting effective strategies to adopt and utilize health information technology in medically underserved communities;

"(6) assisting patients in utilizing health information technology;

"(7) encouraging clinicians to work with Health Information Technology Regional Extension Centers as described in section 3012, to the extent they are available and valuable;

"(8) supporting public health agencies' authorized use of and access to electronic health information;

"(9) promoting the use of electronic health records for quality improvement including through quality measures reporting; and

"(10) such other activities as the Secretary may specify.

"(e) PLAN.—

"(1) IN GENERAL.—A plan described in this subsection is a plan that describes the activities to be carried out by a State or by the qualified State-designated entity within such State to facilitate and expand the electronic movement and use of health information among organizations according to nationally recognized standards and implementation specifications.

"(2) REQUIRED ELEMENTS.—A plan described in paragraph (1) shall—

"(A) be pursued in the public interest;

"(B) be consistent with the strategic plan developed by the National Coordinator (and, as available) under section 3001;

"(C) include a description of the ways the State or qualified State-designated entity will carry out the activities described in subsection (b); and

"(D) contain such elements as the Secretary may require.

"(f) QUALIFIED STATE-DESIGNATED ENTITY.—For purposes of this section, to be a qualified State-designated entity, with respect to a State, an entity shall—

"(1) be designated by the State as eligible to receive awards under this section;

"(2) be a not-for-profit entity with broad stakeholder representation on its governing board;

"(3) demonstrate that one of its principal goals is to use information technology to improve health care quality and efficiency through the authorized and secure electronic exchange and use of health information;

"(4) adopt nondiscrimination and conflict of interest policies that demonstrate a commitment to open, fair, and nondiscriminatory participation by stakeholders; and

"(5) conform to such other requirements as the Secretary may establish.

"(g) REQUIRED CONSULTATION.—In carrying out activities described in subsections (b) and (c), a State or qualified State-designated entity shall consult with and consider the recommendations of—

"(1) health care providers (including providers that provide services to low income and underserved populations);

"(2) health plans;

"(3) patient or consumer organizations that represent the population to be served;

"(4) health information technology vendors;

"(5) health care purchasers and employers;

"(6) public health agencies;

"(7) health professions schools, universities and colleges;

"(8) clinical researchers;

"(9) other users of health information technology such as the support and clerical staff of providers and others involved in the care and care coordination of patients; and

"(10) such other entities, as may be determined appropriate by the Secretary.

"(h) CONTINUOUS IMPROVEMENT.—The Secretary shall annually evaluate the activities conducted under this section and shall, in awarding grants under this section, implement the lessons learned from such evaluation in a manner so that awards made subsequent to each such evaluation are made in a manner that, in the determination of the Secretary, will lead towards the greatest improvement in quality of care, decrease in costs, and the most effective authorized and secure electronic exchange of health information.

"(i) REQUIRED MATCH.—

"(1) IN GENERAL.—For a fiscal year (beginning with fiscal year 2011), the Secretary may not make a grant under this section to a State unless the State agrees to make available non-Federal contributions (which may include in-kind contributions) toward the costs of a grant awarded under subsection (c) in an amount equal to—

"(A) for fiscal year 2011, not less than $1 for each $10 of Federal funds provided under the grant;

"(B) for fiscal year 2012, not less than $1 for each $7 of Federal funds provided under the grant; and

"(C) for fiscal year 2013 and each subsequent fiscal year, not less than $1 for each $3 of Federal funds provided under the grant.

"(2) AUTHORITY TO REQUIRE STATE MATCH FOR FISCAL YEARS BEFORE FISCAL YEAR 2011.—For any fiscal year during the grant program under this section before fiscal year 2011, the Secretary may determine the extent to which there shall be required a non-Federal contribution from a State receiving a grant under this section.

"SEC. 3014. COMPETITIVE GRANTS TO STATES AND INDIAN TRIBES FOR THE DEVELOPMENT OF LOAN PROGRAMS TO FACILITATE THE WIDESPREAD ADOPTION OF CERTIFIED EHR TECHNOLOGY.

"(a) IN GENERAL.—The National Coordinator may award competitive grants to eligible entities for the establishment of programs for loans to health care providers to conduct the activities described in subsection (e).

"(b) ELIGIBLE ENTITY DEFINED.—For purposes of this subsection, the term 'eligible entity' means a State or Indian tribe (as defined in the Indian Self-Determination and Education Assistance Act) that—

"(1) submits to the National Coordinator an application at such time, in such manner, and containing such information as the National Coordinator may require;

"(2) submits to the National Coordinator a strategic plan in accordance with subsection (d) and provides to the National Coordinator assurances that the entity will update such plan annually in accordance with such subsection;

"(3) provides assurances to the National Coordinator that the entity will establish a Loan Fund in accordance with subsection (c);

"(4) provides assurances to the National Coordinator that the entity will not provide a loan from the Loan Fund to a health care provider unless the provider agrees to—

"(A) submit reports on quality measures adopted by the Federal Government (by not later than 90 days after the date on which such measures are adopted), to—

"(i) the Administrator of the Centers for Medicare & Medicaid Services (or his or her designee), in the case of an entity participating in the Medicare program under title XVIII of the Social Security Act or the Medicaid program under title XIX of such Act; or

"(ii) the Secretary in the case of other entities;

"(B) demonstrate to the satisfaction of the Secretary (through criteria established by the Secretary) that any certified EHR technology purchased, improved, or otherwise financially supported under a loan under this section is used to exchange health information in a manner that, in accordance with law and standards (as adopted under section 3004) applicable to the exchange of information, improves

the quality of health care, such as promoting care coordination;

"(C) comply with such other requirements as the entity or the Secretary may require;

"(D) include a plan on how health care providers involved intend to maintain and support the certified EHR technology over time; and

"(E) include a plan on how the health care providers involved intend to maintain and support the certified EHR technology that would be purchased with such loan, including the type of resources expected to be involved and any such other information as the State or Indian Tribe, respectively, may require; and

"(5) agrees to provide matching funds in accordance with subsection (h).

"(c) ESTABLISHMENT OF FUND.—For purposes of subsection (b)(3), an eligible entity shall establish a certified EHR technology loan fund (referred to in this subsection as a 'Loan Fund') and comply with the other requirements contained in this section. A grant to an eligible entity under this section shall be deposited in the Loan Fund established by the eligible entity. No funds authorized by other provisions of this title to be used for other purposes specified in this title shall be deposited in any Loan Fund.

"(d) STRATEGIC PLAN.—

"(1) IN GENERAL.—For purposes of subsection (b)(2), a strategic plan of an eligible entity under this subsection shall identify the intended uses of amounts available to the Loan Fund of such entity.

"(2) CONTENTS.—A strategic plan under paragraph (1), with respect to a Loan Fund of an eligible entity, shall include for a year the following:

"(A) A list of the projects to be assisted through the Loan Fund during such year.

"(B) A description of the criteria and methods established for the distribution of funds from the Loan Fund during the year.

"(C) A description of the financial status of the Loan Fund as of the date of submission of the plan.

"(D) The short-term and long-term goals of the Loan Fund.

"(e) USE OF FUNDS.—Amounts deposited in a Loan Fund, including loan repayments and interest earned on such amounts, shall be used only for awarding loans or loan guarantees, making reimbursements described in subsection (g)(4)(A), or as a source of reserve and security for leveraged loans, the proceeds of which are deposited in the Loan Fund established under subsection (c). Loans under this section may be used by a health care provider to—

"(1) facilitate the purchase of certified EHR technology;

"(2) enhance the utilization of certified EHR technology (which may include costs associated with upgrading health information technology so that it meets criteria necessary to be a certified EHR technology);

"(3) train personnel in the use of such technology; or

"(4) improve the secure electronic exchange of health information.

"(f) TYPES OF ASSISTANCE.—Except as otherwise limited by applicable State law, amounts deposited into a Loan Fund under this section may only be used for the following:

"(1) To award loans that comply with the following:

"(A) The interest rate for each loan shall not exceed the market interest rate.

"(B) The principal and interest payments on each loan shall commence not later than 1 year after the date the loan was awarded, and each loan shall be fully amortized not later than 10 years after the date of the loan.

"(C) The Loan Fund shall be credited with all payments of principal and interest on each loan awarded from the Loan Fund.

"(2) To guarantee, or purchase insurance for, a local obligation (all of the proceeds of which finance a project eligible for assistance under this subsection) if the guarantee or purchase would improve credit market access or reduce the interest rate applicable to the obligation involved.

"(3) As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the eligible entity if the proceeds of the sale of the bonds will be deposited into the Loan Fund.

"(4) To earn interest on the amounts deposited into the Loan Fund.

"(5) To make reimbursements described in subsection (g)(4)(A).

"(g) ADMINISTRATION OF LOAN FUNDS.—

"(1) COMBINED FINANCIAL ADMINISTRATION.—An eligible entity may (as a convenience and to avoid unnecessary administrative costs) combine, in accordance with applicable State law, the financial administration of a Loan Fund established under this subsection with the financial administration of any other revolving fund established by the entity if otherwise not prohibited by the law under which the Loan Fund was established.

"(2) COST OF ADMINISTERING FUND.—Each eligible entity may annually use not to exceed 4 percent of the funds provided to the entity under a grant under this section to pay the reasonable costs of the administration of the programs under this section, including the recovery of reasonable costs expended to establish a Loan Fund which are incurred after the date of the enactment of this title.

"(3) GUIDANCE AND REGULATIONS.—The National Coordinator shall publish guidance and promulgate regulations as may be necessary to carry out the provisions of this section, including—

"(A) provisions to ensure that each eligible entity commits and expends funds allotted to the entity under this section as efficiently as possible in accordance with this title and applicable State laws; and

"(B) guidance to prevent waste, fraud, and abuse.

"(4) PRIVATE SECTOR CONTRIBUTIONS.—

"(A) IN GENERAL.—A Loan Fund established under this section may accept contributions from private sector entities, except that such entities may not specify the recipient or recipients of any loan issued under this subsection. An

eligible entity may agree to reimburse a private sector entity for any contribution made under this subparagraph, except that the amount of such reimbursement may not be greater than the principal amount of the contribution made.

"(B) AVAILABILITY OF INFORMATION.—An eligible entity shall make publicly available the identity of, and amount contributed by, any private sector entity under subparagraph (A) and may issue letters of commendation or make other awards (that have no financial value) to any such entity.

"(h) MATCHING REQUIREMENTS.—

"(1) IN GENERAL.—The National Coordinator may not make a grant under subsection (a) to an eligible entity unless the entity agrees to make available (directly or through donations from public or private entities) non-Federal contributions in cash to the costs of carrying out the activities for which the grant is awarded in an amount equal to not less than $1 for each $5 of Federal funds provided under the grant.

"(2) DETERMINATION OF AMOUNT OF NON-FEDERAL CONTRIBUTION.—In determining the amount of non-Federal contributions that an eligible entity has provided pursuant to subparagraph (A), the National Coordinator may not include any amounts provided to the entity by the Federal Government.

"(i) EFFECTIVE DATE.—The Secretary may not make an award under this section prior to January 1, 2010.

"SEC. 3015. DEMONSTRATION PROGRAM TO INTEGRATE INFORMATION TECHNOLOGY INTO CLINICAL EDUCATION.

"(a) IN GENERAL.—The Secretary may award grants under this section to carry out demonstration projects to develop academic curricula integrating certified EHR technology in the clinical education of health professionals. Such awards shall be made on a competitive basis and pursuant to peer review.

"(b) ELIGIBILITY.—To be eligible to receive a grant under subsection (a), an entity shall—

"(1) submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require;

"(2) submit to the Secretary a strategic plan for integrating certified EHR technology in the clinical education of health professionals to reduce medical errors, increase access to prevention, reduce chronic diseases, and enhance health care quality;

"(3) be—

"(A) a school of medicine, osteopathic medicine, dentistry, or pharmacy, a graduate program in behavioral or mental health, or any other graduate health professions school;

"(B) a graduate school of nursing or physician assistant studies;

"(C) a consortium of two or more schools described in subparagraph (A) or (B); or

"(D) an institution with a graduate medical education program in medicine, osteopathic medicine, dentistry, pharmacy, nursing, or physician assistance studies;

"(4) provide for the collection of data regarding the effectiveness of the demonstration project to be funded under the

grant in improving the safety of patients, the efficiency of health care delivery, and in increasing the likelihood that graduates of the grantee will adopt and incorporate certified EHR technology, in the delivery of health care services; and

"(5) provide matching funds in accordance with subsection (d).

"(c) USE OF FUNDS.—

"(1) IN GENERAL.—With respect to a grant under subsection (a), an eligible entity shall—

"(A) use grant funds in collaboration with 2 or more disciplines; and

"(B) use grant funds to integrate certified EHR technology into community-based clinical education.

"(2) LIMITATION.—An eligible entity shall not use amounts received under a grant under subsection (a) to purchase hardware, software, or services.

"(d) FINANCIAL SUPPORT.—The Secretary may not provide more than 50 percent of the costs of any activity for which assistance is provided under subsection (a), except in an instance of national economic conditions which would render the cost-share requirement under this subsection detrimental to the program and upon notification to Congress as to the justification to waive the cost-share requirement.

"(e) EVALUATION.—The Secretary shall take such action as may be necessary to evaluate the projects funded under this section and publish, make available, and disseminate the results of such evaluations on as wide a basis as is practicable.

"(f) REPORTS.—Not later than 1 year after the date of enactment of this title, and annually thereafter, the Secretary shall submit to the Committee on Health, Education, Labor, and Pensions and the Committee on Finance of the Senate, and the Committee on Energy and Commerce of the House of Representatives a report that—

"(1) describes the specific projects established under this section; and

"(2) contains recommendations for Congress based on the evaluation conducted under subsection (e).

"SEC. 3016. INFORMATION TECHNOLOGY PROFESSIONALS IN HEALTH CARE.

"(a) IN GENERAL.—The Secretary, in consultation with the Director of the National Science Foundation, shall provide assistance to institutions of higher education (or consortia thereof) to establish or expand medical health informatics education programs, including certification, undergraduate, and masters degree programs, for both health care and information technology students to ensure the rapid and effective utilization and development of health information technologies (in the United States health care infrastructure).

"(b) ACTIVITIES.—Activities for which assistance may be provided under subsection (a) may include the following:

"(1) Developing and revising curricula in medical health informatics and related disciplines.

"(2) Recruiting and retaining students to the program involved.

"(3) Acquiring equipment necessary for student instruction in these programs, including the installation of testbed networks for student use.

"(4) Establishing or enhancing bridge programs in the health informatics fields between community colleges and universities.

"(c) PRIORITY.—In providing assistance under subsection (a), the Secretary shall give preference to the following:

"(1) Existing education and training programs.

"(2) Programs designed to be completed in less than six months.

"SEC. 3017. GENERAL GRANT AND LOAN PROVISIONS.

"(a) REPORTS.—The Secretary may require that an entity receiving assistance under this subtitle shall submit to the Secretary, not later than the date that is 1 year after the date of receipt of such assistance, a report that includes—

"(1) an analysis of the effectiveness of the activities for which the entity receives such assistance, as compared to the goals for such activities; and

"(2) an analysis of the impact of the project on health care quality and safety.

"(b) REQUIREMENT TO IMPROVE QUALITY OF CARE AND DECREASE IN COSTS.—The National Coordinator shall annually evaluate the activities conducted under this subtitle and shall, in awarding grants, implement the lessons learned from such evaluation in a manner so that awards made subsequent to each such evaluation are made in a manner that, in the determination of the National Coordinator, will result in the greatest improvement in the quality and efficiency of health care.

"SEC. 3018. AUTHORIZATION FOR APPROPRIATIONS.

"For the purposes of carrying out this subtitle, there is authorized to be appropriated such sums as may be necessary for each of the fiscal years 2009 through 2013.".

Subtitle D—Privacy

SEC. 13400. DEFINITIONS.

In this subtitle, except as specified otherwise:

(1) BREACH.—

(A) IN GENERAL.—The term "breach" means the unauthorized acquisition, access, use, or disclosure of protected health information which compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information.

(B) EXCEPTIONS.—The term "breach" does not include—

(i) any unintentional acquisition, access, or use of protected health information by an employee or individual acting under the authority of a covered entity or business associate if—

(I) such acquisition, access, or use was made in good faith and within the course and scope of the employment or other professional relationship of such employee or individual, respectively, with the covered entity or business associate; and

(II) such information is not further acquired, accessed, used, or disclosed by any person; or

(ii) any inadvertent disclosure from an individual who is otherwise authorized to access protected health information at a facility operated by a covered entity or business associate to another similarly situated individual at same facility; and

(iii) any such information received as a result of such disclosure is not further acquired, accessed, used, or disclosed without authorization by any person.

(2) BUSINESS ASSOCIATE.—The term "business associate" has the meaning given such term in section 160.103 of title 45, Code of Federal Regulations.

(3) COVERED ENTITY.—The term "covered entity" has the meaning given such term in section 160.103 of title 45, Code of Federal Regulations.

(4) DISCLOSE.—The terms "disclose" and "disclosure" have the meaning given the term "disclosure" in section 160.103 of title 45, Code of Federal Regulations.

(5) ELECTRONIC HEALTH RECORD.—The term "electronic health record" means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.

(6) HEALTH CARE OPERATIONS.—The term "health care operation" has the meaning given such term in section 164.501 of title 45, Code of Federal Regulations.

(7) HEALTH CARE PROVIDER.—The term "health care provider" has the meaning given such term in section 160.103 of title 45, Code of Federal Regulations.

(8) HEALTH PLAN.—The term "health plan" has the meaning given such term in section 160.103 of title 45, Code of Federal Regulations.

(9) NATIONAL COORDINATOR.—The term "National Coordinator" means the head of the Office of the National Coordinator for Health Information Technology established under section 3001(a) of the Public Health Service Act, as added by section 13101.

(10) PAYMENT.—The term "payment" has the meaning given such term in section 164.501 of title 45, Code of Federal Regulations.

(11) PERSONAL HEALTH RECORD.—The term "personal health record" means an electronic record of PHR identifiable health information (as defined in section 13407(f)(2)) on an individual that can be drawn from multiple sources and that is managed, shared, and controlled by or primarily for the individual.

(12) PROTECTED HEALTH INFORMATION.—The term "protected health information" has the meaning given such term in section 160.103 of title 45, Code of Federal Regulations.

(13) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services.

(14) SECURITY.—The term "security" has the meaning given such term in section 164.304 of title 45, Code of Federal Regulations.

(15) STATE.—The term "State" means each of the several States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

(16) TREATMENT.—The term "treatment" has the meaning given such term in section 164.501 of title 45, Code of Federal Regulations.

(17) USE.—The term "use" has the meaning given such term in section 160.103 of title 45, Code of Federal Regulations.

(18) VENDOR OF PERSONAL HEALTH RECORDS.—The term "vendor of personal health records" means an entity, other than a covered entity (as defined in paragraph (3)), that offers or maintains a personal health record.

PART 1—IMPROVED PRIVACY PROVISIONS AND SECURITY PROVISIONS

SEC. 13401. APPLICATION OF SECURITY PROVISIONS AND PENALTIES TO BUSINESS ASSOCIATES OF COVERED ENTITIES; ANNUAL GUIDANCE ON SECURITY PROVISIONS.

(a) APPLICATION OF SECURITY PROVISIONS.—Sections 164.308, 164.310, 164.312, and 164.316 of title 45, Code of Federal Regulations, shall apply to a business associate of a covered entity in the same manner that such sections apply to the covered entity. The additional requirements of this title that relate to security and that are made applicable with respect to covered entities shall also be applicable to such a business associate and shall be incorporated into the business associate agreement between the business associate and the covered entity.

(b) APPLICATION OF CIVIL AND CRIMINAL PENALTIES.—In the case of a business associate that violates any security provision specified in subsection (a), sections 1176 and 1177 of the Social Security Act (42 U.S.C. 1320d–5, 1320d–6) shall apply to the business associate with respect to such violation in the same manner such sections apply to a covered entity that violates such security provision.

(c) ANNUAL GUIDANCE.—For the first year beginning after the date of the enactment of this Act and annually thereafter, the Secretary of Health and Human Services shall, after consultation with stakeholders, annually issue guidance on the most effective and appropriate technical safeguards for use in carrying out the sections referred to in subsection (a) and the security standards in subpart C of part 164 of title 45, Code of Federal Regulations, including the use of standards developed under section 3002(b)(2)(B)(vi) of the Public Health Service Act, as added by section 13101 of this Act, as such provisions are in effect as of the date before the enactment of this Act.

SEC. 13402. NOTIFICATION IN THE CASE OF BREACH.

(a) IN GENERAL.—A covered entity that accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses unsecured protected health information (as defined in subsection (h)(1)) shall, in the case of a breach of such information that is discovered by the covered entity, notify each individual whose unsecured protected health information has been, or is reasonably believed by the covered entity to have been, accessed, acquired, or disclosed as a result of such breach.

(b) NOTIFICATION OF COVERED ENTITY BY BUSINESS ASSOCIATE.—A business associate of a covered entity that accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses unsecured protected health information shall, following the discovery of a breach of such information, notify the covered entity of such breach. Such notice shall include the identification of each individual whose unsecured protected health information has been, or is reasonably believed by the business associate to have been, accessed, acquired, or disclosed during such breach.

(c) BREACHES TREATED AS DISCOVERED.—For purposes of this section, a breach shall be treated as discovered by a covered entity or by a business associate as of the first day on which such breach is known to such entity or associate, respectively, (including any person, other than the individual committing the breach, that is an employee, officer, or other agent of such entity or associate, respectively) or should reasonably have been known to such entity or associate (or person) to have occurred.

(d) TIMELINESS OF NOTIFICATION.—

(1) IN GENERAL.—Subject to subsection (g), all notifications required under this section shall be made without unreasonable delay and in no case later than 60 calendar days after the discovery of a breach by the covered entity involved (or business associate involved in the case of a notification required under subsection (b)).

(2) BURDEN OF PROOF.—The covered entity involved (or business associate involved in the case of a notification required under subsection (b)), shall have the burden of demonstrating that all notifications were made as required under this part, including evidence demonstrating the necessity of any delay.

(e) METHODS OF NOTICE.—

(1) INDIVIDUAL NOTICE.—Notice required under this section to be provided to an individual, with respect to a breach, shall be provided promptly and in the following form:

(A) Written notification by first-class mail to the individual (or the next of kin of the individual if the individual is deceased) at the last known address of the individual or the next of kin, respectively, or, if specified as a preference by the individual, by electronic mail. The notification may be provided in one or more mailings as information is available.

(B) In the case in which there is insufficient, or out-of-date contact information (including a phone number, email address, or any other form of appropriate communication) that precludes direct written (or, if specified by the individual under subparagraph (A), electronic) notification to the individual, a substitute form of notice shall be provided, including, in the case that there are 10 or more individuals for which there is insufficient or out-of-date contact information, a conspicuous posting for a period determined by the Secretary on the home page of the Web site of the covered entity involved or notice in major print or broadcast media, including major media in geographic areas where the individuals affected by the breach likely reside. Such a notice in media or web posting will include a toll-free phone number where an individual can learn whether

or not the individual's unsecured protected health information is possibly included in the breach.

(C) In any case deemed by the covered entity involved to require urgency because of possible imminent misuse of unsecured protected health information, the covered entity, in addition to notice provided under subparagraph (A), may provide information to individuals by telephone or other means, as appropriate.

(2) MEDIA NOTICE.—Notice shall be provided to prominent media outlets serving a State or jurisdiction, following the discovery of a breach described in subsection (a), if the unsecured protected health information of more than 500 residents of such State or jurisdiction is, or is reasonably believed to have been, accessed, acquired, or disclosed during such breach.

(3) NOTICE TO SECRETARY.—Notice shall be provided to the Secretary by covered entities of unsecured protected health information that has been acquired or disclosed in a breach. If the breach was with respect to 500 or more individuals then such notice must be provided immediately. If the breach was with respect to less than 500 individuals, the covered entity may maintain a log of any such breach occurring and annually submit such a log to the Secretary documenting such breaches occurring during the year involved.

(4) POSTING ON HHS PUBLIC WEBSITE.—The Secretary shall make available to the public on the Internet website of the Department of Health and Human Services a list that identifies each covered entity involved in a breach described in subsection (a) in which the unsecured protected health information of more than 500 individuals is acquired or disclosed.

(f) CONTENT OF NOTIFICATION.—Regardless of the method by which notice is provided to individuals under this section, notice of a breach shall include, to the extent possible, the following:

(1) A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known.

(2) A description of the types of unsecured protected health information that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code).

(3) The steps individuals should take to protect themselves from potential harm resulting from the breach.

(4) A brief description of what the covered entity involved is doing to investigate the breach, to mitigate losses, and to protect against any further breaches.

(5) Contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

(g) DELAY OF NOTIFICATION AUTHORIZED FOR LAW ENFORCEMENT PURPOSES.—If a law enforcement official determines that a notification, notice, or posting required under this section would impede a criminal investigation or cause damage to national security, such notification, notice, or posting shall be delayed in the same manner as provided under section 164.528(a)(2) of title 45, Code of

Federal Regulations, in the case of a disclosure covered under such section.

(h) UNSECURED PROTECTED HEALTH INFORMATION.—

(1) DEFINITION.—

(A) IN GENERAL.—Subject to subparagraph (B), for purposes of this section, the term "unsecured protected health information" means protected health information that is not secured through the use of a technology or methodology specified by the Secretary in the guidance issued under paragraph (2).

(B) EXCEPTION IN CASE TIMELY GUIDANCE NOT ISSUED.—In the case that the Secretary does not issue guidance under paragraph (2) by the date specified in such paragraph, for purposes of this section, the term "unsecured protected health information" shall mean protected health information that is not secured by a technology standard that renders protected health information unusable, unreadable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute.

(2) GUIDANCE.—For purposes of paragraph (1) and section 13407(f)(3), not later than the date that is 60 days after the date of the enactment of this Act, the Secretary shall, after consultation with stakeholders, issue (and annually update) guidance specifying the technologies and methodologies that render protected health information unusable, unreadable, or indecipherable to unauthorized individuals, including the use of standards developed under section 3002(b)(2)(B)(vi) of the Public Health Service Act, as added by section 13101 of this Act.

(i) REPORT TO CONGRESS ON BREACHES.—

(1) IN GENERAL.—Not later than 12 months after the date of the enactment of this Act and annually thereafter, the Secretary shall prepare and submit to the Committee on Finance and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives a report containing the information described in paragraph (2) regarding breaches for which notice was provided to the Secretary under subsection (e)(3).

(2) INFORMATION.—The information described in this paragraph regarding breaches specified in paragraph (1) shall include—

(A) the number and nature of such breaches; and

(B) actions taken in response to such breaches.

(j) REGULATIONS; EFFECTIVE DATE.—To carry out this section, the Secretary of Health and Human Services shall promulgate interim final regulations by not later than the date that is 180 days after the date of the enactment of this title. The provisions of this section shall apply to breaches that are discovered on or after the date that is 30 days after the date of publication of such interim final regulations.

SEC. 13403. EDUCATION ON HEALTH INFORMATION PRIVACY.

(a) REGIONAL OFFICE PRIVACY ADVISORS.—Not later than 6 months after the date of the enactment of this Act, the Secretary

shall designate an individual in each regional office of the Department of Health and Human Services to offer guidance and education to covered entities, business associates, and individuals on their rights and responsibilities related to Federal privacy and security requirements for protected health information.

(b) EDUCATION INITIATIVE ON USES OF HEALTH INFORMATION.—Not later than 12 months after the date of the enactment of this Act, the Office for Civil Rights within the Department of Health and Human Services shall develop and maintain a multi-faceted national education initiative to enhance public transparency regarding the uses of protected health information, including programs to educate individuals about the potential uses of their protected health information, the effects of such uses, and the rights of individuals with respect to such uses. Such programs shall be conducted in a variety of languages and present information in a clear and understandable manner.

SEC. 13404. APPLICATION OF PRIVACY PROVISIONS AND PENALTIES TO BUSINESS ASSOCIATES OF COVERED ENTITIES.

(a) APPLICATION OF CONTRACT REQUIREMENTS.—In the case of a business associate of a covered entity that obtains or creates protected health information pursuant to a written contract (or other written arrangement) described in section 164.502(e)(2) of title 45, Code of Federal Regulations, with such covered entity, the business associate may use and disclose such protected health information only if such use or disclosure, respectively, is in compliance with each applicable requirement of section 164.504(e) of such title. The additional requirements of this subtitle that relate to privacy and that are made applicable with respect to covered entities shall also be applicable to such a business associate and shall be incorporated into the business associate agreement between the business associate and the covered entity.

(b) APPLICATION OF KNOWLEDGE ELEMENTS ASSOCIATED WITH CONTRACTS.—Section 164.504(e)(1)(ii) of title 45, Code of Federal Regulations, shall apply to a business associate described in subsection (a), with respect to compliance with such subsection, in the same manner that such section applies to a covered entity, with respect to compliance with the standards in sections 164.502(e) and 164.504(e) of such title, except that in applying such section 164.504(e)(1)(ii) each reference to the business associate, with respect to a contract, shall be treated as a reference to the covered entity involved in such contract.

(c) APPLICATION OF CIVIL AND CRIMINAL PENALTIES.—In the case of a business associate that violates any provision of subsection (a) or (b), the provisions of sections 1176 and 1177 of the Social Security Act (42 U.S.C. 1320d–5, 1320d–6) shall apply to the business associate with respect to such violation in the same manner as such provisions apply to a person who violates a provision of part C of title XI of such Act.

SEC. 13405. RESTRICTIONS ON CERTAIN DISCLOSURES AND SALES OF HEALTH INFORMATION; ACCOUNTING OF CERTAIN PROTECTED HEALTH INFORMATION DISCLOSURES; ACCESS TO CERTAIN INFORMATION IN ELECTRONIC FORMAT.

(a) REQUESTED RESTRICTIONS ON CERTAIN DISCLOSURES OF HEALTH INFORMATION.—In the case that an individual requests under paragraph (a)(1)(i)(A) of section 164.522 of title 45, Code of

Federal Regulations, that a covered entity restrict the disclosure of the protected health information of the individual, notwithstanding paragraph (a)(1)(ii) of such section, the covered entity must comply with the requested restriction if—

(1) except as otherwise required by law, the disclosure is to a health plan for purposes of carrying out payment or health care operations (and is not for purposes of carrying out treatment); and

(2) the protected health information pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full.

(b) DISCLOSURES REQUIRED TO BE LIMITED TO THE LIMITED DATA SET OR THE MINIMUM NECESSARY.—

(1) IN GENERAL.—

(A) IN GENERAL.—Subject to subparagraph (B), a covered entity shall be treated as being in compliance with section 164.502(b)(1) of title 45, Code of Federal Regulations, with respect to the use, disclosure, or request of protected health information described in such section, only if the covered entity limits such protected health information, to the extent practicable, to the limited data set (as defined in section 164.514(e)(2) of such title) or, if needed by such entity, to the minimum necessary to accomplish the intended purpose of such use, disclosure, or request, respectively.

(B) GUIDANCE.—Not later than 18 months after the date of the enactment of this section, the Secretary shall issue guidance on what constitutes "minimum necessary" for purposes of subpart E of part 164 of title 45, Code of Federal Regulations. In issuing such guidance the Secretary shall take into consideration the guidance under section 13424(c) and the information necessary to improve patient outcomes and to detect, prevent, and manage chronic disease.

(C) SUNSET.—Subparagraph (A) shall not apply on and after the effective date on which the Secretary issues the guidance under subparagraph (B).

(2) DETERMINATION OF MINIMUM NECESSARY.—For purposes of paragraph (1), in the case of the disclosure of protected health information, the covered entity or business associate disclosing such information shall determine what constitutes the minimum necessary to accomplish the intended purpose of such disclosure.

(3) APPLICATION OF EXCEPTIONS.—The exceptions described in section 164.502(b)(2) of title 45, Code of Federal Regulations, shall apply to the requirement under paragraph (1) as of the effective date described in section 13423 in the same manner that such exceptions apply to section 164.502(b)(1) of such title before such date.

(4) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed as affecting the use, disclosure, or request of protected health information that has been de-identified.

(c) ACCOUNTING OF CERTAIN PROTECTED HEALTH INFORMATION DISCLOSURES REQUIRED IF COVERED ENTITY USES ELECTRONIC HEALTH RECORD.—

(1) IN GENERAL.—In applying section 164.528 of title 45, Code of Federal Regulations, in the case that a covered entity uses or maintains an electronic health record with respect to protected health information—

(A) the exception under paragraph (a)(1)(i) of such section shall not apply to disclosures through an electronic health record made by such entity of such information; and

(B) an individual shall have a right to receive an accounting of disclosures described in such paragraph of such information made by such covered entity during only the three years prior to the date on which the accounting is requested.

(2) REGULATIONS.—The Secretary shall promulgate regulations on what information shall be collected about each disclosure referred to in paragraph (1), not later than 6 months after the date on which the Secretary adopts standards on accounting for disclosure described in the section 3002(b)(2)(B)(iv) of the Public Health Service Act, as added by section 13101. Such regulations shall only require such information to be collected through an electronic health record in a manner that takes into account the interests of the individuals in learning the circumstances under which their protected health information is being disclosed and takes into account the administrative burden of accounting for such disclosures.

(3) PROCESS.—In response to a request from an individual for an accounting, a covered entity shall elect to provide either an—

(A) accounting, as specified under paragraph (1), for disclosures of protected health information that are made by such covered entity and by a business associate acting on behalf of the covered entity; or

(B) accounting, as specified under paragraph (1), for disclosures that are made by such covered entity and provide a list of all business associates acting on behalf of the covered entity, including contact information for such associates (such as mailing address, phone, and email address).

A business associate included on a list under subparagraph (B) shall provide an accounting of disclosures (as required under paragraph (1) for a covered entity) made by the business associate upon a request made by an individual directly to the business associate for such an accounting.

(4) EFFECTIVE DATE.—

(A) CURRENT USERS OF ELECTRONIC RECORDS.—In the case of a covered entity insofar as it acquired an electronic health record as of January 1, 2009, paragraph (1) shall apply to disclosures, with respect to protected health information, made by the covered entity from such a record on and after January 1, 2014.

(B) OTHERS.—In the case of a covered entity insofar as it acquires an electronic health record after January 1, 2009, paragraph (1) shall apply to disclosures, with respect to protected health information, made by the covered entity from such record on and after the later of the following:

(i) January 1, 2011; or

(ii) the date that it acquires an electronic health record.

(C) LATER DATE.—The Secretary may set an effective date that is later than the date specified under subparagraph (A) or (B) if the Secretary determines that such later date is necessary, but in no case may the date specified under—

(i) subparagraph (A) be later than 2016; or

(ii) subparagraph (B) be later than 2013.

(d) PROHIBITION ON SALE OF ELECTRONIC HEALTH RECORDS OR PROTECTED HEALTH INFORMATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), a covered entity or business associate shall not directly or indirectly receive remuneration in exchange for any protected health information of an individual unless the covered entity obtained from the individual, in accordance with section 164.508 of title 45, Code of Federal Regulations, a valid authorization that includes, in accordance with such section, a specification of whether the protected health information can be further exchanged for remuneration by the entity receiving protected health information of that individual.

(2) EXCEPTIONS.—Paragraph (1) shall not apply in the following cases:

(A) The purpose of the exchange is for public health activities (as described in section 164.512(b) of title 45, Code of Federal Regulations).

(B) The purpose of the exchange is for research (as described in sections 164.501 and 164.512(i) of title 45, Code of Federal Regulations) and the price charged reflects the costs of preparation and transmittal of the data for such purpose.

(C) The purpose of the exchange is for the treatment of the individual, subject to any regulation that the Secretary may promulgate to prevent protected health information from inappropriate access, use, or disclosure.

(D) The purpose of the exchange is the health care operation specifically described in subparagraph (iv) of paragraph (6) of the definition of healthcare operations in section 164.501 of title 45, Code of Federal Regulations.

(E) The purpose of the exchange is for remuneration that is provided by a covered entity to a business associate for activities involving the exchange of protected health information that the business associate undertakes on behalf of and at the specific request of the covered entity pursuant to a business associate agreement.

(F) The purpose of the exchange is to provide an individual with a copy of the individual's protected health information pursuant to section 164.524 of title 45, Code of Federal Regulations.

(G) The purpose of the exchange is otherwise determined by the Secretary in regulations to be similarly necessary and appropriate as the exceptions provided in subparagraphs (A) through (F).

(3) REGULATIONS.—Not later than 18 months after the date of enactment of this title, the Secretary shall promulgate regula-

tions to carry out this subsection. In promulgating such regulations, the Secretary—

(A) shall evaluate the impact of restricting the exception described in paragraph (2)(A) to require that the price charged for the purposes described in such paragraph reflects the costs of the preparation and transmittal of the data for such purpose, on research or public health activities, including those conducted by or for the use of the Food and Drug Administration; and

(B) may further restrict the exception described in paragraph (2)(A) to require that the price charged for the purposes described in such paragraph reflects the costs of the preparation and transmittal of the data for such purpose, if the Secretary finds that such further restriction will not impede such research or public health activities.

(4) EFFECTIVE DATE.—Paragraph (1) shall apply to exchanges occurring on or after the date that is 6 months after the date of the promulgation of final regulations implementing this subsection.

(e) ACCESS TO CERTAIN INFORMATION IN ELECTRONIC FORMAT.—In applying section 164.524 of title 45, Code of Federal Regulations, in the case that a covered entity uses or maintains an electronic health record with respect to protected health information of an individual—

(1) the individual shall have a right to obtain from such covered entity a copy of such information in an electronic format and, if the individual chooses, to direct the covered entity to transmit such copy directly to an entity or person designated by the individual, provided that any such choice is clear, conspicuous, and specific; and

(2) notwithstanding paragraph (c)(4) of such section, any fee that the covered entity may impose for providing such individual with a copy of such information (or a summary or explanation of such information) if such copy (or summary or explanation) is in an electronic form shall not be greater than the entity's labor costs in responding to the request for the copy (or summary or explanation).

SEC. 13406. CONDITIONS ON CERTAIN CONTACTS AS PART OF HEALTH CARE OPERATIONS.

(a) MARKETING.—

(1) IN GENERAL.—A communication by a covered entity or business associate that is about a product or service and that encourages recipients of the communication to purchase or use the product or service shall not be considered a health care operation for purposes of subpart E of part 164 of title 45, Code of Federal Regulations, unless the communication is made as described in subparagraph (i), (ii), or (iii) of paragraph (1) of the definition of marketing in section 164.501 of such title.

(2) PAYMENT FOR CERTAIN COMMUNICATIONS.—A communication by a covered entity or business associate that is described in subparagraph (i), (ii), or (iii) of paragraph (1) of the definition of marketing in section 164.501 of title 45, Code of Federal Regulations, shall not be considered a health care operation for purposes of subpart E of part 164 of title 45, Code of Federal Regulations, if the covered entity receives or has re-

ceived direct or indirect payment in exchange for making such communication, except where—

(A)(i) such communication describes only a drug or biologic that is currently being prescribed for the recipient of the communication; and

(ii) any payment received by such covered entity in exchange for making a communication described in clause (i) is reasonable in amount;

(B) each of the following conditions apply—

(i) the communication is made by the covered entity; and

(ii) the covered entity making such communication obtains from the recipient of the communication, in accordance with section 164.508 of title 45, Code of Federal Regulations, a valid authorization (as described in subsection (b) of such section) with respect to such communication; or

(C) each of the following conditions apply—

(i) the communication is made by a business associate on behalf of the covered entity; and

(ii) the communication is consistent with the written contract (or other written arrangement described in section 164.502(e)(2) of such title) between such business associate and covered entity.

(3) REASONABLE IN AMOUNT DEFINED.—For purposes of paragraph (2), the term "reasonable in amount" shall have the meaning given such term by the Secretary by regulation.

(4) DIRECT OR INDIRECT PAYMENT.—For purposes of paragraph (2), the term "direct or indirect payment" shall not include any payment for treatment (as defined in section 164.501 of title 45, Code of Federal Regulations) of an individual.

(b) OPPORTUNITY TO OPT OUT OF FUNDRAISING.—The Secretary shall by rule provide that any written fundraising communication that is a healthcare operation as defined under section 164.501 of title 45, Code of Federal Regulations, shall, in a clear and conspicuous manner, provide an opportunity for the recipient of the communications to elect not to receive any further such communication. When an individual elects not to receive any further such communication, such election shall be treated as a revocation of authorization under section 164.508 of title 45, Code of Federal Regulations.

(c) EFFECTIVE DATE.—This section shall apply to written communications occurring on or after the effective date specified under section 13423.

SEC. 13407. TEMPORARY BREACH NOTIFICATION REQUIREMENT FOR VENDORS OF PERSONAL HEALTH RECORDS AND OTHER NON-HIPAA COVERED ENTITIES.

(a) IN GENERAL.—In accordance with subsection (c), each vendor of personal health records, following the discovery of a breach of security of unsecured PHR identifiable health information that is in a personal health record maintained or offered by such vendor, and each entity described in clause (ii), (iii), or (iv) of section 13424(b)(1)(A), following the discovery of a breach of security of such information that is obtained through a product or service provided by such entity, shall—

(1) notify each individual who is a citizen or resident of the United States whose unsecured PHR identifiable health information was acquired by an unauthorized person as a result of such a breach of security; and

(2) notify the Federal Trade Commission.

(b) NOTIFICATION BY THIRD PARTY SERVICE PROVIDERS.—A third party service provider that provides services to a vendor of personal health records or to an entity described in clause (ii), (iii), or (iv) of section 13424(b)(1)(A) in connection with the offering or maintenance of a personal health record or a related product or service and that accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses unsecured PHR identifiable health information in such a record as a result of such services shall, following the discovery of a breach of security of such information, notify such vendor or entity, respectively, of such breach. Such notice shall include the identification of each individual whose unsecured PHR identifiable health information has been, or is reasonably believed to have been, accessed, acquired, or disclosed during such breach.

(c) APPLICATION OF REQUIREMENTS FOR TIMELINESS, METHOD, AND CONTENT OF NOTIFICATIONS.—Subsections (c), (d), (e), and (f) of section 13402 shall apply to a notification required under subsection (a) and a vendor of personal health records, an entity described in subsection (a) and a third party service provider described in subsection (b), with respect to a breach of security under subsection (a) of unsecured PHR identifiable health information in such records maintained or offered by such vendor, in a manner specified by the Federal Trade Commission.

(d) NOTIFICATION OF THE SECRETARY.—Upon receipt of a notification of a breach of security under subsection (a)(2), the Federal Trade Commission shall notify the Secretary of such breach.

(e) ENFORCEMENT.—A violation of subsection (a) or (b) shall be treated as an unfair and deceptive act or practice in violation of a regulation under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)) regarding unfair or deceptive acts or practices.

(f) DEFINITIONS.—For purposes of this section:

(1) BREACH OF SECURITY.—The term "breach of security" means, with respect to unsecured PHR identifiable health information of an individual in a personal health record, acquisition of such information without the authorization of the individual.

(2) PHR IDENTIFIABLE HEALTH INFORMATION.—The term "PHR identifiable health information" means individually identifiable health information, as defined in section 1171(6) of the Social Security Act (42 U.S.C. 1320d(6)), and includes, with respect to an individual, information—

(A) that is provided by or on behalf of the individual; and

(B) that identifies the individual or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual.

(3) UNSECURED PHR IDENTIFIABLE HEALTH INFORMATION.—

(A) IN GENERAL.—Subject to subparagraph (B), the term "unsecured PHR identifiable health information" means PHR identifiable health information that is not pro-

tected through the use of a technology or methodology specified by the Secretary in the guidance issued under section 13402(h)(2).

(B) EXCEPTION IN CASE TIMELY GUIDANCE NOT ISSUED.—In the case that the Secretary does not issue guidance under section 13402(h)(2) by the date specified in such section, for purposes of this section, the term "unsecured PHR identifiable health information" shall mean PHR identifiable health information that is not secured by a technology standard that renders protected health information unusable, unreadable, or indecipherable to unauthorized individuals and that is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute.

(g) REGULATIONS; EFFECTIVE DATE; SUNSET.—

(1) REGULATIONS; EFFECTIVE DATE.—To carry out this section, the Federal Trade Commission shall promulgate interim final regulations by not later than the date that is 180 days after the date of the enactment of this section. The provisions of this section shall apply to breaches of security that are discovered on or after the date that is 30 days after the date of publication of such interim final regulations.

(2) SUNSET.—If Congress enacts new legislation establishing requirements for notification in the case of a breach of security, that apply to entities that are not covered entities or business associates, the provisions of this section shall not apply to breaches of security discovered on or after the effective date of regulations implementing such legislation.

SEC. 13408. BUSINESS ASSOCIATE CONTRACTS REQUIRED FOR CERTAIN ENTITIES.

Each organization, with respect to a covered entity, that provides data transmission of protected health information to such entity (or its business associate) and that requires access on a routine basis to such protected health information, such as a Health Information Exchange Organization, Regional Health Information Organization, E-prescribing Gateway, or each vendor that contracts with a covered entity to allow that covered entity to offer a personal health record to patients as part of its electronic health record, is required to enter into a written contract (or other written arrangement) described in section 164.502(e)(2) of title 45, Code of Federal Regulations and a written contract (or other arrangement) described in section 164.308(b) of such title, with such entity and shall be treated as a business associate of the covered entity for purposes of the provisions of this subtitle and subparts C and E of part 164 of title 45, Code of Federal Regulations, as such provisions are in effect as of the date of enactment of this title.

SEC. 13409. CLARIFICATION OF APPLICATION OF WRONGFUL DISCLOSURES CRIMINAL PENALTIES.

Section 1177(a) of the Social Security Act (42 U.S.C. 1320d–6(a)) is amended by adding at the end the following new sentence: "For purposes of the previous sentence, a person (including an employee or other individual) shall be considered to have obtained or disclosed individually identifiable health information in violation of this part if the information is maintained by a covered entity (as defined in the HIPAA privacy regulation described in section

1180(b)(3)) and the individual obtained or disclosed such information without authorization.".

SEC. 13410. IMPROVED ENFORCEMENT.

(a) IN GENERAL.—

(1) NONCOMPLIANCE DUE TO WILLFUL NEGLECT.—Section 1176 of the Social Security Act (42 U.S.C. 1320d–5) is amended—

(A) in subsection (b)(1), by striking "the act constitutes an offense punishable under section 1177" and inserting "a penalty has been imposed under section 1177 with respect to such act"; and

(B) by adding at the end the following new subsection:

"(c) NONCOMPLIANCE DUE TO WILLFUL NEGLECT.—

"(1) IN GENERAL.—A violation of a provision of this part due to willful neglect is a violation for which the Secretary is required to impose a penalty under subsection (a)(1).

"(2) REQUIRED INVESTIGATION.—For purposes of paragraph (1), the Secretary shall formally investigate any complaint of a violation of a provision of this part if a preliminary investigation of the facts of the complaint indicate such a possible violation due to willful neglect.".

(2) ENFORCEMENT UNDER SOCIAL SECURITY ACT.—Any violation by a covered entity under this subtitle is subject to enforcement and penalties under section 1176 and 1177 of the Social Security Act.

(b) EFFECTIVE DATE; REGULATIONS.—

(1) The amendments made by subsection (a) shall apply to penalties imposed on or after the date that is 24 months after the date of the enactment of this title.

(2) Not later than 18 months after the date of the enactment of this title, the Secretary of Health and Human Services shall promulgate regulations to implement such amendments.

(c) DISTRIBUTION OF CERTAIN CIVIL MONETARY PENALTIES COLLECTED.—

(1) IN GENERAL.—Subject to the regulation promulgated pursuant to paragraph (3), any civil monetary penalty or monetary settlement collected with respect to an offense punishable under this subtitle or section 1176 of the Social Security Act (42 U.S.C. 1320d–5) insofar as such section relates to privacy or security shall be transferred to the Office for Civil Rights of the Department of Health and Human Services to be used for purposes of enforcing the provisions of this subtitle and subparts C and E of part 164 of title 45, Code of Federal Regulations, as such provisions are in effect as of the date of enactment of this Act.

(2) GAO REPORT.—Not later than 18 months after the date of the enactment of this title, the Comptroller General shall submit to the Secretary a report including recommendations for a methodology under which an individual who is harmed by an act that constitutes an offense referred to in paragraph (1) may receive a percentage of any civil monetary penalty or monetary settlement collected with respect to such offense.

(3) ESTABLISHMENT OF METHODOLOGY TO DISTRIBUTE PERCENTAGE OF CMPS COLLECTED TO HARMED INDIVIDUALS.—Not later than 3 years after the date of the enactment of this title,

the Secretary shall establish by regulation and based on the recommendations submitted under paragraph (2), a methodology under which an individual who is harmed by an act that constitutes an offense referred to in paragraph (1) may receive a percentage of any civil monetary penalty or monetary settlement collected with respect to such offense.

(4) APPLICATION OF METHODOLOGY.—The methodology under paragraph (3) shall be applied with respect to civil monetary penalties or monetary settlements imposed on or after the effective date of the regulation.

(d) TIERED INCREASE IN AMOUNT OF CIVIL MONETARY PENALTIES.—

(1) IN GENERAL.—Section 1176(a)(1) of the Social Security Act (42 U.S.C. 1320d–5(a)(1)) is amended by striking "who violates a provision of this part a penalty of not more than" and all that follows and inserting the following: "who violates a provision of this part—

"(A) in the case of a violation of such provision in which it is established that the person did not know (and by exercising reasonable diligence would not have known) that such person violated such provision, a penalty for each such violation of an amount that is at least the amount described in paragraph (3)(A) but not to exceed the amount described in paragraph (3)(D);

"(B) in the case of a violation of such provision in which it is established that the violation was due to reasonable cause and not to willful neglect, a penalty for each such violation of an amount that is at least the amount described in paragraph (3)(B) but not to exceed the amount described in paragraph (3)(D); and

"(C) in the case of a violation of such provision in which it is established that the violation was due to willful neglect—

"(i) if the violation is corrected as described in subsection (b)(3)(A), a penalty in an amount that is at least the amount described in paragraph (3)(C) but not to exceed the amount described in paragraph (3)(D); and

"(ii) if the violation is not corrected as described in such subsection, a penalty in an amount that is at least the amount described in paragraph (3)(D).

In determining the amount of a penalty under this section for a violation, the Secretary shall base such determination on the nature and extent of the violation and the nature and extent of the harm resulting from such violation.".

(2) TIERS OF PENALTIES DESCRIBED.—Section 1176(a) of such Act (42 U.S.C. 1320d–5(a)) is further amended by adding at the end the following new paragraph:

"(3) TIERS OF PENALTIES DESCRIBED.—For purposes of paragraph (1), with respect to a violation by a person of a provision of this part—

"(A) the amount described in this subparagraph is $100 for each such violation, except that the total amount imposed on the person for all such violations of an identical

requirement or prohibition during a calendar year may not exceed $25,000;

"(B) the amount described in this subparagraph is $1,000 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed $100,000;

"(C) the amount described in this subparagraph is $10,000 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed $250,000; and

"(D) the amount described in this subparagraph is $50,000 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed $1,500,000.".

(3) CONFORMING AMENDMENTS.—Section 1176(b) of such Act (42 U.S.C. 1320d–5(b)) is amended—

(A) by striking paragraph (2) and redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively; and

(B) in paragraph (2), as so redesignated—

(i) in subparagraph (A), by striking "in subparagraph (B), a penalty may not be imposed under subsection (a) if" and all that follows through "the failure to comply is corrected" and inserting "in subparagraph (B) or subsection (a)(1)(C), a penalty may not be imposed under subsection (a) if the failure to comply is corrected"; and

(ii) in subparagraph (B), by striking "(A)(ii)" and inserting "(A)" each place it appears.

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to violations occurring after the date of the enactment of this title.

(e) ENFORCEMENT THROUGH STATE ATTORNEYS GENERAL.—

(1) IN GENERAL.—Section 1176 of the Social Security Act (42 U.S.C. 1320d–5) is amended by adding at the end the following new subsection:

"(d) ENFORCEMENT BY STATE ATTORNEYS GENERAL.—

"(1) CIVIL ACTION.—Except as provided in subsection (b), in any case in which the attorney general of a State has reason to believe that an interest of one or more of the residents of that State has been or is threatened or adversely affected by any person who violates a provision of this part, the attorney general of the State, as parens patriae, may bring a civil action on behalf of such residents of the State in a district court of the United States of appropriate jurisdiction—

"(A) to enjoin further such violation by the defendant; or

"(B) to obtain damages on behalf of such residents of the State, in an amount equal to the amount determined under paragraph (2).

"(2) STATUTORY DAMAGES.—

"(A) IN GENERAL.—For purposes of paragraph (1)(B), the amount determined under this paragraph is the amount calculated by multiplying the number of violations by up to $100. For purposes of the preceding sentence, in the case of a continuing violation, the number of violations shall be determined consistent with the HIPAA privacy regulations (as defined in section 1180(b)(3)) for violations of subsection (a).

"(B) LIMITATION.—The total amount of damages imposed on the person for all violations of an identical requirement or prohibition during a calendar year may not exceed $25,000.

"(C) REDUCTION OF DAMAGES.—In assessing damages under subparagraph (A), the court may consider the factors the Secretary may consider in determining the amount of a civil money penalty under subsection (a) under the HIPAA privacy regulations.

"(3) ATTORNEY FEES.—In the case of any successful action under paragraph (1), the court, in its discretion, may award the costs of the action and reasonable attorney fees to the State.

"(4) NOTICE TO SECRETARY.—The State shall serve prior written notice of any action under paragraph (1) upon the Secretary and provide the Secretary with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Secretary shall have the right—

"(A) to intervene in the action;

"(B) upon so intervening, to be heard on all matters arising therein; and

"(C) to file petitions for appeal.

"(5) CONSTRUCTION.—For purposes of bringing any civil action under paragraph (1), nothing in this section shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State.

"(6) VENUE; SERVICE OF PROCESS.—

"(A) VENUE.—Any action brought under paragraph (1) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

"(B) SERVICE OF PROCESS.—In an action brought under paragraph (1), process may be served in any district in which the defendant—

"(i) is an inhabitant; or

"(ii) maintains a physical place of business.

"(7) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION IS PENDING.—If the Secretary has instituted an action against a person under subsection (a) with respect to a specific violation of this part, no State attorney general may bring an action under this subsection against the person with respect to such violation during the pendency of that action.

"(8) APPLICATION OF CMP STATUTE OF LIMITATION.—A civil action may not be instituted with respect to a violation of this part unless an action to impose a civil money penalty may be

instituted under subsection (a) with respect to such violation consistent with the second sentence of section 1128A(c)(1).".

(2) CONFORMING AMENDMENTS.—Subsection (b) of such section, as amended by subsection (d)(3), is amended—

(A) in paragraph (1), by striking "A penalty may not be imposed under subsection (a)" and inserting "No penalty may be imposed under subsection (a) and no damages obtained under subsection (d)";

(B) in paragraph (2)(A)—

(i) after "subsection (a)(1)(C),", by striking "a penalty may not be imposed under subsection (a)" and inserting "no penalty may be imposed under subsection (a) and no damages obtained under subsection (d)"; and

(ii) in clause (ii), by inserting "or damages" after "the penalty";

(C) in paragraph (2)(B)(i), by striking "The period" and inserting "With respect to the imposition of a penalty by the Secretary under subsection (a), the period"; and

(D) in paragraph (3), by inserting "and any damages under subsection (d)" after "any penalty under subsection (a)".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to violations occurring after the date of the enactment of this Act.

(f) ALLOWING CONTINUED USE OF CORRECTIVE ACTION.—Such section is further amended by adding at the end the following new subsection:

"(e) ALLOWING CONTINUED USE OF CORRECTIVE ACTION.—Nothing in this section shall be construed as preventing the Office for Civil Rights of the Department of Health and Human Services from continuing, in its discretion, to use corrective action without a penalty in cases where the person did not know (and by exercising reasonable diligence would not have known) of the violation involved.".

SEC. 13411. AUDITS.

The Secretary shall provide for periodic audits to ensure that covered entities and business associates that are subject to the requirements of this subtitle and subparts C and E of part 164 of title 45, Code of Federal Regulations, as such provisions are in effect as of the date of enactment of this Act, comply with such requirements.

PART 2—RELATIONSHIP TO OTHER LAWS; REGULATORY REFERENCES; EFFECTIVE DATE; REPORTS

SEC. 13421. RELATIONSHIP TO OTHER LAWS.

(a) APPLICATION OF HIPAA STATE PREEMPTION.—Section 1178 of the Social Security Act (42 U.S.C. 1320d–7) shall apply to a provision or requirement under this subtitle in the same manner that such section applies to a provision or requirement under part C of title XI of such Act or a standard or implementation specification adopted or established under sections 1172 through 1174 of such Act.

(b) HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT.—The standards governing the privacy and security of individually identifiable health information promulgated by the Secretary

under sections 262(a) and 264 of the Health Insurance Portability and Accountability Act of 1996 shall remain in effect to the extent that they are consistent with this subtitle. The Secretary shall by rule amend such Federal regulations as required to make such regulations consistent with this subtitle.

(c) CONSTRUCTION.—Nothing in this subtitle shall constitute a waiver of any privilege otherwise applicable to an individual with respect to the protected health information of such individual.

SEC. 13422. REGULATORY REFERENCES.

Each reference in this subtitle to a provision of the Code of Federal Regulations refers to such provision as in effect on the date of the enactment of this title (or to the most recent update of such provision).

SEC. 13423. EFFECTIVE DATE.

Except as otherwise specifically provided, the provisions of part I shall take effect on the date that is 12 months after the date of the enactment of this title.

SEC. 13424. STUDIES, REPORTS, GUIDANCE.

(a) REPORT ON COMPLIANCE.—

(1) IN GENERAL.—For the first year beginning after the date of the enactment of this Act and annually thereafter, the Secretary shall prepare and submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives a report concerning complaints of alleged violations of law, including the provisions of this subtitle as well as the provisions of subparts C and E of part 164 of title 45, Code of Federal Regulations, (as such provisions are in effect as of the date of enactment of this Act) relating to privacy and security of health information that are received by the Secretary during the year for which the report is being prepared. Each such report shall include, with respect to such complaints received during the year—

(A) the number of such complaints;

(B) the number of such complaints resolved informally, a summary of the types of such complaints so resolved, and the number of covered entities that received technical assistance from the Secretary during such year in order to achieve compliance with such provisions and the types of such technical assistance provided;

(C) the number of such complaints that have resulted in the imposition of civil monetary penalties or have been resolved through monetary settlements, including the nature of the complaints involved and the amount paid in each penalty or settlement;

(D) the number of compliance reviews conducted and the outcome of each such review;

(E) the number of subpoenas or inquiries issued;

(F) the Secretary's plan for improving compliance with and enforcement of such provisions for the following year; and

(G) the number of audits performed and a summary of audit findings pursuant to section 13411.

(2) AVAILABILITY TO PUBLIC.—Each report under paragraph (1) shall be made available to the public on the Internet website of the Department of Health and Human Services.

(b) STUDY AND REPORT ON APPLICATION OF PRIVACY AND SECURITY REQUIREMENTS TO NON-HIPAA COVERED ENTITIES.—

(1) STUDY.—Not later than one year after the date of the enactment of this title, the Secretary, in consultation with the Federal Trade Commission, shall conduct a study, and submit a report under paragraph (2), on privacy and security requirements for entities that are not covered entities or business associates as of the date of the enactment of this title, including—

(A) requirements relating to security, privacy, and notification in the case of a breach of security or privacy (including the applicability of an exemption to notification in the case of individually identifiable health information that has been rendered unusable, unreadable, or indecipherable through technologies or methodologies recognized by appropriate professional organization or standard setting bodies to provide effective security for the information) that should be applied to—

(i) vendors of personal health records;

(ii) entities that offer products or services through the website of a vendor of personal health records;

(iii) entities that are not covered entities and that offer products or services through the websites of covered entities that offer individuals personal health records;

(iv) entities that are not covered entities and that access information in a personal health record or send information to a personal health record; and

(v) third party service providers used by a vendor or entity described in clause (i), (ii), (iii), or (iv) to assist in providing personal health record products or services;

(B) a determination of which Federal government agency is best equipped to enforce such requirements recommended to be applied to such vendors, entities, and service providers under subparagraph (A); and

(C) a timeframe for implementing regulations based on such findings.

(2) REPORT.—The Secretary shall submit to the Committee on Finance, the Committee on Health, Education, Labor, and Pensions, and the Committee on Commerce of the Senate and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives a report on the findings of the study under paragraph (1) and shall include in such report recommendations on the privacy and security requirements described in such paragraph.

(c) GUIDANCE ON IMPLEMENTATION SPECIFICATION TO DE-IDENTIFY PROTECTED HEALTH INFORMATION.—Not later than 12 months after the date of the enactment of this title, the Secretary shall, in consultation with stakeholders, issue guidance on how best to implement the requirements for the de-identification of protected health information under section 164.514(b) of title 45, Code of Federal Regulations.

(d) GAO REPORT ON TREATMENT DISCLOSURES.—Not later than one year after the date of the enactment of this title, the Comptroller General of the United States shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives a report on the best practices related to the disclosure among health care providers of protected health information of an individual for purposes of treatment of such individual. Such report shall include an examination of the best practices implemented by States and by other entities, such as health information exchanges and regional health information organizations, an examination of the extent to which such best practices are successful with respect to the quality of the resulting health care provided to the individual and with respect to the ability of the health care provider to manage such best practices, and an examination of the use of electronic informed consent for disclosing protected health information for treatment, payment, and health care operations.

(e) REPORT REQUIRED.—Not later than 5 years after the date of enactment of this section, the Government Accountability Office shall submit to Congress and the Secretary of Health and Human Services a report on the impact of any of the provisions of this Act on health insurance premiums, overall health care costs, adoption of electronic health records by providers, and reduction in medical errors and other quality improvements.

(f) STUDY.—The Secretary shall study the definition of "psychotherapy notes" in section 164.501 of title 45, Code of Federal Regulations, with regard to including test data that is related to direct responses, scores, items, forms, protocols, manuals, or other materials that are part of a mental health evaluation, as determined by the mental health professional providing treatment or evaluation in such definitions and may, based on such study, issue regulations to revise such definition.

TITLE XIV—STATE FISCAL STABILIZATION FUND

DEPARTMENT OF EDUCATION

STATE FISCAL STABILIZATION FUND

For necessary expenses for a State Fiscal Stabilization Fund, $53,600,000,000, which shall be administered by the Department of Education.

GENERAL PROVISIONS—THIS TITLE

SEC. 14001. ALLOCATIONS.

(a) OUTLYING AREAS.—From the amount appropriated to carry out this title, the Secretary of Education shall first allocate up to one-half of 1 percent to the outlying areas on the basis of their respective needs, as determined by the Secretary, in consultation with the Secretary of the Interior, for activities consistent with this title under such terms and conditions as the Secretary may determine.

(b) ADMINISTRATION AND OVERSIGHT.—The Secretary may, in addition, reserve up to $14,000,000 for administration and oversight of this title, including for program evaluation.

(c) RESERVATION FOR ADDITIONAL PROGRAMS.—After reserving funds under subsections (a) and (b), the Secretary shall reserve $5,000,000,000 for grants under sections 14006 and 14007.

(d) STATE ALLOCATIONS.—After carrying out subsections (a), (b), and (c), the Secretary shall allocate the remaining funds made available to carry out this title to the States as follows:

(1) 61 percent on the basis of their relative population of individuals aged 5 through 24.

(2) 39 percent on the basis of their relative total population.

(e) STATE GRANTS.—From funds allocated under subsection (d), the Secretary shall make grants to the Governor of each State.

(f) REALLOCATION.—The Governor shall return to the Secretary any funds received under subsection (e) that the Governor does not award as subgrants or otherwise commit within two years of receiving such funds, and the Secretary shall reallocate such funds to the remaining States in accordance with subsection (d).

SEC. 14002. STATE USES OF FUNDS.

(a) EDUCATION FUND.—

(1) IN GENERAL.—For each fiscal year, the Governor shall use 81.8 percent of the State's allocation under section 14001(d) for the support of elementary, secondary, and postsecondary education and, as applicable, early childhood education programs and services.

(2) RESTORING STATE SUPPORT FOR EDUCATION.—

(A) IN GENERAL.—The Governor shall first use the funds described in paragraph (1)—

(i) to provide the amount of funds, through the State's primary elementary and secondary funding formulae, that is needed—

(I) to restore, in each of fiscal years 2009, 2010, and 2011, the level of State support provided through such formulae to the greater of the fiscal year 2008 or fiscal year 2009 level; and

(II) where applicable, to allow existing State formulae increases to support elementary and secondary education for fiscal years 2010 and 2011 to be implemented and allow funding for phasing in State equity and adequacy adjustments, if such increases were enacted pursuant to State law prior to October 1, 2008.

(ii) to provide, in each of fiscal years 2009, 2010, and 2011, the amount of funds to public institutions of higher education in the State that is needed to restore State support for such institutions (excluding tuition and fees paid by students) to the greater of the fiscal year 2008 or fiscal year 2009 level.

(B) SHORTFALL.—If the Governor determines that the amount of funds available under paragraph (1) is insufficient to support, in each of fiscal years 2009, 2010, and 2011, public elementary, secondary, and higher education at the levels described in clauses (i) and (ii) of subparagraph (A), the Governor shall allocate those funds between

those clauses in proportion to the relative shortfall in State support for the education sectors described in those clauses.

(C) FISCAL YEAR.—For purposes of this paragraph, the term "fiscal year" shall have the meaning given such term under State law.

(3) SUBGRANTS TO IMPROVE BASIC PROGRAMS OPERATED BY LOCAL EDUCATIONAL AGENCIES.—After carrying out paragraph (2), the Governor shall use any funds remaining under paragraph (1) to provide local educational agencies in the State with subgrants based on their relative shares of funding under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) for the most recent year for which data are available.

(b) OTHER GOVERNMENT SERVICES.—

(1) IN GENERAL.—The Governor shall use 18.2 percent of the State's allocation under section 14001 for public safety and other government services, which may include assistance for elementary and secondary education and public institutions of higher education, and for modernization, renovation, or repair of public school facilities and institutions of higher education facilities, including modernization, renovation, and repairs that are consistent with a recognized green building rating system.

(2) AVAILABILITY TO ALL INSTITUTIONS OF HIGHER EDUCATION.—A Governor shall not consider the type or mission of an institution of higher education, and shall consider any institution for funding for modernization, renovation, and repairs within the State that—

(A) qualifies as an institution of higher education, as defined in subsection 14013(3); and

(B) continues to be eligible to participate in the programs under title IV of the Higher Education Act of 1965.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall allow a local educational agency to engage in school modernization, renovation, or repair that is inconsistent with State law.

SEC. 14003. USES OF FUNDS BY LOCAL EDUCATIONAL AGENCIES.

(a) IN GENERAL.—A local educational agency that receives funds under this title may use the funds for any activity authorized by the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) ("ESEA"), the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) ("IDEA"), the Adult and Family Literacy Act (20 U.S.C. 1400 et seq.), or the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 et seq.) ("the Perkins Act") or for modernization, renovation, or repair of public school facilities, including modernization, renovation, and repairs that are consistent with a recognized green building rating system.

(b) PROHIBITION.—A local educational agency may not use funds received under this title for—

(1) payment of maintenance costs;

(2) stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public;

(3) purchase or upgrade of vehicles; or

(4) improvement of stand-alone facilities whose purpose is not the education of children, including central office administration or operations or logistical support facilities.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall allow a local educational agency to engage in school modernization, renovation, or repair that is inconsistent with State law.

SEC. 14004. USES OF FUNDS BY INSTITUTIONS OF HIGHER EDUCATION.

(a) IN GENERAL.—A public institution of higher education that receives funds under this title shall use the funds for education and general expenditures, and in such a way as to mitigate the need to raise tuition and fees for in-State students, or for modernization, renovation, or repair of institution of higher education facilities that are primarily used for instruction, research, or student housing, including modernization, renovation, and repairs that are consistent with a recognized green building rating system.

(b) PROHIBITION.—An institution of higher education may not use funds received under this title to increase its endowment.

(c) ADDITIONAL PROHIBITION.—No funds awarded under this title may be used for—

(1) the maintenance of systems, equipment, or facilities;

(2) modernization, renovation, or repair of stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public; or

(3) modernization, renovation, or repair of facilities—

(A) used for sectarian instruction or religious worship; or

(B) in which a substantial portion of the functions of the facilities are subsumed in a religious mission.

SEC. 14005. STATE APPLICATIONS.

(a) IN GENERAL.—The Governor of a State desiring to receive an allocation under section 14001 shall submit an application at such time, in such manner, and containing such information as the Secretary may reasonably require.

(b) APPLICATION.—In such application, the Governor shall—

(1) include the assurances described in subsection (d);

(2) provide baseline data that demonstrates the State's current status in each of the areas described in such assurances; and

(3) describe how the State intends to use its allocation, including whether the State will use such allocation to meet maintenance of effort requirements under the ESEA and IDEA and, in such cases, what amount will be used to meet such requirements.

(c) INCENTIVE GRANT APPLICATION.—The Governor of a State seeking a grant under section 14006 shall—

(1) submit an application for consideration;

(2) describe the status of the State's progress in each of the areas described in subsection (d), and the strategies the State is employing to help ensure that students in the subgroups described in section 1111(b)(2)(C)(v)(II) of the ESEA (20 U.S.C. 6311(b)(2)(C)(v)(II)) who have not met the State's proficiency targets continue making progress toward meeting the State's student academic achievement standards;

(3) describe the achievement and graduation rates (as described in section 1111(b)(2)(C)(vi) of the ESEA (20 U.S.C.

6311(b)(2)(C)(vi)) and as clarified in section 200.19(b)(1) of title 34, Code of Federal Regulations) of public elementary and secondary school students in the State, and the strategies the State is employing to help ensure that all subgroups of students identified in section 1111(b)(2) of the ESEA (20 U.S.C. 6311(b)(2)) in the State continue making progress toward meeting the State's student academic achievement standards;

(4) describe how the State would use its grant funding to improve student academic achievement in the State, including how it will allocate the funds to give priority to high-need local educational agencies; and

(5) include a plan for evaluating the State's progress in closing achievement gaps.

(d) ASSURANCES.—An application under subsection (b) shall include the following assurances:

(1) MAINTENANCE OF EFFORT.—

(A) ELEMENTARY AND SECONDARY EDUCATION.—The State will, in each of fiscal years 2009, 2010, and 2011, maintain State support for elementary and secondary education at least at the level of such support in fiscal year 2006.

(B) HIGHER EDUCATION.—The State will, in each of fiscal years 2009, 2010, and 2011, maintain State support for public institutions of higher education (not including support for capital projects or for research and development or tuition and fees paid by students) at least at the level of such support in fiscal year 2006.

(2) ACHIEVING EQUITY IN TEACHER DISTRIBUTION.—The State will take actions to improve teacher effectiveness and comply with section 1111(b)(8)(C) of the ESEA (20 U.S.C. 6311(b)(8)(C)) in order to address inequities in the distribution of highly qualified teachers between high- and low-poverty schools, and to ensure that low-income and minority children are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers.

(3) IMPROVING COLLECTION AND USE OF DATA.—The State will establish a longitudinal data system that includes the elements described in section 6401(e)(2)(D) of the America COMPETES Act (20 U.S.C. 9871).

(4) STANDARDS AND ASSESSMENTS.—The State—

(A) will enhance the quality of the academic assessments it administers pursuant to section 1111(b)(3) of the ESEA (20 U.S.C. 6311(b)(3)) through activities such as those described in section 6112(a) of such Act (20 U.S.C. 7301a(a));

(B) will comply with the requirements of paragraphs (3)(C)(ix) and (6) of section 1111(b) of the ESEA (20 U.S.C. 6311(b)) and section 612(a)(16) of the IDEA (20 U.S.C. 1412(a)(16)) related to the inclusion of children with disabilities and limited English proficient students in State assessments, the development of valid and reliable assessments for those students, and the provision of accommodations that enable their participation in State assessments; and

(C) will take steps to improve State academic content standards and student academic achievement standards consistent with section 6401(e)(1)(9)(A)(ii) of the America COMPETES Act.

(5) SUPPORTING STRUGGLING SCHOOLS.—The State will ensure compliance with the requirements of section 1116(a)(7)(C)(iv) and section 1116(a)(8)(B) of the ESEA with respect to schools identified under such sections.

SEC. 14006. STATE INCENTIVE GRANTS.

(a) IN GENERAL.—

(1) RESERVATION.—From the total amount reserved under section 14001(c) that is not used for section 14007, the Secretary may reserve up to 1 percent for technical assistance to States to assist them in meeting the objectives of paragraphs (2), (3), (4), and (5) of section 14005(d).

(2) REMAINDER.—Of the remaining funds, the Secretary shall, in fiscal year 2010, make grants to States that have made significant progress in meeting the objectives of paragraphs (2), (3), (4), and (5) of section 14005(d).

(b) BASIS FOR GRANTS.—The Secretary shall determine which States receive grants under this section, and the amount of those grants, on the basis of information provided in State applications under section 14005 and such other criteria as the Secretary determines appropriate, which may include a State's need for assistance to help meet the objective of paragraphs (2), (3), (4), and (5) of section 14005(d).

(c) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.—Each State receiving a grant under this section shall use at least 50 percent of the grant to provide local educational agencies in the State with subgrants based on their relative shares of funding under part A of title I of the ESEA (20 U.S.C. 6311 et seq.) for the most recent year.

SEC. 14007. INNOVATION FUND.

(a) IN GENERAL.—

(1) ELIGIBLE ENTITIES.—For the purposes of this section, the term "eligible entity" means—

(A) a local educational agency; or

(B) a partnership between a nonprofit organization and—

(i) one or more local educational agencies; or

(ii) a consortium of schools.

(2) PROGRAM ESTABLISHED.—From the total amount reserved under section 14001(c), the Secretary may reserve up to $650,000,000 to establish an Innovation Fund, which shall consist of academic achievement awards that recognize eligible entities that meet the requirements described in subsection (b).

(3) BASIS FOR AWARDS.—The Secretary shall make awards to eligible entities that have made significant gains in closing the achievement gap as described in subsection (b)(1)—

(A) to allow such eligible entities to expand their work and serve as models for best practices;

(B) to allow such eligible entities to work in partnership with the private sector and the philanthropic community; and

(C) to identify and document best practices that can be shared, and taken to scale based on demonstrated success.

(b) ELIGIBILITY.—To be eligible for such an award, an eligible entity shall—

(1) have significantly closed the achievement gaps between groups of students described in section 1111(b)(2) of the ESEA (20 U.S.C. 6311(b)(2));

(2) have exceeded the State's annual measurable objectives consistent with such section 1111(b)(2) for 2 or more consecutive years or have demonstrated success in significantly increasing student academic achievement for all groups of students described in such section through another measure, such as measures described in section 1111(c)(2) of the ESEA;

(3) have made significant improvement in other areas, such as graduation rates or increased recruitment and placement of high-quality teachers and school leaders, as demonstrated with meaningful data; and

(4) demonstrate that they have established partnerships with the private sector, which may include philanthropic organizations, and that the private sector will provide matching funds in order to help bring results to scale.

(c) SPECIAL RULE.—In the case of an eligible entity that includes a nonprofit organization, the eligible entity shall be considered to have met the eligibility requirements of paragraphs (1), (2), and (3) of subsection (b) if such nonprofit organization has a record of meeting such requirements.

SEC. 14008. STATE REPORTS.

For each year of the program under this title, a State receiving funds under this title shall submit a report to the Secretary, at such time and in such manner as the Secretary may require, that describes—

(1) the uses of funds provided under this title within the State;

(2) how the State distributed the funds it received under this title;

(3) the number of jobs that the Governor estimates were saved or created with funds the State received under this title;

(4) tax increases that the Governor estimates were averted because of the availability of funds from this title;

(5) the State's progress in reducing inequities in the distribution of highly qualified teachers, in implementing a State longitudinal data system, and in developing and implementing valid and reliable assessments for limited English proficient students and children with disabilities;

(6) the tuition and fee increases for in-State students imposed by public institutions of higher education in the State during the period of availability of funds under this title, and a description of any actions taken by the State to limit those increases;

(7) the extent to which public institutions of higher education maintained, increased, or decreased enrollment of in-State students, including students eligible for Pell Grants or other need-based financial assistance; and

(8) a description of each modernization, renovation and repair project funded, which shall include the amounts awarded and project costs.

SEC. 14009. EVALUATION.

The Comptroller General of the United States shall conduct evaluations of the programs under sections 14006 and 14007 which shall include, but not be limited to, the criteria used for the awards made, the States selected for awards, award amounts, how each State used the award received, and the impact of this funding on the progress made toward closing achievement gaps.

SEC. 14010. SECRETARY'S REPORT TO CONGRESS.

The Secretary shall submit a report to the Committee on Education and Labor of the House of Representatives, the Committee on Health, Education, Labor, and Pensions of the Senate, and the Committees on Appropriations of the House of Representatives and of the Senate, not less than 6 months following the submission of State reports, that evaluates the information provided in the State reports under section 14008 and the information required by section 14005(b)(3) including State-by-State information.

SEC. 14011. PROHIBITION ON PROVISION OF CERTAIN ASSISTANCE.

No recipient of funds under this title shall use such funds to provide financial assistance to students to attend private elementary or secondary schools.

SEC. 14012. FISCAL RELIEF.

(a) IN GENERAL.—For the purpose of relieving fiscal burdens on States and local educational agencies that have experienced a precipitous decline in financial resources, the Secretary of Education may waive or modify any requirement of this title relating to maintaining fiscal effort.

(b) DURATION.—A waiver or modification under this section shall be for any of fiscal year 2009, fiscal year 2010, or fiscal year 2011, as determined by the Secretary.

(c) CRITERIA.—The Secretary shall not grant a waiver or modification under this section unless the Secretary determines that the State or local educational agency receiving such waiver or modification will not provide for elementary and secondary education, for the fiscal year under consideration, a smaller percentage of the total revenues available to the State or local educational agency than the amount provided for such purpose in the preceding fiscal year.

(d) MAINTENANCE OF EFFORT.—Upon prior approval from the Secretary, a State or local educational agency that receives funds under this title may treat any portion of such funds that is used for elementary, secondary, or postsecondary education as non-Federal funds for the purpose of any requirement to maintain fiscal effort under any other program, including part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 et seq.), administered by the Secretary.

(e) SUBSEQUENT LEVEL OF EFFORT.—Notwithstanding (d), the level of effort required by a State or local educational agency for the following fiscal year shall not be reduced.

SEC. 14013. DEFINITIONS.

Except as otherwise provided in this title, as used in this title—

(1) the terms "elementary education" and "secondary education" have the meaning given such terms under State law;

(2) the term "high-need local educational agency" means a local educational agency—

(A) that serves not fewer than 10,000 children from families with incomes below the poverty line; or

(B) for which not less than 20 percent of the children served by the agency are from families with incomes below the poverty line;

(3) the term "institution of higher education" has the meaning given such term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001);

(4) the term "Secretary" means the Secretary of Education;

(5) the term "State" means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and

(6) any other term used that is defined in section 9101 of the ESEA (20 U.S.C. 7801) shall have the meaning given the term in such section.

TITLE XV—ACCOUNTABILITY AND TRANSPARENCY

SEC. 1501. DEFINITIONS.

In this title:

(1) AGENCY.—The term "agency" has the meaning given under section 551 of title 5, United States Code.

(2) BOARD.—The term "Board" means the Recovery Accountability and Transparency Board established in section 1521.

(3) CHAIRPERSON.—The term "Chairperson" means the Chairperson of the Board.

(4) COVERED FUNDS.—The term "covered funds" means any funds that are expended or obligated from appropriations made under this Act.

(5) PANEL.—The term "Panel" means the Recovery Independent Advisory Panel established in section 1541.

Subtitle A—Transparency and Oversight Requirements

SEC. 1511. CERTIFICATIONS.

With respect to covered funds made available to State or local governments for infrastructure investments, the Governor, mayor, or other chief executive, as appropriate, shall certify that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Such certification shall include a description of the investment, the estimated total cost, and the amount of covered funds to be used, and shall be posted on a website and linked to the website established by section 1526. A State or local agency may not receive infrastructure investment funding from funds made available in this Act unless this certification is made and posted.

SEC. 1512. REPORTS ON USE OF FUNDS.

(a) SHORT TITLE.—This section may be cited as the "Jobs Accountability Act".

(b) DEFINITIONS.—In this section:

(1) RECIPIENT.—The term "recipient"—

(A) means any entity that receives recovery funds directly from the Federal Government (including recovery funds received through grant, loan, or contract) other than an individual; and

(B) includes a State that receives recovery funds.

(2) RECOVERY FUNDS.—The term "recovery funds" means any funds that are made available from appropriations made under this Act.

(c) RECIPIENT REPORTS.—Not later than 10 days after the end of each calendar quarter, each recipient that received recovery funds from a Federal agency shall submit a report to that agency that contains—

(1) the total amount of recovery funds received from that agency;

(2) the amount of recovery funds received that were expended or obligated to projects or activities; and

(3) a detailed list of all projects or activities for which recovery funds were expended or obligated, including—

(A) the name of the project or activity;

(B) a description of the project or activity;

(C) an evaluation of the completion status of the project or activity;

(D) an estimate of the number of jobs created and the number of jobs retained by the project or activity; and

(E) for infrastructure investments made by State and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under this Act, and name of the person to contact at the agency if there are concerns with the infrastructure investment.

(4) Detailed information on any subcontracts or subgrants awarded by the recipient to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109–282), allowing aggregate reporting on awards below $25,000 or to individuals, as prescribed by the Director of the Office of Management and Budget.

(d) AGENCY REPORTS.—Not later than 30 days after the end of each calendar quarter, each agency that made recovery funds available to any recipient shall make the information in reports submitted under subsection (c) publicly available by posting the information on a website.

(e) OTHER REPORTS.—The Congressional Budget Office and the Government Accountability Office shall comment on the information described in subsection (c)(3)(D) for any reports submitted under subsection (c). Such comments shall be due within 45 days after such reports are submitted.

(f) COMPLIANCE.—Within 180 days of enactment, as a condition of receipt of funds under this Act, Federal agencies shall require any

recipient of such funds to provide the information required under subsection (c).

(g) GUIDANCE.—Federal agencies, in coordination with the Director of the Office of Management and Budget, shall provide for user-friendly means for recipients of covered funds to meet the requirements of this section.

(h) REGISTRATION.—Funding recipients required to report information per subsection (c)(4) must register with the Central Contractor Registration database or complete other registration requirements as determined by the Director of the Office of Management and Budget.

SEC. 1513. REPORTS OF THE COUNCIL OF ECONOMIC ADVISERS.

(a) IN GENERAL.—In consultation with the Director of the Office of Management and Budget and the Secretary of the Treasury, the Chairperson of the Council of Economic Advisers shall submit quarterly reports to the Committees on Appropriations of the Senate and House of Representatives that detail the impact of programs funded through covered funds on employment, estimated economic growth, and other key economic indicators.

(b) SUBMISSION OF REPORTS.—

(1) FIRST REPORT.—The first report submitted under subsection (a) shall be submitted not later than 45 days after the end of the first full quarter following the date of enactment of this Act.

(2) LAST REPORT.—The last report required to be submitted under subsection (a) shall apply to the quarter in which the Board terminates under section 1530.

SEC. 1514. INSPECTOR GENERAL REVIEWS.

(a) REVIEWS.—Any inspector general of a Federal department or executive agency shall review, as appropriate, any concerns raised by the public about specific investments using funds made available in this Act. Any findings of such reviews not related to an ongoing criminal proceeding shall be relayed immediately to the head of the department or agency concerned. In addition, the findings of such reviews, along with any audits conducted by any inspector general of funds made available in this Act, shall be posted on the inspector general's website and linked to the website established by section 1526, except that portions of reports may be redacted to the extent the portions would disclose information that is protected from public disclosure under sections 552 and 552a of title 5, United States Code.

SEC. 1515. ACCESS OF OFFICES OF INSPECTOR GENERAL TO CERTAIN RECORDS AND EMPLOYEES.

(a) ACCESS.—With respect to each contract or grant awarded using covered funds, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized—

(1) to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract, that pertain to, and involve transactions relating to, the contract, subcontract, grant, or subgrant; and

(2) to interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.

(b) RELATIONSHIP TO EXISTING AUTHORITY.—Nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an inspector general.

Subtitle B—Recovery Accountability and Transparency Board

SEC. 1521. ESTABLISHMENT OF THE RECOVERY ACCOUNTABILITY AND TRANSPARENCY BOARD.

There is established the Recovery Accountability and Transparency Board to coordinate and conduct oversight of covered funds to prevent fraud, waste, and abuse.

SEC. 1522. COMPOSITION OF BOARD.

(a) CHAIRPERSON.—

(1) DESIGNATION OR APPOINTMENT.—The President shall—

(A) designate the Deputy Director for Management of the Office of Management and Budget to serve as Chairperson of the Board;

(B) designate another Federal officer who was appointed by the President to a position that required the advice and consent of the Senate, to serve as Chairperson of the Board; or

(C) appoint an individual as the Chairperson of the Board, by and with the advice and consent of the Senate.

(2) COMPENSATION.—

(A) DESIGNATION OF FEDERAL OFFICER.—If the President designates a Federal officer under paragraph (1)(A) or (B) to serve as Chairperson, that Federal officer may not receive additional compensation for services performed as Chairperson.

(B) APPOINTMENT OF NON-FEDERAL OFFICER.—If the President appoints an individual as Chairperson under paragraph (1)(C), that individual shall be compensated at the rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(b) MEMBERS.—The members of the Board shall include—

(1) the Inspectors General of the Departments of Agriculture, Commerce, Education, Energy, Health and Human Services, Homeland Security, Justice, Transportation, Treasury, and the Treasury Inspector General for Tax Administration; and

(2) any other Inspector General as designated by the President from any agency that expends or obligates covered funds.

SEC. 1523. FUNCTIONS OF THE BOARD.

(a) FUNCTIONS.—

(1) IN GENERAL.—The Board shall coordinate and conduct oversight of covered funds in order to prevent fraud, waste, and abuse.

(2) SPECIFIC FUNCTIONS.—The functions of the Board shall include—

(A) reviewing whether the reporting of contracts and grants using covered funds meets applicable standards and specifies the purpose of the contract or grant and measures of performance;

(B) reviewing whether competition requirements applicable to contracts and grants using covered funds have been satisfied;

(C) auditing or reviewing covered funds to determine whether wasteful spending, poor contract or grant management, or other abuses are occurring and referring matters it considers appropriate for investigation to the inspector general for the agency that disbursed the covered funds;

(D) reviewing whether there are sufficient qualified acquisition and grant personnel overseeing covered funds;

(E) reviewing whether personnel whose duties involve acquisitions or grants made with covered funds receive adequate training; and

(F) reviewing whether there are appropriate mechanisms for interagency collaboration relating to covered funds, including coordinating and collaborating to the extent practicable with the Inspectors General Council on Integrity and Efficiency established by the Inspector General Reform Act of 2008 (Public Law 110–409).

(b) REPORTS.—

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

(2) QUARTERLY REPORTS.—The Board shall submit quarterly reports to the President and Congress, including the Committees on Appropriations of the Senate and House of Representatives, summarizing the findings of the Board and the findings of inspectors general of agencies. The Board may submit additional reports as appropriate.

(3) ANNUAL REPORTS.—The Board shall submit annual reports to the President and Congress, including the Committees on Appropriations of the Senate and House of Representatives, consolidating applicable quarterly reports on the use of covered funds.

(4) PUBLIC AVAILABILITY.—

(A) IN GENERAL.—All reports submitted under this subsection shall be made publicly available and posted on the website established by section 1526.

(B) REDACTIONS.—Any portion of a report submitted under this subsection may be redacted when made publicly available, if that portion would disclose information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

(c) RECOMMENDATIONS.—

(1) IN GENERAL.—The Board shall make recommendations to agencies on measures to prevent fraud, waste, and abuse relating to covered funds.

(2) RESPONSIVE REPORTS.—Not later than 30 days after receipt of a recommendation under paragraph (1), an agency shall submit a report to the President, the congressional com-

mittees of jurisdiction, including the Committees on Appropriations of the Senate and House of Representatives, and the Board on—

(A) whether the agency agrees or disagrees with the recommendations; and

(B) any actions the agency will take to implement the recommendations.

SEC. 1524. POWERS OF THE BOARD.

(a) IN GENERAL.—The Board shall conduct audits and reviews of spending of covered funds and coordinate on such activities with the inspectors general of the relevant agency to avoid duplication and overlap of work.

(b) AUDITS AND REVIEWS.—The Board may—

(1) conduct its own independent audits and reviews relating to covered funds; and

(2) collaborate on audits and reviews relating to covered funds with any inspector general of an agency.

(c) AUTHORITIES.—

(1) AUDITS AND REVIEWS.—In conducting audits and reviews, the Board shall have the authorities provided under section 6 of the Inspector General Act of 1978 (5 U.S.C. App.). Additionally, the Board may issue subpoenas to compel the testimony of persons who are not Federal officers or employees and may enforce such subpoenas in the same manner as provided for inspector general subpoenas under section 6 of the Inspector General Act of 1978 (5 U.S.C. App.).

(2) STANDARDS AND GUIDELINES.—The Board shall carry out the powers under subsections (a) and (b) in accordance with section 4(b)(1) of the Inspector General Act of 1978 (5 U.S.C. App.).

(d) PUBLIC HEARINGS.—The Board may hold public hearings and Board personnel may conduct necessary inquiries. The head of each agency shall make all officers and employees of that agency available to provide testimony to the Board and Board personnel. The Board may issue subpoenas to compel the testimony of persons who are not Federal officers or employees at such public hearings. Any such subpoenas may be enforced in the same manner as provided for inspector general subpoenas under section 6 of the Inspector General Act of 1978 (5 U.S.C. App.).

(e) CONTRACTS.—The Board may enter into contracts to enable the Board to discharge its duties under this subtitle, including contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and make such payments as may be necessary to carry out the duties of the Board.

(f) TRANSFER OF FUNDS.—The Board may transfer funds appropriated to the Board for expenses to support administrative support services and audits, reviews, or other activities related to oversight by the Board of covered funds to any office of inspector general, the Office of Management and Budget, the General Services Administration, and the Panel.

SEC. 1525. EMPLOYMENT, PERSONNEL, AND RELATED AUTHORITIES.

(a) EMPLOYMENT AND PERSONNEL AUTHORITIES.—

(1) IN GENERAL.—

(A) AUTHORITIES.—Subject to paragraph (2), the Board may exercise the authorities of subsections (b) through (i) of section 3161 of title 5, United States Code (without regard to subsection (a) of that section).

(B) APPLICATION.—For purposes of exercising the authorities described under subparagraph (A), the term "Chairperson of the Board" shall be substituted for the term "head of a temporary organization".

(C) CONSULTATION.—In exercising the authorities described under subparagraph (A), the Chairperson shall consult with members of the Board.

(2) EMPLOYMENT AUTHORITIES.—In exercising the employment authorities under subsection (b) of section 3161 of title 5, United States Code, as provided under paragraph (1) of this subsection—

(A) paragraph (2) of subsection (b) of section 3161 of that title (relating to periods of appointments) shall not apply; and

(B) no period of appointment may exceed the date on which the Board terminates under section 1530.

(b) INFORMATION AND ASSISTANCE.—

(1) IN GENERAL.—Upon request of the Board for information or assistance from any agency or other entity of the Federal Government, the head of such entity shall, insofar as is practicable and not in contravention of any existing law, furnish such information or assistance to the Board, or an authorized designee.

(2) REPORT OF REFUSALS.—Whenever information or assistance requested by the Board is, in the judgment of the Board, unreasonably refused or not provided, the Board shall report the circumstances to the congressional committees of jurisdiction, including the Committees on Appropriations of the Senate and House of Representatives, without delay.

(c) ADMINISTRATIVE SUPPORT.—The General Services Administration shall provide the Board with administrative support services, including the provision of office space and facilities.

SEC. 1526. BOARD WEBSITE.

(a) ESTABLISHMENT.—The Board shall establish and maintain, no later than 30 days after enactment of this Act, a user-friendly, public-facing website to foster greater accountability and transparency in the use of covered funds.

(b) PURPOSE.—The website established and maintained under subsection (a) shall be a portal or gateway to key information relating to this Act and provide connections to other Government websites with related information.

(c) CONTENT AND FUNCTION.—In establishing the website established and maintained under subsection (a), the Board shall ensure the following:

(1) The website shall provide materials explaining what this Act means for citizens. The materials shall be easy to understand and regularly updated.

(2) The website shall provide accountability information, including findings from audits, inspectors general, and the Government Accountability Office.

(3) The website shall provide data on relevant economic, financial, grant, and contract information in user-friendly visual presentations to enhance public awareness of the use of covered funds.

(4) The website shall provide detailed data on contracts awarded by the Federal Government that expend covered funds, including information about the competitiveness of the contracting process, information about the process that was used for the award of contracts, and for contracts over $500,000 a summary of the contract.

(5) The website shall include printable reports on covered funds obligated by month to each State and congressional district.

(6) The website shall provide a means for the public to give feedback on the performance of contracts that expend covered funds.

(7) The website shall include detailed information on Federal Government contracts and grants that expend covered funds, to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109–282), allowing aggregate reporting on awards below $25,000 or to individuals, as prescribed by the Director of the Office of Management and Budget.

(8) The website shall provide a link to estimates of the jobs sustained or created by the Act.

(9) The website shall provide a link to information about announcements of grant competitions and solicitations for contracts to be awarded.

(10) The website shall include appropriate links to other government websites with information concerning covered funds, including Federal agency and State websites.

(11) The website shall include a plan from each Federal agency for using funds made available in this Act to the agency.

(12) The website shall provide information on Federal allocations of formula grants and awards of competitive grants using covered funds.

(13) The website shall provide information on Federal allocations of mandatory and other entitlement programs by State, county, or other appropriate geographical unit.

(14) To the extent practical, the website shall provide, organized by the location of the job opportunities involved, links to and information about how to access job opportunities, including, if possible, links to or information about local employment agencies, job banks operated by State workforce agencies, the Department of Labor's CareerOneStop website, State, local and other public agencies receiving Federal funding, and private firms contracted to perform work with Federal funding, in order to direct job seekers to job opportunities created by this Act.

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

(d) WAIVER.—The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is

not subject to disclosure under sections 552 and 552a of title 5, United States Code.

SEC. 1527. INDEPENDENCE OF INSPECTORS GENERAL.

(a) INDEPENDENT AUTHORITY.—Nothing in this subtitle shall affect the independent authority of an inspector general to determine whether to conduct an audit or investigation of covered funds.

(b) REQUESTS BY BOARD.—If the Board requests that an inspector general conduct or refrain from conducting an audit or investigation and the inspector general rejects the request in whole or in part, the inspector general shall, not later than 30 days after rejecting the request, submit a report to the Board, the head of the applicable agency, and the congressional committees of jurisdiction, including the Committees on Appropriations of the Senate and House of Representatives. The report shall state the reasons that the inspector general has rejected the request in whole or in part. The inspector general's decision shall be final.

SEC. 1528. COORDINATION WITH THE COMPTROLLER GENERAL AND STATE AUDITORS.

The Board shall coordinate its oversight activities with the Comptroller General of the United States and State auditors.

SEC. 1529. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as necessary to carry out this subtitle.

SEC. 1530. TERMINATION OF THE BOARD.

The Board shall terminate on September 30, 2013.

Subtitle C—Recovery Independent Advisory Panel

SEC. 1541. ESTABLISHMENT OF RECOVERY INDEPENDENT ADVISORY PANEL.

(a) ESTABLISHMENT.—There is established the Recovery Independent Advisory Panel.

(b) MEMBERSHIP.—The Panel shall be composed of 5 members who shall be appointed by the President.

(c) QUALIFICATIONS.—Members shall be appointed on the basis of expertise in economics, public finance, contracting, accounting, or any other relevant field.

(d) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Panel have been appointed, the Panel shall hold its first meeting.

(e) MEETINGS.—The Panel shall meet at the call of the Chairperson of the Panel.

(f) QUORUM.—A majority of the members of the Panel shall constitute a quorum, but a lesser number of members may hold hearings.

(g) CHAIRPERSON AND VICE CHAIRPERSON.—The Panel shall select a Chairperson and Vice Chairperson from among its members.

SEC. 1542. DUTIES OF THE PANEL.

The Panel shall make recommendations to the Board on actions the Board could take to prevent fraud, waste, and abuse relating to covered funds.

SEC. 1543. POWERS OF THE PANEL.

(a) HEARINGS.—The Panel may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Panel considers advisable to carry out this subtitle.

(b) INFORMATION FROM FEDERAL AGENCIES.—The Panel may secure directly from any agency such information as the Panel considers necessary to carry out this subtitle. Upon request of the Chairperson of the Panel, the head of such agency shall furnish such information to the Panel.

(c) POSTAL SERVICES.—The Panel may use the United States mails in the same manner and under the same conditions as agencies of the Federal Government.

(d) GIFTS.—The Panel may accept, use, and dispose of gifts or donations of services or property.

SEC. 1544. PANEL PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS.—Each member of the Panel who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Panel. All members of the Panel who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(b) TRAVEL EXPENSES.—The members of the Panel shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Panel.

(c) STAFF.—

(1) IN GENERAL.—The Chairperson of the Panel may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Panel to perform its duties. The employment of an executive director shall be subject to confirmation by the Panel.

(2) COMPENSATION.—The Chairperson of the Panel may fix the compensation of the executive director and other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(3) PERSONNEL AS FEDERAL EMPLOYEES.—

(A) IN GENERAL.—The executive director and any personnel of the Panel who are employees shall be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, 89A, 89B, and 90 of that title.

(B) MEMBERS OF PANEL.—Subparagraph (A) shall not be construed to apply to members of the Panel.

(d) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Panel without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairperson of the Panel may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

(f) ADMINISTRATIVE SUPPORT.—The General Services Administration shall provide the Panel with administrative support services, including the provision of office space and facilities.

SEC. 1545. TERMINATION OF THE PANEL.

The Panel shall terminate on September 30, 2013.

SEC. 1546. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as necessary to carry out this subtitle.

Subtitle D—Additional Accountability and Transparency Requirements

SEC. 1551. AUTHORITY TO ESTABLISH SEPARATE FUNDING ACCOUNTS.

Although this Act provides supplemental appropriations for programs, projects, and activities in existing Treasury accounts, to facilitate tracking these funds through Treasury and agency accounting systems, the Secretary of the Treasury shall ensure that all funds appropriated in this Act shall be established in separate Treasury accounts, unless a waiver from this provision is approved by the Director of the Office of Management and Budget.

SEC. 1552. SET-ASIDE FOR STATE AND LOCAL GOVERNMENT REPORTING AND RECORDKEEPING.

Federal agencies receiving funds under this Act, may, after following the notice and comment rulemaking requirements under the Administrative Procedures Act (5 U.S.C. 500), reasonably adjust applicable limits on administrative expenditures for Federal awards to help award recipients defray the costs of data collection requirements initiated pursuant to this Act.

SEC. 1553. PROTECTING STATE AND LOCAL GOVERNMENT AND CONTRACTOR WHISTLEBLOWERS.

(a) PROHIBITION OF REPRISALS.—An employee of any non-Federal employer receiving covered funds may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee reasonably believes is evidence of—

(1) gross mismanagement of an agency contract or grant relating to covered funds;

(2) a gross waste of covered funds;

(3) a substantial and specific danger to public health or safety related to the implementation or use of covered funds;

(4) an abuse of authority related to the implementation or use of covered funds; or

(5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

(b) INVESTIGATION OF COMPLAINTS.—

(1) IN GENERAL.—A person who believes that the person has been subjected to a reprisal prohibited by subsection (a) may submit a complaint regarding the reprisal to the appropriate inspector general. Except as provided under paragraph (3), unless the inspector general determines that the complaint is frivolous, does not relate to covered funds, or another Federal or State judicial or administrative proceeding has previously been invoked to resolve such complaint, the inspector general shall investigate the complaint and, upon completion of such investigation, submit a report of the findings of the investigation to the person, the person's employer, the head of the appropriate agency, and the Board.

(2) TIME LIMITATIONS FOR ACTIONS.—

(A) IN GENERAL.—Except as provided under subparagraph (B), the inspector general shall, not later than 180 days after receiving a complaint under paragraph (1)—

(i) make a determination that the complaint is frivolous, does not relate to covered funds, or another Federal or State judicial or administrative proceeding has previously been invoked to resolve such complaint; or

(ii) submit a report under paragraph (1).

(B) EXTENSIONS.—

(i) VOLUNTARY EXTENSION AGREED TO BETWEEN INSPECTOR GENERAL AND COMPLAINANT.—If the inspector general is unable to complete an investigation under this section in time to submit a report within the 180-day period specified under subparagraph (A) and the person submitting the complaint agrees to an extension of time, the inspector general shall submit a report under paragraph (1) within such additional period of time as shall be agreed upon between the inspector general and the person submitting the complaint.

(ii) EXTENSION GRANTED BY INSPECTOR GENERAL.—If the inspector general is unable to complete an investigation under this section in time to submit a report within the 180-day period specified under subparagraph (A), the inspector general may extend the period for not more than 180 days without agreeing with the person submitting the complaint to such extension, provided that the inspector general provides a written explanation (subject to the authority to exclude information under paragraph (4)(C)) for the decision,

which shall be provided to both the person submitting the complaint and the non-Federal employer.

(iii) SEMI-ANNUAL REPORT ON EXTENSIONS.—The inspector general shall include in semi-annual reports to Congress a list of those investigations for which the inspector general received an extension.

(3) DISCRETION NOT TO INVESTIGATE COMPLAINTS.—

(A) IN GENERAL.—The inspector general may decide not to conduct or continue an investigation under this section upon providing to the person submitting the complaint and the non-Federal employer a written explanation (subject to the authority to exclude information under paragraph (4)(C)) for such decision.

(B) ASSUMPTION OF RIGHTS TO CIVIL REMEDY.—Upon receipt of an explanation of a decision not to conduct or continue an investigation under subparagraph (A), the person submitting a complaint shall immediately assume the right to a civil remedy under subsection (c)(3) as if the 210-day period specified under such subsection has already passed.

(C) SEMI-ANNUAL REPORT.—The inspector general shall include in semi-annual reports to Congress a list of those investigations the inspector general decided not to conduct or continue under this paragraph.

(4) ACCESS TO INVESTIGATIVE FILE OF INSPECTOR GENERAL.—

(A) IN GENERAL.—The person alleging a reprisal under this section shall have access to the investigation file of the appropriate inspector general in accordance with section 552a of title 5, United States Code (commonly referred to as the "Privacy Act"). The investigation of the inspector general shall be deemed closed for purposes of disclosure under such section when an employee files an appeal to an agency head or a court of competent jurisdiction.

(B) CIVIL ACTION.—In the event the person alleging the reprisal brings suit under subsection (c)(3), the person alleging the reprisal and the non-Federal employer shall have access to the investigative file of the inspector general in accordance with the Privacy Act.

(C) EXCEPTION.—The inspector general may exclude from disclosure—

(i) information protected from disclosure by a provision of law; and

(ii) any additional information the inspector general determines disclosure of which would impede a continuing investigation, provided that such information is disclosed once such disclosure would no longer impede such investigation, unless the inspector general determines that disclosure of law enforcement techniques, procedures, or information could reasonably be expected to risk circumvention of the law or disclose the identity of a confidential source.

(5) PRIVACY OF INFORMATION.—An inspector general investigating an alleged reprisal under this section may not respond to any inquiry or disclose any information from or about any

person alleging such reprisal, except in accordance with the provisions of section 552a of title 5, United States Code, or as required by any other applicable Federal law.

(c) REMEDY AND ENFORCEMENT AUTHORITY.—

(1) BURDEN OF PROOF.—

(A) DISCLOSURE AS CONTRIBUTING FACTOR IN REPRISAL.—

(i) IN GENERAL.—A person alleging a reprisal under this section shall be deemed to have affirmatively established the occurrence of the reprisal if the person demonstrates that a disclosure described in subsection (a) was a contributing factor in the reprisal.

(ii) USE OF CIRCUMSTANTIAL EVIDENCE.—A disclosure may be demonstrated as a contributing factor in a reprisal for purposes of this paragraph by circumstantial evidence, including—

(I) evidence that the official undertaking the reprisal knew of the disclosure; or

(II) evidence that the reprisal occurred within a period of time after the disclosure such that a reasonable person could conclude that the disclosure was a contributing factor in the reprisal.

(B) OPPORTUNITY FOR REBUTTAL.—The head of an agency may not find the occurrence of a reprisal with respect to a reprisal that is affirmatively established under subparagraph (A) if the non-Federal employer demonstrates by clear and convincing evidence that the non-Federal employer would have taken the action constituting the reprisal in the absence of the disclosure.

(2) AGENCY ACTION.—Not later than 30 days after receiving an inspector general report under subsection (b), the head of the agency concerned shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the complainant to a reprisal prohibited by subsection (a) and shall either issue an order denying relief in whole or in part or shall take 1 or more of the following actions:

(A) Order the employer to take affirmative action to abate the reprisal.

(B) Order the employer to reinstate the person to the position that the person held before the reprisal, together with the compensation (including back pay), compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

(C) Order the employer to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal, as determined by the head of the agency or a court of competent jurisdiction.

(3) CIVIL ACTION.—If the head of an agency issues an order denying relief in whole or in part under paragraph (1), has not issued an order within 210 days after the submission of a complaint under subsection (b), or in the case of an extension of

time under subsection (b)(2)(B)(i), within 30 days after the expiration of the extension of time, or decides under subsection (b)(3) not to investigate or to discontinue an investigation, and there is no showing that such delay or decision is due to the bad faith of the complainant, the complainant shall be deemed to have exhausted all administrative remedies with respect to the complaint, and the complainant may bring a de novo action at law or equity against the employer to seek compensatory damages and other relief available under this section in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy. Such an action shall, at the request of either party to the action, be tried by the court with a jury.

(4) JUDICIAL ENFORCEMENT OF ORDER.—Whenever a person fails to comply with an order issued under paragraph (2), the head of the agency shall file an action for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this paragraph, the court may grant appropriate relief, including injunctive relief, compensatory and exemplary damages, and attorneys fees and costs.

(5) JUDICIAL REVIEW.—Any person adversely affected or aggrieved by an order issued under paragraph (2) may obtain review of the order's conformance with this subsection, and any regulations issued to carry out this section, in the United States court of appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the order by the head of the agency. Review shall conform to chapter 7 of title 5, United States Code.

(d) NONENFORCEABILITY OF CERTAIN PROVISIONS WAIVING RIGHTS AND REMEDIES OR REQUIRING ARBITRATION OF DISPUTES.—

(1) WAIVER OF RIGHTS AND REMEDIES.—Except as provided under paragraph (3), the rights and remedies provided for in this section may not be waived by any agreement, policy, form, or condition of employment, including by any predispute arbitration agreement.

(2) PREDISPUTE ARBITRATION AGREEMENTS.—Except as provided under paragraph (3), no predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising under this section.

(3) EXCEPTION FOR COLLECTIVE BARGAINING AGREEMENTS.—Notwithstanding paragraphs (1) and (2), an arbitration provision in a collective bargaining agreement shall be enforceable as to disputes arising under the collective bargaining agreement.

(e) REQUIREMENT TO POST NOTICE OF RIGHTS AND REMEDIES.—Any employer receiving covered funds shall post notice of the rights and remedies provided under this section.

(f) RULES OF CONSTRUCTION.—

(1) NO IMPLIED AUTHORITY TO RETALIATE FOR NON-PROTECTED DISCLOSURES.—Nothing in this section may be construed to authorize the discharge of, demotion of, or discrimination against an employee for a disclosure other than a disclo-

sure protected by subsection (a) or to modify or derogate from a right or remedy otherwise available to the employee.

(2) RELATIONSHIP TO STATE LAWS.—Nothing may be construed to preempt, preclude, or limit the protections provided for public or private employees under State whistleblower laws.

(g) DEFINITIONS.—In this section:

(1) ABUSE OF AUTHORITY.—The term "abuse of authority" means an arbitrary and capricious exercise of authority by a contracting official or employee that adversely affects the rights of any person, or that results in personal gain or advantage to the official or employee or to preferred other persons.

(2) COVERED FUNDS.—The term "covered funds" means any contract, grant, or other payment received by any non-Federal employer if—

(A) the Federal Government provides any portion of the money or property that is provided, requested, or demanded; and

(B) at least some of the funds are appropriated or otherwise made available by this Act.

(3) EMPLOYEE.—The term "employee"—

(A) except as provided under subparagraph (B), means an individual performing services on behalf of an employer; and

(B) does not include any Federal employee or member of the uniformed services (as that term is defined in section 101(a)(5) of title 10, United States Code).

(4) NON-FEDERAL EMPLOYER.—The term "non-Federal employer"—

(A) means any employer—

(i) with respect to covered funds—

(I) the contractor, subcontractor, grantee, or recipient, as the case may be, if the contractor, subcontractor, grantee, or recipient is an employer; and

(II) any professional membership organization, certification or other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving covered funds; or

(ii) with respect to covered funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor of the State or local government; and

(B) does not mean any department, agency, or other entity of the Federal Government.

(5) STATE OR LOCAL GOVERNMENT.—The term "State or local government" means—

(A) the government of each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, or any other territory or possession of the United States; or

(B) the government of any political subdivision of a government listed in subparagraph (A).

SEC. 1554. SPECIAL CONTRACTING PROVISIONS.

To the maximum extent possible, contracts funded under this Act shall be awarded as fixed-price contracts through the use of competitive procedures. A summary of any contract awarded with such funds that is not fixed-price and not awarded using competitive procedures shall be posted in a special section of the website established in section 1526.

TITLE XVI—GENERAL PROVISIONS—THIS ACT

RELATIONSHIP TO OTHER APPROPRIATIONS

SEC. 1601. Each amount appropriated or made available in this Act is in addition to amounts otherwise appropriated for the fiscal year involved. Enactment of this Act shall have no effect on the availability of amounts under the Continuing Appropriations Resolution, 2009 (division A of Public Law 110–329).

PREFERENCE FOR QUICK-START ACTIVITIES

SEC. 1602. In using funds made available in this Act for infrastructure investment, recipients shall give preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds for activities that can be initiated not later than 120 days after the date of the enactment of this Act. Recipients shall also use grant funds in a manner that maximizes job creation and economic benefit.

PERIOD OF AVAILABILITY

SEC. 1603. All funds appropriated in this Act shall remain available for obligation until September 30, 2010, unless expressly provided otherwise in this Act.

LIMIT ON FUNDS

SEC. 1604. None of the funds appropriated or otherwise made available in this Act may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

BUY AMERICAN

SEC. 1605. USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS. (a) None of the funds appropriated or otherwise made available by this Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.

(b) Subsection (a) shall not apply in any case or category of cases in which the head of the Federal department or agency involved finds that—

(1) applying subsection (a) would be inconsistent with the public interest;

(2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

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

(c) If the head of a Federal department or agency determines that it is necessary to waive the application of subsection (a) based on a finding under subsection (b), the head of the department or agency shall publish in the Federal Register a detailed written justification as to why the provision is being waived.

(d) This section shall be applied in a manner consistent with United States obligations under international agreements.

WAGE RATE REQUIREMENTS

SEC. 1606. Notwithstanding any other provision of law and in a manner consistent with other provisions in this Act, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to this Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C. App.) and section 3145 of title 40, United States Code.

ADDITIONAL FUNDING DISTRIBUTION AND ASSURANCE OF APPROPRIATE USE OF FUNDS

SEC. 1607. (a) CERTIFICATION BY GOVERNOR.—Not later than 45 days after the date of enactment of this Act, for funds provided to any State or agency thereof, the Governor of the State shall certify that: (1) the State will request and use funds provided by this Act; and (2) the funds will be used to create jobs and promote economic growth.

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

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

ECONOMIC STABILIZATION CONTRACTING

SEC. 1608. REFORM OF CONTRACTING PROCEDURES UNDER EESA.—Section 107(b) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5217(b)) is amended by inserting "and individuals with disabilities and businesses owned by individuals with disabilities (for purposes of this subsection the term 'individual with disability' has the same meaning as the term 'handicapped individual' as that term is defined in section 3(f) of the Small Business Act (15 U.S.C. 632(f))," after "(12 U.S.C. 1441a(r)(4)),".

SEC. 1609. (a) FINDINGS.—

(1) The National Environmental Policy Act protects public health, safety and environmental quality: by ensuring transparency, accountability and public involvement in federal actions and in the use of public funds;

(2) When President Nixon signed the National Environmental Policy Act into law on January 1, 1970, he said that the Act provided the "direction" for the country to "regain a productive harmony between man and nature";

(3) The National Environmental Policy Act helps to provide an orderly process for considering federal actions and funding decisions and prevents ligation and delay that would otherwise be inevitable and existed prior to the establishment of the National Environmental Policy Act.

(b) Adequate resources within this bill must be devoted to ensuring that applicable environmental reviews under the National Environmental Policy Act are completed on an expeditious basis and that the shortest existing applicable process under the National Environmental Policy Act shall be utilized.

(c) The President shall report to the Senate Environment and Public Works Committee and the House Natural Resources Committee every 90 days following the date of enactment until September 30, 2011 on the status and progress of projects and activities funded by this Act with respect to compliance with National Environmental Policy Act requirements and documentation.

SEC. 1610. (a) None of the funds appropriated or otherwise made available by this Act, for projects initiated after the effective date of this Act, may be used by an executive agency to enter into any Federal contract unless such contract is entered into in accordance with the Federal Property and Administrative Services Act (41 U.S.C. 253) or chapter 137 of title 10, United States Code, and the Federal Acquisition Regulation, unless such contract is otherwise authorized by statute to be entered into without regard to the above referenced statutes.

(b) All projects to be conducted under the authority of the Indian Self-Determination and Education Assistance Act, the Tribally-Controlled Schools Act, the Sanitation and Facilities Act, the Native American Housing and Self-Determination Assistance Act and the Buy-Indian Act shall be identified by the appropriate Secretary and the appropriate Secretary shall incorporate provisions to ensure that the agreement conforms with the provisions of this Act regarding the timing for use of funds and transparency, oversight, reporting, and accountability, including review by the Inspectors General, the Accountability and Transparency Board, and Government Accountability Office, consistent with the objectives of this Act.

SEC. 1611. HIRING AMERICAN WORKERS IN COMPANIES RECEIVING TARP FUNDING. (a) SHORT TITLE.—This section may be cited as the "Employ American Workers Act".

(b) PROHIBITION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, it shall be unlawful for any recipient of funding under title I of the Emergency Economic Stabilization Act of 2008 (Public Law 110–343) or section 13 of the Federal Reserve Act (12 U.S.C. 342 et seq.) to hire any nonimmigrant described in section 101(a)(15)(h)(i)(b) of the Immigration and Nationality Act

(8 U.S.C. 1101(a)(15)(h)(i)(b)) unless the recipient is in compliance with the requirements for an H–1B dependent employer (as defined in section 212(n)(3) of such Act (8 U.S.C. 1182(n)(3))), except that the second sentence of section 212(n)(1)(E)(ii) of such Act shall not apply.

(2) DEFINED TERM.—In this subsection, the term "hire" means to permit a new employee to commence a period of employment.

(c) SUNSET PROVISION.—This section shall be effective during the 2-year period beginning on the date of the enactment of this Act.

SEC. 1612. During the current fiscal year not to exceed 1 percent of any appropriation made available by this Act may be transferred by an agency head between such appropriations funded in this Act of that department or agency: Provided, That such appropriations shall be merged with and available for the same purposes, and for the same time period, as the appropriation to which transferred: Provided further, That the agency head shall notify the Committees on Appropriations of the Senate and House of Representatives of the transfer 15 days in advance: Provided further, That notice of any transfer made pursuant to this authority be posted on the website established by the Recovery Act Accountability and Transparency Board 15 days following such transfer: Provided further, That the authority contained in this section is in addition to transfer authorities otherwise available under current law: Provided further, That the authority provided in this section shall not apply to any appropriation that is subject to transfer provisions included elsewhere in this Act.

DIVISION B—TAX, UNEMPLOYMENT, HEALTH, STATE FISCAL RELIEF, AND OTHER PROVISIONS

TITLE I—TAX PROVISIONS

SEC. 1000. SHORT TITLE, ETC.

(a) SHORT TITLE.—This title may be cited as the "American Recovery and Reinvestment Tax Act of 2009".

(b) REFERENCE.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—The table of contents for this title is as follows:

TITLE I—TAX PROVISIONS

Sec. 1000. Short title, etc.

Subtitle A—Tax Relief for Individuals and Families

PART I—GENERAL TAX RELIEF

Sec. 1001. Making work pay credit.
Sec. 1002. Temporary increase in earned income tax credit.
Sec. 1003. Temporary increase of refundable portion of child credit.
Sec. 1004. American opportunity tax credit.
Sec. 1005. Computer technology and equipment allowed as a qualified higher education expense for section 529 accounts in 2009 and 2010.

Sec. 1006. Extension of and increase in first-time homebuyer credit; waiver of requirement to repay.
Sec. 1007. Suspension of tax on portion of unemployment compensation.
Sec. 1008. Additional deduction for State sales tax and excise tax on the purchase of certain motor vehicles.

PART II—ALTERNATIVE MINIMUM TAX RELIEF

Sec. 1011. Extension of alternative minimum tax relief for nonrefundable personal credits.
Sec. 1012. Extension of increased alternative minimum tax exemption amount.

Subtitle B—Energy Incentives

PART I—RENEWABLE ENERGY INCENTIVES

Sec. 1101. Extension of credit for electricity produced from certain renewable resources.
Sec. 1102. Election of investment credit in lieu of production credit.
Sec. 1103. Repeal of certain limitations on credit for renewable energy property.
Sec. 1104. Coordination with renewable energy grants.

PART II—INCREASED ALLOCATIONS OF NEW CLEAN RENEWABLE ENERGY BONDS AND QUALIFIED ENERGY CONSERVATION BONDS

Sec. 1111. Increased limitation on issuance of new clean renewable energy bonds.
Sec. 1112. Increased limitation on issuance of qualified energy conservation bonds.

PART III—ENERGY CONSERVATION INCENTIVES

Sec. 1121. Extension and modification of credit for nonbusiness energy property.
Sec. 1122. Modification of credit for residential energy efficient property.
Sec. 1123. Temporary increase in credit for alternative fuel vehicle refueling property.

PART IV—MODIFICATION OF CREDIT FOR CARBON DIOXIDE SEQUESTRATION

Sec. 1131. Application of monitoring requirements to carbon dioxide used as a tertiary injectant.

PART V—PLUG-IN ELECTRIC DRIVE MOTOR VEHICLES

Sec. 1141. Credit for new qualified plug-in electric drive motor vehicles.
Sec. 1142. Credit for certain plug-in electric vehicles.
Sec. 1143. Conversion kits.
Sec. 1144. Treatment of alternative motor vehicle credit as a personal credit allowed against AMT.

PART VI—PARITY FOR TRANSPORTATION FRINGE BENEFITS

Sec. 1151. Increased exclusion amount for commuter transit benefits and transit passes.

Subtitle C—Tax Incentives for Business

PART I—TEMPORARY INVESTMENT INCENTIVES

Sec. 1201. Special allowance for certain property acquired during 2009.
Sec. 1202. Temporary increase in limitations on expensing of certain depreciable business assets.

PART II—SMALL BUSINESS PROVISIONS

Sec. 1211. 5-year carryback of operating losses of small businesses.
Sec. 1212. Decreased required estimated tax payments in 2009 for certain small businesses.

PART III—INCENTIVES FOR NEW JOBS

Sec. 1221. Incentives to hire unemployed veterans and disconnected youth.

PART IV—RULES RELATING TO DEBT INSTRUMENTS

Sec. 1231. Deferral and ratable inclusion of income arising from business indebtedness discharged by the reacquisition of a debt instrument.
Sec. 1232. Modifications of rules for original issue discount on certain high yield obligations.

PART V—QUALIFIED SMALL BUSINESS STOCK

Sec. 1241. Special rules applicable to qualified small business stock for 2009 and 2010.

PART VI—S CORPORATIONS

Sec. 1251. Temporary reduction in recognition period for built-in gains tax.

PART VII—RULES RELATING TO OWNERSHIP CHANGES

Sec. 1261. Clarification of regulations related to limitations on certain built-in losses following an ownership change.
Sec. 1262. Treatment of certain ownership changes for purposes of limitations on net operating loss carryforwards and certain built-in losses.

Subtitle D—Manufacturing Recovery Provisions

Sec. 1301. Temporary expansion of availability of industrial development bonds to facilities manufacturing intangible property.
Sec. 1302. Credit for investment in advanced energy facilities.

Subtitle E—Economic Recovery Tools

Sec. 1401. Recovery zone bonds.
Sec. 1402. Tribal economic development bonds.
Sec. 1403. Increase in new markets tax credit.
Sec. 1404. Coordination of low-income housing credit and low-income housing grants.

Subtitle F—Infrastructure Financing Tools

PART I—IMPROVED MARKETABILITY FOR TAX-EXEMPT BONDS

Sec. 1501. De minimis safe harbor exception for tax-exempt interest expense of financial institutions.
Sec. 1502. Modification of small issuer exception to tax-exempt interest expense allocation rules for financial institutions.
Sec. 1503. Temporary modification of alternative minimum tax limitations on tax-exempt bonds.
Sec. 1504. Modification to high speed intercity rail facility bonds.

PART II—DELAY IN APPLICATION OF WITHHOLDING TAX ON GOVERNMENT CONTRACTORS

Sec. 1511. Delay in application of withholding tax on government contractors.

PART III—TAX CREDIT BONDS FOR SCHOOLS

Sec. 1521. Qualified school construction bonds.
Sec. 1522. Extension and expansion of qualified zone academy bonds.

PART IV—BUILD AMERICA BONDS

Sec. 1531. Build America bonds.

PART V—REGULATED INVESTMENT COMPANIES ALLOWED TO PASS-THRU TAX CREDIT BOND CREDITS

Sec. 1541. Regulated investment companies allowed to pass-thru tax credit bond credits.

Subtitle G—Other Provisions

Sec. 1601. Application of certain labor standards to projects financed with certain tax-favored bonds.
Sec. 1602. Grants to States for low-income housing projects in lieu of low-income housing credit allocations for 2009.
Sec. 1603. Grants for specified energy property in lieu of tax credits.
Sec. 1604. Increase in public debt limit.

Subtitle H—Prohibition on Collection of Certain Payments Made Under the Continued Dumping and Subsidy Offset Act of 2000

Sec. 1701. Prohibition on collection of certain payments made under the Continued Dumping and Subsidy Offset Act of 2000.

Subtitle I—Trade Adjustment Assistance

Sec. 1800. Short title.

PART I—TRADE ADJUSTMENT ASSISTANCE FOR WORKERS

SUBPART A—TRADE ADJUSTMENT ASSISTANCE FOR SERVICE SECTOR WORKERS

Sec. 1801. Extension of trade adjustment assistance to service sector and public agency workers; shifts in production.
Sec. 1802. Separate basis for certification.
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Sec. 1811. Notifications following certain affirmative determinations.
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SUBPART C—PROGRAM BENEFITS

Sec. 1821. Qualifying Requirements for Workers.
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Sec. 1823. Limitations on trade readjustment allowances; allowances for extended training and breaks in training.
Sec. 1824. Special rules for calculation of eligibility period.
Sec. 1825. Application of State laws and regulations on good cause for waiver of time limits or late filing of claims.
Sec. 1826. Employment and case management services.
Sec. 1827. Administrative expenses and employment and case management services.
Sec. 1828. Training funding.
Sec. 1829. Prerequisite education; approved training programs.
Sec. 1830. Pre-layoff and part-time training.
Sec. 1831. On-the-job training.
Sec. 1832. Eligibility for unemployment insurance and program benefits while in training.
Sec. 1833. Job search and relocation allowances.

SUBPART D—REEMPLOYMENT TRADE ADJUSTMENT ASSISTANCE PROGRAM

Sec. 1841. Reemployment trade adjustment assistance program.

SUBPART E—OTHER MATTERS

Sec. 1851. Office of Trade Adjustment Assistance.
Sec. 1852. Accountability of State agencies; collection and publication of program data; agreements with States.
Sec. 1853. Verification of eligibility for program benefits.
Sec. 1854. Collection of data and reports; information to workers.
Sec. 1855. Fraud and recovery of overpayments.
Sec. 1856. Sense of Congress on application of trade adjustment assistance.
Sec. 1857. Consultations in promulgation of regulations.
Sec. 1858. Technical corrections.

PART II—TRADE ADJUSTMENT ASSISTANCE FOR FIRMS

Sec. 1861. Expansion to service sector firms.
Sec. 1862. Modification of requirements for certification.
Sec. 1863. Basis for determinations.
Sec. 1864. Oversight and administration; authorization of appropriations.
Sec. 1865. Increased penalties for false statements.
Sec. 1866. Annual report on trade adjustment assistance for firms.
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PART III—TRADE ADJUSTMENT ASSISTANCE FOR COMMUNITIES

Sec. 1871. Purpose.
Sec. 1872. Trade adjustment assistance for communities.
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PART IV—TRADE ADJUSTMENT ASSISTANCE FOR FARMERS

Sec. 1881. Definitions.
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PART V—GENERAL PROVISIONS

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PART VI—HEALTH COVERAGE IMPROVEMENT

Sec. 1899. Short title.
Sec. 1899A. Improvement of the affordability of the credit.
Sec. 1899B. Payment for monthly premiums paid prior to commencement of advance payments of credit.
Sec. 1899C. TAA recipients not enrolled in training programs eligible for credit.
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Sec. 1899E. Continued qualification of family members after certain events.
Sec. 1899F. Extension of COBRA benefits for certain TAA-eligible individuals and PBGC recipients.
Sec. 1899G. Addition of coverage through voluntary employees' beneficiary associations.
Sec. 1899H. Notice requirements.
Sec. 1899I. Survey and report on enhanced health coverage tax credit program.
Sec. 1899J. Authorization of appropriations.
Sec. 1899K. Extension of national emergency grants.
Sec. 1899L. GAO study and report.

Subtitle A—Tax Relief for Individuals and Families

PART I—GENERAL TAX RELIEF

SEC. 1001. MAKING WORK PAY CREDIT.

(a) IN GENERAL.—Subpart C of part IV of subchapter A of chapter 1 is amended by inserting after section 36 the following new section:

"SEC. 36A. MAKING WORK PAY CREDIT.

"(a) ALLOWANCE OF CREDIT.—In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the lesser of—

"(1) 6.2 percent of earned income of the taxpayer, or

"(2) $400 ($800 in the case of a joint return).

"(b) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—

"(1) IN GENERAL.—The amount allowable as a credit under subsection (a) (determined without regard to this paragraph and subsection (c)) for the taxable year shall be reduced (but not below zero) by 2 percent of so much of the taxpayer's modified adjusted gross income as exceeds $75,000 ($150,000 in the case of a joint return).

"(2) MODIFIED ADJUSTED GROSS INCOME.—For purposes of subparagraph (A), the term 'modified adjusted gross income' means the adjusted gross income of the taxpayer for the taxable year increased by any amount excluded from gross income under section 911, 931, or 933.

"(c) REDUCTION FOR CERTAIN OTHER PAYMENTS.—The credit allowed under subsection (a) for any taxable year shall be reduced by the amount of any payments received by the taxpayer during such taxable year under section 2201, and any credit allowed to the tax-

payer under section 2202, of the American Recovery and Reinvestment Tax Act of 2009.

"(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) ELIGIBLE INDIVIDUAL.—

"(A) IN GENERAL.—The term 'eligible individual' means any individual other than—

"(i) any nonresident alien individual,

"(ii) any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, and

"(iii) an estate or trust.

"(B) IDENTIFICATION NUMBER REQUIREMENT.—Such term shall not include any individual who does not include on the return of tax for the taxable year—

"(i) such individual's social security account number, and

"(ii) in the case of a joint return, the social security account number of one of the taxpayers on such return. For purposes of the preceding sentence, the social security account number shall not include a TIN issued by the Internal Revenue Service.

"(2) EARNED INCOME.—The term 'earned income' has the meaning given such term by section 32(c)(2), except that such term shall not include net earnings from self-employment which are not taken into account in computing taxable income. For purposes of the preceding sentence, any amount excluded from gross income by reason of section 112 shall be treated as earned income which is taken into account in computing taxable income for the taxable year.

"(e) TERMINATION.—This section shall not apply to taxable years beginning after December 31, 2010.".

(b) TREATMENT OF POSSESSIONS.—

(1) PAYMENTS TO POSSESSIONS.—

(A) MIRROR CODE POSSESSION.—The Secretary of the Treasury shall pay to each possession of the United States with a mirror code tax system amounts equal to the loss to that possession by reason of the amendments made by this section with respect to taxable years beginning in 2009 and 2010. Such amounts shall be determined by the Secretary of the Treasury based on information provided by the government of the respective possession.

(B) OTHER POSSESSIONS.—The Secretary of the Treasury shall pay to each possession of the United States which does not have a mirror code tax system amounts estimated by the Secretary of the Treasury as being equal to the aggregate benefits that would have been provided to residents of such possession by reason of the amendments made by this section for taxable years beginning in 2009 and 2010 if a mirror code tax system had been in effect in such possession. The preceding sentence shall not apply with respect to any possession of the United States unless such possession has a plan, which has been approved by the Secretary of the Treasury, under which such possession will promptly

distribute such payments to the residents of such possession.

(2) COORDINATION WITH CREDIT ALLOWED AGAINST UNITED STATES INCOME TAXES.—No credit shall be allowed against United States income taxes for any taxable year under section 36A of the Internal Revenue Code of 1986 (as added by this section) to any person—

(A) to whom a credit is allowed against taxes imposed by the possession by reason of the amendments made by this section for such taxable year, or

(B) who is eligible for a payment under a plan described in paragraph (1)(B) with respect to such taxable year.

(3) DEFINITIONS AND SPECIAL RULES.—

(A) POSSESSION OF THE UNITED STATES.—For purposes of this subsection, the term "possession of the United States" includes the Commonwealth of Puerto Rico and the Commonwealth of the Northern Mariana Islands.

(B) MIRROR CODE TAX SYSTEM.—For purposes of this subsection, the term "mirror code tax system" means, with respect to any possession of the United States, the income tax system of such possession if the income tax liability of the residents of such possession under such system is determined by reference to the income tax laws of the United States as if such possession were the United States.

(C) TREATMENT OF PAYMENTS.—For purposes of section 1324(b)(2) of title 31, United States Code, the payments under this subsection shall be treated in the same manner as a refund due from the credit allowed under section 36A of the Internal Revenue Code of 1986 (as added by this section).

(c) REFUNDS DISREGARDED IN THE ADMINISTRATION OF FEDERAL PROGRAMS AND FEDERALLY ASSISTED PROGRAMS.—Any credit or refund allowed or made to any individual by reason of section 36A of the Internal Revenue Code of 1986 (as added by this section) or by reason of subsection (b) of this section shall not be taken into account as income and shall not be taken into account as resources for the month of receipt and the following 2 months, for purposes of determining the eligibility of such individual or any other individual for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program or under any State or local program financed in whole or in part with Federal funds.

(d) AUTHORITY RELATING TO CLERICAL ERRORS.—Section 6213(g)(2) is amended by striking "and" at the end of subparagraph (L)(ii), by striking the period at the end of subparagraph (M) and inserting ", and", and by adding at the end the following new subparagraph:

"(N) an omission of the reduction required under section 36A(c) with respect to the credit allowed under section 36A or an omission of the correct social security account number required under section 36A(d)(1)(B).".

(e) CONFORMING AMENDMENTS.—

(1) Section 6211(b)(4)(A) is amended by inserting "36A," after "36,".

(2) Section 1324(b)(2) of title 31, United States Code, is amended by inserting "36A," after "36,".

(3) The table of sections for subpart C of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 36 the following new item:

"Sec. 36A. Making work pay credit.".

(f) EFFECTIVE DATE.—This section, and the amendments made by this section, shall apply to taxable years beginning after December 31, 2008.

SEC. 1002. TEMPORARY INCREASE IN EARNED INCOME TAX CREDIT.

(a) IN GENERAL.—Subsection (b) of section 32 is amended by adding at the end the following new paragraph:

"(3) SPECIAL RULES FOR 2009 AND 2010.—In the case of any taxable year beginning in 2009 or 2010—

"(A) INCREASED CREDIT PERCENTAGE FOR 3 OR MORE QUALIFYING CHILDREN.—In the case of a taxpayer with 3 or more qualifying children, the credit percentage is 45 percent.

"(B) REDUCTION OF MARRIAGE PENALTY.—

"(i) IN GENERAL.—The dollar amount in effect under paragraph (2)(B) shall be $5,000.

"(ii) INFLATION ADJUSTMENT.—In the case of any taxable year beginning in 2010, the $5,000 amount in clause (i) shall be increased by an amount equal to—

"(I) such dollar amount, multiplied by

"(II) the cost of living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins determined by substituting 'calendar year 2008' for 'calendar year 1992' in subparagraph (B) thereof.

"(iii) ROUNDING.—Subparagraph (A) of subsection (j)(2) shall apply after taking into account any increase under clause (ii).".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2008.

SEC. 1003. TEMPORARY INCREASE OF REFUNDABLE PORTION OF CHILD CREDIT.

(a) IN GENERAL.—Paragraph (4) of section 24(d) is amended to read as follows:

"(4) SPECIAL RULE FOR 2009 AND 2010.—Notwithstanding paragraph (3), in the case of any taxable year beginning in 2009 or 2010, the dollar amount in effect for such taxable year under paragraph (1)(B)(i) shall be $3,000.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2008.

SEC. 1004. AMERICAN OPPORTUNITY TAX CREDIT.

(a) IN GENERAL.—Section 25A (relating to Hope Scholarship Credit) is amended by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection:

"(i) AMERICAN OPPORTUNITY TAX CREDIT.—In the case of any taxable year beginning in 2009 or 2010—

"(1) INCREASE IN CREDIT.—The Hope Scholarship Credit shall be an amount equal to the sum of—

"(A) 100 percent of so much of the qualified tuition and related expenses paid by the taxpayer during the taxable year (for education furnished to the eligible student during any academic period beginning in such taxable year) as does not exceed $2,000, plus

"(B) 25 percent of such expenses so paid as exceeds $2,000 but does not exceed $4,000.

"(2) CREDIT ALLOWED FOR FIRST 4 YEARS OF POST-SECONDARY EDUCATION.—Subparagraphs (A) and (C) of subsection (b)(2) shall be applied by substituting '4' for '2'.

"(3) QUALIFIED TUITION AND RELATED EXPENSES TO INCLUDE REQUIRED COURSE MATERIALS.—Subsection (f)(1)(A) shall be applied by substituting 'tuition, fees, and course materials' for 'tuition and fees'.

"(4) INCREASE IN AGI LIMITS FOR HOPE SCHOLARSHIP CREDIT.—In lieu of applying subsection (d) with respect to the Hope Scholarship Credit, such credit (determined without regard to this paragraph) shall be reduced (but not below zero) by the amount which bears the same ratio to such credit (as so determined) as—

"(A) the excess of—

"(i) the taxpayer's modified adjusted gross income (as defined in subsection (d)(3)) for such taxable year, over

"(ii) $80,000 ($160,000 in the case of a joint return), bears to

"(B) $10,000 ($20,000 in the case of a joint return).

"(5) CREDIT ALLOWED AGAINST ALTERNATIVE MINIMUM TAX.—In the case of a taxable year to which section 26(a)(2) does not apply, so much of the credit allowed under subsection (a) as is attributable to the Hope Scholarship Credit shall not exceed the excess of—

"(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

"(B) the sum of the credits allowable under this subpart (other than this subsection and sections 23, 25D, and 30D) and section 27 for the taxable year.

Any reference in this section or section 24, 25, 26, 25B, 904, or 1400C to a credit allowable under this subsection shall be treated as a reference to so much of the credit allowable under subsection (a) as is attributable to the Hope Scholarship Credit.

"(6) PORTION OF CREDIT MADE REFUNDABLE.—40 percent of so much of the credit allowed under subsection (a) as is attributable to the Hope Scholarship Credit (determined after application of paragraph (4) and without regard to this paragraph and section 26(a)(2) or paragraph (5), as the case may be) shall be treated as a credit allowable under subpart C (and not allowed under subsection (a)). The preceding sentence shall not apply to any taxpayer for any taxable year if such taxpayer is a child to whom subsection (g) of section 1 applies for such taxable year.

"(7) COORDINATION WITH MIDWESTERN DISASTER AREA BENEFITS.—In the case of a taxpayer with respect to whom section 702(a)(1)(B) of the Heartland Disaster Tax Relief Act of 2008 applies for any taxable year, such taxpayer may elect to waive

the application of this subsection to such taxpayer for such taxable year.".

(b) CONFORMING AMENDMENTS.—

(1) Section 24(b)(3)(B) is amended by inserting "25A(i)," after "23,".

(2) Section 25(e)(1)(C)(ii) is amended by inserting "25A(i)," after "24,".

(3) Section 26(a)(1) is amended by inserting "25A(i)," after "24,".

(4) Section 25B(g)(2) is amended by inserting "25A(i)," after "23,".

(5) Section 904(i) is amended by inserting "25A(i)," after "24,".

(6) Section 1400C(d)(2) is amended by inserting "25A(i)," after "24,".

(7) Section 6211(b)(4)(A) is amended by inserting "25A by reason of subsection (i)(6) thereof," after "24(d),".

(8) Section 1324(b)(2) of title 31, United States Code, is amended by inserting "25A," before "35".

(c) TREATMENT OF POSSESSIONS.—

(1) PAYMENTS TO POSSESSIONS.—

(A) MIRROR CODE POSSESSION.—The Secretary of the Treasury shall pay to each possession of the United States with a mirror code tax system amounts equal to the loss to that possession by reason of the application of section 25A(i)(6) of the Internal Revenue Code of 1986 (as added by this section) with respect to taxable years beginning in 2009 and 2010. Such amounts shall be determined by the Secretary of the Treasury based on information provided by the government of the respective possession.

(B) OTHER POSSESSIONS.—The Secretary of the Treasury shall pay to each possession of the United States which does not have a mirror code tax system amounts estimated by the Secretary of the Treasury as being equal to the aggregate benefits that would have been provided to residents of such possession by reason of the application of section 25A(i)(6) of such Code (as so added) for taxable years beginning in 2009 and 2010 if a mirror code tax system had been in effect in such possession. The preceding sentence shall not apply with respect to any possession of the United States unless such possession has a plan, which has been approved by the Secretary of the Treasury, under which such possession will promptly distribute such payments to the residents of such possession.

(2) COORDINATION WITH CREDIT ALLOWED AGAINST UNITED STATES INCOME TAXES.—Section 25A(i)(6) of such Code (as added by this section) shall not apply to a bona fide resident of any possession of the United States.

(3) DEFINITIONS AND SPECIAL RULES.—

(A) POSSESSION OF THE UNITED STATES.—For purposes of this subsection, the term "possession of the United States" includes the Commonwealth of Puerto Rico and the Commonwealth of the Northern Mariana Islands.

(B) MIRROR CODE TAX SYSTEM.—For purposes of this subsection, the term "mirror code tax system" means, with

respect to any possession of the United States, the income tax system of such possession if the income tax liability of the residents of such possession under such system is determined by reference to the income tax laws of the United States as if such possession were the United States.

(C) TREATMENT OF PAYMENTS.—For purposes of section 1324(b)(2) of title 31, United States Code, the payments under this subsection shall be treated in the same manner as a refund due from the credit allowed under section 25A of the Internal Revenue Code of 1986 by reason of subsection (i)(6) of such section (as added by this section).

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2008.

(e) APPLICATION OF EGTRRA SUNSET.—The amendment made by subsection (b)(1) shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 in the same manner as the provision of such Act to which such amendment relates.

(f) TREASURY STUDIES REGARDING EDUCATION INCENTIVES.—

(1) STUDY REGARDING COORDINATION WITH NON-TAX STUDENT FINANCIAL ASSISTANCE.—The Secretary of the Treasury and the Secretary of Education, or their delegates, shall—

(A) study how to coordinate the credit allowed under section 25A of the Internal Revenue Code of 1986 with the Federal Pell Grant program under section 401 of the Higher Education Act of 1965 to maximize their effectiveness at promoting college affordability, and

(B) examine ways to expedite the delivery of the tax credit.

(2) STUDY REGARDING INCLUSION OF COMMUNITY SERVICE REQUIREMENTS.—The Secretary of the Treasury and the Secretary of Education, or their delegates, shall study the feasibility of requiring including community service as a condition of taking their tuition and related expenses into account under section 25A of the Internal Revenue Code of 1986.

(3) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary of the Treasury, or the Secretary's delegate, shall report to Congress on the results of the studies conducted under this paragraph.

SEC. 1005. COMPUTER TECHNOLOGY AND EQUIPMENT ALLOWED AS A QUALIFIED HIGHER EDUCATION EXPENSE FOR SECTION 529 ACCOUNTS IN 2009 AND 2010.

(a) IN GENERAL.—Section 529(e)(3)(A) is amended by striking "and" at the end of clause (i), by striking the period at the end of clause (ii), and by adding at the end the following:

"(iii) expenses paid or incurred in 2009 or 2010 for the purchase of any computer technology or equipment (as defined in section 170(e)(6)(F)(i)) or Internet access and related services, if such technology, equipment, or services are to be used by the beneficiary and the beneficiary's family during any of the years the beneficiary is enrolled at an eligible educational institution.

Clause (iii) shall not include expenses for computer software designed for sports, games, or hobbies unless the software is predominantly educational in nature.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to expenses paid or incurred after December 31, 2008.

SEC. 1006. EXTENSION OF AND INCREASE IN FIRST-TIME HOMEBUYER CREDIT; WAIVER OF REQUIREMENT TO REPAY.

(a) EXTENSION.—

(1) IN GENERAL.—Section 36(h) is amended by striking "July 1, 2009" and inserting "December 1, 2009".

(2) CONFORMING AMENDMENT.—Section 36(g) is amended by striking "July 1, 2009" and inserting "December 1, 2009".

(b) INCREASE.—

(1) IN GENERAL.—Section 36(b) is amended by striking "$7,500" each place it appears and inserting "$8,000".

(2) CONFORMING AMENDMENT.—Section 36(b)(1)(B) is amended by striking "$3,750" and inserting "$4,000".

(c) WAIVER OF RECAPTURE.—

(1) IN GENERAL.—Paragraph (4) of section 36(f) is amended by adding at the end the following new subparagraph:

"(D) WAIVER OF RECAPTURE FOR PURCHASES IN 2009.—In the case of any credit allowed with respect to the purchase of a principal residence after December 31, 2008, and before December 1, 2009—

"(i) paragraph (1) shall not apply, and

"(ii) paragraph (2) shall apply only if the disposition or cessation described in paragraph (2) with respect to such residence occurs during the 36-month period beginning on the date of the purchase of such residence by the taxpayer.".

(2) CONFORMING AMENDMENT.—Subsection (g) of section 36 is amended by striking "subsection (c)" and inserting "subsections (c) and (f)(4)(D)".

(d) COORDINATION WITH FIRST-TIME HOMEBUYER CREDIT FOR DISTRICT OF COLUMBIA.—

(1) IN GENERAL.—Subsection (e) of section 1400C is amended by adding at the end the following new paragraph:

"(4) COORDINATION WITH NATIONAL FIRST-TIME HOMEBUYERS CREDIT.—No credit shall be allowed under this section to any taxpayer with respect to the purchase of a residence after December 31, 2008, and before December 1, 2009, if a credit under section 36 is allowable to such taxpayer (or the taxpayer's spouse) with respect to such purchase.".

(2) CONFORMING AMENDMENT.—Section 36(d) is amended by striking paragraph (1).

(e) REMOVAL OF PROHIBITION ON FINANCING BY MORTGAGE REVENUE BONDS.—Section 36(d), as amended by subsection (c)(2), is amended by striking paragraph (2) and by redesignating paragraphs (3) and (4) as paragraphs (1) and (2), respectively.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to residences purchased after December 31, 2008.

SEC. 1007. SUSPENSION OF TAX ON PORTION OF UNEMPLOYMENT COMPENSATION.

(a) IN GENERAL.—Section 85 of the Internal Revenue Code of 1986 (relating to unemployment compensation) is amended by adding at the end the following new subsection:

"(c) SPECIAL RULE FOR 2009.—In the case of any taxable year beginning in 2009, gross income shall not include so much of the

unemployment compensation received by an individual as does not exceed $2,400.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2008.

SEC. 1008. ADDITIONAL DEDUCTION FOR STATE SALES TAX AND EXCISE TAX ON THE PURCHASE OF CERTAIN MOTOR VEHICLES.

(a) IN GENERAL.—Subsection (a) of section 164 is amended by inserting after paragraph (5) the following new paragraph:

"(6) Qualified motor vehicle taxes.".

(b) QUALIFIED MOTOR VEHICLE TAXES.—Subsection (b) of section 164 is amended by adding at the end the following new paragraph:

"(6) QUALIFIED MOTOR VEHICLE TAXES.—

"(A) IN GENERAL.—For purposes of this section, the term 'qualified motor vehicle taxes' means any State or local sales or excise tax imposed on the purchase of a qualified motor vehicle.

"(B) LIMITATION BASED ON VEHICLE PRICE.—The amount of any State or local sales or excise tax imposed on the purchase of a qualified motor vehicle taken into account under subparagraph (A) shall not exceed the portion of such tax attributable to so much of the purchase price as does not exceed $49,500.

"(C) INCOME LIMITATION.—The amount otherwise taken into account under subparagraph (A) (after the application of subparagraph (B)) for any taxable year shall be reduced (but not below zero) by the amount which bears the same ratio to the amount which is so treated as—

"(i) the excess (if any) of—

"(I) the taxpayer's modified adjusted gross income for such taxable year, over

"(II) $125,000 ($250,000 in the case of a joint return), bears to

"(ii) $10,000.

For purposes of the preceding sentence, the term 'modified adjusted gross income' means the adjusted gross income of the taxpayer for the taxable year (determined without regard to sections 911, 931, and 933).

"(D) QUALIFIED MOTOR VEHICLE.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'qualified motor vehicle' means—

"(I) a passenger automobile or light truck which is treated as a motor vehicle for purposes of title II of the Clean Air Act, the gross vehicle weight rating of which is not more than 8,500 pounds, and the original use of which commences with the taxpayer,

"(II) a motorcycle the gross vehicle weight rating of which is not more than 8,500 pounds and the original use of which commences with the taxpayer, and

"(III) a motor home the original use of which commences with the taxpayer.

"(ii) OTHER TERMS.—The terms 'motorcycle' and 'motor home' have the meanings given such terms under section 571.3 of title 49, Code of Federal Regulations (as in effect on the date of the enactment of this paragraph).

"(E) QUALIFIED MOTOR VEHICLE TAXES NOT INCLUDED IN COST OF ACQUIRED PROPERTY.—The last sentence of subsection (a) shall not apply to any qualified motor vehicle taxes.

"(F) COORDINATION WITH GENERAL SALES TAX.—This paragraph shall not apply in the case of a taxpayer who makes an election under paragraph (5) for the taxable year.

"(G) TERMINATION.—This paragraph shall not apply to purchases after December 31, 2009.".

(c) DEDUCTION ALLOWED TO NONITEMIZERS.—

(1) IN GENERAL.—Paragraph (1) of section 63(c) is amended by striking "and" at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting ", and", and by adding at the end the following new subparagraph:

"(E) the motor vehicle sales tax deduction.".

(2) DEFINITION.—Section 63(c) is amended by adding at the end the following new paragraph:

"(9) MOTOR VEHICLE SALES TAX DEDUCTION.—For purposes of paragraph (1), the term 'motor vehicle sales tax deduction' means the amount allowable as a deduction under section 164(a)(6). Such term shall not include any amount taken into account under section 62(a).".

(d) TREATMENT OF DEDUCTION UNDER ALTERNATIVE MINIMUM TAX.—The last sentence of section 56(b)(1)(E) is amended by striking "section 63(c)(1)(D)" and inserting "subparagraphs (D) and (E) of section 63(c)(1)".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to purchases on or after the date of the enactment of this Act in taxable years ending after such date.

PART II—ALTERNATIVE MINIMUM TAX RELIEF

SEC. 1011. EXTENSION OF ALTERNATIVE MINIMUM TAX RELIEF FOR NONREFUNDABLE PERSONAL CREDITS.

(a) IN GENERAL.—Paragraph (2) of section 26(a) (relating to special rule for taxable years 2000 through 2008) is amended—

(1) by striking "or 2008" and inserting "2008, or 2009", and

*(2) by striking "**2008**" in the heading thereof and inserting "**2009**".*

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2008.

SEC. 1012. EXTENSION OF INCREASED ALTERNATIVE MINIMUM TAX EXEMPTION AMOUNT.

(a) IN GENERAL.—Paragraph (1) of section 55(d) (relating to exemption amount) is amended—

(1) by striking "($69,950 in the case of taxable years beginning in 2008)" in subparagraph (A) and inserting "($70,950 in the case of taxable years beginning in 2009)", and

(2) by striking "($46,200 in the case of taxable years beginning in 2008)" in subparagraph (B) and inserting "($46,700 in the case of taxable years beginning in 2009)".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2008.

Subtitle B—Energy Incentives

PART I—RENEWABLE ENERGY INCENTIVES

SEC. 1101. EXTENSION OF CREDIT FOR ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES.

(a) IN GENERAL.—Subsection (d) of section 45 is amended—

(1) by striking "2010" in paragraph (1) and inserting "2013",

(2) by striking "2011" each place it appears in paragraphs (2), (3), (4), (6), (7) and (9) and inserting "2014", and

(3) by striking "2012" in paragraph (11)(B) and inserting "2014".

(b) TECHNICAL AMENDMENT.—Paragraph (5) of section 45(d) is amended by striking "and before" and all that follows and inserting " and before October 3, 2008.".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by subsection (a) shall apply to property placed in service after the date of the enactment of this Act.

(2) TECHNICAL AMENDMENT.—The amendment made by subsection (b) shall take effect as if included in section 102 of the Energy Improvement and Extension Act of 2008.

SEC. 1102. ELECTION OF INVESTMENT CREDIT IN LIEU OF PRODUCTION CREDIT.

(a) IN GENERAL.—Subsection (a) of section 48 is amended by adding at the end the following new paragraph:

"(5) ELECTION TO TREAT QUALIFIED FACILITIES AS ENERGY PROPERTY.—

"(A) IN GENERAL.—In the case of any qualified property which is part of a qualified investment credit facility—

"(i) such property shall be treated as energy property for purposes of this section, and

"(ii) the energy percentage with respect to such property shall be 30 percent.

"(B) DENIAL OF PRODUCTION CREDIT.—No credit shall be allowed under section 45 for any taxable year with respect to any qualified investment credit facility.

"(C) QUALIFIED INVESTMENT CREDIT FACILITY.—For purposes of this paragraph, the term 'qualified investment credit facility' means any of the following facilities if no credit has been allowed under section 45 with respect to such facility and the taxpayer makes an irrevocable election to have this paragraph apply to such facility:

"(i) WIND FACILITIES.—Any qualified facility (within the meaning of section 45) described in paragraph (1) of section 45(d) if such facility is placed in service in 2009, 2010, 2011, or 2012.

"(ii) OTHER FACILITIES.—Any qualified facility (within the meaning of section 45) described in paragraph (2), (3), (4), (6), (7), (9), or (11) of section 45(d) if such facility is placed in service in 2009, 2010, 2011, 2012, or 2013.

"(D) QUALIFIED PROPERTY.—For purposes of this paragraph, the term 'qualified property' means property—

"(i) which is—

"(I) tangible personal property, or

"(II) other tangible property (not including a building or its structural components), but only if such property is used as an integral part of the qualified investment credit facility, and

"(ii) with respect to which depreciation (or amortization in lieu of depreciation) is allowable.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to facilities placed in service after December 31, 2008.

SEC. 1103. REPEAL OF CERTAIN LIMITATIONS ON CREDIT FOR RENEWABLE ENERGY PROPERTY.

(a) REPEAL OF LIMITATION ON CREDIT FOR QUALIFIED SMALL WIND ENERGY PROPERTY.—Paragraph (4) of section 48(c) is amended by striking subparagraph (B) and by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C).

(b) REPEAL OF LIMITATION ON PROPERTY FINANCED BY SUBSIDIZED ENERGY FINANCING.—

(1) IN GENERAL.—Section 48(a)(4) is amended by adding at the end the following new subparagraph:

"(D) TERMINATION.—This paragraph shall not apply to periods after December 31, 2008, under rules similar to the rules of section 48(m) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).".

(2) CONFORMING AMENDMENTS.—

(A) Section 25C(e)(1) is amended by striking "(8), and (9)" and inserting "and (8)".

(B) Section 25D(e) is amended by striking paragraph (9).

(C) Section 48A(b)(2) is amended by inserting "(without regard to subparagraph (D) thereof)" after "section 48(a)(4)".

(D) Section 48B(b)(2) is amended by inserting "(without regard to subparagraph (D) thereof)" after "section 48(a)(4)".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by this section shall apply to periods after December 31, 2008, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

(2) CONFORMING AMENDMENTS.—The amendments made by subparagraphs (A) and (B) of subsection (b)(2) shall apply to taxable years beginning after December 31, 2008.

SEC. 1104. COORDINATION WITH RENEWABLE ENERGY GRANTS.

Section 48 is amended by adding at the end the following new subsection:

"(d) COORDINATION WITH DEPARTMENT OF TREASURY GRANTS.—In the case of any property with respect to which the Secretary makes a grant under section 1603 of the American Recovery and Reinvestment Tax Act of 2009—

"(1) DENIAL OF PRODUCTION AND INVESTMENT CREDITS.—No credit shall be determined under this section or section 45 with respect to such property for the taxable year in which such grant is made or any subsequent taxable year.

"(2) RECAPTURE OF CREDITS FOR PROGRESS EXPENDITURES MADE BEFORE GRANT.—If a credit was determined under this section with respect to such property for any taxable year ending before such grant is made—

"(A) the tax imposed under subtitle A on the taxpayer for the taxable year in which such grant is made shall be increased by so much of such credit as was allowed under section 38,

"(B) the general business carryforwards under section 39 shall be adjusted so as to recapture the portion of such credit which was not so allowed, and

"(C) the amount of such grant shall be determined without regard to any reduction in the basis of such property by reason of such credit.

"(3) TREATMENT OF GRANTS.—Any such grant shall—

"(A) not be includible in the gross income of the taxpayer, but

"(B) shall be taken into account in determining the basis of the property to which such grant relates, except that the basis of such property shall be reduced under section 50(c) in the same manner as a credit allowed under subsection (a).".

PART II—INCREASED ALLOCATIONS OF NEW CLEAN RENEWABLE ENERGY BONDS AND QUALIFIED ENERGY CONSERVATION BONDS

SEC. 1111. INCREASED LIMITATION ON ISSUANCE OF NEW CLEAN RENEWABLE ENERGY BONDS.

Subsection (c) of section 54C is amended by adding at the end the following new paragraph:

"(4) ADDITIONAL LIMITATION.—The national new clean renewable energy bond limitation shall be increased by $1,600,000,000. Such increase shall be allocated by the Secretary consistent with the rules of paragraphs (2) and (3).".

SEC. 1112. INCREASED LIMITATION ON ISSUANCE OF QUALIFIED ENERGY CONSERVATION BONDS.

(a) IN GENERAL.—Section 54D(d) is amended by striking "$800,000,000" and inserting "$3,200,000,000".

(b) CLARIFICATION WITH RESPECT TO GREEN COMMUNITY PROGRAMS.—

(1) IN GENERAL.—Clause (ii) of section 54D(f)(1)(A) is amended by inserting "(including the use of loans, grants, or other repayment mechanisms to implement such programs)" after "green community programs".

(2) SPECIAL RULES FOR BONDS FOR IMPLEMENTING GREEN COMMUNITY PROGRAMS.—Subsection (e) of section 54D is amended by adding at the end the following new paragraph:

"(4) SPECIAL RULES FOR BONDS TO IMPLEMENT GREEN COMMUNITY PROGRAMS.—In the case of any bond issued for the purpose of providing loans, grants, or other repayment mechanisms for capital expenditures to implement green community programs, such bond shall not be treated as a private activity bond for purposes of paragraph (3).".

PART III—ENERGY CONSERVATION INCENTIVES

SEC. 1121. EXTENSION AND MODIFICATION OF CREDIT FOR NONBUSINESS ENERGY PROPERTY.

(a) IN GENERAL.—Section 25C is amended by striking subsections (a) and (b) and inserting the following new subsections:

"(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 30 percent of the sum of—

"(1) the amount paid or incurred by the taxpayer during such taxable year for qualified energy efficiency improvements, and

"(2) the amount of the residential energy property expenditures paid or incurred by the taxpayer during such taxable year.

"(b) LIMITATION.—The aggregate amount of the credits allowed under this section for taxable years beginning in 2009 and 2010 with respect to any taxpayer shall not exceed $1,500.".

(b) MODIFICATIONS OF STANDARDS FOR ENERGY-EFFICIENT BUILDING PROPERTY.—

(1) ELECTRIC HEAT PUMPS.—Subparagraph (B) of section 25C(d)(3) is amended to read as follows:

"(B) an electric heat pump which achieves the highest efficiency tier established by the Consortium for Energy Efficiency, as in effect on January 1, 2009.".

(2) CENTRAL AIR CONDITIONERS.—Subparagraph (C) of section 25C(d)(3) is amended by striking "2006" and inserting "2009".

(3) WATER HEATERS.—Subparagraph (D) of section 25C(d)(3) is amended to read as follows:

"(D) a natural gas, propane, or oil water heater which has either an energy factor of at least 0.82 or a thermal efficiency of at least 90 percent.".

(4) WOOD STOVES.—Subparagraph (E) of section 25C(d)(3) is amended by inserting ", as measured using a lower heating value" after "75 percent".

(c) MODIFICATIONS OF STANDARDS FOR OIL FURNACES AND HOT WATER BOILERS.—

(1) IN GENERAL.—Paragraph (4) of section 25C(d) is amended to read as follows:

"(4) QUALIFIED NATURAL GAS, PROPANE, AND OIL FURNACES AND HOT WATER BOILERS.—

"(A) QUALIFIED NATURAL GAS FURNACE.—The term 'qualified natural gas furnace' means any natural gas furnace which achieves an annual fuel utilization efficiency rate of not less than 95.

"(B) QUALIFIED NATURAL GAS HOT WATER BOILER.—The term 'qualified natural gas hot water boiler' means any natural gas hot water boiler which achieves an annual fuel utilization efficiency rate of not less than 90.

"(C) QUALIFIED PROPANE FURNACE.—The term 'qualified propane furnace' means any propane furnace which achieves an annual fuel utilization efficiency rate of not less than 95.

"(D) QUALIFIED PROPANE HOT WATER BOILER.—The term 'qualified propane hot water boiler' means any propane hot water boiler which achieves an annual fuel utilization efficiency rate of not less than 90.

"(E) QUALIFIED OIL FURNACES.—The term 'qualified oil furnace' means any oil furnace which achieves an annual fuel utilization efficiency rate of not less than 90.

"(F) QUALIFIED OIL HOT WATER BOILER.—The term 'qualified oil hot water boiler' means any oil hot water boiler which achieves an annual fuel utilization efficiency rate of not less than 90.".

(2) CONFORMING AMENDMENT.—Clause (ii) of section 25C(d)(2)(A) is amended to read as follows:

"(ii) any qualified natural gas furnace, qualified propane furnace, qualified oil furnace, qualified natural gas hot water boiler, qualified propane hot water boiler, or qualified oil hot water boiler, or".

(d) MODIFICATIONS OF STANDARDS FOR QUALIFIED ENERGY EFFICIENCY IMPROVEMENTS.—

(1) QUALIFICATIONS FOR EXTERIOR WINDOWS, DOORS, AND SKYLIGHTS.—Subsection (c) of section 25C is amended by adding at the end the following new paragraph:

"(4) QUALIFICATIONS FOR EXTERIOR WINDOWS, DOORS, AND SKYLIGHTS.—Such term shall not include any component described in subparagraph (B) or (C) of paragraph (2) unless such component is equal to or below a U factor of 0.30 and SHGC of 0.30.".

(2) ADDITIONAL QUALIFICATION FOR INSULATION.—Subparagraph (A) of section 25C(c)(2) is amended by inserting "and meets the prescriptive criteria for such material or system established by the 2009 International Energy Conservation Code, as such Code (including supplements) is in effect on the date of the enactment of the American Recovery and Reinvestment Tax Act of 2009" after "such dwelling unit".

(e) EXTENSION.—Section 25C(g)(2) is amended by striking "December 31, 2009" and inserting "December 31, 2010".

(f) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 2008.

(2) EFFICIENCY STANDARDS.—The amendments made by paragraphs (1), (2), and (3) of subsection (b) and subsections (c) and (d) shall apply to property placed in service after the date of the enactment of this Act.

SEC. 1122. MODIFICATION OF CREDIT FOR RESIDENTIAL ENERGY EFFICIENT PROPERTY.

(a) REMOVAL OF CREDIT LIMITATION FOR PROPERTY PLACED IN SERVICE.—

(1) IN GENERAL.—Paragraph (1) of section 25D(b) is amended to read as follows:

"(1) MAXIMUM CREDIT FOR FUEL CELLS.—In the case of any qualified fuel cell property expenditure, the credit allowed under subsection (a) (determined without regard to subsection (c)) for any taxable year shall not exceed $500 with respect to each half kilowatt of capacity of the qualified fuel cell property (as defined in section 48(c)(1)) to which such expenditure relates.".

(2) CONFORMING AMENDMENT.—Paragraph (4) of section 25D(e) is amended—

(A) by striking all that precedes subparagraph (B) and inserting the following:

"(4) FUEL CELL EXPENDITURE LIMITATIONS IN CASE OF JOINT OCCUPANCY.—In the case of any dwelling unit with respect to which qualified fuel cell property expenditures are made and which is jointly occupied and used during any calendar year as a residence by two or more individuals, the following rules shall apply:

"(A) MAXIMUM EXPENDITURES FOR FUEL CELLS.—The maximum amount of such expenditures which may be taken into account under subsection (a) by all such individuals with respect to such dwelling unit during such calendar year shall be $1,667 in the case of each half kilowatt of capacity of qualified fuel cell property (as defined in section 48(c)(1)) with respect to which such expenditures relate.", and

(B) by striking subparagraph (C).

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2008.

SEC. 1123. TEMPORARY INCREASE IN CREDIT FOR ALTERNATIVE FUEL VEHICLE REFUELING PROPERTY.

(a) IN GENERAL.—Section 30C(e) is amended by adding at the end the following new paragraph:

"(6) SPECIAL RULE FOR PROPERTY PLACED IN SERVICE DURING 2009 AND 2010.—In the case of property placed in service in taxable years beginning after December 31, 2008, and before January 1, 2011—

"(A) in the case of any such property which does not relate to hydrogen—

"(i) subsection (a) shall be applied by substituting '50 percent' for '30 percent',

"(ii) subsection (b)(1) shall be applied by substituting '$50,000' for '$30,000', and

"(iii) subsection (b)(2) shall be applied by substituting '$2,000' for '$1,000', and

"(B) in the case of any such property which relates to hydrogen, subsection (b)(1) shall be applied by substituting '$200,000' for '$30,000'.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2008.

PART IV—MODIFICATION OF CREDIT FOR CARBON DIOXIDE SEQUESTRATION

SEC. 1131. APPLICATION OF MONITORING REQUIREMENTS TO CARBON DIOXIDE USED AS A TERTIARY INJECTANT.

(a) IN GENERAL.—Section 45Q(a)(2) is amended by striking "and" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", and", and by adding at the end the following new subparagraph:

"(C) disposed of by the taxpayer in secure geological storage.".

(b) CONFORMING AMENDMENTS.—

(1) Section 45Q(d)(2) is amended—

(A) by striking "subsection (a)(1)(B)" and inserting "paragraph (1)(B) or (2)(C) of subsection (a)",

(B) by striking "and unminable coal seems" and inserting ", oil and gas reservoirs, and unminable coal seams", and

(C) by inserting "the Secretary of Energy, and the Secretary of the Interior," after "Environmental Protection Agency".

(2) Section 45Q(a)(1)(B) is amended by inserting "and not used by the taxpayer as described in paragraph (2)(B)" after "storage".

(3) Section 45Q(e) is amended by striking "captured and disposed of or used as a tertiary injectant" and inserting "taken into account in accordance with subsection (a)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to carbon dioxide captured after the date of the enactment of this Act.

PART V—PLUG-IN ELECTRIC DRIVE MOTOR VEHICLES

SEC. 1141. CREDIT FOR NEW QUALIFIED PLUG-IN ELECTRIC DRIVE MOTOR VEHICLES.

(a) IN GENERAL.—Section 30D is amended to read as follows:

"SEC. 30D. NEW QUALIFIED PLUG-IN ELECTRIC DRIVE MOTOR VEHICLES.

"(a) ALLOWANCE OF CREDIT.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of the credit amounts determined under subsection (b) with respect to each new qualified plug-in electric drive motor vehicle placed in service by the taxpayer during the taxable year.

"(b) PER VEHICLE DOLLAR LIMITATION.—

"(1) IN GENERAL.—The amount determined under this subsection with respect to any new qualified plug-in electric drive motor vehicle is the sum of the amounts determined under paragraphs (2) and (3) with respect to such vehicle.

"(2) BASE AMOUNT.—The amount determined under this paragraph is $2,500.

"(3) BATTERY CAPACITY.—In the case of a vehicle which draws propulsion energy from a battery with not less than 5 kilowatt hours of capacity, the amount determined under this paragraph is $417, plus $417 for each kilowatt hour of capacity

in excess of 5 kilowatt hours. The amount determined under this paragraph shall not exceed $5,000.

"(c) APPLICATION WITH OTHER CREDITS.—

"(1) BUSINESS CREDIT TREATED AS PART OF GENERAL BUSINESS CREDIT.—So much of the credit which would be allowed under subsection (a) for any taxable year (determined without regard to this subsection) that is attributable to property of a character subject to an allowance for depreciation shall be treated as a credit listed in section 38(b) for such taxable year (and not allowed under subsection (a)).

"(2) PERSONAL CREDIT.—

"(A) IN GENERAL.—For purposes of this title, the credit allowed under subsection (a) for any taxable year (determined after application of paragraph (1)) shall be treated as a credit allowable under subpart A for such taxable year.

"(B) LIMITATION BASED ON AMOUNT OF TAX.—In the case of a taxable year to which section 26(a)(2) does not apply, the credit allowed under subsection (a) for any taxable year (determined after application of paragraph (1)) shall not exceed the excess of—

"(i) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

"(ii) the sum of the credits allowable under subpart A (other than this section and sections 23 and 25D) and section 27 for the taxable year.

"(d) NEW QUALIFIED PLUG-IN ELECTRIC DRIVE MOTOR VEHICLE.—For purposes of this section—

"(1) IN GENERAL.—The term 'new qualified plug-in electric drive motor vehicle' means a motor vehicle—

"(A) the original use of which commences with the taxpayer,

"(B) which is acquired for use or lease by the taxpayer and not for resale,

"(C) which is made by a manufacturer,

"(D) which is treated as a motor vehicle for purposes of title II of the Clean Air Act,

"(E) which has a gross vehicle weight rating of less than 14,000 pounds, and

"(F) which is propelled to a significant extent by an electric motor which draws electricity from a battery which—

"(i) has a capacity of not less than 4 kilowatt hours, and

"(ii) is capable of being recharged from an external source of electricity.

"(2) MOTOR VEHICLE.—The term 'motor vehicle' means any vehicle which is manufactured primarily for use on public streets, roads, and highways (not including a vehicle operated exclusively on a rail or rails) and which has at least 4 wheels.

"(3) MANUFACTURER.—The term 'manufacturer' has the meaning given such term in regulations prescribed by the Administrator of the Environmental Protection Agency for pur-

poses of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

"(4) BATTERY CAPACITY.—The term 'capacity' means, with respect to any battery, the quantity of electricity which the battery is capable of storing, expressed in kilowatt hours, as measured from a 100 percent state of charge to a 0 percent state of charge.

"(e) LIMITATION ON NUMBER OF NEW QUALIFIED PLUG-IN ELECTRIC DRIVE MOTOR VEHICLES ELIGIBLE FOR CREDIT.—

"(1) IN GENERAL.—In the case of a new qualified plug-in electric drive motor vehicle sold during the phaseout period, only the applicable percentage of the credit otherwise allowable under subsection (a) shall be allowed.

"(2) PHASEOUT PERIOD.—For purposes of this subsection, the phaseout period is the period beginning with the second calendar quarter following the calendar quarter which includes the first date on which the number of new qualified plug-in electric drive motor vehicles manufactured by the manufacturer of the vehicle referred to in paragraph (1) sold for use in the United States after December 31, 2009, is at least 200,000.

"(3) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage is—

"(A) 50 percent for the first 2 calendar quarters of the phaseout period,

"(B) 25 percent for the 3d and 4th calendar quarters of the phaseout period, and

"(C) 0 percent for each calendar quarter thereafter.

"(4) CONTROLLED GROUPS.—Rules similar to the rules of section 30B(f)(4) shall apply for purposes of this subsection.

"(f) SPECIAL RULES.—

"(1) BASIS REDUCTION.—For purposes of this subtitle, the basis of any property for which a credit is allowable under subsection (a) shall be reduced by the amount of such credit so allowed.

"(2) NO DOUBLE BENEFIT.—The amount of any deduction or other credit allowable under this chapter for a new qualified plug-in electric drive motor vehicle shall be reduced by the amount of credit allowed under subsection (a) for such vehicle.

"(3) PROPERTY USED BY TAX-EXEMPT ENTITY.—In the case of a vehicle the use of which is described in paragraph (3) or (4) of section 50(b) and which is not subject to a lease, the person who sold such vehicle to the person or entity using such vehicle shall be treated as the taxpayer that placed such vehicle in service, but only if such person clearly discloses to such person or entity in a document the amount of any credit allowable under subsection (a) with respect to such vehicle (determined without regard to subsection (c)).

"(4) PROPERTY USED OUTSIDE UNITED STATES NOT QUALIFIED.—No credit shall be allowable under subsection (a) with respect to any property referred to in section 50(b)(1).

"(5) RECAPTURE.—The Secretary shall, by regulations, provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any property which ceases to be property eligible for such credit.

"(6) ELECTION NOT TO TAKE CREDIT.—No credit shall be allowed under subsection (a) for any vehicle if the taxpayer elects to not have this section apply to such vehicle.

"(7) INTERACTION WITH AIR QUALITY AND MOTOR VEHICLE SAFETY STANDARDS.—A motor vehicle shall not be considered eligible for a credit under this section unless such vehicle is in compliance with—

"(A) the applicable provisions of the Clean Air Act for the applicable make and model year of the vehicle (or applicable air quality provisions of State law in the case of a State which has adopted such provision under a waiver under section 209(b) of the Clean Air Act), and

"(B) the motor vehicle safety provisions of sections 30101 through 30169 of title 49, United States Code.".

(b) CONFORMING AMENDMENTS.—

(1) Section 30B(d)(3)(D) is amended by striking "subsection (d) thereof" and inserting "subsection (c) thereof".

(2) Section 38(b)(35) is amended by striking "30D(d)(1)" and inserting "30D(c)(1)".

(3) Section 1016(a)(25) is amended by striking "section 30D(e)(4)" and inserting "section 30D(f)(1)".

(4) Section 6501(m) is amended by striking "section 30D(e)(9)" and inserting "section 30D(e)(4)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to vehicles acquired after December 31, 2009.

SEC. 1142. CREDIT FOR CERTAIN PLUG-IN ELECTRIC VEHICLES.

(a) IN GENERAL.—Section 30 is amended to read as follows:

"SEC. 30. CERTAIN PLUG-IN ELECTRIC VEHICLES.

"(a) ALLOWANCE OF CREDIT.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 10 percent of the cost of any qualified plug-in electric vehicle placed in service by the taxpayer during the taxable year.

"(b) PER VEHICLE DOLLAR LIMITATION.—The amount of the credit allowed under subsection (a) with respect to any vehicle shall not exceed $2,500.

"(c) APPLICATION WITH OTHER CREDITS.—

"(1) BUSINESS CREDIT TREATED AS PART OF GENERAL BUSINESS CREDIT.—So much of the credit which would be allowed under subsection (a) for any taxable year (determined without regard to this subsection) that is attributable to property of a character subject to an allowance for depreciation shall be treated as a credit listed in section 38(b) for such taxable year (and not allowed under subsection (a)).

"(2) PERSONAL CREDIT.—

"(A) IN GENERAL.—For purposes of this title, the credit allowed under subsection (a) for any taxable year (determined after application of paragraph (1)) shall be treated as a credit allowable under subpart A for such taxable year.

"(B) LIMITATION BASED ON AMOUNT OF TAX.—In the case of a taxable year to which section 26(a)(2) does not apply, the credit allowed under subsection (a) for any tax-

able year (determined after application of paragraph (1)) shall not exceed the excess of—

"(i) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

"(ii) the sum of the credits allowable under subpart A (other than this section and sections 23, 25D, and 30D) and section 27 for the taxable year.

"(d) QUALIFIED PLUG-IN ELECTRIC VEHICLE.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified plug-in electric vehicle' means a specified vehicle—

"(A) the original use of which commences with the taxpayer,

"(B) which is acquired for use or lease by the taxpayer and not for resale,

"(C) which is made by a manufacturer,

"(D) which is manufactured primarily for use on public streets, roads, and highways,

"(E) which has a gross vehicle weight rating of less than 14,000 pounds, and

"(F) which is propelled to a significant extent by an electric motor which draws electricity from a battery which—

"(i) has a capacity of not less than 4 kilowatt hours (2.5 kilowatt hours in the case of a vehicle with 2 or 3 wheels), and

"(ii) is capable of being recharged from an external source of electricity.

"(2) SPECIFIED VEHICLE.—The term 'specified vehicle' means any vehicle which—

"(A) is a low speed vehicle within the meaning of section 571.3 of title 49, Code of Federal Regulations (as in effect on the date of the enactment of the American Recovery and Reinvestment Tax Act of 2009), or

"(B) has 2 or 3 wheels.

"(3) MANUFACTURER.—The term 'manufacturer' has the meaning given such term in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

"(4) BATTERY CAPACITY.—The term 'capacity' means, with respect to any battery, the quantity of electricity which the battery is capable of storing, expressed in kilowatt hours, as measured from a 100 percent state of charge to a 0 percent state of charge.

"(e) SPECIAL RULES.—

"(1) BASIS REDUCTION.—For purposes of this subtitle, the basis of any property for which a credit is allowable under subsection (a) shall be reduced by the amount of such credit so allowed.

"(2) NO DOUBLE BENEFIT.—The amount of any deduction or other credit allowable under this chapter for a new qualified plug-in electric drive motor vehicle shall be reduced by the

amount of credit allowable under subsection (a) for such vehicle.

"(3) PROPERTY USED BY TAX-EXEMPT ENTITY.—In the case of a vehicle the use of which is described in paragraph (3) or (4) of section 50(b) and which is not subject to a lease, the person who sold such vehicle to the person or entity using such vehicle shall be treated as the taxpayer that placed such vehicle in service, but only if such person clearly discloses to such person or entity in a document the amount of any credit allowable under subsection (a) with respect to such vehicle (determined without regard to subsection (c)).

"(4) PROPERTY USED OUTSIDE UNITED STATES NOT QUALIFIED.—No credit shall be allowable under subsection (a) with respect to any property referred to in section 50(b)(1).

"(5) RECAPTURE.—The Secretary shall, by regulations, provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any property which ceases to be property eligible for such credit.

"(6) ELECTION NOT TO TAKE CREDIT.—No credit shall be allowed under subsection (a) for any vehicle if the taxpayer elects to not have this section apply to such vehicle.

"(f) TERMINATION.—This section shall not apply to any vehicle acquired after December 31, 2011.".

(b) CONFORMING AMENDMENTS.—

(1)(A) Section 24(b)(3)(B) is amended by inserting "30," after "25D,".

(B) Section 25(e)(1)(C)(ii) is amended by inserting "30," after "25D,".

(C) Section 25B(g)(2) is amended by inserting "30," after "25D,".

(D) Section 26(a)(1) is amended by inserting "30," after "25D,".

(E) Section 904(i) is amended by striking "and 25B" and inserting "25B, 30, and 30D".

(F) Section 1400C(d)(2) is amended by striking "and 25D" and inserting "25D, and 30".

(2) Paragraph (1) of section 30B(h) is amended to read as follows:

"(1) MOTOR VEHICLE.—The term 'motor vehicle' means any vehicle which is manufactured primarily for use on public streets, roads, and highways (not including a vehicle operated exclusively on a rail or rails) and which has at least 4 wheels.".

(3) Section 30C(d)(2)(A) is amended by striking ", 30,".

(4)(A) Section 53(d)(1)(B) is amended by striking clause (iii) and redesignating clause (iv) as clause (iii).

(B) Subclause (II) of section 53(d)(1)(B)(iii), as so redesignated, is amended by striking "increased in the manner provided in clause (iii)".

(5) Section 55(c)(3) is amended by striking "30(b)(3),".

(6) Section 1016(a)(25) is amended by striking "section 30(d)(1)" and inserting "section 30(e)(1)".

(7) Section 6501(m) is amended by striking "section 30(d)(4)" and inserting "section 30(e)(6)".

(8) The item in the table of sections for subpart B of part IV of subchapter A of chapter 1 is amended to read as follows:

"Sec. 30. Certain plug-in electric vehicles.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to vehicles acquired after the date of the enactment of this Act.

(d) TRANSITIONAL RULE.—In the case of a vehicle acquired after the date of the enactment of this Act and before January 1, 2010, no credit shall be allowed under section 30 of the Internal Revenue Code of 1986, as added by this section, if credit is allowable under section 30D of such Code with respect to such vehicle.

(e) APPLICATION OF EGTRRA SUNSET.—The amendment made by subsection (b)(1)(A) shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 in the same manner as the provision of such Act to which such amendment relates.

SEC. 1143. CONVERSION KITS.

(a) IN GENERAL.—Section 30B (relating to alternative motor vehicle credit) is amended by redesignating subsections (i) and (j) as subsections (j) and (k), respectively, and by inserting after subsection (h) the following new subsection:

"(i) PLUG-IN CONVERSION CREDIT.—

"(1) IN GENERAL.—For purposes of subsection (a), the plug-in conversion credit determined under this subsection with respect to any motor vehicle which is converted to a qualified plug-in electric drive motor vehicle is 10 percent of so much of the cost of the converting such vehicle as does not exceed $40,000.

"(2) QUALIFIED PLUG-IN ELECTRIC DRIVE MOTOR VEHICLE.—For purposes of this subsection, the term 'qualified plug-in electric drive motor vehicle' means any new qualified plug-in electric drive motor vehicle (as defined in section 30D, determined without regard to whether such vehicle is made by a manufacturer or whether the original use of such vehicle commences with the taxpayer).

"(3) CREDIT ALLOWED IN ADDITION TO OTHER CREDITS.—The credit allowed under this subsection shall be allowed with respect to a motor vehicle notwithstanding whether a credit has been allowed with respect to such motor vehicle under this section (other than this subsection) in any preceding taxable year.

"(4) TERMINATION.—This subsection shall not apply to conversions made after December 31, 2011.".

(b) CREDIT TREATED AS PART OF ALTERNATIVE MOTOR VEHICLE CREDIT.—Section 30B(a) is amended by striking "and" at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting ", and", and by adding at the end the following new paragraph:

"(5) the plug-in conversion credit determined under subsection (i).".

(c) NO RECAPTURE FOR VEHICLES CONVERTED TO QUALIFIED PLUG-IN ELECTRIC DRIVE MOTOR VEHICLES.—Paragraph (8) of section 30B(h) is amended by adding at the end the following: ", except that no benefit shall be recaptured if such property ceases to be eligible for such credit by reason of conversion to a qualified plug-in electric drive motor vehicle.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act.

SEC. 1144. TREATMENT OF ALTERNATIVE MOTOR VEHICLE CREDIT AS A PERSONAL CREDIT ALLOWED AGAINST AMT.

(a) IN GENERAL.—Paragraph (2) of section 30B(g) is amended to read as follows:

"(2) PERSONAL CREDIT.—

"(A) IN GENERAL.—For purposes of this title, the credit allowed under subsection (a) for any taxable year (determined after application of paragraph (1)) shall be treated as a credit allowable under subpart A for such taxable year.

"(B) LIMITATION BASED ON AMOUNT OF TAX.—In the case of a taxable year to which section 26(a)(2) does not apply, the credit allowed under subsection (a) for any taxable year (determined after application of paragraph (1)) shall not exceed the excess of—

"(i) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

"(ii) the sum of the credits allowable under subpart A (other than this section and sections 23, 25D, 30, and 30D) and section 27 for the taxable year.".

(b) CONFORMING AMENDMENTS.—

(1)(A) Section 24(b)(3)(B), as amended by this Act, is amended by inserting "30B," after "30,".

(B) Section 25(e)(1)(C)(ii), as amended by this Act, is amended by inserting "30B," after "30,".

(C) Section 25B(g)(2), as amended by this Act, is amended by inserting "30B," after "30,".

(D) Section 26(a)(1), as amended by this Act, is amended by inserting "30B," after "30,".

(E) Section 904(i), as amended by this Act, is amended by inserting "30B," after "30".

(F) Section 1400C(d)(2), as amended by this Act, is amended by striking "and 30" and inserting "30, and 30B".

(2) Section 30C(d)(2)(A), as amended by this Act, is amended by striking "sections 27 and 30B" and inserting "section 27".

(3) Section 55(c)(3) is amended by striking "30B(g)(2),".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2008.

(d) APPLICATION OF EGTRRA SUNSET.—The amendment made by subsection (b)(1)(A) shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 in the same manner as the provision of such Act to which such amendment relates.

PART VI—PARITY FOR TRANSPORTATION FRINGE BENEFITS

SEC. 1151. INCREASED EXCLUSION AMOUNT FOR COMMUTER TRANSIT BENEFITS AND TRANSIT PASSES.

(a) IN GENERAL.—Paragraph (2) of section 132(f) is amended by adding at the end the following flush sentence:

"In the case of any month beginning on or after the date of the enactment of this sentence and before January 1, 2011, sub-

paragraph (A) shall be applied as if the dollar amount therein were the same as the dollar amount in effect for such month under subparagraph (B).".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to months beginning on or after the date of the enactment of this section.

Subtitle C—Tax Incentives for Business

PART I—TEMPORARY INVESTMENT INCENTIVES

SEC. 1201. SPECIAL ALLOWANCE FOR CERTAIN PROPERTY ACQUIRED DURING 2009.

(a) EXTENSION OF SPECIAL ALLOWANCE.—

(1) IN GENERAL.—Paragraph (2) of section 168(k) is amended—

(A) by striking "January 1, 2010" and inserting "January 1, 2011", and

(B) by striking "January 1, 2009" each place it appears and inserting "January 1, 2010".

(2) CONFORMING AMENDMENTS.—

(A) The heading for subsection (k) of section 168 is amended by striking "JANUARY 1, 2009" and inserting "JANUARY 1, 2010".

(B) The heading for clause (ii) of section 168(k)(2)(B) is amended by striking "PRE-JANUARY 1, 2009" and inserting "PRE-JANUARY 1, 2010".

(C) Subparagraph (B) of section 168(l)(5) is amended by striking "January 1, 2009" and inserting "January 1, 2010".

(D) Subparagraph (C) of section 168(n)(2) is amended by striking "January 1, 2009" and inserting "January 1, 2010".

(E) Subparagraph (B) of section 1400N(d)(3) is amended by striking "January 1, 2009" and inserting "January 1, 2010".

(3) TECHNICAL AMENDMENTS.—

(A) Subparagraph (D) of section 168(k)(4) is amended—

(i) by striking "and" at the end of clause (i),

(ii) by redesignating clause (ii) as clause (iii), and

(iii) by inserting after clause (i) the following new clause:

"(ii) 'April 1, 2008' shall be substituted for 'January 1, 2008' in subparagraph (A)(iii)(I) thereof, and".

(B) Subparagraph (A) of section 6211(b)(4) is amended by inserting "168(k)(4)," after "53(e),".

(b) EXTENSION OF ELECTION TO ACCELERATE THE AMT AND RESEARCH CREDITS IN LIEU OF BONUS DEPRECIATION.—

(1) IN GENERAL.—Section 168(k)(4) (relating to election to accelerate the AMT and research credits in lieu of bonus depreciation) is amended—

(A) by striking "2009" and inserting "2010" in subparagraph (D)(iii) (as redesignated by subsection (a)(3)), and

(B) by adding at the end the following new subparagraph:

"(H) SPECIAL RULES FOR EXTENSION PROPERTY.—

"(i) TAXPAYERS PREVIOUSLY ELECTING ACCELERATION.—In the case of a taxpayer who made the election under subparagraph (A) for its first taxable year ending after March 31, 2008—

"(I) the taxpayer may elect not to have this paragraph apply to extension property, but

"(II) if the taxpayer does not make the election under subclause (I), in applying this paragraph to the taxpayer a separate bonus depreciation amount, maximum amount, and maximum increase amount shall be computed and applied to eligible qualified property which is extension property and to eligible qualified property which is not extension property.

"(ii) TAXPAYERS NOT PREVIOUSLY ELECTING ACCELERATION.—In the case of a taxpayer who did not make the election under subparagraph (A) for its first taxable year ending after March 31, 2008—

"(I) the taxpayer may elect to have this paragraph apply to its first taxable year ending after December 31, 2008, and each subsequent taxable year, and

"(II) if the taxpayer makes the election under subclause (I), this paragraph shall only apply to eligible qualified property which is extension property.

"(iii) EXTENSION PROPERTY.—For purposes of this subparagraph, the term 'extension property' means property which is eligible qualified property solely by reason of the extension of the application of the special allowance under paragraph (1) pursuant to the amendments made by section 1201(a) of the American Recovery and Reinvestment Tax Act of 2009 (and the application of such extension to this paragraph pursuant to the amendment made by section 1201(b)(1) of such Act).".

(2) TECHNICAL AMENDMENT.—Section 6211(b)(4)(A) is amended by inserting "168(k)(4)," after "53(e),".

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to property placed in service after December 31, 2008, in taxable years ending after such date.

(2) TECHNICAL AMENDMENTS.—The amendments made by subsections (a)(3) and (b)(2) shall apply to taxable years ending after March 31, 2008.

SEC. 1202. TEMPORARY INCREASE IN LIMITATIONS ON EXPENSING OF CERTAIN DEPRECIABLE BUSINESS ASSETS.

(a) IN GENERAL.—Paragraph (7) of section 179(b) is amended—

(1) by striking "2008" and inserting "2008, or 2009", and

(2) by striking "2008" in the heading thereof and inserting "2008, AND 2009".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2008.

PART II—SMALL BUSINESS PROVISIONS

SEC. 1211. 5-YEAR CARRYBACK OF OPERATING LOSSES OF SMALL BUSINESSES.

(a) IN GENERAL.—Subparagraph (H) of section 172(b)(1) is amended to read as follows:

"(H) CARRYBACK FOR 2008 NET OPERATING LOSSES OF SMALL BUSINESSES.—

"(i) IN GENERAL.—If an eligible small business elects the application of this subparagraph with respect to an applicable 2008 net operating loss—

"(I) subparagraph (A)(i) shall be applied by substituting any whole number elected by the taxpayer which is more than 2 and less than 6 for '2',

"(II) subparagraph (E)(ii) shall be applied by substituting the whole number which is one less than the whole number substituted under subclause (I) for '2', and

"(III) subparagraph (F) shall not apply.

"(ii) APPLICABLE 2008 NET OPERATING LOSS.—For purposes of this subparagraph, the term 'applicable 2008 net operating loss' means—

"(I) the taxpayer's net operating loss for any taxable year ending in 2008, or

"(II) if the taxpayer elects to have this subclause apply in lieu of subclause (I), the taxpayer's net operating loss for any taxable year beginning in 2008.

"(iii) ELECTION.—Any election under this subparagraph shall be made in such manner as may be prescribed by the Secretary, and shall be made by the due date (including extension of time) for filing the taxpayer's return for the taxable year of the net operating loss. Any such election, once made, shall be irrevocable. Any election under this subparagraph may be made only with respect to 1 taxable year.

"(iv) ELIGIBLE SMALL BUSINESS.—For purposes of this subparagraph, the term 'eligible small business' has the meaning given such term by subparagraph (F)(iii), except that in applying such subparagraph, section 448(c) shall be applied by substituting '$15,000,000' for '$5,000,000' each place it appears.".

(b) CONFORMING AMENDMENT.—Section 172 is amended by striking subsection (k) and by redesignating subsection (l) as subsection (k).

(c) ANTI-ABUSE RULES.—The Secretary of Treasury or the Secretary's designee shall prescribe such rules as are necessary to prevent the abuse of the purposes of the amendments made by this section, including anti-stuffing rules, anti-churning rules (including rules relating to sale-leasebacks), and rules similar to the rules under section 1091 of the Internal Revenue Code of 1986 relating to losses from wash sales.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to net operating losses arising in taxable years ending after December 31, 2007.

(2) TRANSITIONAL RULE.—In the case of a net operating loss for a taxable year ending before the date of the enactment of this Act—

(A) any election made under section 172(b)(3) of the Internal Revenue Code of 1986 with respect to such loss may (notwithstanding such section) be revoked before the applicable date,

(B) any election made under section 172(b)(1)(H) of such Code with respect to such loss shall (notwithstanding such section) be treated as timely made if made before the applicable date, and

(C) any application under section 6411(a) of such Code with respect to such loss shall be treated as timely filed if filed before the applicable date.

For purposes of this paragraph, the term "applicable date" means the date which is 60 days after the date of the enactment of this Act.

SEC. 1212. DECREASED REQUIRED ESTIMATED TAX PAYMENTS IN 2009 FOR CERTAIN SMALL BUSINESSES.

Paragraph (1) of section 6654(d) is amended by adding at the end the following new subparagraph:

"(D) SPECIAL RULE FOR 2009.—

"(i) IN GENERAL.—Notwithstanding subparagraph (C), in the case of any taxable year beginning in 2009, clause (ii) of subparagraph (B) shall be applied to any qualified individual by substituting '90 percent' for '100 percent'.

"(ii) QUALIFIED INDIVIDUAL.—For purposes of this subparagraph, the term 'qualified individual' means any individual if—

"(I) the adjusted gross income shown on the return of such individual for the preceding taxable year is less than $500,000, and

"(II) such individual certifies that more than 50 percent of the gross income shown on the return of such individual for the preceding taxable year was income from a small business.

A certification under subclause (II) shall be in such form and manner and filed at such time as the Secretary may by regulations prescribe.

"(iii) INCOME FROM A SMALL BUSINESS.—For purposes of clause (ii), income from a small business means, with respect to any individual, income from a trade or business the average number of employees of which was less than 500 employees for the calendar year ending with or within the preceding taxable year of the individual.

"(iv) SEPARATE RETURNS.—In the case of a married individual (within the meaning of section 7703) who files a separate return for the taxable year for which the amount of the installment is being determined,

clause (ii)(I) shall be applied by substituting '$250,000' for '$500,000'.

"(v) ESTATES AND TRUSTS.—In the case of an estate or trust, adjusted gross income shall be determined as provided in section 67(e).".

PART III—INCENTIVES FOR NEW JOBS

SEC. 1221. INCENTIVES TO HIRE UNEMPLOYED VETERANS AND DISCONNECTED YOUTH.

(a) IN GENERAL.—Subsection (d) of section 51 is amended by adding at the end the following new paragraph:

"(14) CREDIT ALLOWED FOR UNEMPLOYED VETERANS AND DISCONNECTED YOUTH HIRED IN 2009 OR 2010.—

"(A) IN GENERAL.—Any unemployed veteran or disconnected youth who begins work for the employer during 2009 or 2010 shall be treated as a member of a targeted group for purposes of this subpart.

"(B) DEFINITIONS.—For purposes of this paragraph—

"(i) UNEMPLOYED VETERAN.—The term 'unemployed veteran' means any veteran (as defined in paragraph (3)(B), determined without regard to clause (ii) thereof) who is certified by the designated local agency as—

"(I) having been discharged or released from active duty in the Armed Forces at any time during the 5-year period ending on the hiring date, and

"(II) being in receipt of unemployment compensation under State or Federal law for not less than 4 weeks during the 1-year period ending on the hiring date.

"(ii) DISCONNECTED YOUTH.—The term 'disconnected youth' means any individual who is certified by the designated local agency—

"(I) as having attained age 16 but not age 25 on the hiring date,

"(II) as not regularly attending any secondary, technical, or post-secondary school during the 6-month period preceding the hiring date,

"(III) as not regularly employed during such 6-month period, and

"(IV) as not readily employable by reason of lacking a sufficient number of basic skills.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to individuals who begin work for the employer after December 31, 2008.

PART IV—RULES RELATING TO DEBT INSTRUMENTS

SEC. 1231. DEFERRAL AND RATABLE INCLUSION OF INCOME ARISING FROM BUSINESS INDEBTEDNESS DISCHARGED BY THE REACQUISITION OF A DEBT INSTRUMENT.

(a) IN GENERAL.—Section 108 (relating to income from discharge of indebtedness) is amended by adding at the end the following new subsection:

"(i) DEFERRAL AND RATABLE INCLUSION OF INCOME ARISING FROM BUSINESS INDEBTEDNESS DISCHARGED BY THE REACQUISITION OF A DEBT INSTRUMENT.—

"(1) IN GENERAL.—At the election of the taxpayer, income from the discharge of indebtedness in connection with the reacquisition after December 31, 2008, and before January 1, 2011, of an applicable debt instrument shall be includible in gross income ratably over the 5-taxable-year period beginning with—

"(A) in the case of a reacquisition occurring in 2009, the fifth taxable year following the taxable year in which the reacquisition occurs, and

"(B) in the case of a reacquisition occurring in 2010, the fourth taxable year following the taxable year in which the reacquisition occurs.

"(2) DEFERRAL OF DEDUCTION FOR ORIGINAL ISSUE DISCOUNT IN DEBT FOR DEBT EXCHANGES.—

"(A) IN GENERAL.—If, as part of a reacquisition to which paragraph (1) applies, any debt instrument is issued for the applicable debt instrument being reacquired (or is treated as so issued under subsection (e)(4) and the regulations thereunder) and there is any original issue discount determined under subpart A of part V of subchapter P of this chapter with respect to the debt instrument so issued—

"(i) except as provided in clause (ii), no deduction otherwise allowable under this chapter shall be allowed to the issuer of such debt instrument with respect to the portion of such original issue discount which—

"(I) accrues before the 1st taxable year in the 5-taxable-year period in which income from the discharge of indebtedness attributable to the reacquisition of the debt instrument is includible under paragraph (1), and

"(II) does not exceed the income from the discharge of indebtedness with respect to the debt instrument being reacquired, and

"(ii) the aggregate amount of deductions disallowed under clause (i) shall be allowed as a deduction ratably over the 5-taxable-year period described in clause (i)(I).

If the amount of the original issue discount accruing before such 1st taxable year exceeds the income from the discharge of indebtedness with respect to the applicable debt instrument being reacquired, the deductions shall be disallowed in the order in which the original issue discount is accrued.

"(B) DEEMED DEBT FOR DEBT EXCHANGES.—For purposes of subparagraph (A), if any debt instrument is issued by an issuer and the proceeds of such debt instrument are used directly or indirectly by the issuer to reacquire an applicable debt instrument of the issuer, the debt instrument so issued shall be treated as issued for the debt instrument being reacquired. If only a portion of the proceeds from a debt instrument are so used, the rules of subparagraph (A) shall apply to the portion of any original issue discount on the newly issued debt instrument which is equal to the por-

tion of the proceeds from such instrument used to reacquire the outstanding instrument.

"(3) APPLICABLE DEBT INSTRUMENT.—For purposes of this subsection—

"(A) APPLICABLE DEBT INSTRUMENT.—The term 'applicable debt instrument' means any debt instrument which was issued by—

"(i) a C corporation, or

"(ii) any other person in connection with the conduct of a trade or business by such person.

"(B) DEBT INSTRUMENT.—The term 'debt instrument' means a bond, debenture, note, certificate, or any other instrument or contractual arrangement constituting indebtedness (within the meaning of section 1275(a)(1)).

"(4) REACQUISITION.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'reacquisition' means, with respect to any applicable debt instrument, any acquisition of the debt instrument by—

"(i) the debtor which issued (or is otherwise the obligor under) the debt instrument, or

"(ii) a related person to such debtor.

"(B) ACQUISITION.—The term 'acquisition' shall, with respect to any applicable debt instrument, include an acquisition of the debt instrument for cash, the exchange of the debt instrument for another debt instrument (including an exchange resulting from a modification of the debt instrument), the exchange of the debt instrument for corporate stock or a partnership interest, and the contribution of the debt instrument to capital. Such term shall also include the complete forgiveness of the indebtedness by the holder of the debt instrument.

"(5) OTHER DEFINITIONS AND RULES.—For purposes of this subsection—

"(A) RELATED PERSON.—The determination of whether a person is related to another person shall be made in the same manner as under subsection (e)(4).

"(B) ELECTION.—

"(i) IN GENERAL.—An election under this subsection with respect to any applicable debt instrument shall be made by including with the return of tax imposed by chapter 1 for the taxable year in which the reacquisition of the debt instrument occurs a statement which—

"(I) clearly identifies such instrument, and

"(II) includes the amount of income to which paragraph (1) applies and such other information as the Secretary may prescribe.

"(ii) ELECTION IRREVOCABLE.—Such election, once made, is irrevocable.

"(iii) PASS-THRU ENTITIES.—In the case of a partnership, S corporation, or other pass-thru entity, the election under this subsection shall be made by the partnership, the S corporation, or other entity involved.

"(C) COORDINATION WITH OTHER EXCLUSIONS.—If a taxpayer elects to have this subsection apply to an applica-

ble debt instrument, subparagraphs (A), (B), (C), and (D) of subsection (a)(1) shall not apply to the income from the discharge of such indebtedness for the taxable year of the election or any subsequent taxable year.

"(D) ACCELERATION OF DEFERRED ITEMS.—

"(i) IN GENERAL.—In the case of the death of the taxpayer, the liquidation or sale of substantially all the assets of the taxpayer (including in a title 11 or similar case), the cessation of business by the taxpayer, or similar circumstances, any item of income or deduction which is deferred under this subsection (and has not previously been taken into account) shall be taken into account in the taxable year in which such event occurs (or in the case of a title 11 or similar case, the day before the petition is filed).

"(ii) SPECIAL RULE FOR PASS-THRU ENTITIES.—The rule of clause (i) shall also apply in the case of the sale or exchange or redemption of an interest in a partnership, S corporation, or other pass-thru entity by a partner, shareholder, or other person holding an ownership interest in such entity.

"(6) SPECIAL RULE FOR PARTNERSHIPS.—In the case of a partnership, any income deferred under this subsection shall be allocated to the partners in the partnership immediately before the discharge in the manner such amounts would have been included in the distributive shares of such partners under section 704 if such income were recognized at such time. Any decrease in a partner's share of partnership liabilities as a result of such discharge shall not be taken into account for purposes of section 752 at the time of the discharge to the extent it would cause the partner to recognize gain under section 731. Any decrease in partnership liabilities deferred under the preceding sentence shall be taken into account by such partner at the same time, and to the extent remaining in the same amount, as income deferred under this subsection is recognized.

"(7) SECRETARIAL AUTHORITY.—The Secretary may prescribe such regulations, rules, or other guidance as may be necessary or appropriate for purposes of applying this subsection, including—

"(A) extending the application of the rules of paragraph (5)(D) to other circumstances where appropriate,

"(B) requiring reporting of the election (and such other information as the Secretary may require) on returns of tax for subsequent taxable years, and

"(C) rules for the application of this subsection to partnerships, S corporations, and other pass-thru entities, including for the allocation of deferred deductions.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to discharges in taxable years ending after December 31, 2008.

SEC. 1232. MODIFICATIONS OF RULES FOR ORIGINAL ISSUE DISCOUNT ON CERTAIN HIGH YIELD OBLIGATIONS.

(a) SUSPENSION OF SPECIAL RULES.—Section 163(e)(5) (relating to special rules for original issue discount on certain high yield obligations) is amended by redesignating subparagraph (F) as subpara-

graph (G) and by inserting after subparagraph (E) the following new subparagraph:

"(F) SUSPENSION OF APPLICATION OF PARAGRAPH.—

"(i) TEMPORARY SUSPENSION.—This paragraph shall not apply to any applicable high yield discount obligation issued during the period beginning on September 1, 2008, and ending on December 31, 2009, in exchange (including an exchange resulting from a modification of the debt instrument) for an obligation which is not an applicable high yield discount obligation and the issuer (or obligor) of which is the same as the issuer (or obligor) of such applicable high yield discount obligation. The preceding sentence shall not apply to any obligation the interest on which is interest described in section 871(h)(4) (without regard to subparagraph (D) thereof) or to any obligation issued to a related person (within the meaning of section 108(e)(4)).

"(ii) SUCCESSIVE APPLICATION.—Any obligation to which clause (i) applies shall not be treated as an applicable high yield discount obligation for purposes of applying this subparagraph to any other obligation issued in exchange for such obligation.

"(iii) SECRETARIAL AUTHORITY TO SUSPEND APPLICATION.—The Secretary may apply this paragraph with respect to debt instruments issued in periods following the period described in clause (i) if the Secretary determines that such application is appropriate in light of distressed conditions in the debt capital markets.".

(b) INTEREST RATE USED IN DETERMINING HIGH YIELD OBLIGATIONS.—The last sentence of section 163(i)(1) is amended—

(1) by inserting "(i)" after "regulation", and

(2) by inserting ", or (ii) permit, on a temporary basis, a rate to be used with respect to any debt instrument which is higher than the applicable Federal rate if the Secretary determines that such rate is appropriate in light of distressed conditions in the debt capital markets" before the period at the end.

(c) EFFECTIVE DATE.—

(1) SUSPENSION.—The amendments made by subsection (a) shall apply to obligations issued after August 31, 2008, in taxable years ending after such date.

(2) INTEREST RATE AUTHORITY.—The amendments made by subsection (b) shall apply to obligations issued after December 31, 2009, in taxable years ending after such date.

PART V—QUALIFIED SMALL BUSINESS STOCK

SEC. 1241. SPECIAL RULES APPLICABLE TO QUALIFIED SMALL BUSINESS STOCK FOR 2009 AND 2010.

(a) IN GENERAL.—Section 1202(a) is amended by adding at the end the following new paragraph:

"(3) SPECIAL RULES FOR 2009 AND 2010.—In the case of qualified small business stock acquired after the date of the enactment of this paragraph and before January 1, 2011—

"(A) paragraph (1) shall be applied by substituting '75 percent' for '50 percent', and

"(B) paragraph (2) shall not apply.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to stock acquired after the date of the enactment of this Act.

PART VI—S CORPORATIONS

SEC. 1251. TEMPORARY REDUCTION IN RECOGNITION PERIOD FOR BUILT-IN GAINS TAX.

(a) IN GENERAL.—Paragraph (7) of section 1374(d) (relating to definitions and special rules) is amended to read as follows:

"(7) RECOGNITION PERIOD.—

"(A) IN GENERAL.—The term 'recognition period' means the 10-year period beginning with the 1st day of the 1st taxable year for which the corporation was an S corporation.

"(B) SPECIAL RULE FOR 2009 AND 2010.—In the case of any taxable year beginning in 2009 or 2010, no tax shall be imposed on the net recognized built-in gain of an S corporation if the 7th taxable year in the recognition period preceded such taxable year. The preceding sentence shall be applied separately with respect to any asset to which paragraph (8) applies.

"(C) SPECIAL RULE FOR DISTRIBUTIONS TO SHAREHOLDERS.—For purposes of applying this section to any amount includible in income by reason of distributions to shareholders pursuant to section 593(e)—

"(i) subparagraph (A) shall be applied without regard to the phrase '10-year', and

"(ii) subparagraph (B) shall not apply.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2008.

PART VII—RULES RELATING TO OWNERSHIP CHANGES

SEC. 1261. CLARIFICATION OF REGULATIONS RELATED TO LIMITATIONS ON CERTAIN BUILT-IN LOSSES FOLLOWING AN OWNERSHIP CHANGE.

(a) FINDINGS.—Congress finds as follows:

(1) The delegation of authority to the Secretary of the Treasury under section 382(m) of the Internal Revenue Code of 1986 does not authorize the Secretary to provide exemptions or special rules that are restricted to particular industries or classes of taxpayers.

(2) Internal Revenue Service Notice 2008–83 is inconsistent with the congressional intent in enacting such section 382(m).

(3) The legal authority to prescribe Internal Revenue Service Notice 2008–83 is doubtful.

(4) However, as taxpayers should generally be able to rely on guidance issued by the Secretary of the Treasury legislation is necessary to clarify the force and effect of Internal Revenue Service Notice 2008–83 and restore the proper application under the Internal Revenue Code of 1986 of the limitation on built-in losses following an ownership change of a bank.

(b) DETERMINATION OF FORCE AND EFFECT OF INTERNAL REVENUE SERVICE NOTICE 2008–83 EXEMPTING BANKS FROM LIMITA-

TION ON CERTAIN BUILT–IN LOSSES FOLLOWING OWNERSHIP CHANGE.—

(1) IN GENERAL.—Internal Revenue Service Notice 2008–83—

(A) shall be deemed to have the force and effect of law with respect to any ownership change (as defined in section 382(g) of the Internal Revenue Code of 1986) occurring on or before January 16, 2009, and

(B) shall have no force or effect with respect to any ownership change after such date.

(2) BINDING CONTRACTS.—Notwithstanding paragraph (1), Internal Revenue Service Notice 2008–83 shall have the force and effect of law with respect to any ownership change (as so defined) which occurs after January 16, 2009, if such change—

(A) is pursuant to a written binding contract entered into on or before such date, or

(B) is pursuant to a written agreement entered into on or before such date and such agreement was described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission required by reason of such ownership change.

SEC. 1262. TREATMENT OF CERTAIN OWNERSHIP CHANGES FOR PURPOSES OF LIMITATIONS ON NET OPERATING LOSS CARRYFORWARDS AND CERTAIN BUILT-IN LOSSES.

(a) IN GENERAL.—Section 382 is amended by adding at the end the following new subsection:

"(n) SPECIAL RULE FOR CERTAIN OWNERSHIP CHANGES.—

"(1) IN GENERAL.—The limitation contained in subsection (a) shall not apply in the case of an ownership change which is pursuant to a restructuring plan of a taxpayer which—

"(A) is required under a loan agreement or a commitment for a line of credit entered into with the Department of the Treasury under the Emergency Economic Stabilization Act of 2008, and

"(B) is intended to result in a rationalization of the costs, capitalization, and capacity with respect to the manufacturing workforce of, and suppliers to, the taxpayer and its subsidiaries.

"(2) SUBSEQUENT ACQUISITIONS.—Paragraph (1) shall not apply in the case of any subsequent ownership change unless such ownership change is described in such paragraph.

"(3) LIMITATION BASED ON CONTROL IN CORPORATION.—

"(A) IN GENERAL.—Paragraph (1) shall not apply in the case of any ownership change if, immediately after such ownership change, any person (other than a voluntary employees' beneficiary association under section 501(c)(9)) owns stock of the new loss corporation possessing 50 percent or more of the total combined voting power of all classes of stock entitled to vote, or of the total value of the stock of such corporation.

"(B) TREATMENT OF RELATED PERSONS.—

"(i) IN GENERAL.—Related persons shall be treated as a single person for purposes of this paragraph.

"(ii) RELATED PERSONS.—For purposes of clause (i), a person shall be treated as related to another person if—

"(I) such person bears a relationship to such other person described in section 267(b) or 707(b), or

"(II) such persons are members of a group of persons acting in concert.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to ownership changes after the date of the enactment of this Act.

Subtitle D—Manufacturing Recovery Provisions

SEC. 1301. TEMPORARY EXPANSION OF AVAILABILITY OF INDUSTRIAL DEVELOPMENT BONDS TO FACILITIES MANUFACTURING INTANGIBLE PROPERTY.

(a) IN GENERAL.—Subparagraph (C) of section 144(a)(12) is amended—

(1) by striking "For purposes of this paragraph, the term" and inserting "For purposes of this paragraph—

"(i) IN GENERAL.—The term", and

(2) by striking the last sentence and inserting the following new clauses:

"(ii) CERTAIN FACILITIES INCLUDED.—Such term includes facilities which are directly related and ancillary to a manufacturing facility (determined without regard to this clause) if—

"(I) such facilities are located on the same site as the manufacturing facility, and

"(II) not more than 25 percent of the net proceeds of the issue are used to provide such facilities.

"(iii) SPECIAL RULES FOR BONDS ISSUED IN 2009 AND 2010.—In the case of any issue made after the date of enactment of this clause and before January 1, 2011, clause (ii) shall not apply and the net proceeds from a bond shall be considered to be used to provide a manufacturing facility if such proceeds are used to provide—

"(I) a facility which is used in the creation or production of intangible property which is described in section 197(d)(1)(C)(iii), or

"(II) a facility which is functionally related and subordinate to a manufacturing facility (determined without regard to this subclause) if such facility is located on the same site as the manufacturing facility.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after the date of the enactment of this Act.

SEC. 1302. CREDIT FOR INVESTMENT IN ADVANCED ENERGY FACILITIES.

(a) IN GENERAL.—Section 46 (relating to amount of credit) is amended by striking "and" at the end of paragraph (3), by striking

the period at the end of paragraph (4), and by adding at the end the following new paragraph:

"(5) the qualifying advanced energy project credit.".

(b) AMOUNT OF CREDIT.—Subpart E of part IV of subchapter A of chapter 1 (relating to rules for computing investment credit) is amended by inserting after section 48B the following new section:

"SEC. 48C. QUALIFYING ADVANCED ENERGY PROJECT CREDIT.

"(a) IN GENERAL.—For purposes of section 46, the qualifying advanced energy project credit for any taxable year is an amount equal to 30 percent of the qualified investment for such taxable year with respect to any qualifying advanced energy project of the taxpayer.

"(b) QUALIFIED INVESTMENT.—

"(1) IN GENERAL.—For purposes of subsection (a), the qualified investment for any taxable year is the basis of eligible property placed in service by the taxpayer during such taxable year which is part of a qualifying advanced energy project.

"(2) CERTAIN QUALIFIED PROGRESS EXPENDITURES RULES MADE APPLICABLE.—Rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this section.

"(3) LIMITATION.—The amount which is treated for all taxable years with respect to any qualifying advanced energy project shall not exceed the amount designated by the Secretary as eligible for the credit under this section.

"(c) DEFINITIONS.—

"(1) QUALIFYING ADVANCED ENERGY PROJECT.—

"(A) IN GENERAL.—The term 'qualifying advanced energy project' means a project—

"(i) which re-equips, expands, or establishes a manufacturing facility for the production of—

"(I) property designed to be used to produce energy from the sun, wind, geothermal deposits (within the meaning of section 613(e)(2)), or other renewable resources,

"(II) fuel cells, microturbines, or an energy storage system for use with electric or hybrid-electric motor vehicles,

"(III) electric grids to support the transmission of intermittent sources of renewable energy, including storage of such energy,

"(IV) property designed to capture and sequester carbon dioxide emissions,

"(V) property designed to refine or blend renewable fuels or to produce energy conservation technologies (including energy-conserving lighting technologies and smart grid technologies),

"(VI) new qualified plug-in electric drive motor vehicles (as defined by section 30D), qualified plug-in electric vehicles (as defined by section 30(d)), or components which are designed specifically for use with such vehicles, including electric motors, generators, and power control units, or

"(VII) other advanced energy property designed to reduce greenhouse gas emissions as may be determined by the Secretary, and

"(ii) any portion of the qualified investment of which is certified by the Secretary under subsection (d) as eligible for a credit under this section.

"(B) EXCEPTION.—Such term shall not include any portion of a project for the production of any property which is used in the refining or blending of any transportation fuel (other than renewable fuels).

"(2) ELIGIBLE PROPERTY.—The term 'eligible property' means any property—

"(A) which is necessary for the production of property described in paragraph (1)(A)(i),

"(B) which is—

"(i) tangible personal property, or

"(ii) other tangible property (not including a building or its structural components), but only if such property is used as an integral part of the qualified investment credit facility, and

"(C) with respect to which depreciation (or amortization in lieu of depreciation) is allowable.

"(d) QUALIFYING ADVANCED ENERGY PROJECT PROGRAM.—

"(1) ESTABLISHMENT.—

"(A) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Secretary, in consultation with the Secretary of Energy, shall establish a qualifying advanced energy project program to consider and award certifications for qualified investments eligible for credits under this section to qualifying advanced energy project sponsors.

"(B) LIMITATION.—The total amount of credits that may be allocated under the program shall not exceed $2,300,000,000.

"(2) CERTIFICATION.—

"(A) APPLICATION PERIOD.—Each applicant for certification under this paragraph shall submit an application containing such information as the Secretary may require during the 2-year period beginning on the date the Secretary establishes the program under paragraph (1).

"(B) TIME TO MEET CRITERIA FOR CERTIFICATION.—Each applicant for certification shall have 1 year from the date of acceptance by the Secretary of the application during which to provide to the Secretary evidence that the requirements of the certification have been met.

"(C) PERIOD OF ISSUANCE.—An applicant which receives a certification shall have 3 years from the date of issuance of the certification in order to place the project in service and if such project is not placed in service by that time period, then the certification shall no longer be valid.

"(3) SELECTION CRITERIA.—In determining which qualifying advanced energy projects to certify under this section, the Secretary—

"(A) shall take into consideration only those projects where there is a reasonable expectation of commercial viability, and

"(B) shall take into consideration which projects—

"(i) will provide the greatest domestic job creation (both direct and indirect) during the credit period,

"(ii) will provide the greatest net impact in avoiding or reducing air pollutants or anthropogenic emissions of greenhouse gases,

"(iii) have the greatest potential for technological innovation and commercial deployment,

"(iv) have the lowest levelized cost of generated or stored energy, or of measured reduction in energy consumption or greenhouse gas emission (based on costs of the full supply chain), and

"(v) have the shortest project time from certification to completion.

"(4) REVIEW AND REDISTRIBUTION.—

"(A) REVIEW.—Not later than 4 years after the date of enactment of this section, the Secretary shall review the credits allocated under this section as of such date.

"(B) REDISTRIBUTION.—The Secretary may reallocate credits awarded under this section if the Secretary determines that—

"(i) there is an insufficient quantity of qualifying applications for certification pending at the time of the review, or

"(ii) any certification made pursuant to paragraph (2) has been revoked pursuant to paragraph (2)(B) because the project subject to the certification has been delayed as a result of third party opposition or litigation to the proposed project.

"(C) REALLOCATION.—If the Secretary determines that credits under this section are available for reallocation pursuant to the requirements set forth in paragraph (2), the Secretary is authorized to conduct an additional program for applications for certification.

"(5) DISCLOSURE OF ALLOCATIONS.—The Secretary shall, upon making a certification under this subsection, publicly disclose the identity of the applicant and the amount of the credit with respect to such applicant.

"(e) DENIAL OF DOUBLE BENEFIT.—A credit shall not be allowed under this section for any qualified investment for which a credit is allowed under section 48, 48A, or 48B.".

(c) CONFORMING AMENDMENTS.—

(1) Section 49(a)(1)(C) is amended by striking "and" at the end of clause (iii), by striking the period at the end of clause (iv) and inserting ", and", and by adding after clause (iv) the following new clause:

"(v) the basis of any property which is part of a qualifying advanced energy project under section 48C.".

(2) The table of sections for subpart E of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 48B the following new item:

"48C. Qualifying advanced energy project credit.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to periods after the date of the enactment of this Act, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

Subtitle E—Economic Recovery Tools

SEC. 1401. RECOVERY ZONE BONDS.

(a) IN GENERAL.—Subchapter Y of chapter 1 is amended by adding at the end the following new part:

"PART III—RECOVERY ZONE BONDS

"Sec. 1400U–1. Allocation of recovery zone bonds.
"Sec. 1400U–2. Recovery zone economic development bonds.
"Sec. 1400U–3. Recovery zone facility bonds.

"SEC. 1400U–1. ALLOCATION OF RECOVERY ZONE BONDS.

"(a) ALLOCATIONS.—

"(1) IN GENERAL.—

"(A) GENERAL ALLOCATION.—The Secretary shall allocate the national recovery zone economic development bond limitation and the national recovery zone facility bond limitation among the States in the proportion that each such State's 2008 State employment decline bears to the aggregate of the 2008 State employment declines for all of the States.

"(B) MINIMUM ALLOCATION.—The Secretary shall adjust the allocations under subparagraph (A) for any calendar year for each State to the extent necessary to ensure that no State receives less than 0.9 percent of the national recovery zone economic development bond limitation and 0.9 percent of the national recovery zone facility bond limitation.

"(2) 2008 STATE EMPLOYMENT DECLINE.—For purposes of this subsection, the term '2008 State employment decline' means, with respect to any State, the excess (if any) of—

"(A) the number of individuals employed in such State determined for December 2007, over

"(B) the number of individuals employed in such State determined for December 2008.

"(3) ALLOCATIONS BY STATES.—

"(A) IN GENERAL.—Each State with respect to which an allocation is made under paragraph (1) shall reallocate such allocation among the counties and large municipalities in such State in the proportion to each such county's or municipality's 2008 employment decline bears to the aggregate of the 2008 employment declines for all the counties and municipalities in such State. A county or municipality may waive any portion of an allocation made under this subparagraph.

"(B) LARGE MUNICIPALITIES.—For purposes of subparagraph (A), the term 'large municipality' means a municipality with a population of more than 100,000.

"(C) DETERMINATION OF LOCAL EMPLOYMENT DECLINES.—For purposes of this paragraph, the employment decline of any municipality or county shall be determined in the same manner as determining the State employment decline under paragraph (2), except that in the case of a municipality any portion of which is in a county, such portion shall be treated as part of such municipality and not part of such county.

"(4) NATIONAL LIMITATIONS.—

"(A) RECOVERY ZONE ECONOMIC DEVELOPMENT BONDS.—There is a national recovery zone economic development bond limitation of $10,000,000,000.

"(B) RECOVERY ZONE FACILITY BONDS.—There is a national recovery zone facility bond limitation of $15,000,000,000.

"(b) RECOVERY ZONE.—For purposes of this part, the term 'recovery zone' means—

"(1) any area designated by the issuer as having significant poverty, unemployment, rate of home foreclosures, or general distress,

"(2) any area designated by the issuer as economically distressed by reason of the closure or realignment of a military installation pursuant to the Defense Base Closure and Realignment Act of 1990, and

"(3) any area for which a designation as an empowerment zone or renewal community is in effect.

"SEC. 1400U–2. RECOVERY ZONE ECONOMIC DEVELOPMENT BONDS.

"(a) IN GENERAL.—In the case of a recovery zone economic development bond—

"(1) such bond shall be treated as a qualified bond for purposes of section 6431, and

"(2) subsection (b) of such section shall be applied by substituting '45 percent' for '35 percent'.

"(b) RECOVERY ZONE ECONOMIC DEVELOPMENT BOND.—

"(1) IN GENERAL.—For purposes of this section, the term 'recovery zone economic development bond' means any build America bond (as defined in section 54AA(d)) issued before January 1, 2011, as part of issue if—

"(A) 100 percent of the excess of—

"(i) the available project proceeds (as defined in section 54A) of such issue, over

"(ii) the amounts in a reasonably required reserve (within the meaning of section 150(a)(3)) with respect to such issue,

are to be used for one or more qualified economic development purposes, and

"(B) the issuer designates such bond for purposes of this section.

"(2) LIMITATION ON AMOUNT OF BONDS DESIGNATED.—The maximum aggregate face amount of bonds which may be designated by any issuer under paragraph (1) shall not exceed the amount of the recovery zone economic development bond limitation allocated to such issuer under section 1400U–1.

"(c) QUALIFIED ECONOMIC DEVELOPMENT PURPOSE.—For purposes of this section, the term 'qualified economic development pur-

pose' means expenditures for purposes of promoting development or other economic activity in a recovery zone, including—

"(1) capital expenditures paid or incurred with respect to property located in such zone,

"(2) expenditures for public infrastructure and construction of public facilities, and

"(3) expenditures for job training and educational programs.

"SEC. 1400U–3. RECOVERY ZONE FACILITY BONDS.

"(a) IN GENERAL.—For purposes of part IV of subchapter B (relating to tax exemption requirements for State and local bonds), the term 'exempt facility bond' includes any recovery zone facility bond.

"(b) RECOVERY ZONE FACILITY BOND.—

"(1) IN GENERAL.—For purposes of this section, the term 'recovery zone facility bond' means any bond issued as part of an issue if—

"(A) 95 percent or more of the net proceeds (as defined in section 150(a)(3)) of such issue are to be used for recovery zone property,

"(B) such bond is issued before January 1, 2011, and

"(C) the issuer designates such bond for purposes of this section.

"(2) LIMITATION ON AMOUNT OF BONDS DESIGNATED.—The maximum aggregate face amount of bonds which may be designated by any issuer under paragraph (1) shall not exceed the amount of recovery zone facility bond limitation allocated to such issuer under section 1400U–1.

"(c) RECOVERY ZONE PROPERTY.—For purposes of this section—

"(1) IN GENERAL.—The term 'recovery zone property' means any property to which section 168 applies (or would apply but for section 179) if—

"(A) such property was constructed, reconstructed, renovated, or acquired by purchase (as defined in section 179(d)(2)) by the taxpayer after the date on which the designation of the recovery zone took effect,

"(B) the original use of which in the recovery zone commences with the taxpayer, and

"(C) substantially all of the use of which is in the recovery zone and is in the active conduct of a qualified business by the taxpayer in such zone.

"(2) QUALIFIED BUSINESS.—The term 'qualified business' means any trade or business except that—

"(A) the rental to others of real property located in a recovery zone shall be treated as a qualified business only if the property is not residential rental property (as defined in section 168(e)(2)), and

"(B) such term shall not include any trade or business consisting of the operation of any facility described in section 144(c)(6)(B).

"(3) SPECIAL RULES FOR SUBSTANTIAL RENOVATIONS AND SALE-LEASEBACK.—Rules similar to the rules of subsections (a)(2) and (b) of section 1397D shall apply for purposes of this subsection.

"(d) NONAPPLICATION OF CERTAIN RULES.—Sections 146 (relating to volume cap) and 147(d) (relating to acquisition of existing

property not permitted) shall not apply to any recovery zone facility bond.".

(b) CLERICAL AMENDMENT.—The table of parts for subchapter Y of chapter 1 of such Code is amended by adding at the end the following new item:

"PART III. RECOVERY ZONE BONDS.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after the date of the enactment of this Act.

SEC. 1402. TRIBAL ECONOMIC DEVELOPMENT BONDS.

(a) IN GENERAL.—Section 7871 is amended by adding at the end the following new subsection:

"(f) TRIBAL ECONOMIC DEVELOPMENT BONDS.—

"(1) ALLOCATION OF LIMITATION.—

"(A) IN GENERAL.—The Secretary shall allocate the national tribal economic development bond limitation among the Indian tribal governments in such manner as the Secretary, in consultation with the Secretary of the Interior, determines appropriate.

"(B) NATIONAL LIMITATION.—There is a national tribal economic development bond limitation of $2,000,000,000.

"(2) BONDS TREATED AS EXEMPT FROM TAX.—In the case of a tribal economic development bond—

"(A) notwithstanding subsection (c), such bond shall be treated for purposes of this title in the same manner as if such bond were issued by a State,

"(B) the Indian tribal government issuing such bond and any instrumentality of such Indian tribal government shall be treated as a State for purposes of section 141, and

"(C) section 146 shall not apply.

"(3) TRIBAL ECONOMIC DEVELOPMENT BOND.—

"(A) IN GENERAL.—For purposes of this section, the term 'tribal economic development bond' means any bond issued by an Indian tribal government—

"(i) the interest on which would be exempt from tax under section 103 if issued by a State or local government, and

"(ii) which is designated by the Indian tribal government as a tribal economic development bond for purposes of this subsection.

"(B) EXCEPTIONS.—Such term shall not include any bond issued as part of an issue if any portion of the proceeds of such issue are used to finance—

"(i) any portion of a building in which class II or class III gaming (as defined in section 4 of the Indian Gaming Regulatory Act) is conducted or housed or any other property actually used in the conduct of such gaming, or

"(ii) any facility located outside the Indian reservation (as defined in section 168(j)(6)).

"(C) LIMITATION ON AMOUNT OF BONDS DESIGNATED.—The maximum aggregate face amount of bonds which may be designated by any Indian tribal government under subparagraph (A) shall not exceed the amount of national trib-

al economic development bond limitation allocated to such government under paragraph (1).".

(b) STUDY.—The Secretary of the Treasury, or the Secretary's delegate, shall conduct a study of the effects of the amendment made by subsection (a). Not later than 1 year after the date of the enactment of this Act, the Secretary of the Treasury, or the Secretary's delegate, shall report to Congress on the results of the study conducted under this paragraph, including the Secretary's recommendations regarding such amendment.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to obligations issued after the date of the enactment of this Act.

SEC. 1403. INCREASE IN NEW MARKETS TAX CREDIT.

(a) IN GENERAL.—Section 45D(f)(1) is amended—

(1) by striking "and" at the end of subparagraph (C),

(2) by striking ", 2007, 2008, and 2009." in subparagraph (D), and inserting "and 2007,", and

(3) by adding at the end the following new subparagraphs:

"(E) $5,000,000,000 for 2008, and

"(F) $5,000,000,000 for 2009.".

(b) SPECIAL RULE FOR ALLOCATION OF INCREASED 2008 LIMITATION.—The amount of the increase in the new markets tax credit limitation for calendar year 2008 by reason of the amendments made by subsection (a) shall be allocated in accordance with section 45D(f)(2) of the Internal Revenue Code of 1986 to qualified community development entities (as defined in section 45D(c) of such Code) which—

(1) submitted an allocation application with respect to calendar year 2008, and

(2)(A) did not receive an allocation for such calendar year, or

(B) received an allocation for such calendar year in an amount less than the amount requested in the allocation application.

SEC. 1404. COORDINATION OF LOW-INCOME HOUSING CREDIT AND LOW-INCOME HOUSING GRANTS.

Subsection (i) of section 42 is amended by adding at the end the following new paragraph:

"(9) COORDINATION WITH LOW-INCOME HOUSING GRANTS.—

"(A) REDUCTION IN STATE HOUSING CREDIT CEILING FOR LOW-INCOME HOUSING GRANTS RECEIVED IN 2009.—For purposes of this section, the amounts described in clauses (i) through (iv) of subsection (h)(3)(C) with respect to any State for 2009 shall each be reduced by so much of such amount as is taken into account in determining the amount of any grant to such State under section 1602 of the American Recovery and Reinvestment Tax Act of 2009.

"(B) SPECIAL RULE FOR BASIS.—Basis of a qualified low-income building shall not be reduced by the amount of any grant described in subparagraph (A).".

Subtitle F—Infrastructure Financing Tools

PART I—IMPROVED MARKETABILITY FOR TAX-EXEMPT BONDS

SEC. 1501. DE MINIMIS SAFE HARBOR EXCEPTION FOR TAX-EXEMPT INTEREST EXPENSE OF FINANCIAL INSTITUTIONS.

(a) IN GENERAL.—Subsection (b) of section 265 is amended by adding at the end the following new paragraph:

"(7) DE MINIMIS EXCEPTION FOR BONDS ISSUED DURING 2009 OR 2010.—

"(A) IN GENERAL.—In applying paragraph (2)(A), there shall not be taken into account tax-exempt obligations issued during 2009 or 2010.

"(B) LIMITATION.—The amount of tax-exempt obligations not taken into account by reason of subparagraph (A) shall not exceed 2 percent of the amount determined under paragraph (2)(B).

"(C) REFUNDINGS.—For purposes of this paragraph, a refunding bond (whether a current or advance refunding) shall be treated as issued on the date of the issuance of the refunded bond (or in the case of a series of refundings, the original bond).".

(b) TREATMENT AS FINANCIAL INSTITUTION PREFERENCE ITEM.—Clause (iv) of section 291(e)(1)(B) is amended by adding at the end the following: "That portion of any obligation not taken into account under paragraph (2)(A) of section 265(b) by reason of paragraph (7) of such section shall be treated for purposes of this section as having been acquired on August 7, 1986.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after December 31, 2008.

SEC. 1502. MODIFICATION OF SMALL ISSUER EXCEPTION TO TAX-EXEMPT INTEREST EXPENSE ALLOCATION RULES FOR FINANCIAL INSTITUTIONS.

(a) IN GENERAL.—Paragraph (3) of section 265(b) (relating to exception for certain tax-exempt obligations) is amended by adding at the end the following new subparagraph:

"(G) SPECIAL RULES FOR OBLIGATIONS ISSUED DURING 2009 AND 2010.—

"(i) INCREASE IN LIMITATION.—In the case of obligations issued during 2009 or 2010, subparagraphs (C)(i), (D)(i), and (D)(iii)(II) shall each be applied by substituting '$30,000,000' for '$10,000,000'.

"(ii) QUALIFIED 501(C)(3) BONDS TREATED AS ISSUED BY EXEMPT ORGANIZATION.—In the case of a qualified 501(c)(3) bond (as defined in section 145) issued during 2009 or 2010, this paragraph shall be applied by treating the 501(c)(3) organization for whose benefit such bond was issued as the issuer.

"(iii) SPECIAL RULE FOR QUALIFIED FINANCINGS.—In the case of a qualified financing issue issued during 2009 or 2010—

"(I) subparagraph (F) shall not apply, and

"(II) any obligation issued as a part of such issue shall be treated as a qualified tax-exempt ob-

ligation if the requirements of this paragraph are met with respect to each qualified portion of the issue (determined by treating each qualified portion as a separate issue which is issued by the qualified borrower with respect to which such portion relates).

"(iv) QUALIFIED FINANCING ISSUE.—For purposes of this subparagraph, the term 'qualified financing issue' means any composite, pooled, or other conduit financing issue the proceeds of which are used directly or indirectly to make or finance loans to 1 or more ultimate borrowers each of whom is a qualified borrower.

"(v) QUALIFIED PORTION.—For purposes of this subparagraph, the term 'qualified portion' means that portion of the proceeds which are used with respect to each qualified borrower under the issue.

"(vi) QUALIFIED BORROWER.—For purposes of this subparagraph, the term 'qualified borrower' means a borrower which is a State or political subdivision thereof or an organization described in section 501(c)(3) and exempt from taxation under section 501(a).".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to obligations issued after December 31, 2008.

SEC. 1503. TEMPORARY MODIFICATION OF ALTERNATIVE MINIMUM TAX LIMITATIONS ON TAX-EXEMPT BONDS.

(a) INTEREST ON PRIVATE ACTIVITY BONDS ISSUED DURING 2009 AND 2010 NOT TREATED AS TAX PREFERENCE ITEM.—Subparagraph (C) of section 57(a)(5) is amended by adding at the end a new clause:

"(vi) EXCEPTION FOR BONDS ISSUED IN 2009 AND 2010.—

"(I) IN GENERAL.—For purposes of clause (i), the term 'private activity bond' shall not include any bond issued after December 31, 2008, and before January 1, 2011.

"(II) TREATMENT OF REFUNDING BONDS.—For purposes of subclause (I), a refunding bond (whether a current or advance refunding) shall be treated as issued on the date of the issuance of the refunded bond (or in the case of a series of refundings, the original bond).

"(III) EXCEPTION FOR CERTAIN REFUNDING BONDS.—Subclause (II) shall not apply to any refunding bond which is issued to refund any bond which was issued after December 31, 2003, and before January 1, 2009.".

(b) NO ADJUSTMENT TO ADJUSTED CURRENT EARNINGS FOR INTEREST ON TAX-EXEMPT BONDS ISSUED DURING 2009 AND 2010.—Subparagraph (B) of section 56(g)(4) is amended by adding at the end the following new clause:

"(iv) TAX EXEMPT INTEREST ON BONDS ISSUED IN 2009 AND 2010.—

"(I) IN GENERAL.—Clause (i) shall not apply in the case of any interest on a bond issued after December 31, 2008, and before January 1, 2011.

"(II) TREATMENT OF REFUNDING BONDS.—For purposes of subclause (I), a refunding bond (whether a current or advance refunding) shall be treated as issued on the date of the issuance of the refunded bond (or in the case of a series of refundings, the original bond).

"(III) EXCEPTION FOR CERTAIN REFUNDING BONDS.—Subclause (II) shall not apply to any refunding bond which is issued to refund any bond which was issued after December 31, 2003, and before January 1, 2009.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after December 31, 2008.

SEC. 1504. MODIFICATION TO HIGH SPEED INTERCITY RAIL FACILITY BONDS.

(a) IN GENERAL.—Paragraph (1) of section 142(i) is amended by striking "operate at speeds in excess of" and inserting "be capable of attaining a maximum speed in excess of".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to obligations issued after the date of the enactment of this Act.

PART II—DELAY IN APPLICATION OF WITHHOLDING TAX ON GOVERNMENT CONTRACTORS

SEC. 1511. DELAY IN APPLICATION OF WITHHOLDING TAX ON GOVERNMENT CONTRACTORS.

Subsection (b) of section 511 of the Tax Increase Prevention and Reconciliation Act of 2005 is amended by striking "December 31, 2010" and inserting "December 31, 2011".

PART III—TAX CREDIT BONDS FOR SCHOOLS

SEC. 1521. QUALIFIED SCHOOL CONSTRUCTION BONDS.

(a) IN GENERAL.—Subpart I of part IV of subchapter A of chapter 1 is amended by adding at the end the following new section:

"SEC. 54F. QUALIFIED SCHOOL CONSTRUCTION BONDS.

"(a) QUALIFIED SCHOOL CONSTRUCTION BOND.—For purposes of this subchapter, the term 'qualified school construction bond' means any bond issued as part of an issue if—

"(1) 100 percent of the available project proceeds of such issue are to be used for the construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which such a facility is to be constructed with part of the proceeds of such issue,

"(2) the bond is issued by a State or local government within the jurisdiction of which such school is located, and

"(3) the issuer designates such bond for purposes of this section.

"(b) LIMITATION ON AMOUNT OF BONDS DESIGNATED.—The maximum aggregate face amount of bonds issued during any calendar year which may be designated under subsection (a) by any issuer shall not exceed the limitation amount allocated under subsection (d) for such calendar year to such issuer.

"(c) NATIONAL LIMITATION ON AMOUNT OF BONDS DESIGNATED.—There is a national qualified school construction bond limitation for each calendar year. Such limitation is—

"(1) $11,000,000,000 for 2009,

"(2) $11,000,000,000 for 2010, and

"(3) except as provided in subsection (e), zero after 2010.

"(d) ALLOCATION OF LIMITATION.—

"(1) ALLOCATION AMONG STATES.—Except as provided in paragraph (2)(C), the limitation applicable under subsection (c) for any calendar year shall be allocated by the Secretary among the States in proportion to the respective amounts each such State is eligible to receive under section 1124 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333) for the most recent fiscal year ending before such calendar year. The limitation amount allocated to a State under the preceding sentence shall be allocated by the State to issuers within such State.

"(2) 40 PERCENT OF LIMITATION ALLOCATED AMONG LARGEST SCHOOL DISTRICTS.—

"(A) IN GENERAL.—40 percent of the limitation applicable under subsection (c) for any calendar year shall be allocated under subparagraph (B) by the Secretary among local educational agencies which are large local educational agencies for such year.

"(B) ALLOCATION FORMULA.—The amount to be allocated under subparagraph (A) for any calendar year shall be allocated among large local educational agencies in proportion to the respective amounts each such agency received under section 1124 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333) for the most recent fiscal year ending before such calendar year.

"(C) REDUCTION IN STATE ALLOCATION.—The allocation to any State under paragraph (1) shall be reduced by the aggregate amount of the allocations under this paragraph to large local educational agencies within such State.

"(D) ALLOCATION OF UNUSED LIMITATION TO STATE.—The amount allocated under this paragraph to a large local educational agency for any calendar year may be reallocated by such agency to the State in which such agency is located for such calendar year. Any amount reallocated to a State under the preceding sentence may be allocated as provided in paragraph (1).

"(E) LARGE LOCAL EDUCATIONAL AGENCY.—For purposes of this paragraph, the term 'large local educational agency' means, with respect to a calendar year, any local educational agency if such agency is—

"(i) among the 100 local educational agencies with the largest numbers of children aged 5 through 17 from families living below the poverty level, as determined by the Secretary using the most recent data available from the Department of Commerce that are satisfactory to the Secretary, or

"(ii) 1 of not more than 25 local educational agencies (other than those described in clause (i)) that the Secretary of Education determines (based on the most

recent data available satisfactory to the Secretary) are in particular need of assistance, based on a low level of resources for school construction, a high level of enrollment growth, or such other factors as the Secretary deems appropriate.

"(3) ALLOCATIONS TO CERTAIN POSSESSIONS.—The amount to be allocated under paragraph (1) to any possession of the United States other than Puerto Rico shall be the amount which would have been allocated if all allocations under paragraph (1) were made on the basis of respective populations of individuals below the poverty line (as defined by the Office of Management and Budget). In making other allocations, the amount to be allocated under paragraph (1) shall be reduced by the aggregate amount allocated under this paragraph to possessions of the United States.

"(4) ALLOCATIONS FOR INDIAN SCHOOLS.—In addition to the amounts otherwise allocated under this subsection, $200,000,000 for calendar year 2009, and $200,000,000 for calendar year 2010, shall be allocated by the Secretary of the Interior for purposes of the construction, rehabilitation, and repair of schools funded by the Bureau of Indian Affairs. In the case of amounts allocated under the preceding sentence, Indian tribal governments (as defined in section 7701(a)(40)) shall be treated as qualified issuers for purposes of this subchapter.

"(e) CARRYOVER OF UNUSED LIMITATION.—If for any calendar year—

"(1) the amount allocated under subsection (d) to any State, exceeds

"(2) the amount of bonds issued during such year which are designated under subsection (a) pursuant to such allocation,

the limitation amount under such subsection for such State for the following calendar year shall be increased by the amount of such excess. A similar rule shall apply to the amounts allocated under subsection (d)(4).".

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 54A(d) is amended by striking "or" at the end of subparagraph (C), by inserting "or" at the end of subparagraph (D), and by inserting after subparagraph (D) the following new subparagraph:

"(E) a qualified school construction bond,".

(2) Subparagraph (C) of section 54A(d)(2) is amended by striking "and" at the end of clause (iii), by striking the period at the end of clause (iv) and inserting ", and", and by adding at the end the following new clause:

"(v) in the case of a qualified school construction bond, a purpose specified in section 54F(a)(1).".

(3) The table of sections for subpart I of part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

"Sec. 54F. Qualified school construction bonds.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after the date of the enactment of this Act.

SEC. 1522. EXTENSION AND EXPANSION OF QUALIFIED ZONE ACADEMY BONDS.

(a) IN GENERAL.—Section 54E(c)(1) is amended by striking "and 2009" and inserting "and $1,400,000,000 for 2009 and 2010".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to obligations issued after December 31, 2008.

PART IV—BUILD AMERICA BONDS

SEC. 1531. BUILD AMERICA BONDS.

(a) IN GENERAL.—Part IV of subchapter A of chapter 1 is amended by adding at the end the following new subpart:

"Subpart J—Build America Bonds

"Sec. 54AA. Build America bonds.

"SEC. 54AA. BUILD AMERICA BONDS.

"(a) IN GENERAL.—If a taxpayer holds a build America bond on one or more interest payment dates of the bond during any taxable year, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of the credits determined under subsection (b) with respect to such dates.

"(b) AMOUNT OF CREDIT.—The amount of the credit determined under this subsection with respect to any interest payment date for a build America bond is 35 percent of the amount of interest payable by the issuer with respect to such date .

"(c) LIMITATION BASED ON AMOUNT OF TAX.—

"(1) IN GENERAL.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

"(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

"(B) the sum of the credits allowable under this part (other than subpart C and this subpart).

"(2) CARRYOVER OF UNUSED CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by paragraph (1) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year (determined before the application of paragraph (1) for such succeeding taxable year).

"(d) BUILD AMERICA BOND.—

"(1) IN GENERAL.—For purposes of this section, the term 'build America bond' means any obligation (other than a private activity bond) if—

"(A) the interest on such obligation would (but for this section) be excludable from gross income under section 103,

"(B) such obligation is issued before January 1, 2011, and

"(C) the issuer makes an irrevocable election to have this section apply.

"(2) APPLICABLE RULES.—For purposes of applying paragraph (1)—

"(A) for purposes of section 149(b), a build America bond shall not be treated as federally guaranteed by reason of the credit allowed under subsection (a) or section 6431,

"(B) for purposes of section 148, the yield on a build America bond shall be determined without regard to the credit allowed under subsection (a), and

"(C) a bond shall not be treated as a build America bond if the issue price has more than a de minimis amount (determined under rules similar to the rules of section 1273(a)(3)) of premium over the stated principal amount of the bond.

"(e) INTEREST PAYMENT DATE.—For purposes of this section, the term 'interest payment date' means any date on which the holder of record of the build America bond is entitled to a payment of interest under such bond.

"(f) SPECIAL RULES.—

"(1) INTEREST ON BUILD AMERICA BONDS INCLUDIBLE IN GROSS INCOME FOR FEDERAL INCOME TAX PURPOSES.—For purposes of this title, interest on any build America bond shall be includible in gross income.

"(2) APPLICATION OF CERTAIN RULES.—Rules similar to the rules of subsections (f), (g), (h), and (i) of section 54A shall apply for purposes of the credit allowed under subsection (a).

"(g) SPECIAL RULE FOR QUALIFIED BONDS ISSUED BEFORE 2011.—In the case of a qualified bond issued before January 1, 2011—

"(1) ISSUER ALLOWED REFUNDABLE CREDIT.—In lieu of any credit allowed under this section with respect to such bond, the issuer of such bond shall be allowed a credit as provided in section 6431.

"(2) QUALIFIED BOND.—For purposes of this subsection, the term 'qualified bond' means any build America bond issued as part of an issue if—

"(A) 100 percent of the excess of—

"(i) the available project proceeds (as defined in section 54A) of such issue, over

"(ii) the amounts in a reasonably required reserve (within the meaning of section 150(a)(3)) with respect to such issue,

are to be used for capital expenditures, and

"(B) the issuer makes an irrevocable election to have this subsection apply.

"(h) REGULATIONS.—The Secretary may prescribe such regulations and other guidance as may be necessary or appropriate to carry out this section and section 6431.".

(b) CREDIT FOR QUALIFIED BONDS ISSUED BEFORE 2011.—Subchapter B of chapter 65 is amended by adding at the end the following new section:

"SEC. 6431. CREDIT FOR QUALIFIED BONDS ALLOWED TO ISSUER.

"(a) IN GENERAL.—In the case of a qualified bond issued before January 1, 2011, the issuer of such bond shall be allowed a credit with respect to each interest payment under such bond which shall be payable by the Secretary as provided in subsection (b).

"(b) PAYMENT OF CREDIT.—The Secretary shall pay (contemporaneously with each interest payment date under such bond) to the issuer of such bond (or to any person who makes such interest payments on behalf of the issuer) 35 percent of the interest payable under such bond on such date.

"(c) APPLICATION OF ARBITRAGE RULES.—For purposes of section 148, the yield on a qualified bond shall be reduced by the credit allowed under this section.

"(d) INTEREST PAYMENT DATE.—For purposes of this subsection, the term 'interest payment date' means each date on which interest is payable by the issuer under the terms of the bond.

"(e) QUALIFIED BOND.—For purposes of this subsection, the term 'qualified bond' has the meaning given such term in section 54AA(g).".

(c) CONFORMING AMENDMENTS.—

(1) Section 1324(b)(2) of title 31, United States Code, is amended by striking "or 6428" and inserting "6428, or 6431,".

(2) Section 54A(c)(1)(B) is amended by striking "subpart C" and inserting "subparts C and J".

(3) Sections 54(c)(2), 1397E(c)(2), and 1400N(l)(3)(B) are each amended by striking "and I" and inserting ", I, and J".

(4) Section 6211(b)(4)(A) is amended by striking "and 6428" and inserting "6428, and 6431".

(5) Section 6401(b)(1) is amended by striking "and I" and inserting "I, and J".

(6) The table of subparts for part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

"SUBPART J. BUILD AMERICA BONDS.".

(7) The table of section for subchapter B of chapter 65 is amended by adding at the end the following new item:

"Sec. 6431. Credit for qualified bonds allowed to issuer.".

(d) TRANSITIONAL COORDINATION WITH STATE LAW.—Except as otherwise provided by a State after the date of the enactment of this Act, the interest on any build America bond (as defined in section 54AA of the Internal Revenue Code of 1986, as added by this section) and the amount of any credit determined under such section with respect to such bond shall be treated for purposes of the income tax laws of such State as being exempt from Federal income tax.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after the date of the enactment of this Act.

PART V—REGULATED INVESTMENT COMPANIES ALLOWED TO PASS-THRU TAX CREDIT BOND CREDITS

SEC. 1541. REGULATED INVESTMENT COMPANIES ALLOWED TO PASS-THRU TAX CREDIT BOND CREDITS.

(a) IN GENERAL.—Part I of subchapter M of chapter 1 is amended by inserting after section 853 the following new section:

"SEC. 853A. CREDITS FROM TAX CREDIT BONDS ALLOWED TO SHAREHOLDERS.

"(a) GENERAL RULE.—A regulated investment company—

"(1) which holds (directly or indirectly) one or more tax credit bonds on one or more applicable dates during the taxable year, and

"(2) which meets the requirements of section 852(a) for the taxable year,

may elect the application of this section with respect to credits allowable to the investment company during such taxable year with respect to such bonds.

"(b) EFFECT OF ELECTION.—If the election provided in subsection (a) is in effect for any taxable year—

"(1) the regulated investment company shall not be allowed any credits to which subsection (a) applies for such taxable year,

"(2) the regulated investment company shall—

"(A) include in gross income (as interest) for such taxable year an amount equal to the amount that such investment company would have included in gross income with respect to such credits if this section did not apply, and

"(B) increase the amount of the dividends paid deduction for such taxable year by the amount of such income, and

"(3) each shareholder of such investment company shall—

"(A) include in gross income an amount equal to such shareholder's proportionate share of the interest income attributable to such credits, and

"(B) be allowed the shareholder's proportionate share of such credits against the tax imposed by this chapter.

"(c) NOTICE TO SHAREHOLDERS.—For purposes of subsection (b)(3), the shareholder's proportionate share of—

"(1) credits described in subsection (a), and

"(2) gross income in respect of such credits,

shall not exceed the amounts so designated by the regulated investment company in a written notice mailed to its shareholders not later than 60 days after the close of its taxable year.

"(d) MANNER OF MAKING ELECTION AND NOTIFYING SHAREHOLDERS.—The election provided in subsection (a) and the notice to shareholders required by subsection (c) shall be made in such manner as the Secretary may prescribe.

"(e) DEFINITIONS AND SPECIAL RULES.—

"(1) DEFINITIONS.—For purposes of this subsection—

"(A) TAX CREDIT BOND.—The term 'tax credit bond' means—

"(i) a qualified tax credit bond (as defined in section 54A(d)),

"(ii) a build America bond (as defined in section 54AA(d)), and

"(iii) any bond for which a credit is allowable under subpart H of part IV of subchapter A of this chapter.

"(B) APPLICABLE DATE.—The term 'applicable date' means—

"(i) in the case of a qualified tax credit bond or a bond described in subparagraph (A)(iii), any credit allowance date (as defined in section 54A(e)(1)), and

"(ii) in the case of a build America bond (as defined in section 54AA(d)), any interest payment date (as defined in section 54AA(e)).

"(2) STRIPPED TAX CREDIT BONDS.—If the ownership of a tax credit bond is separated from the credit with respect to such bond, subsection (a) shall be applied by reference to the instru-

ments evidencing the entitlement to the credit rather than the tax credit bond.

"(f) REGULATIONS, ETC.—The Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the purposes of this section, including methods for determining a shareholder's proportionate share of credits.".

(b) CONFORMING AMENDMENTS.—

(1) Section 54(l) is amended by striking paragraph (4) and by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

(2) Section 54A(h) is amended to read as follows:

"(h) BONDS HELD BY REAL ESTATE INVESTMENT TRUSTS.—If any qualified tax credit bond is held by a real estate investment trust, the credit determined under subsection (a) shall be allowed to beneficiaries of such trust (and any gross income included under subsection (f) with respect to such credit shall be distributed to such beneficiaries) under procedures prescribed by the Secretary.".

(3) The table of sections for part I of subchapter M of chapter 1 is amended by inserting after the item relating to section 853 the following new item:

"Sec. 853A. Credits from tax credit bonds allowed to shareholders.".

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

Subtitle G—Other Provisions

SEC. 1601. APPLICATION OF CERTAIN LABOR STANDARDS TO PROJECTS FINANCED WITH CERTAIN TAX-FAVORED BONDS.

Subchapter IV of chapter 31 of the title 40, United States Code, shall apply to projects financed with the proceeds of—

(1) any new clean renewable energy bond (as defined in section 54C of the Internal Revenue Code of 1986) issued after the date of the enactment of this Act,

(2) any qualified energy conservation bond (as defined in section 54D of the Internal Revenue Code of 1986) issued after the date of the enactment of this Act,

(3) any qualified zone academy bond (as defined in section 54E of the Internal Revenue Code of 1986) issued after the date of the enactment of this Act,

(4) any qualified school construction bond (as defined in section 54F of the Internal Revenue Code of 1986), and

(5) any recovery zone economic development bond (as defined in section 1400U–2 of the Internal Revenue Code of 1986).

SEC. 1602. GRANTS TO STATES FOR LOW-INCOME HOUSING PROJECTS IN LIEU OF LOW-INCOME HOUSING CREDIT ALLOCATIONS FOR 2009.

(a) IN GENERAL.—The Secretary of the Treasury shall make a grant to the housing credit agency of each State in an amount equal to such State's low-income housing grant election amount.

(b) LOW-INCOME HOUSING GRANT ELECTION AMOUNT.—For purposes of this section, the term "low-income housing grant election amount" means, with respect to any State, such amount as the State may elect which does not exceed 85 percent of the product of—

(1) the sum of—

(A) 100 percent of the State housing credit ceiling for 2009 which is attributable to amounts described in clauses (i) and (iii) of section 42(h)(3)(C) of the Internal Revenue Code of 1986, and

(B) 40 percent of the State housing credit ceiling for 2009 which is attributable to amounts described in clauses (ii) and (iv) of such section, multiplied by

(2) 10.

(c) SUBAWARDS FOR LOW-INCOME BUILDINGS.—

(1) IN GENERAL.—A State housing credit agency receiving a grant under this section shall use such grant to make subawards to finance the construction or acquisition and rehabilitation of qualified low-income buildings. A subaward under this section may be made to finance a qualified low-income building with or without an allocation under section 42 of the Internal Revenue Code of 1986, except that a State housing credit agency may make subawards to finance qualified low-income buildings without an allocation only if it makes a determination that such use will increase the total funds available to the State to build and rehabilitate affordable housing. In complying with such determination requirement, a State housing credit agency shall establish a process in which applicants that are allocated credits are required to demonstrate good faith efforts to obtain investment commitments for such credits before the agency makes such subawards.

(2) SUBAWARDS SUBJECT TO SAME REQUIREMENTS AS LOW-INCOME HOUSING CREDIT ALLOCATIONS.—Any such subaward with respect to any qualified low-income building shall be made in the same manner and shall be subject to the same limitations (including rent, income, and use restrictions on such building) as an allocation of housing credit dollar amount allocated by such State housing credit agency under section 42 of the Internal Revenue Code of 1986, except that such subawards shall not be limited by, or otherwise affect (except as provided in subsection (h)(3)(J) of such section), the State housing credit ceiling applicable to such agency.

(3) COMPLIANCE AND ASSET MANAGEMENT.—The State housing credit agency shall perform asset management functions to ensure compliance with section 42 of the Internal Revenue Code of 1986 and the long-term viability of buildings funded by any subaward under this section. The State housing credit agency may collect reasonable fees from a subaward recipient to cover expenses associated with the performance of its duties under this paragraph. The State housing credit agency may retain an agent or other private contractor to satisfy the requirements of this paragraph.

(4) RECAPTURE.—The State housing credit agency shall impose conditions or restrictions, including a requirement providing for recapture, on any subaward under this section so as to assure that the building with respect to which such subaward is made remains a qualified low-income building during the compliance period. Any such recapture shall be payable to the Secretary of the Treasury for deposit in the general fund of the Treasury and may be enforced by means of liens or

such other methods as the Secretary of the Treasury determines appropriate.

(d) RETURN OF UNUSED GRANT FUNDS.—Any grant funds not used to make subawards under this section before January 1, 2011, shall be returned to the Secretary of the Treasury on such date. Any subawards returned to the State housing credit agency on or after such date shall be promptly returned to the Secretary of the Treasury. Any amounts returned to the Secretary of the Treasury under this subsection shall be deposited in the general fund of the Treasury.

(e) DEFINITIONS.—Any term used in this section which is also used in section 42 of the Internal Revenue Code of 1986 shall have the same meaning for purposes of this section as when used in such section 42. Any reference in this section to the Secretary of the Treasury shall be treated as including the Secretary's delegate.

(f) APPROPRIATIONS.—There is hereby appropriated to the Secretary of the Treasury such sums as may be necessary to carry out this section.

SEC. 1603. GRANTS FOR SPECIFIED ENERGY PROPERTY IN LIEU OF TAX CREDITS.

(a) IN GENERAL.—Upon application, the Secretary of the Treasury shall, subject to the requirements of this section, provide a grant to each person who places in service specified energy property to reimburse such person for a portion of the expense of such property as provided in subsection (b). No grant shall be made under this section with respect to any property unless such property—

(1) is placed in service during 2009 or 2010, or

(2) is placed in service after 2010 and before the credit termination date with respect to such property, but only if the construction of such property began during 2009 or 2010.

(b) GRANT AMOUNT.—

(1) IN GENERAL.—The amount of the grant under subsection (a) with respect to any specified energy property shall be the applicable percentage of the basis of such property.

(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the term "applicable percentage" means—

(A) 30 percent in the case of any property described in paragraphs (1) through (4) of subsection (d), and

(B) 10 percent in the case of any other property.

(3) DOLLAR LIMITATIONS.—In the case of property described in paragraph (2), (6), or (7) of subsection (d), the amount of any grant under this section with respect to such property shall not exceed the limitation described in section 48(c)(1)(B), 48(c)(2)(B), or 48(c)(3)(B) of the Internal Revenue Code of 1986, respectively, with respect to such property.

(c) TIME FOR PAYMENT OF GRANT.—The Secretary of the Treasury shall make payment of any grant under subsection (a) during the 60-day period beginning on the later of—

(1) the date of the application for such grant, or

(2) the date the specified energy property for which the grant is being made is placed in service.

(d) SPECIFIED ENERGY PROPERTY.—For purposes of this section, the term "specified energy property" means any of the following:

(1) QUALIFIED FACILITIES.—Any qualified property (as defined in section 48(a)(5)(D) of the Internal Revenue Code of

1986) which is part of a qualified facility (within the meaning of section 45 of such Code) described in paragraph (1), (2), (3), (4), (6), (7), (9), or (11) of section 45(d) of such Code.

(2) QUALIFIED FUEL CELL PROPERTY.—Any qualified fuel cell property (as defined in section 48(c)(1) of such Code).

(3) SOLAR PROPERTY.—Any property described in clause (i) or (ii) of section 48(a)(3)(A) of such Code.

(4) QUALIFIED SMALL WIND ENERGY PROPERTY.—Any qualified small wind energy property (as defined in section 48(c)(4) of such Code).

(5) GEOTHERMAL PROPERTY.—Any property described in clause (iii) of section 48(a)(3)(A) of such Code.

(6) QUALIFIED MICROTURBINE PROPERTY.—Any qualified microturbine property (as defined in section 48(c)(2) of such Code).

(7) COMBINED HEAT AND POWER SYSTEM PROPERTY.—Any combined heat and power system property (as defined in section 48(c)(3) of such Code).

(8) GEOTHERMAL HEAT PUMP PROPERTY.—Any property described in clause (vii) of section 48(a)(3)(A) of such Code.

Such term shall not include any property unless depreciation (or amortization in lieu of depreciation) is allowable with respect to such property.

(e) CREDIT TERMINATION DATE.—For purposes of this section, the term "credit termination date" means—

(1) in the case of any specified energy property which is part of a facility described in paragraph (1) of section 45(d) of the Internal Revenue Code of 1986, January 1, 2013,

(2) in the case of any specified energy property which is part of a facility described in paragraph (2), (3), (4), (6), (7), (9), or (11) of section 45(d) of such Code, January 1, 2014, and

(3) in the case of any specified energy property described in section 48 of such Code, January 1, 2017.

In the case of any property which is described in paragraph (3) and also in another paragraph of this subsection, paragraph (3) shall apply with respect to such property.

(f) APPLICATION OF CERTAIN RULES.—In making grants under this section, the Secretary of the Treasury shall apply rules similar to the rules of section 50 of the Internal Revenue Code of 1986. In applying such rules, if the property is disposed of, or otherwise ceases to be specified energy property, the Secretary of the Treasury shall provide for the recapture of the appropriate percentage of the grant amount in such manner as the Secretary of the Treasury determines appropriate.

(g) EXCEPTION FOR CERTAIN NON-TAXPAYERS.—The Secretary of the Treasury shall not make any grant under this section to—

(1) any Federal, State, or local government (or any political subdivision, agency, or instrumentality thereof),

(2) any organization described in section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code,

(3) any entity referred to in paragraph (4) of section 54(j) of such Code, or

(4) any partnership or other pass-thru entity any partner (or other holder of an equity or profits interest) of which is described in paragraph (1), (2) or (3).

(h) DEFINITIONS.—Terms used in this section which are also used in section 45 or 48 of the Internal Revenue Code of 1986 shall have the same meaning for purposes of this section as when used in such section 45 or 48. Any reference in this section to the Secretary of the Treasury shall be treated as including the Secretary's delegate.

(i) APPROPRIATIONS.—There is hereby appropriated to the Secretary of the Treasury such sums as may be necessary to carry out this section.

(j) TERMINATION.—The Secretary of the Treasury shall not make any grant to any person under this section unless the application of such person for such grant is received before October 1, 2011.

SEC. 1604. INCREASE IN PUBLIC DEBT LIMIT.

Subsection (b) of section 3101 of title 31, United States Code, is amended by striking out the dollar limitation contained in such subsection and inserting "$12,104,000,000,000".

Subtitle H—Prohibition on Collection of Certain Payments Made Under the Continued Dumping and Subsidy Offset Act of 2000

SEC. 1701. PROHIBITION ON COLLECTION OF CERTAIN PAYMENTS MADE UNDER THE CONTINUED DUMPING AND SUBSIDY OFFSET ACT OF 2000.

(a) IN GENERAL.—Notwithstanding any other provision of law, neither the Secretary of Homeland Security nor any other person may—

(1) require repayment of, or attempt in any other way to recoup, any payments described in subsection (b); or

(2) offset any past, current, or future distributions of antidumping or countervailing duties assessed with respect to imports from countries that are not parties to the North American Free Trade Agreement in an attempt to recoup any payments described in subsection (b).

(b) PAYMENTS DESCRIBED.—Payments described in this subsection are payments of antidumping or countervailing duties made pursuant to the Continued Dumping and Subsidy Offset Act of 2000 (section 754 of the Tariff Act of 1930 (19 U.S.C. 1675c; repealed by subtitle F of title VII of the Deficit Reduction Act of 2005 (Public Law 109–171; 120 Stat. 154))) that were—

(1) assessed and paid on imports of goods from countries that are parties to the North American Free Trade Agreement; and

(2) distributed on or after January 1, 2001, and before January 1, 2006.

(c) PAYMENT OF FUNDS COLLECTED OR WITHHELD.—Not later than the date that is 60 days after the date of the enactment of this Act, the Secretary of Homeland Security shall—

(1) refund any repayments, or any other recoupment, of payments described in subsection (b); and

(2) fully distribute any antidumping or countervailing duties that the U.S. Customs and Border Protection is withholding as an offset as described in subsection (a)(2).

(d) LIMITATION.—Nothing in this section shall be construed to prevent the Secretary of Homeland Security, or any other person, from requiring repayment of, or attempting to otherwise recoup, any payments described in subsection (b) as a result of—

(1) a finding of false statements or other misconduct by a recipient of such a payment; or

(2) the reliquidation of an entry with respect to which such a payment was made.

Subtitle I—Trade Adjustment Assistance

SEC. 1800. SHORT TITLE.

This subtitle may be cited as the "Trade and Globalization Adjustment Assistance Act of 2009".

PART I—TRADE ADJUSTMENT ASSISTANCE FOR WORKERS

Subpart A—Trade Adjustment Assistance for Service Sector Workers

SEC. 1801. EXTENSION OF TRADE ADJUSTMENT ASSISTANCE TO SERVICE SECTOR AND PUBLIC AGENCY WORKERS; SHIFTS IN PRODUCTION.

(a) DEFINITIONS.—Section 247 of the Trade Act of 1974 (19 U.S.C. 2319) is amended—

(1) in paragraph (1)—

(A) by striking "or appropriate subdivision of a firm"; and

(B) by striking "or subdivision";

(2) in paragraph (2), by striking "employment—" and all that follows and inserting "employment, has been totally or partially separated from such employment.";

(3) by inserting after paragraph (2) the following:

"(3) Subject to section 222(d)(5), the term 'firm' means—

"(A) a firm, including an agricultural firm, service sector firm, or public agency; or

"(B) an appropriate subdivision thereof.";

(4) by inserting after paragraph (6) the following:

"(7) The term 'public agency' means a department or agency of a State or local government or of the Federal Government, or a subdivision thereof.";

(5) in paragraph (11), by striking ", or in a subdivision of which,"; and

(6) by adding at the end the following:

"(18) The term 'service sector firm' means a firm engaged in the business of supplying services.".

(b) GROUP ELIGIBILITY REQUIREMENTS.—Section 222 of the Trade Act of 1974 (19 U.S.C. 2272) is amended—

(1) in subsection (a)(2)—

(A) by amending subparagraph (A)(ii) to read as follows:

"(ii)(I) imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

"(II) imports of articles like or directly competitive with articles—

"(aa) into which one or more component parts produced by such firm are directly incorporated, or

"(bb) which are produced directly using services supplied by such firm,

have increased; or

"(III) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased; and"; and

(B) by amending subparagraph (B) to read as follows:

"(B)(i)(I) there has been a shift by such workers' firm to a foreign country in the production of articles or the supply of services like or directly competitive with articles which are produced or services which are supplied by such firm; or

"(II) such workers' firm has acquired from a foreign country articles or services that are like or directly competitive with articles which are produced or services which are supplied by such firm; and

"(ii) the shift described in clause (i)(I) or the acquisition of articles or services described in clause (i)(II) contributed importantly to such workers' separation or threat of separation.";

(2) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(3) by inserting after subsection (a) the following:

"(b) ADVERSELY AFFECTED WORKERS IN PUBLIC AGENCIES.—A group of workers in a public agency shall be certified by the Secretary as eligible to apply for adjustment assistance under this chapter pursuant to a petition filed under section 221 if the Secretary determines that—

"(1) a significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

"(2) the public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

"(3) the acquisition of services described in paragraph (2) contributed importantly to such workers' separation or threat of separation.".

(c) BASIS FOR SECRETARY'S DETERMINATIONS.—Section 222 of the Trade Act of 1974 (19 U.S.C. 2272), as amended, is further amended by adding at the end the following:

"(e) BASIS FOR SECRETARY'S DETERMINATIONS.—

"(1) IN GENERAL.—The Secretary shall, in determining whether to certify a group of workers under section 223, obtain from the workers' firm, or a customer of the workers' firm, information the Secretary determines to be necessary to make the certification, through questionnaires and in such other manner as the Secretary determines appropriate.

"(2) ADDITIONAL INFORMATION.—The Secretary may seek additional information to determine whether to certify a group of workers under subsection (a), (b), or (c)—

"(A) by contacting—

"(i) officials or employees of the workers' firm;

"(ii) officials of customers of the workers' firm;

"(iii) officials of certified or recognized unions or other duly authorized representatives of the group of workers; or

"(iv) one-stop operators or one-stop partners (as defined in section 101 of the Workforce Investment Act of 1998 (29 U.S.C. 2801)); or

"(B) by using other available sources of information.

"(3) VERIFICATION OF INFORMATION.—

"(A) CERTIFICATION.—The Secretary shall require a firm or customer to certify—

"(i) all information obtained under paragraph (1) from the firm or customer (as the case may be) through questionnaires; and

"(ii) all other information obtained under paragraph (1) from the firm or customer (as the case may be) on which the Secretary relies in making a determination under section 223, unless the Secretary has a reasonable basis for determining that such information is accurate and complete without being certified.

"(B) USE OF SUBPOENAS.—The Secretary shall require the workers' firm or a customer of the workers' firm to provide information requested by the Secretary under paragraph (1) by subpoena pursuant to section 249 if the firm or customer (as the case may be) fails to provide the information within 20 days after the date of the Secretary's request, unless the firm or customer (as the case may be) demonstrates to the satisfaction of the Secretary that the firm or customer (as the case may be) will provide the information within a reasonable period of time.

"(C) PROTECTION OF CONFIDENTIAL INFORMATION.—The Secretary may not release information obtained under paragraph (1) that the Secretary considers to be confidential business information unless the firm or customer (as the case may be) submitting the confidential business information had notice, at the time of submission, that the information would be released by the Secretary, or the firm or customer (as the case may be) subsequently consents to the release of the information. Nothing in this subparagraph shall be construed to prohibit the Secretary from providing such confidential business information to a court in camera or to another party under a protective order issued by a court.".

(d) PENALTIES.—Section 244 of the Trade Act of 1974 (19 U.S.C. 2316) is amended to read as follows:

"SEC. 244. PENALTIES.

"Any person who—

"(1) makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact, for the purpose of obtaining or increasing for that person or for any

other person any payment authorized to be furnished under this chapter or pursuant to an agreement under section 239, or

"(2) makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact, when providing information to the Secretary during an investigation of a petition under section 221,

shall be imprisoned for not more than 1 year, or fined under title 18, United States Code, or both.".

(e) CONFORMING AMENDMENTS.—

(1) Section 221(a) of the Trade Act of 1974 (19 U.S.C. 2271(a)) is amended—

(A) in paragraph (1)—

(i) in the matter preceding subparagraph (A)—

(I) by striking "Secretary" and inserting "Secretary of Labor"; and

(II) by striking "or subdivision" and inserting "(as defined in section 247)"; and

(ii) in subparagraph (A), by striking "(including workers in an agricultural firm or subdivision of any agricultural firm)";

(B) in paragraph (2)(A), by striking "rapid response assistance" and inserting "rapid response activities"; and

(C) in paragraph (3), by inserting "and on the website of the Department of Labor" after "Federal Register".

(2) Section 222 of the Trade Act of 1974 (19 U.S.C. 2272), as amended, is further amended—

(A) by striking "(including workers in any agricultural firm or subdivision of an agricultural firm)" each place it appears;

(B) in subsection (a)—

(i) in paragraph (1), by striking ", or an appropriate subdivision of the firm,"; and

(ii) in paragraph (2), by striking "or subdivision" each place it appears;

(C) in subsection (c) (as redesignated)—

(i) in paragraph (2)—

(I) by striking "(or subdivision)" each place it appears;

(II) by inserting "or service" after "the article"; and

(III) by striking "(c)(3)" and inserting "(d)(3)"; and

(ii) in paragraph (3), by striking "(or subdivision)" each place it appears; and

(D) in subsection (d) (as redesignated)—

(i) by striking "For purposes" and inserting "DEFINITIONS.—For purposes";

(ii) in paragraph (2), by striking ", or appropriate subdivision of a firm," each place it appears;

(iii) by amending paragraph (3) to read as follows:

"(3) DOWNSTREAM PRODUCER.—

"(A) IN GENERAL.—The term 'downstream producer' means a firm that performs additional, value-added production processes or services directly for another firm for

articles or services with respect to which a group of workers in such other firm has been certified under subsection (a).

"(B) VALUE-ADDED PRODUCTION PROCESSES OR SERVICES.—For purposes of subparagraph (A), value-added production processes or services include final assembly, finishing, testing, packaging, or maintenance or transportation services.";

(iv) in paragraph (4)—

(I) by striking "(or subdivision)"; and

(II) by inserting ", or services, used in the production of articles or in the supply of services, as the case may be," after "for articles"; and

(v) by adding at the end the following:

"(5) REFERENCE TO FIRM.—For purposes of subsection (a), the term 'firm' does not include a public agency.".

(3) Section 231(a)(2) of the Trade Act of 1974 (19 U.S.C. 2291(a)(2)) is amended—

(A) in the matter preceding subparagraph (A), by striking "or subdivision of a firm"; and

(B) in subparagraph (C), by striking "or subdivision".

SEC. 1802. SEPARATE BASIS FOR CERTIFICATION.

Section 222 of the Trade Act of 1974 (19 U.S.C. 2272), as amended, is further amended by adding at the end the following:

"(f) FIRMS IDENTIFIED BY THE INTERNATIONAL TRADE COMMISSION.—Notwithstanding any other provision of this chapter, a group of workers covered by a petition filed under section 221 shall be certified under subsection (a) as eligible to apply for adjustment assistance under this chapter if—

"(1) the workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

"(A) an affirmative determination of serious injury or threat thereof under section 202(b)(1);

"(B) an affirmative determination of market disruption or threat thereof under section 421(b)(1); or

"(C) an affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

"(2) the petition is filed during the 1-year period beginning on the date on which—

"(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the Federal Register under section 202(f)(3); or

"(B) notice of an affirmative determination described in subparagraph (B) or (C) of paragraph (1) is published in the Federal Register; and

"(3) the workers have become totally or partially separated from the workers' firm within—

"(A) the 1-year period described in paragraph (2); or

"(B) notwithstanding section 223(b), the one-year period preceding the one-year period described in paragraph (2).".

SEC. 1803. DETERMINATIONS BY SECRETARY OF LABOR.

Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) is amended—

(1) in subsection (b), by striking "or appropriate subdivision of the firm before his application" and all that follows and inserting "before the worker's application under section 231 occurred more than one year before the date of the petition on which such certification was granted.";

(2) in subsection (c), by striking "together with his reasons" and inserting "and on the website of the Department of Labor, together with the Secretary's reasons";

(3) in subsection (d)—

(A) by striking "or subdivision of the firm" and all that follows through "he shall" and inserting ", that total or partial separations from such firm are no longer attributable to the conditions specified in section 222, the Secretary shall"; and

(B) by striking "together with his reasons" and inserting "and on the website of the Department of Labor, together with the Secretary's reasons"; and

(4) by adding at the end the following:

"(e) STANDARDS FOR INVESTIGATIONS AND DETERMINATIONS.—

"(1) IN GENERAL.—The Secretary shall establish standards, including data requirements, for investigations of petitions filed under section 221 and criteria for making determinations under subsection (a).

"(2) CONSULTATIONS.—Not less than 90 days before issuing a final rule with respect to the standards required under paragraph (1), the Secretary shall consult with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to such rule.".

SEC. 1804. MONITORING AND REPORTING RELATING TO SERVICE SECTOR.

(a) IN GENERAL.—Section 282 of the Trade Act of 1974 (19 U.S.C. 2393) is amended—

*(1) in the heading, by striking "**SYSTEM**" and inserting "**AND DATA COLLECTION**";*

(2) in the first sentence—

(A) by striking "The Secretary" and inserting "(a) MONITORING PROGRAMS.—The Secretary";

(B) by inserting "and services" after "imports of articles";

(C) by inserting "and domestic supply of services" after "domestic production";

(D) by inserting "or supplying services" after "producing articles"; and

(E) by inserting ", or supply of services," after "changes in production"; and

(3) by adding at the end the following:

"(b) COLLECTION OF DATA AND REPORTS ON SERVICE SECTOR.—

"(1) SECRETARY OF LABOR.—Not later than 90 days after the date of the enactment of this subsection, the Secretary of Labor shall implement a system to collect data on adversely affected workers employed in the service sector that includes the

number of workers by State and industry, and by the cause of the dislocation of each worker, as identified in the certification.

"(2) SECRETARY OF COMMERCE.—Not later than 1 year after such date of enactment, the Secretary of Commerce shall, in consultation with the Secretary of Labor, conduct a study and submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report on ways to improve the timeliness and coverage of data on trade in services, including methods to identify increased imports due to the relocation of United States firms to foreign countries, and increased imports due to United States firms acquiring services from firms in foreign countries.".

(b) CLERICAL AMENDMENT.—The table of contents of the Trade Act of 1974 is amended by striking the item relating to section 282 and inserting the following:

"Sec. 282. Trade monitoring and data collection.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

Subpart B—Industry Notifications Following Certain Affirmative Determinations

SEC. 1811. NOTIFICATIONS FOLLOWING CERTAIN AFFIRMATIVE DETERMINATIONS.

(a) IN GENERAL.—Section 224 of the Trade Act of 1974 (19 U.S.C. 2274) is amended—

(1) by amending the heading to read as follows:

"SEC. 224. STUDY AND NOTIFICATIONS REGARDING CERTAIN AFFIRMATIVE DETERMINATIONS; INDUSTRY NOTIFICATION OF ASSISTANCE.";

(2) in subsection (a), by striking "Whenever" and inserting "STUDY OF DOMESTIC INDUSTRY.—Whenever";

(3) in subsection (b)—

(A) by striking "The report" and inserting "REPORT BY THE SECRETARY.—The report"; and

(B) by inserting "and on the website of the Department of Labor" after "Federal Register"; and

(4) by adding at the end the following:

"(c) NOTIFICATIONS FOLLOWING AFFIRMATIVE GLOBAL SAFEGUARD DETERMINATIONS.—Upon making an affirmative determination under section 202(b)(1), the Commission shall promptly notify the Secretary of Labor and the Secretary of Commerce and, in the case of a determination with respect to an agricultural commodity, the Secretary of Agriculture, of the determination.

"(d) NOTIFICATIONS FOLLOWING AFFIRMATIVE BILATERAL OR PLURILATERAL SAFEGUARD DETERMINATIONS.—

"(1) NOTIFICATIONS OF DETERMINATIONS OF MARKET DISRUPTION.—Upon making an affirmative determination under section 421(b)(1), the Commission shall promptly notify the Secretary of Labor and the Secretary of Commerce and, in the case of a determination with respect to an agricultural commodity, the Secretary of Agriculture, of the determination.

"(2) NOTIFICATIONS REGARDING TRADE AGREEMENT SAFEGUARDS.—Upon making an affirmative determination in a proceeding initiated under an applicable safeguard provision

(other than a provision described in paragraph (3)) that is enacted to implement a trade agreement to which the United States is a party, the Commission shall promptly notify the Secretary of Labor and the Secretary of Commerce and, in the case of a determination with respect to an agricultural commodity, the Secretary of Agriculture, of the determination.

"(3) NOTIFICATIONS REGARDING TEXTILE AND APPAREL SAFEGUARDS.—Upon making an affirmative determination in a proceeding initiated under any safeguard provision relating to textile and apparel articles that is enacted to implement a trade agreement to which the United States is a party, the President shall promptly notify the Secretary of Labor and the Secretary of Commerce of the determination.

"(e) NOTIFICATIONS FOLLOWING CERTAIN AFFIRMATIVE DETERMINATIONS UNDER TITLE VII OF THE TARIFF ACT OF 1930.—Upon making an affirmative determination under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A)), the Commission shall promptly notify the Secretary of Labor and the Secretary of Commerce and, in the case of a determination with respect to an agricultural commodity, the Secretary of Agriculture, of the determination.

"(f) INDUSTRY NOTIFICATION OF ASSISTANCE.—Upon receiving a notification of a determination under subsection (c), (d), or (e) with respect to a domestic industry—

"(1) the Secretary of Labor shall—

"(A) notify the representatives of the domestic industry affected by the determination, firms publicly identified by name during the course of the proceeding relating to the determination, and any certified or recognized union or, to the extent practicable, other duly authorized representative of workers employed by such representatives of the domestic industry, of—

"(i) the allowances, training, employment services, and other benefits available under this chapter;

"(ii) the manner in which to file a petition and apply for such benefits; and

"(iii) the availability of assistance in filing such petitions;

"(B) notify the Governor of each State in which one or more firms in the industry described in subparagraph (A) are located of the Commission's determination and the identity of the firms; and

"(C) upon request, provide any assistance that is necessary to file a petition under section 221;

"(2) the Secretary of Commerce shall—

"(A) notify the representatives of the domestic industry affected by the determination and any firms publicly identified by name during the course of the proceeding relating to the determination of—

"(i) the benefits available under chapter 3;

"(ii) the manner in which to file a petition and apply for such benefits; and

"(iii) the availability of assistance in filing such petitions; and

"(B) upon request, provide any assistance that is necessary to file a petition under section 251; and

"(3) in the case of an affirmative determination based upon imports of an agricultural commodity, the Secretary of Agriculture shall—

"(A) notify representatives of the domestic industry affected by the determination and any agricultural commodity producers publicly identified by name during the course of the proceeding relating to the determination of—

"(i) the benefits available under chapter 6;

"(ii) the manner in which to file a petition and apply for such benefits; and

"(iii) the availability of assistance in filing such petitions; and

"(B) upon request, provide any assistance that is necessary to file a petition under section 292.

"(g) REPRESENTATIVES OF THE DOMESTIC INDUSTRY.—For purposes of subsection (f), the term 'representatives of the domestic industry' means the persons that petitioned for relief in connection with—

"(1) a proceeding under section 202 or 421 of this Act;

"(2) a proceeding under section 702(b) or 732(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)); or

"(3) any safeguard investigation described in subsection (d)(2) or (d)(3).".

(b) CLERICAL AMENDMENT.—The table of contents of the Trade Act of 1974 is amended by striking the item relating to section 224 and inserting the following:

"Sec. 224. Study and notifications regarding certain affirmative determinations; industry notification of assistance.".

SEC. 1812. NOTIFICATION TO SECRETARY OF COMMERCE.

Section 225 of the Trade Act of 1974 (19 U.S.C. 2275) is amended by adding at the end the following:

"(c) Upon issuing a certification under section 223, the Secretary shall notify the Secretary of Commerce of the identity of each firm covered by the certification.".

Subpart C—Program Benefits

SEC. 1821. QUALIFYING REQUIREMENTS FOR WORKERS.

(a) IN GENERAL.—Section 231(a)(5)(A)(ii) of the Trade Act of 1974 (19 U.S.C. 2291 (a)(5)(A)(ii)) is amended—

(1) by striking subclauses (I) and (II) and inserting the following:

"(I) in the case of a worker whose most recent total separation from adversely affected employment that meets the requirements of paragraphs (1) and (2) occurs after the date on which the Secretary issues a certification covering the worker, the last day of the 26th week after such total separation,

"(II) in the case of a worker whose most recent total separation from adversely affected employment that meets the requirements of paragraphs (1) and (2) occurs before the date on which the Secretary issues a

certification covering the worker, the last day of the 26th week after the date of such certification,";

(2) in subclause (III)—

(A) by striking "later of the dates specified in subclause (I) or (II)" and inserting "date specified in subclause (I) or (II), as the case may be"; and

(B) by striking "or" at the end;

(3) by redesignating subclause (IV) as subclause (V); and

(4) by inserting after subclause (III) the following:

"(IV) in the case of a worker who fails to enroll by the date required by subclause (I), (II), or (III), as the case may be, due to the failure to provide the worker with timely information regarding the date specified in such subclause, the last day of a period determined by the Secretary, or".

(b) WAIVERS OF TRAINING REQUIREMENTS.—Section 231(c) of the Trade Act of 1974 (19 U.S.C. 2291(c)) is amended—

(1) in paragraph (1)(B)—

(A) by striking "The worker possesses" and inserting the following:

"(i) IN GENERAL.—The worker possesses"; and

(B) by adding at the end the following:

"(ii) MARKETABLE SKILLS DEFINED.—For purposes of clause (i), the term 'marketable skills' may include the possession of a postgraduate degree from an institution of higher education (as defined in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002)) or an equivalent institution, or the possession of an equivalent postgraduate certification in a specialized field.";

(2) in paragraph (2)(A), by striking "A waiver" and inserting "Except as provided in paragraph (3)(B), a waiver"; and

(3) in paragraph (3)—

(A) in subparagraph (A), by striking "Pursuant to an agreement under section 239, the Secretary may authorize a" and inserting "An agreement under section 239 shall authorize a";

(B) by redesignating subparagraph (B) as subparagraph (C); and

(C) by inserting after subparagraph (A) the following:

"(B) REVIEW OF WAIVERS.—An agreement under section 239 shall require a cooperating State to review each waiver issued by the State under subparagraph (A), (B), (D), (E), or (F) of paragraph (1)—

"(i) 3 months after the date on which the State issues the waiver; and

"(ii) on a monthly basis thereafter.".

(c) CONFORMING AMENDMENTS.—

(1) Section 231 of the Trade Act of 1974 (19 U.S.C. 2291), as amended, is further amended—

(A) in subsection (a), in the matter preceding paragraph (1), by striking "more than 60 days" and all that follows through "section 221" and inserting "on or after the date of such certification"; and

(B) in subsection (b)—

(i) by striking paragraph (2); and

(ii) in paragraph (1)—

(I) by striking "(1)";

(II) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively;

(III) by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively; and

(IV) by redesignating subclauses (I) and (II) as clauses (i) and (ii), respectively.

(2) Section 233 of the Trade Act of 1974 (19 U.S.C. 2293) is amended—

(A) by striking subsection (b); and

(B) by redesignating subsections (c) through (g) as subsections (b) through (f), respectively.

SEC. 1822. WEEKLY AMOUNTS.

Section 232 of the Trade Act of 1974 (19 U.S.C. 2292) is amended—

(1) in subsection (a)—

(A) by striking "subsections (b) and (c)" and inserting "subsections (b), (c), and (d)";

(B) by striking "total unemployment" the first place it appears and inserting "unemployment"; and

(C) in paragraph (2), by inserting before the period the following: ", except that in the case of an adversely affected worker who is participating in training under this chapter, such income shall not include earnings from work for such week that are equal to or less than the most recent weekly benefit amount of the unemployment insurance payable to the worker for a week of total unemployment preceding the worker's first exhaustion of unemployment insurance (as determined for purposes of section 231(a)(3)(B))"; and

(2) by adding at the end the following:

"(d) ELECTION OF TRADE READJUSTMENT ALLOWANCE OR UNEMPLOYMENT INSURANCE.—Notwithstanding section 231(a)(3)(B), an adversely affected worker may elect to receive a trade readjustment allowance instead of unemployment insurance during any week with respect to which the worker—

"(1) is entitled to receive unemployment insurance as a result of the establishment by the worker of a new benefit year under State law, based in whole or in part upon part-time or short-term employment in which the worker engaged after the worker's most recent total separation from adversely affected employment; and

"(2) is otherwise entitled to a trade readjustment allowance.".

SEC. 1823. LIMITATIONS ON TRADE READJUSTMENT ALLOWANCES; ALLOWANCES FOR EXTENDED TRAINING AND BREAKS IN TRAINING.

Section 233(a) of the Trade Act of 1974 (19 U.S.C. 2293(a)) is amended—

(1) in paragraph (2), by inserting "under paragraph (1)" after "trade readjustment allowance"; and

(2) in paragraph (3)—

(A) in the matter preceding subparagraph (A)—

(i) by striking "training approved for him" and inserting "a training program approved for the worker";

(ii) by striking "52 additional weeks" and inserting "78 additional weeks"; and

(iii) by striking "52-week" and inserting "91-week"; and

(B) in the matter following subparagraph (B), by striking "52-week" and inserting "91-week".

SEC. 1824. SPECIAL RULES FOR CALCULATION OF ELIGIBILITY PERIOD.

Section 233 of the Trade Act of 1974 (19 U.S.C. 2293), as amended, is further amended by adding at the end the following:

"(g) SPECIAL RULE FOR CALCULATING SEPARATION.—Notwithstanding any other provision of this chapter, any period during which a judicial or administrative appeal is pending with respect to the denial by the Secretary of a petition under section 223 shall not be counted for purposes of calculating the period of separation under subsection (a)(2).

"(h) SPECIAL RULE FOR JUSTIFIABLE CAUSE.—If the Secretary determines that there is justifiable cause, the Secretary may extend the period during which trade readjustment allowances are payable to an adversely affected worker under paragraphs (2) and (3) of subsection (a) (but not the maximum amounts of such allowances that are payable under this section).

"(i) SPECIAL RULE WITH RESPECT TO MILITARY SERVICE.—

"(1) IN GENERAL.—Notwithstanding any other provision of this chapter, the Secretary may waive any requirement of this chapter that the Secretary determines is necessary to ensure that an adversely affected worker who is a member of a reserve component of the Armed Forces and serves a period of duty described in paragraph (2) is eligible to receive a trade readjustment allowance, training, and other benefits under this chapter in the same manner and to the same extent as if the worker had not served the period of duty.

"(2) PERIOD OF DUTY DESCRIBED.—An adversely affected worker serves a period of duty described in this paragraph if, before completing training under section 236, the worker—

"(A) serves on active duty for a period of more than 30 days under a call or order to active duty of more than 30 days; or

"(B) in the case of a member of the Army National Guard of the United States or Air National Guard of the United States, performs full-time National Guard duty under section 502(f) of title 32, United States Code, for 30 consecutive days or more when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds.".

SEC. 1825. APPLICATION OF STATE LAWS AND REGULATIONS ON GOOD CAUSE FOR WAIVER OF TIME LIMITS OR LATE FILING OF CLAIMS.

Section 234 of the Trade Act of 1974 (19 U.S.C. 2294) is amended—

(1) by striking "Except where inconsistent" and inserting "(a) IN GENERAL.—Except where inconsistent"; and

(2) by adding at the end the following:

"(b) SPECIAL RULE WITH RESPECT TO STATE LAWS AND REGULATIONS ON GOOD CAUSE FOR WAIVER OF TIME LIMITS OR LATE FILING OF CLAIMS.—Any law, regulation, policy, or practice of a cooperating State that allows for a waiver for good cause of any time limitation relating to the administration of the State unemployment insurance law shall, in the administration of the program under this chapter by the State, apply to any time limitation with respect to an application for a trade readjustment allowance or enrollment in training under this chapter.".

SEC. 1826. EMPLOYMENT AND CASE MANAGEMENT SERVICES.

(a) IN GENERAL.—Section 235 of the Trade Act of 1974 (19 U.S.C. 2295) is amended to read as follows:

"SEC. 235. EMPLOYMENT AND CASE MANAGEMENT SERVICES.

"The Secretary shall make available, directly or through agreements with States under section 239, to adversely affected workers and adversely affected incumbent workers covered by a certification under subchapter A of this chapter the following employment and case management services:

"(1) Comprehensive and specialized assessment of skill levels and service needs, including through—

"(A) diagnostic testing and use of other assessment tools; and

"(B) in-depth interviewing and evaluation to identify employment barriers and appropriate employment goals.

"(2) Development of an individual employment plan to identify employment goals and objectives, and appropriate training to achieve those goals and objectives.

"(3) Information on training available in local and regional areas, information on individual counseling to determine which training is suitable training, and information on how to apply for such training.

"(4) Information on how to apply for financial aid, including referring workers to educational opportunity centers described in section 402F of the Higher Education Act of 1965 (20 U.S.C. 1070a–16), where applicable, and notifying workers that the workers may request financial aid administrators at institutions of higher education (as defined in section 102 of such Act (20 U.S.C. 1002)) to use the administrators' discretion under section 479A of such Act (20 U.S.C. 1087tt) to use current year income data, rather than preceding year income data, for determining the amount of need of the workers for Federal financial assistance under title IV of such Act (20 U.S.C. 1070 et seq.).

"(5) Short-term prevocational services, including development of learning skills, communications skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct to prepare individuals for employment or training.

"(6) Individual career counseling, including job search and placement counseling, during the period in which the individual is receiving a trade adjustment allowance or training under this chapter, and after receiving such training for purposes of job placement.

"(7) Provision of employment statistics information, including the provision of accurate information relating to local, regional, and national labor market areas, including—

"(A) job vacancy listings in such labor market areas;

"(B) information on jobs skills necessary to obtain jobs identified in job vacancy listings described in subparagraph (A);

"(C) information relating to local occupations that are in demand and earnings potential of such occupations; and

"(D) skills requirements for local occupations described in subparagraph (C).

"(8) Information relating to the availability of supportive services, including services relating to child care, transportation, dependent care, housing assistance, and need-related payments that are necessary to enable an individual to participate in training.".

(b) CLERICAL AMENDMENT.—The table of contents of the Trade Act of 1974 is amended by striking the item relating to section 235 and inserting the following:

"235. Employment and case management services.".

SEC. 1827. ADMINISTRATIVE EXPENSES AND EMPLOYMENT AND CASE MANAGEMENT SERVICES.

(a) IN GENERAL.—Part II of subchapter B of chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2295 et seq.) is amended by inserting after section 235 the following:

"SEC. 235A. FUNDING FOR ADMINISTRATIVE EXPENSES AND EMPLOYMENT AND CASE MANAGEMENT SERVICES.

"(a) FUNDING FOR ADMINISTRATIVE EXPENSES AND EMPLOYMENT AND CASE MANAGEMENT SERVICES.—

"(1) IN GENERAL.—In addition to any funds made available to a State to carry out section 236 for a fiscal year, the State shall receive for the fiscal year a payment in an amount that is equal to 15 percent of the amount of such funds.

"(2) USE OF FUNDS.—A State that receives a payment under paragraph (1) shall—

"(A) use not more than ⅔ of such payment for the administration of the trade adjustment assistance for workers program under this chapter, including for—

"(i) processing waivers of training requirements under section 231;

"(ii) collecting, validating, and reporting data required under this chapter; and

"(iii) providing reemployment trade adjustment assistance under section 246; and

"(B) use not less than ⅓ of such payment for employment and case management services under section 235.

"(b) ADDITIONAL FUNDING FOR EMPLOYMENT AND CASE MANAGEMENT SERVICES.—

"(1) IN GENERAL.—In addition to any funds made available to a State to carry out section 236 and the payment under subsection (a)(1) for a fiscal year, the Secretary shall provide to the State for the fiscal year a payment in the amount of $350,000.

"(2) USE OF FUNDS.—A State that receives a payment under paragraph (1) shall use such payment for the purpose of pro-

viding employment and case management services under section 235.

"(3) VOLUNTARY RETURN OF FUNDS.—A State that receives a payment under paragraph (1) may decline or otherwise return such payment to the Secretary.".

(b) CLERICAL AMENDMENT.—The table of contents of the Trade Act of 1974 is amended by inserting after the item relating to section 235 the following:

"Sec. 235A. Funding for administrative expenses and employment and case management services.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 1828. TRAINING FUNDING.

(a) IN GENERAL.—Section 236(a)(2) of the Trade Act of 1974 (19 U.S.C. 2296(a)(2)) is amended to read as follows:

"(2)(A) The total amount of payments that may be made under paragraph (1) shall not exceed—

"(i) for each of the fiscal years 2009 and 2010, $575,000,000; and

"(ii) for the period beginning October 1, 2010, and ending December 31, 2010, $143,750,000.

"(B)(i) The Secretary shall, as soon as practicable after the beginning of each fiscal year, make an initial distribution of the funds made available to carry out this section, in accordance with the requirements of subparagraph (C).

"(ii) The Secretary shall ensure that not less than 90 percent of the funds made available to carry out this section for a fiscal year are distributed to the States by not later than July 15 of that fiscal year.

"(C)(i) In making the initial distribution of funds pursuant to subparagraph (B)(i) for a fiscal year, the Secretary shall hold in reserve 35 percent of the funds made available to carry out this section for that fiscal year for additional distributions during the remainder of the fiscal year.

"(ii) Subject to clause (iii), in determining how to apportion the initial distribution of funds pursuant to subparagraph (B)(i) in a fiscal year, the Secretary shall take into account, with respect to each State—

"(I) the trend in the number of workers covered by certifications of eligibility under this chapter during the most recent 4 consecutive calendar quarters for which data are available;

"(II) the trend in the number of workers participating in training under this section during the most recent 4 consecutive calendar quarters for which data are available;

"(III) the number of workers estimated to be participating in training under this section during the fiscal year;

"(IV) the amount of funding estimated to be necessary to provide training approved under this section to such workers during the fiscal year; and

"(V) such other factors as the Secretary considers appropriate relating to the provision of training under this section.

"(iii) In no case may the amount of the initial distribution to a State pursuant to subparagraph (B)(i) in a fiscal year be less than

25 percent of the initial distribution to the State in the preceding fiscal year.

"(D) The Secretary shall establish procedures for the distribution of the funds that remain available for the fiscal year after the initial distribution required under subparagraph (B)(i). Such procedures may include the distribution of funds pursuant to requests submitted by States in need of such funds.

"(E) If, during a fiscal year, the Secretary estimates that the amount of funds necessary to pay the costs of training approved under this section will exceed the dollar amount limitation specified in subparagraph (A), the Secretary shall decide how the amount of funds made available to carry out this section that have not been distributed at the time of the estimate will be apportioned among the States for the remainder of the fiscal year.".

(b) DETERMINATIONS REGARDING TRAINING.—Section 236(a)(9) of the Trade Act of 1974 (19 U.S.C. 2296(a)(9)) is amended—

(1) by striking "The Secretary" and inserting "(A) Subject to subparagraph (B), the Secretary"; and

(2) by adding at the end the following:

"(B)(i) In determining under paragraph (1)(E) whether a worker is qualified to undertake and complete training, the Secretary may approve training for a period longer than the worker's period of eligibility for trade readjustment allowances under part I if the worker demonstrates a financial ability to complete the training after the expiration of the worker's period of eligibility for such trade readjustment allowances.

"(ii) In determining the reasonable cost of training under paragraph (1)(F) with respect to a worker, the Secretary may consider whether other public or private funds are reasonably available to the worker, except that the Secretary may not require a worker to obtain such funds as a condition of approval of training under paragraph (1).".

(c) REGULATIONS.—Section 236 of the Trade Act of 1974 (19 U.S.C. 2296) is amended by adding at the end the following:

"(g) REGULATIONS WITH RESPECT TO APPORTIONMENT OF TRAINING FUNDS TO STATES.—

"(1) IN GENERAL.—Not later than 1 year after the date of the enactment of this subsection, the Secretary shall issue such regulations as may be necessary to carry out the provisions of subsection (a)(2).

"(2) CONSULTATIONS.—The Secretary shall consult with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives not less than 90 days before issuing any regulation pursuant to paragraph (1).".

(d) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect upon the expiration of the 90-day period beginning on the date of the enactment of this Act, except that—

(1) subparagraph (A) of section 236(a)(2) of the Trade Act of 1974, as amended by subsection (a) of this section, shall take effect on the date of the enactment of this Act; and

(2) subparagraphs (B), (C), and (D) of such section 236(a)(2) shall take effect on October 1, 2009.

SEC. 1829. PREREQUISITE EDUCATION; APPROVED TRAINING PROGRAMS.

(a) IN GENERAL.—Section 236(a)(5) of the Trade Act of 1974 (19 U.S.C. 2296(a)(5)) is amended—

(1) in subparagraph (A)—

(A) by striking "and" at the end of clause (i);

(B) by adding "and" at the end of clause (ii); and

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

"(iii) apprenticeship programs registered under the Act of August 16, 1937 (commonly known as the 'National Apprenticeship Act'; 50 Stat. 664, chapter 663; 29 U.S.C. 50 et seq.),";

(2) by redesignating subparagraphs (E) and (F) as subparagraphs (F) and (G), respectively;

(3) by inserting after subparagraph (D) the following:

"(E) any program of prerequisite education or coursework required to enroll in training that may be approved under this section,";

(4) in subparagraph (F)(ii), as redesignated by paragraph (2), by striking "and" at the end;

(5) in subparagraph (G), as redesignated by paragraph (2), by striking the period at the end and inserting ", and"; and

(6) by adding at the end the following:

"(H) any training program or coursework at an accredited institution of higher education (described in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002)), including a training program or coursework for the purpose of—

"(i) obtaining a degree or certification; or

"(ii) completing a degree or certification that the worker had previously begun at an accredited institution of higher education.

The Secretary may not limit approval of a training program under paragraph (1) to a program provided pursuant to title I of the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.).".

(b) CONFORMING AMENDMENTS.—Section 233 of the Trade Act of 1974 (19 U.S.C. 2293) is amended—

(1) in subsection (a)(2), by inserting "prerequisite education or" after "requires a program of"; and

(2) in subsection (f) (as redesignated by section 1821(c) of this subtitle), by inserting "prerequisite education or" after "includes a program of".

(c) TECHNICAL CORRECTIONS.—Section 236 of the Trade Act of 1974 (19 U.S.C. 2296) is amended—

(1) in subsection (a)—

(A) in paragraph (1), in the flush text, by striking "his behalf" and inserting "the worker's behalf"; and

(B) in paragraph (3), by striking "this paragraph (1)" and inserting "paragraph (1)"; and

(2) in subsection (b)(2), by striking ", and" and inserting a period.

SEC. 1830. PRE-LAYOFF AND PART-TIME TRAINING.

(a) PRE-LAYOFF TRAINING.—

(1) IN GENERAL.—Section 236(a) of the Trade Act of 1974 (19 U.S.C. 2296(a)) is amended—

(A) in paragraph (1), by inserting after "determines" the following: ", with respect to an adversely affected worker or an adversely affected incumbent worker,";

(B) in paragraph (4)—

(i) in subparagraphs (A) and (B), by inserting "or an adversely affected incumbent worker" after "an adversely affected worker" each place it appears; and

(ii) in subparagraph (C), by inserting "or adversely affected incumbent worker" after "adversely affected worker" each place it appears;

(C) in paragraph (5), in the matter preceding subparagraph (A), by striking "The training programs" and inserting "Except as provided in paragraph (10), the training programs";

(D) in paragraph (6)(B), by inserting "or adversely affected incumbent worker" after "adversely affected worker";

(E) in paragraph (7)(B), by inserting "or adversely affected incumbent worker" after "adversely affected worker"; and

(F) by inserting after paragraph (9) the following:

"(10) In the case of an adversely affected incumbent worker, the Secretary may not approve—

"(A) on-the-job training under paragraph (5)(A)(i); or

"(B) customized training under paragraph (5)(A)(ii), unless such training is for a position other than the worker's adversely affected employment.

"(11) If the Secretary determines that an adversely affected incumbent worker for whom the Secretary approved training under this section is no longer threatened with a total or partial separation, the Secretary shall terminate the approval of such training.".

(2) DEFINITIONS.—Section 247 of the Trade Act of 1974 (19 U.S.C. 2319), as amended, is further amended by adding at the end the following:

"(19) The term 'adversely affected incumbent worker' means a worker who—

"(A) is a member of a group of workers who have been certified as eligible to apply for adjustment assistance under subchapter A;

"(B) has not been totally or partially separated from adversely affected employment; and

"(C) the Secretary determines, on an individual basis, is threatened with total or partial separation.".

(b) PART-TIME TRAINING.—Section 236 of the Trade Act of 1974 (19 U.S.C. 2296), as amended, is further amended by adding at the end the following:

"(h) PART-TIME TRAINING.—

"(1) IN GENERAL.—The Secretary may approve full-time or part-time training for a worker under subsection (a).

"(2) LIMITATION.—Notwithstanding paragraph (1), a worker participating in part-time training approved under subsection (a) may not receive a trade readjustment allowance under section 231.".

SEC. 1831. ON-THE-JOB TRAINING.

(a) IN GENERAL.—Section 236(c) of the Trade Act of 1974 (19 U.S.C. 2296(c)) is amended—

(1) by redesignating paragraphs (1) through (10) as subparagraphs (A) through (J) and moving such subparagraphs 2 ems to the right;

(2) by striking "(c) The Secretary shall" and all that follows through "such costs," and inserting the following:

"(c) ON-THE-JOB TRAINING REQUIREMENTS.—

"(1) IN GENERAL.—The Secretary may approve on-the-job training for any adversely affected worker if—

"(A) the worker meets the requirements for training to be approved under subsection (a)(1);

"(B) the Secretary determines that on-the-job training—

"(i) can reasonably be expected to lead to suitable employment with the employer offering the on-the-job training;

"(ii) is compatible with the skills of the worker;

"(iii) includes a curriculum through which the worker will gain the knowledge or skills to become proficient in the job for which the worker is being trained; and

"(iv) can be measured by benchmarks that indicate that the worker is gaining such knowledge or skills; and

"(C) the State determines that the on-the-job training program meets the requirements of clauses (iii) and (iv) of subparagraph (B).

"(2) MONTHLY PAYMENTS.—The Secretary shall pay the costs of on-the-job training approved under paragraph (1) in monthly installments.

"(3) CONTRACTS FOR ON-THE-JOB TRAINING.—

"(A) IN GENERAL.—The Secretary shall ensure, in entering into a contract with an employer to provide on-the-job training to a worker under this subsection, that the skill requirements of the job for which the worker is being trained, the academic and occupational skill level of the worker, and the work experience of the worker are taken into consideration.

"(B) TERM OF CONTRACT.—Training under any such contract shall be limited to the period of time required for the worker receiving on-the-job training to become proficient in the job for which the worker is being trained, but may not exceed 104 weeks in any case.

"(4) EXCLUSION OF CERTAIN EMPLOYERS.—The Secretary shall not enter into a contract for on-the-job training with an employer that exhibits a pattern of failing to provide workers receiving on-the-job training from the employer with—

"(A) continued, long-term employment as regular employees; and

"(B) wages, benefits, and working conditions that are equivalent to the wages, benefits, and working conditions provided to regular employees who have worked a similar period of time and are doing the same type of work as workers receiving on-the-job training from the employer.

"(5) LABOR STANDARDS.—The Secretary may pay the costs of on-the-job training,"; and

(3) in paragraph (5), as redesignated—

(A) in subparagraph (I), as redesignated by paragraph (1) of this section, by striking "paragraphs (1), (2), (3), (4), (5), and (6)" and inserting "subparagraphs (A), (B), (C), (D), (E), and (F)"; and

(B) in subparagraph (J), as redesignated by paragraph (1) of this section, by striking "paragraph (8)" and inserting "subparagraph (H)".

(b) REPEAL OF PREFERENCE FOR TRAINING ON THE JOB.—Section 236(a)(1) of the Trade Act of 1974 (19 U.S.C. 2296(a)(1)) is amended by striking the last sentence.

SEC. 1832. ELIGIBILITY FOR UNEMPLOYMENT INSURANCE AND PROGRAM BENEFITS WHILE IN TRAINING.

Section 236(d) of the Trade Act of 1974 (19 U.S.C. 2296(d)) is amended to read as follows:

"(d) ELIGIBILITY.—An adversely affected worker may not be determined to be ineligible or disqualified for unemployment insurance or program benefits under this subchapter—

"(1) because the worker—

"(A) is enrolled in training approved under subsection (a);

"(B) left work—

"(i) that was not suitable employment in order to enroll in such training; or

"(ii) that the worker engaged in on a temporary basis during a break in such training or a delay in the commencement of such training; or

"(C) left on-the-job training not later than 30 days after commencing such training because the training did not meet the requirements of subsection (c)(1)(B); or

"(2) because of the application to any such week in training of the provisions of State law or Federal unemployment insurance law relating to availability for work, active search for work, or refusal to accept work.".

SEC. 1833. JOB SEARCH AND RELOCATION ALLOWANCES.

(a) JOB SEARCH ALLOWANCES.—Section 237 of the Trade Act of 1974 (19 U.S.C. 2297) is amended—

(1) in subsection (a)(2)(C)(ii), by striking ", unless the worker received a waiver under section 231(c)"; and

(2) in subsection (b)—

(A) in paragraph (1), by striking "90 percent of the cost of" and inserting "all"; and

(B) in paragraph (2), by striking "$1,250" and inserting "$1,500".

(b) RELOCATION ALLOWANCES.—Section 238 of the Trade Act of 1974 (19 U.S.C. 2298) is amended—

(1) in subsection (a)(2)(E)(ii), by striking ", unless the worker received a waiver under section 231(c)"; and

(2) in subsection (b)—

(A) in paragraph (1), by striking "90 percent of the" and inserting "all"; and

(B) in paragraph (2), by striking "$1,250" and inserting "$1,500".

Subpart D—Reemployment Trade Adjustment Assistance Program

SEC. 1841. REEMPLOYMENT TRADE ADJUSTMENT ASSISTANCE PROGRAM.

(a) IN GENERAL.—Section 246 of the Trade Act of 1974 (19 U.S.C. 2318) is amended—

(1) by amending the heading to read as follows:

"SEC. 246. REEMPLOYMENT TRADE ADJUSTMENT ASSISTANCE PROGRAM.";

(2) in subsection (a)—

(A) in paragraph (1)—

(i) by striking "Not later than" and all that follows through "2002, the Secretary" and inserting "The Secretary"; and

(ii) by striking "an alternative trade adjustment assistance program for older workers" and inserting "a reemployment trade adjustment assistance program";

(B) in paragraph (2)—

(i) in subparagraph (A)—

(I) in the matter preceding clause (i), by striking "for a period not to exceed 2 years" and inserting "for the eligibility period under subparagraph (A) or (B) of paragraph (4) (as the case may be)"; and

(II) by striking clauses (i) and (ii) and inserting the following:

"(i) the wages received by the worker at the time of separation; and

"(ii) the wages received by the worker from reemployment.";

(ii) in subparagraph (B)—

(I) by striking "for a period not to exceed 2 years" and inserting "for the eligibility period under subparagraph (A) or (B) of paragraph (4) (as the case may be)"; and

(II) by striking ", as added by section 201 of the Trade Act of 2002"; and

(iii) by adding at the end the following:

"(C) TRAINING AND OTHER SERVICES.—A worker described in paragraph (3)(B) participating in the program established under paragraph (1) is eligible to receive training approved under section 236 and employment and case management services under section 235."; and

(C) by striking paragraphs (3) through (5) and inserting the following:

"(3) ELIGIBILITY.—

"(A) IN GENERAL.—A group of workers certified under subchapter A as eligible for adjustment assistance under subchapter A is eligible for benefits described in paragraph (2) under the program established under paragraph (1).

"(B) INDIVIDUAL ELIGIBILITY.—A worker in a group of workers described in subparagraph (A) may elect to receive benefits described in paragraph (2) under the program established under paragraph (1) if the worker—

"(i) is at least 50 years of age;

"(ii) earns not more than $55,000 each year in wages from reemployment;

"(iii)(I) is employed on a full-time basis as defined by the law of the State in which the worker is employed and is not enrolled in a training program approved under section 236; or

"(II) is employed at least 20 hours per week and is enrolled in a training program approved under section 236; and

"(iv) is not employed at the firm from which the worker was separated.

"(4) ELIGIBILITY PERIOD FOR PAYMENTS.—

"(A) WORKER WHO HAS NOT RECEIVED TRADE READJUSTMENT ALLOWANCE.—In the case of a worker described in paragraph (3)(B) who has not received a trade readjustment allowance under part I of subchapter B pursuant to the certification described in paragraph (3)(A), the worker may receive benefits described in paragraph (2) for a period not to exceed 2 years beginning on the earlier of—

"(i) the date on which the worker exhausts all rights to unemployment insurance based on the separation of the worker from the adversely affected employment that is the basis of the certification; or

"(ii) the date on which the worker obtains reemployment described in paragraph (3)(B).

"(B) WORKER WHO HAS RECEIVED TRADE READJUSTMENT ALLOWANCE.—In the case of a worker described in paragraph (3)(B) who has received a trade readjustment allowance under part I of subchapter B pursuant to the certification described in paragraph (3)(A), the worker may receive benefits described in paragraph (2) for a period of 104 weeks beginning on the date on which the worker obtains reemployment described in paragraph (3)(B), reduced by the total number of weeks for which the worker received such trade readjustment allowance.

"(5) TOTAL AMOUNT OF PAYMENTS.—

"(A) IN GENERAL.—The payments described in paragraph (2)(A) made to a worker may not exceed—

"(i) $12,000 per worker during the eligibility period under paragraph (4)(A); or

"(ii) the amount described in subparagraph (B) per worker during the eligibility period under paragraph (4)(B).

"(B) AMOUNT DESCRIBED.—The amount described in this subparagraph is the amount equal to the product of—

"(i) $12,000, and

"(ii) the ratio of—

"(I) the total number of weeks in the eligibility period under paragraph (4)(B) with respect to the worker, to

"(II) 104 weeks.

"(6) CALCULATION OF AMOUNT OF PAYMENTS FOR CERTAIN WORKERS.—

"(A) IN GENERAL.—In the case of a worker described in paragraph (3)(B)(iii)(II), paragraph (2)(A) shall be applied by substituting the percentage described in subparagraph (B) for '50 percent'.

"(B) PERCENTAGE DESCRIBED.—The percentage described in this subparagraph is the percentage—

"(i) equal to ½ of the ratio of—

"(I) the number of weekly hours of employment of the worker referred to in paragraph (3)(B)(iii)(II), to

"(II) the number of weekly hours of employment of the worker at the time of separation, but

"(ii) in no case more than 50 percent.

"(7) LIMITATION ON OTHER BENEFITS.—A worker described in paragraph (3)(B) may not receive a trade readjustment allowance under part I of subchapter B pursuant to the certification described in paragraph (3)(A) during any week for which the worker receives a payment described in paragraph (2)(A).";

and

(3) in subsection (b)(2), by striking "subsection (a)(3)(B)" and inserting "subsection (a)(3)".

(b) EXTENSION OF PROGRAM.—Section 246(b)(1) of the Trade Act of 1974 (19 U.S.C. 2318(b)(1)) is amended by striking "the date that is 5 years" and all that follows through the end period and inserting "December 31, 2010.".

(c) CLERICAL AMENDMENT.—The table of contents of the Trade Act of 1974 is amended by striking the item relating to section 246 and inserting the following:

"Sec. 246. Reemployment trade adjustment assistance program.".

Subpart E—Other Matters

SEC. 1851. OFFICE OF TRADE ADJUSTMENT ASSISTANCE.

(a) IN GENERAL.—Subchapter C of chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2311 et seq.) is amended by adding at the end the following:

"SEC. 249A. OFFICE OF TRADE ADJUSTMENT ASSISTANCE.

"(a) ESTABLISHMENT.—There is established in the Department of Labor an office to be known as the Office of Trade Adjustment Assistance (in this section referred to as the 'Office').

"(b) HEAD OF OFFICE.—The head of the Office shall be an administrator, who shall report directly to the Deputy Assistant Secretary for Employment and Training.

"(c) PRINCIPAL FUNCTIONS.—The principal functions of the administrator of the Office shall be—

"(1) to oversee and implement the administration of trade adjustment assistance program under this chapter; and

"(2) to carry out functions delegated to the Secretary of Labor under this chapter, including—

"(A) making determinations under section 223;

"(B) providing information under section 225 about trade adjustment assistance to workers and assisting such workers to prepare petitions or applications for program benefits;

"(C) providing assistance to employers of groups of workers that have filed petitions under section 221 in submitting information required by the Secretary relating to the petitions;

"(D) ensuring workers covered by a certification of eligibility under subchapter A receive the employment and case management services described in section 235;

"(E) ensuring that States fully comply with agreements entered into under section 239;

"(F) advocating for workers applying for benefits available under this chapter;

"(G) establishing and overseeing a hotline that workers, employers, and other entities may call to obtain information regarding eligibility criteria, procedural requirements, and benefits available under this chapter; and

"(H) carrying out such other duties with respect to this chapter as the Secretary specifies for purposes of this section.

"(d) ADMINISTRATION.—

"(1) DESIGNATION.—The administrator shall designate an employee of the Department of Labor with appropriate experience and expertise to carry out the duties described in paragraph (2).

"(2) DUTIES.—The employee designated under paragraph (1) shall—

"(A) receive complaints and requests for assistance related to the trade adjustment assistance program under this chapter;

"(B) resolve such complaints and requests for assistance, in coordination with other employees of the Office;

"(C) compile basic information concerning such complaints and requests for assistance; and

"(D) carry out such other duties with respect to this chapter as the Secretary specifies for purposes of this section.".

(b) CLERICAL AMENDMENT.—The table of contents of the Trade Act of 1974 is amended by inserting after the item relating to section 249 the following:

"Sec. 249A. Office of Trade Adjustment Assistance.".

SEC. 1852. ACCOUNTABILITY OF STATE AGENCIES; COLLECTION AND PUBLICATION OF PROGRAM DATA; AGREEMENTS WITH STATES.

(a) IN GENERAL.—Section 239(a) of the Trade Act of 1974 (19 U.S.C. 2311(a)) is amended—

(1) by amending clause (2) to read as follows: "(2) in accordance with subsection (f), shall make available to adversely affected workers and adversely affected incumbent workers covered by a certification under subchapter A the employment and case management services described in section 235,"; and

(2) by striking "will" each place it appears and inserting "shall".

(b) FORM AND MANNER OF DATA.—Section 239 of the Trade Act of 1974 (19 U.S.C. 2311) is amended—

(1) by redesignating subsections (c) through (g) as subsections (d) through (h), respectively; and

(2) by inserting after subsection (b) the following:

"(c) FORM AND MANNER OF DATA.—Each agreement under this subchapter shall—

"(1) provide the Secretary with the authority to collect any data the Secretary determines necessary to meet the requirements of this chapter; and

"(2) specify the form and manner in which any such data requested by the Secretary shall be reported.".

(c) STATE ACTIVITIES.—Section 239(g) of the Trade Act of 1974 (as redesignated) is amended—

(1) in paragraph (3), by striking "and" at the end;

(2) by amending paragraph (4) to read as follows:

"(4) perform outreach to, intake of, and orientation for adversely affected workers and adversely affected incumbent workers covered by a certification under subchapter A with respect to assistance and benefits available under this chapter, and"; and

(3) by adding at the end the following:

"(5) make employment and case management services described in section 235 available to adversely affected workers and adversely affected incumbent workers covered by a certification under subchapter A and, if funds provided to carry out this chapter are insufficient to make such services available, make arrangements to make such services available through other Federal programs.".

(d) REPORTING REQUIREMENT.—Section 239(h) of the Trade Act of 1974 (as redesignated) is amended by striking "1998." and inserting "1998 (29 U.S.C. 2822(b)) and a description of the State's rapid response activities under section 221(a)(2)(A).".

(e) CONTROL MEASURES.—Section 239 of the Trade Act of 1974 (19 U.S.C. 2311), as amended, is further amended by adding at the end the following:

"(i) CONTROL MEASURES.—

"(1) IN GENERAL.—The Secretary shall require each cooperating State and cooperating State agency to implement effective control measures and to effectively oversee the operation and administration of the trade adjustment assistance program under this chapter, including by means of monitoring the operation of control measures to improve the accuracy and timeliness of the data being collected and reported.

"(2) DEFINITION.—For purposes of paragraph (1), the term 'control measures' means measures that—

"(A) are internal to a system used by a State to collect data; and

"(B) are designed to ensure the accuracy and verifiability of such data.

"(j) DATA REPORTING.—

"(1) IN GENERAL.—Any agreement entered into under this section shall require the cooperating State or cooperating State agency to report to the Secretary on a quarterly basis comprehensive performance accountability data, to consist of—

"(A) the core indicators of performance described in paragraph (2)(A);

"(B) the additional indicators of performance described in paragraph (2)(B), if any; and

"(C) a description of efforts made to improve outcomes for workers under the trade adjustment assistance program.

"(2) CORE INDICATORS DESCRIBED.—

"(A) IN GENERAL.—The core indicators of performance described in this paragraph are—

"(i) the percentage of workers receiving benefits under this chapter who are employed during the second calendar quarter following the calendar quarter in which the workers cease receiving such benefits;

"(ii) the percentage of such workers who are employed in each of the third and fourth calendar quarters following the calendar quarter in which the workers cease receiving such benefits; and

"(iii) the earnings of such workers in each of the third and fourth calendar quarters following the calendar quarter in which the workers cease receiving such benefits.

"(B) ADDITIONAL INDICATORS.—The Secretary and a cooperating State or cooperating State agency may agree upon additional indicators of performance for the trade adjustment assistance program under this chapter, as appropriate.

"(3) STANDARDS WITH RESPECT TO RELIABILITY OF DATA.—In preparing the quarterly report required by paragraph (1), each cooperating State or cooperating State agency shall establish procedures that are consistent with guidelines to be issued by the Secretary to ensure that the data reported are valid and reliable.".

SEC. 1853. VERIFICATION OF ELIGIBILITY FOR PROGRAM BENEFITS.

Section 239 of the Trade Act of 1974 (19 U.S.C. 2311), as amended, is further amended by adding at the end the following:

"(k) VERIFICATION OF ELIGIBILITY FOR PROGRAM BENEFITS.—

"(1) IN GENERAL.—An agreement under this subchapter shall provide that the State shall periodically redetermine that a worker receiving benefits under this subchapter who is not a citizen or national of the United States remains in a satisfactory immigration status. Once satisfactory immigration status has been initially verified through the immigration status verification system described in section 1137(d) of the Social Security Act (42 U.S.C. 1320b–7(d)) for purposes of establishing a worker's eligibility for unemployment compensation, the State shall reverify the worker's immigration status if the documentation provided during initial verification will expire during the period in which that worker is potentially eligible to receive benefits under this subchapter. The State shall conduct such redetermination in a timely manner, utilizing the immigration status verification system described in section 1137(d) of the Social Security Act (42 U.S.C. 1320b–7(d)).

"(2) PROCEDURES.—The Secretary shall establish procedures to ensure the uniform application by the States of the requirements of this subsection.".

SEC. 1854. COLLECTION OF DATA AND REPORTS; INFORMATION TO WORKERS.

(a) IN GENERAL.—Subchapter C of chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2311 et seq.), as amended, is further amended by adding at the end the following:

"SEC. 249B. COLLECTION AND PUBLICATION OF DATA AND REPORTS; INFORMATION TO WORKERS.

"(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this section, the Secretary shall implement a system to collect and report the data described in subsection (b), as well as any other information that the Secretary considers appropriate to effectively carry out this chapter.

"(b) DATA TO BE INCLUDED.—The system required under subsection (a) shall include collection of and reporting on the following data for each fiscal year:

"(1) DATA ON PETITIONS FILED, CERTIFIED, AND DENIED.—

"(A) The number of petitions filed, certified, and denied under this chapter.

"(B) The number of workers covered by petitions filed, certified, and denied.

"(C) The number of petitions, classified by—

"(i) the basis for certification, including increased imports, shifts in production, and other bases of eligibility; and

"(ii) congressional district of the United States.

"(D) The average time for processing such petitions.

"(2) DATA ON BENEFITS RECEIVED.—

"(A) The number of workers receiving benefits under this chapter.

"(B) The number of workers receiving each type of benefit, including training, trade readjustment allowances, employment and case management services, and relocation and job search allowances, and, to the extent feasible, credits for health insurance costs under section 35 of the Internal Revenue Code of 1986.

"(C) The average time during which such workers receive each such type of benefit.

"(3) DATA ON TRAINING.—

"(A) The number of workers enrolled in training approved under section 236, classified by major types of training, including classroom training, training through distance learning, on-the-job training, and customized training.

"(B) The number of workers enrolled in full-time training and part-time training.

"(C) The average duration of training.

"(D) The number of training waivers granted under section 231(c), classified by type of waiver.

"(E) The number of workers who complete training and the duration of such training.

"(F) The number of workers who do not complete training.

"(4) DATA ON OUTCOMES.—

"(A) A summary of the quarterly reports required under section 239(j).

"(B) The sectors in which workers are employed after receiving benefits under this chapter.

"(5) DATA ON RAPID RESPONSE ACTIVITIES.—Whether rapid response activities were provided with respect to each petition filed under section 221.

"(c) CLASSIFICATION OF DATA.—To the extent possible, in collecting and reporting the data described in subsection (b), the Secretary shall classify the data by industry, State, and national totals.

"(d) REPORT.—Not later than December 15 of each year, the Secretary shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report that includes—

"(1) a summary of the information collected under this section for the preceding fiscal year;

"(2) information on the distribution of funds to each State pursuant to section 236(a)(2); and

"(3) any recommendations of the Secretary with respect to changes in eligibility requirements, benefits, or training funding under this chapter based on the data collected under this section.

"(e) AVAILABILITY OF DATA.—

"(1) IN GENERAL.—The Secretary shall make available to the public, by publishing on the website of the Department of Labor and by other means, as appropriate—

"(A) the report required under subsection (d);

"(B) the data collected under this section, in a searchable format; and

"(C) a list of cooperating States and cooperating State agencies that failed to submit the data required by this section to the Secretary in a timely manner.

"(2) UPDATES.—The Secretary shall update the data under paragraph (1) on a quarterly basis.".

(b) CLERICAL AMENDMENT.—The table of contents of the Trade Act of 1974 is amended by inserting after the item relating to section 249A the following:

"Sec. 249B. Collection and publication of data and reports; information to workers.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 1855. FRAUD AND RECOVERY OF OVERPAYMENTS.

Section 243(a)(1) of the Trade Act of 1974 (19 U.S.C. 2315(a)(1)) is amended—

(1) in the matter preceding subparagraph (A)—

(A) by striking "may waive" and inserting "shall waive"; and

(B) by striking ", in accordance with guidelines prescribed by the Secretary,"; and

(2) in subparagraph (B), by striking "would be contrary to equity and good conscience" and inserting "would cause a financial hardship for the individual (or the individual's household, if applicable) when taking into consideration the income and resources reasonably available to the individual (or household) and other ordinary living expenses of the individual (or household)".

SEC. 1856. SENSE OF CONGRESS ON APPLICATION OF TRADE ADJUSTMENT ASSISTANCE.

(a) IN GENERAL.—Chapter 5 of title II of the Trade Act of 1974 (19 U.S.C. 2391 et seq.) is amended by adding at the end the following:

"SEC. 288. SENSE OF CONGRESS.

"It is the sense of Congress that the Secretaries of Labor, Commerce, and Agriculture should apply the provisions of chapter 2 (relating to adjustment assistance for workers), chapter 3 (relating to adjustment assistance for firms), chapter 4 (relating to adjustment assistance for communities), and chapter 6 (relating to adjustment assistance for farmers), respectively, with the utmost regard for the interests of workers, firms, communities, and farmers petitioning for benefits under such chapters.".

(b) CLERICAL AMENDMENT.—The table of contents of the Trade Act of 1974 is amended by inserting after the item relating to section 287 the following:

"Sec. 288. Sense of Congress.".

SEC. 1857. CONSULTATIONS IN PROMULGATION OF REGULATIONS.

Section 248 of the Trade Act of 1974 (19 U.S.C. 2320) is amended—

(1) by striking "The Secretary shall" and inserting the following:

"(a) IN GENERAL.—The Secretary shall"; and

(2) by adding at the end the following:

"(b) CONSULTATIONS.—Not later than 90 days before issuing a regulation under subsection (a), the Secretary shall consult with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to the regulation.".

SEC. 1858. TECHNICAL CORRECTIONS.

(a) DETERMINATIONS BY SECRETARY OF LABOR.—Section 223(c) of the Trade Act of 1974 (19 U.S.C. 2273(c)) is amended by striking "his determination" and inserting "a determination".

(b) QUALIFYING REQUIREMENTS FOR WORKERS.—Section 231(a) of the Trade Act of 1974 (19 U.S.C. 2291(a)) is amended—

(1) in paragraph (1)—

(A) in the matter preceding subparagraph (A), by striking "his application" and inserting "the worker's application"; and

(B) in subparagraph (A), by striking "he is covered" and inserting "the worker is covered";

(2) in paragraph (2)—

(A) in subparagraph (A), by striking the period and inserting a comma; and

(B) in subparagraph (D), by striking "5 U.S.C. 8521(a)(1)" and inserting "section 8521(a)(1) of title 5, United States Code"; and

(3) in paragraph (3)—

(A) by striking "he" each place it appears and inserting "the worker"; and

(B) in subparagraph (C), by striking "him" and inserting "the worker".

(c) SUBPOENA POWER.—Section 249 of the Trade Act of 1974 (19 U.S.C. 2321) is amended—

*(1) in the section heading, by striking "**SUBPENA**" and inserting "**SUBPOENA**";*

(2) by striking "subpena" and inserting "subpoena" each place it appears; and

(3) in subsection (a), by striking "him" and inserting "the Secretary".

(d) CLERICAL AMENDMENT.—The table of contents of the Trade Act of 1974 is amended by striking the item relating to section 249 and inserting the following:

"Sec. 249. Subpoena power.".

PART II—TRADE ADJUSTMENT ASSISTANCE FOR FIRMS

SEC. 1861. EXPANSION TO SERVICE SECTOR FIRMS.

(a) IN GENERAL.—Section 251 of the Trade Act of 1974 (19 U.S.C. 2341) is amended by inserting "or service sector firm" after "agricultural firm" each place it appears.

(b) DEFINITION OF SERVICE SECTOR FIRM.—Section 261 of the Trade Act of 1974 (19 U.S.C. 2351) is amended—

(1) by striking "chapter," and inserting "chapter:";

(2) by striking "the term 'firm'" and inserting the following: "(1) FIRM.—The term 'firm'"; and

(3) by adding at the end the following:

"(2) SERVICE SECTOR FIRM.—The term 'service sector firm' means a firm engaged in the business of supplying services.".

(c) CONFORMING AMENDMENTS.—

(1) Section 251(c)(1)(C) of the Trade Act of 1974 (19 U.S.C. 2341(c)(1)(C)) is amended—

(A) by inserting "or services" after "articles" the first place it appears; and

(B) by inserting "or services which are supplied" after "produced".

(2) Section 251(c)(2)(B)(ii) of such Act is amended to read as follows:

"(ii) Any firm that engages in exploration or drilling for oil or natural gas, or otherwise produces oil or natural gas, shall be considered to be producing articles directly competitive with imports of oil and with imports of natural gas.".

SEC. 1862. MODIFICATION OF REQUIREMENTS FOR CERTIFICATION.

Section 251(c)(1)(B) of the Trade Act of 1974 (19 U.S.C. 2341(c)(1)(B)) is amended to read as follows:

"(B) that—

"(i) sales or production, or both, of the firm have decreased absolutely,

"(ii) sales or production, or both, of an article or service that accounted for not less than 25 percent of the total sales or production of the firm during the 12-month period preceding the most recent 12-month period for which data are available have decreased absolutely,

"(iii) sales or production, or both, of the firm during the most recent 12-month period for which data are available have decreased compared to—

"(I) the average annual sales or production for the firm during the 24-month period preceding that 12-month period, or

"(II) the average annual sales or production for the firm during the 36-month period preceding that 12-month period, and

"(iv) sales or production, or both, of an article or service that accounted for not less than 25 percent of the total sales or production of the firm during the most recent 12-month period for which data are available have decreased compared to—

"(I) the average annual sales or production for the article or service during the 24-month period preceding that 12-month period, or

"(II) the average annual sales or production for the article or service during the 36-month period preceding that 12-month period, and".

SEC. 1863. BASIS FOR DETERMINATIONS.

Section 251 of the Trade Act of 1974 (19 U.S.C. 2341), as amended, is further amended by adding at the end the following:

"(e) BASIS FOR SECRETARY'S DETERMINATIONS.—For purposes of subsection (c)(1)(C), the Secretary may determine that there are increased imports of like or directly competitive articles or services, if customers accounting for a significant percentage of the decrease in the sales or production of the firm certify to the Secretary that such customers have increased their imports of such articles or services from a foreign country, either absolutely or relative to their acquisition of such articles or services from suppliers located in the United States.

"(f) NOTIFICATION TO FIRMS OF AVAILABILITY OF BENEFITS.—Upon receiving notice from the Secretary of Labor under section 225 of the identity of a firm that is covered by a certification issued under section 223, the Secretary of Commerce shall notify the firm of the availability of adjustment assistance under this chapter.".

SEC. 1864. OVERSIGHT AND ADMINISTRATION; AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Chapter 3 of title II of the Trade Act of 1974 (19 U.S.C. 2341 et seq.) is amended—

(1) by striking sections 254, 255, 256, and 257;

(2) by redesignating sections 258, 259, 260, 261, 262, 264, and 265, as sections 256, 257, 258, 259, 260, 261, and 262, respectively; and

(3) by inserting after section 253 the following:

"SEC. 254. OVERSIGHT AND ADMINISTRATION.

"(a) IN GENERAL.—The Secretary shall, to such extent and in such amounts as are provided in appropriations Acts, provide grants to intermediary organizations (referred to in section 253(b)(1)) throughout the United States pursuant to agreements with such intermediary organizations. Each such agreement shall require the intermediary organization to provide benefits to firms certified under section 251. The Secretary shall, to the maximum extent practicable, provide by October 1, 2010, that contracts entered into with intermediary organizations be for a 12-month period and

that all such contracts have the same beginning date and the same ending date.

"(b) DISTRIBUTION OF FUNDS.—

"(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this subsection, the Secretary shall develop a methodology for the distribution of funds among the intermediary organizations described in subsection (a).

"(2) PROMPT INITIAL DISTRIBUTION.—The methodology described in paragraph (1) shall ensure the prompt initial distribution of funds and establish additional criteria governing the apportionment and distribution of the remainder of such funds among the intermediary organizations.

"(3) CRITERIA.—The methodology described in paragraph (1) shall include criteria based on the data in the annual report on the trade adjustment assistance for firms program described in section 1866 of the Trade and Globalization Adjustment Assistance Act of 2009.

"(c) REQUIREMENTS FOR CONTRACTS.—An agreement with an intermediary organization described in subsection (a) shall require the intermediary organization to contract for the supply of services to carry out grants under this chapter in accordance with terms and conditions that are consistent with guidelines established by the Secretary.

"(d) CONSULTATIONS.—

"(1) CONSULTATIONS REGARDING METHODOLOGY.—The Secretary shall consult with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives—

"(A) not less than 30 days before finalizing the methodology described in subsection (b); and

"(B) not less than 60 days before adopting any changes to such methodology.

"(2) CONSULTATIONS REGARDING GUIDELINES.—The Secretary shall consult with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives not less than 60 days before finalizing the guidelines described in subsection (c) or adopting any subsequent changes to such guidelines.

"SEC. 255. AUTHORIZATION OF APPROPRIATIONS.

"(a) IN GENERAL.—There are authorized to be appropriated to the Secretary $50,000,000 for each of the fiscal years 2009 through 2010, and $12,501,000 for the period beginning October 1, 2010, and ending December 31, 2010, to carry out the provisions of this chapter. Amounts appropriated pursuant to this subsection shall—

"(1) be available to provide adjustment assistance to firms that file a petition for such assistance pursuant to this chapter on or before December 31, 2010; and

"(2) otherwise remain available until expended.

"(b) PERSONNEL.—Of the amounts appropriated pursuant to this section for each fiscal year, $350,000 shall be available for full-time positions in the Department of Commerce to administer the provisions of this chapter. Of such funds the Secretary shall make available to the Economic Development Administration such sums as may be necessary to establish the position of Director of Adjust-

ment Assistance for Firms and such other full-time positions as may be appropriate to administer the provisions of this chapter.".

(b) RESIDUAL AUTHORITY.—The Secretary of Commerce shall have the authority to modify, terminate, resolve, liquidate, or take any other action with respect to a loan, guarantee, contract, or any other financial assistance that was extended under section 254, 255, 256, or 257 of the Trade Act of 1974 (19 U.S.C. 2344, 2345, 2346, and 2347), as in effect on the day before the effective date set forth in section 1891.

(c) CONFORMING AMENDMENTS.—

(1) Section 256 of the Trade Act of 1974, as redesignated by subsection (a) of this section, is amended by striking subsection (d).

(2) Section 258 of the Trade Act of 1974, as redesignated by subsection (a) of this section, is amended—

(A) in the first sentence, by striking "and financial"; and

(B) in the last sentence—

(i) by striking "sections 253 and 254" and inserting "section 253"; and

(ii) by striking "title 28 of the United States Code" and inserting "title 28, United States Code".

(d) CLERICAL AMENDMENTS.—The table of contents of the Trade Act of 1974 is amended by striking the items relating to sections 254, 255, 256, 257, 258, 259, 260, 261, 262, 264, and 265, and inserting the following:

"Sec. 254. Oversight and administration.
"Sec. 255. Authorization of appropriations.
"Sec. 256. Protective provisions.
"Sec. 257. Penalties.
"Sec. 258. Civil actions.
"Sec. 259. Definitions.
"Sec. 260. Regulations.
"Sec. 261. Study by Secretary of Commerce when International Trade Commission begins investigation; action where there is affirmative finding.
"Sec. 262. Assistance to industries.".

(e) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect upon the expiration of the 90-day period beginning on the date of the enactment of this Act, except that subsections (b) and (d) of section 254 of the Trade Act of 1974 (as added by subsection (a) of this section) shall take effect on such date of enactment.

SEC. 1865. INCREASED PENALTIES FOR FALSE STATEMENTS.

Section 257 of the Trade Act of 1974, as redesignated by section 1864(a), is amended to read as follows:

"SEC. 257. PENALTIES.

"Any person who—

"(1) makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact, or willfully overvalues any security, for the purpose of influencing in any way a determination under this chapter, or for the purpose of obtaining money, property, or anything of value under this chapter, or

"(2) makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact, when

providing information to the Secretary during an investigation of a petition under this chapter,

shall be imprisoned for not more than 2 years, or fined under title 18, United States Code, or both.".

SEC. 1866. ANNUAL REPORT ON TRADE ADJUSTMENT ASSISTANCE FOR FIRMS.

(a) IN GENERAL.—Not later than December 15, 2009, and each year thereafter, the Secretary of Commerce shall prepare a report containing data regarding the trade adjustment assistance for firms program provided for in chapter 3 of title II of the Trade Act of 1974 (19 U.S.C. 2341 et seq.) for the preceding fiscal year. The data shall include the following:

(1) The number of firms that inquired about the program.

(2) The number of petitions filed under section 251.

(3) The number of petitions certified and denied.

(4) The average time for processing petitions.

(5) The number of petitions filed and firms certified for each congressional district of the United States.

(6) The number of firms that received assistance in preparing their petitions.

(7) The number of firms that received assistance developing business recovery plans.

(8) The number of business recovery plans approved and denied by the Secretary of Commerce.

(9) Sales, employment, and productivity at each firm participating in the program at the time of certification.

(10) Sales, employment, and productivity at each firm upon completion of the program and each year for the 2-year period following completion.

(11) The financial assistance received by each firm participating in the program.

(12) The financial contribution made by each firm participating in the program.

(13) The types of technical assistance included in the business recovery plans of firms participating in the program.

(14) The number of firms leaving the program before completing the project or projects in their business recovery plans and the reason the project was not completed.

(b) CLASSIFICATION OF DATA.—To the extent possible, in collecting and reporting the data described in subsection (a), the Secretary shall classify the data by intermediary organization, State, and national totals.

(c) REPORT TO CONGRESS; PUBLICATION.—The Secretary of Commerce shall—

(1) submit the report described in subsection (a) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives; and

(2) publish the report in the Federal Register and on the website of the Department of Commerce.

(d) PROTECTION OF CONFIDENTIAL INFORMATION.—The Secretary of Commerce may not release information described in subsection (a) that the Secretary considers to be confidential business information unless the person submitting the confidential business information had notice, at the time of submission, that such information would be released by the Secretary, or such person subse-

quently consents to the release of the information. Nothing in this subsection shall be construed to prohibit the Secretary from providing such confidential business information to a court in camera or to another party under a protective order issued by a court.

SEC. 1867. TECHNICAL CORRECTIONS.

(a) IN GENERAL.—Section 251 of the Trade Act of 1974 (19 U.S.C. 2341), as amended, is further amended—

(1) in subsection (a), by striking "he has" and inserting "the Secretary has"; and

(2) in subsection (d), by striking "60 days" and inserting "40 days".

(b) TECHNICAL ASSISTANCE.—Section 253(a)(3) of the Trade Act of 1974 (19 U.S.C. 2343(a)(3)) is amended by striking "of a certified firm" and inserting "to a certified firm".

PART III—TRADE ADJUSTMENT ASSISTANCE FOR COMMUNITIES

SEC. 1871. PURPOSE.

The purpose of the amendments made by this part is to assist communities impacted by trade with economic adjustment through the coordination of Federal, State, and local resources, the creation of community-based development strategies, and the development and provision of programs that meet the training needs of workers covered by certifications under section 223.

SEC. 1872. TRADE ADJUSTMENT ASSISTANCE FOR COMMUNITIES.

(a) IN GENERAL.—Chapter 4 of title II of the Trade Act of 1974 (19 U.S.C. 2371 et seq.) is amended to read as follows:

"CHAPTER 4—TRADE ADJUSTMENT ASSISTANCE FOR COMMUNITIES

"Subchapter A—Trade Adjustment Assistance for Communities

"SEC. 271. DEFINITIONS.

"In this subchapter:

"(1) AGRICULTURAL COMMODITY PRODUCER.—The term 'agricultural commodity producer' has the meaning given that term in section 291.

"(2) COMMUNITY.—The term 'community' means a city, county, or other political subdivision of a State or a consortium of political subdivisions of a State.

"(3) COMMUNITY IMPACTED BY TRADE.—The term 'community impacted by trade' means a community described in section 273(b)(2).

"(4) ELIGIBLE COMMUNITY.—The term 'eligible community' means a community that the Secretary has determined under section 273(b)(1) is eligible to apply for assistance under this subchapter.

"(5) SECRETARY.—The term 'Secretary' means the Secretary of Commerce.

"SEC. 272. ESTABLISHMENT OF TRADE ADJUSTMENT ASSISTANCE FOR COMMUNITIES PROGRAM.

"Not later than August 1, 2009, the Secretary shall establish a trade adjustment assistance for communities program at the Department of Commerce under which the Secretary shall—

"(1) provide technical assistance under section 274 to communities impacted by trade to facilitate the economic adjustment of those communities; and

"(2) award grants to communities impacted by trade to carry out strategic plans developed under section 276.

"SEC. 273. ELIGIBILITY; NOTIFICATION.

"(a) PETITION.—

"(1) IN GENERAL.—A community may submit a petition to the Secretary for an affirmative determination under subsection (b)(1) that the community is eligible to apply for assistance under this subchapter if—

"(A) on or after August 1, 2009, one or more certifications described in subsection (b)(3) are made with respect to the community; and

"(B) the community submits the petition not later than 180 days after the date of the most recent certification.

"(2) SPECIAL RULE WITH RESPECT TO CERTAIN COMMUNITIES.—In the case of a community with respect to which one or more certifications described in subsection (b)(3) were made on or after January 1, 2007, and before August 1, 2009, the community may submit not later than February 1, 2010, a petition to the Secretary for an affirmative determination under subsection (b)(1).

"(b) AFFIRMATIVE DETERMINATION.—

"(1) IN GENERAL.—The Secretary shall make an affirmative determination that a community is eligible to apply for assistance under this subchapter if the Secretary determines that the community is a community impacted by trade.

"(2) COMMUNITY IMPACTED BY TRADE.—A community is a community impacted by trade if—

"(A) one or more certifications described in paragraph (3) are made with respect to the community; and

"(B) the Secretary determines that the community is significantly affected by the threat to, or the loss of, jobs associated with any such certification.

"(3) CERTIFICATION DESCRIBED.—A certification described in this paragraph is a certification—

"(A) by the Secretary of Labor that a group of workers in the community is eligible to apply for assistance under section 223;

"(B) by the Secretary of Commerce that a firm located in the community is eligible to apply for adjustment assistance under section 251; or

"(C) by the Secretary of Agriculture that a group of agricultural commodity producers in the community is eligible to apply for adjustment assistance under section 293.

"(c) NOTIFICATIONS.—

"(1) NOTIFICATION TO THE GOVERNOR.—The Governor of a State shall be notified promptly—

"(A) by the Secretary of Labor, upon making a determination that a group of workers in the State is eligible for assistance under section 223;

"(B) by the Secretary of Commerce, upon making a determination that a firm in the State is eligible for assistance under section 251; and

"(C) by the Secretary of Agriculture, upon making a determination that a group of agricultural commodity producers in the State is eligible for assistance under section 293.

"(2) NOTIFICATION TO COMMUNITY.—Upon making an affirmative determination under subsection (b)(1) that a community is eligible to apply for assistance under this subchapter, the Secretary shall promptly notify the community and the Governor of the State in which the community is located—

"(A) of the affirmative determination;

"(B) of the applicable provisions of this subchapter; and

"(C) of the means for obtaining assistance under this subchapter and other appropriate economic assistance that may be available to the community.

"SEC. 274. TECHNICAL ASSISTANCE.

"(a) IN GENERAL.—The Secretary shall provide comprehensive technical assistance to an eligible community to assist the community to—

"(1) diversify and strengthen the economy in the community;

"(2) identify significant impediments to economic development that result from the impact of trade on the community; and

"(3) develop a strategic plan under section 276 to address economic adjustment and workforce dislocation in the community, including unemployment among agricultural commodity producers.

"(b) COORDINATION OF FEDERAL RESPONSE.—The Secretary shall coordinate the Federal response to an eligible community by—

"(1) identifying Federal, State, and local resources that are available to assist the community in responding to economic distress; and

"(2) assisting the community in accessing available Federal assistance and ensuring that such assistance is provided in a targeted, integrated manner.

"(c) INTERAGENCY COMMUNITY ASSISTANCE WORKING GROUP.—

"(1) IN GENERAL.—The Secretary shall establish an interagency Community Assistance Working Group, to be chaired by the Secretary or the Secretary's designee, which shall assist the Secretary with the coordination of the Federal response pursuant to subsection (b).

"(2) MEMBERSHIP.—The Working Group shall consist of representatives of any Federal department or agency with responsibility for providing economic adjustment assistance, including the Department of Agriculture, the Department of Defense, the Department of Education, the Department of Labor, the Department of Housing and Urban Development, the Department of Health and Human Services, the Small Business

Administration, the Department of the Treasury, and any other Federal, State, or regional public department or agency the Secretary determines to be appropriate.

"SEC. 275. GRANTS FOR ELIGIBLE COMMUNITIES.

"(a) IN GENERAL.—The Secretary may award a grant under this section to an eligible community to assist the community in carrying out any project or program that is included in a strategic plan developed by the community under section 276.

"(b) APPLICATION.—

"(1) IN GENERAL.—An eligible community seeking to receive a grant under this section shall submit a grant application to the Secretary that contains—

"(A) the strategic plan developed by the community under section 276(a)(1)(A) and approved by the Secretary under section 276(a)(1)(B); and

"(B) a description of the project or program included in the strategic plan with respect to which the community seeks the grant.

"(2) COORDINATION AMONG GRANT PROGRAMS.—If an entity in an eligible community is seeking or plans to seek a Community College and Career Training Grant under section 278 or a Sector Partnership Grant under section 279A while the eligible community is seeking a grant under this section, the eligible community shall include in the grant application a description of how the eligible community will integrate any projects or programs carried out using a grant under this section with any projects or programs that may be carried out using such other grants.

"(c) LIMITATION.—An eligible community may not be awarded more than $5,000,000 under this section.

"(d) COST-SHARING.—

"(1) FEDERAL SHARE.—The Federal share of a project or program for which a grant is awarded under this section may not exceed 95 percent of the cost of such project or program.

"(2) COMMUNITY SHARE.—The Secretary shall require, as a condition of awarding a grant to an eligible community under this section, that the eligible community contribute not less than an amount equal to 5 percent of the amount of the grant toward the cost of the project or program for which the grant is awarded.

"(e) GRANTS TO SMALL- AND MEDIUM-SIZED COMMUNITIES.—The Secretary shall give priority to grant applications submitted under this section by eligible communities that are small- and medium-sized communities.

"(f) ANNUAL REPORT.—Not later than December 15 in each of the calendar years 2009 through 2011, the Secretary shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report—

"(1) describing each grant awarded under this section during the preceding fiscal year; and

"(2) assessing the impact on the eligible community of each such grant awarded in a fiscal year before the fiscal year referred to in paragraph (1).

"SEC. 276. STRATEGIC PLANS.

"(a) IN GENERAL.—

"(1) DEVELOPMENT.—An eligible community that intends to apply for a grant under section 275 shall—

"(A) develop a strategic plan for the community's economic adjustment to the impact of trade; and

"(B) submit the plan to the Secretary for evaluation and approval.

"(2) INVOLVEMENT OF PRIVATE AND PUBLIC ENTITIES.—

"(A) IN GENERAL.—To the extent practicable, an eligible community shall consult with entities described in subparagraph (B) in developing a strategic plan under paragraph (1).

"(B) ENTITIES DESCRIBED.—Entities described in this subparagraph are public and private entities within the eligible community, including—

"(i) local, county, or State government agencies serving the community;

"(ii) firms, including small- and medium-sized firms, within the community;

"(iii) local workforce investment boards established under section 117 of the Workforce Investment Act of 1998 (29 U.S.C. 2832);

"(iv) labor organizations, including State labor federations and labor-management initiatives, representing workers in the community; and

"(v) educational institutions, local educational agencies, or other training providers serving the community.

"(b) CONTENTS.—The strategic plan shall, at a minimum, contain the following:

"(1) A description and analysis of the capacity of the eligible community to achieve economic adjustment to the impact of trade.

"(2) An analysis of the economic development challenges and opportunities facing the community as well as the strengths and weaknesses of the economy of the community.

"(3) An assessment of the commitment of the eligible community to the strategic plan over the long term and the participation and input of members of the community affected by economic dislocation.

"(4) A description of the role and the participation of the entities described in subsection (a)(2)(B) in developing the strategic plan.

"(5) A description of the projects to be undertaken by the eligible community under the strategic plan.

"(6) A description of how the strategic plan and the projects to be undertaken by the eligible community will facilitate the community's economic adjustment.

"(7) A description of the educational and training programs available to workers in the eligible community and the future employment needs of the community.

"(8) An assessment of the cost of implementing the strategic plan, the timing of funding required by the eligible community

to implement the strategic plan, and the method of financing to be used to implement the strategic plan.

"(9) A strategy for continuing the economic adjustment of the eligible community after the completion of the projects described in paragraph (5).

"(c) GRANTS TO DEVELOP STRATEGIC PLANS.—

"(1) IN GENERAL.—The Secretary, upon receipt of an application from an eligible community, may award a grant to the community to assist the community in developing a strategic plan under subsection (a)(1). A grant awarded under this paragraph shall not exceed 75 percent of the cost of developing the strategic plan.

"(2) FUNDS TO BE USED.—Of the funds appropriated pursuant to section 277(c), the Secretary may make available not more than $25,000,000 for each of the fiscal years 2009 and 2010, and $6,250,000 for the period beginning October 1, 2010, and ending December 31, 2010, to provide grants to eligible communities under paragraph (1).

"SEC. 277. GENERAL PROVISIONS.

"(a) REGULATIONS.—

"(1) IN GENERAL.—The Secretary shall prescribe such regulations as are necessary to carry out the provisions of this subchapter, including—

"(A) establishing specific guidelines for the submission and evaluation of strategic plans under section 276;

"(B) establishing specific guidelines for the submission and evaluation of grant applications under section 275; and

"(C) administering the grant programs established under sections 275 and 276.

"(2) CONSULTATIONS.—The Secretary shall consult with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives not less than 90 days prior to promulgating any final rule or regulation pursuant to paragraph (1).

"(b) PERSONNEL.—The Secretary shall designate such staff as may be necessary to carry out the responsibilities described in this subchapter.

"(c) AUTHORIZATION OF APPROPRIATIONS.—

"(1) IN GENERAL.—There are authorized to be appropriated to the Secretary $150,000,000 for each of the fiscal years 2009 and 2010, and $37,500,000 for the period beginning October 1, 2010, and ending December 31, 2010, to carry out this subchapter.

"(2) AVAILABILITY.—Amounts appropriated pursuant to this subchapter—

"(A) shall be available to provide adjustment assistance to communities that have been approved for assistance pursuant to this chapter on or before December 31, 2010; and

"(B) shall otherwise remain available until expended.

"(3) SUPPLEMENT NOT SUPPLANT.—Funds appropriated pursuant to this subchapter shall be used to supplement and not supplant other Federal, State, and local public funds expended to provide economic development assistance for communities.

"Subchapter B—Community College and Career Training Grant Program

"SEC. 278. COMMUNITY COLLEGE AND CAREER TRAINING GRANT PROGRAM.

"(a) GRANTS AUTHORIZED.—

"(1) IN GENERAL.—Beginning August 1, 2009, the Secretary may award Community College and Career Training Grants to eligible institutions for the purpose of developing, offering, or improving educational or career training programs for workers eligible for training under section 236.

"(2) LIMITATIONS.—An eligible institution may not be awarded—

"(A) more than one grant under this section; or

"(B) a grant under this section in excess of $1,000,000.

"(b) DEFINITIONS.—In this section:

"(1) ELIGIBLE INSTITUTION.—The term 'eligible institution' means an institution of higher education (as defined in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002)), but only with respect to a program offered by the institution that can be completed in not more than 2 years.

"(2) SECRETARY.—The term 'Secretary' means the Secretary of Labor.

"(c) GRANT PROPOSALS.—

"(1) IN GENERAL.—An eligible institution seeking to receive a grant under this section shall submit a grant proposal to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

"(2) GUIDELINES.—Not later than June 1, 2009, the Secretary shall—

"(A) promulgate guidelines for the submission of grant proposals under this section; and

"(B) publish and maintain such guidelines on the website of the Department of Labor.

"(3) ASSISTANCE.—The Secretary shall offer assistance in preparing a grant proposal to any eligible institution that requests such assistance.

"(4) GENERAL REQUIREMENTS FOR GRANT PROPOSALS.—

"(A) IN GENERAL.—A grant proposal submitted to the Secretary under this section shall include a detailed description of—

"(i) the specific project for which the grant proposal is submitted, including the manner in which the grant will be used to develop, offer, or improve an educational or career training program that is suited to workers eligible for training under section 236;

"(ii) the extent to which the project for which the grant proposal is submitted will meet the educational or career training needs of workers in the community served by the eligible institution who are eligible for training under section 236;

"(iii) the extent to which the project for which the grant proposal is submitted fits within any overall strategic plan developed by an eligible community under section 276;

"(iv) the extent to which the project for which the grant proposal is submitted relates to any project funded by a Sector Partnership Grant awarded under section 279A; and

"(v) any previous experience of the eligible institution in providing educational or career training programs to workers eligible for training under section 236.

"(B) ABSENCE OF EXPERIENCE.—The absence of any previous experience in providing educational or career training programs described in subparagraph (A)(v) shall not automatically disqualify an eligible institution from receiving a grant under this section.

"(5) COMMUNITY OUTREACH REQUIRED.—In order to be considered by the Secretary, a grant proposal submitted by an eligible institution under this section shall—

"(A) demonstrate that the eligible institution—

"(i) reached out to employers, and other entities described in section 276(a)(2)(B) to identify—

"(I) any shortcomings in existing educational and career training opportunities available to workers in the community; and

"(II) any future employment opportunities within the community and the educational and career training skills required for workers to meet the future employment demand;

"(ii) reached out to other similarly situated institutions in an effort to benefit from any best practices that may be shared with respect to providing educational or career training programs to workers eligible for training under section 236; and

"(iii) reached out to any eligible partnership in the community that has sought or received a Sector Partnership Grant under section 279A to enhance the effectiveness of each grant and avoid duplication of efforts; and

"(B) include a detailed description of—

"(i) the extent and outcome of the outreach conducted under subparagraph (A);

"(ii) the extent to which the project for which the grant proposal is submitted will contribute to meeting any shortcomings identified under subparagraph (A)(i)(I) or any educational or career training needs identified under subparagraph (A)(i)(II); and

"(iii) the extent to which employers, including small- and medium-sized firms within the community, have demonstrated a commitment to employing workers who would benefit from the project for which the grant proposal is submitted.

"(d) CRITERIA FOR AWARD OF GRANTS.—

"(1) IN GENERAL.—Subject to the appropriation of funds, the Secretary shall award a grant under this section based on—

"(A) a determination of the merits of the grant proposal submitted by the eligible institution to develop, offer, or im-

prove educational or career training programs to be made available to workers eligible for training under section 236;

"(B) an evaluation of the likely employment opportunities available to workers who complete an educational or career training program that the eligible institution proposes to develop, offer, or improve; and

"(C) an evaluation of prior demand for training programs by workers eligible for training under section 236 in the community served by the eligible institution, as well as the availability and capacity of existing training programs to meet future demand for training programs.

"(2) PRIORITY FOR CERTAIN COMMUNITIES.—In awarding grants under this section, the Secretary shall give priority to an eligible institution that serves a community that the Secretary of Commerce has determined under section 273 is eligible to apply for assistance under subchapter A within the 5-year period preceding the date on which the grant proposal is submitted to the Secretary under this section.

"(3) MATCHING REQUIREMENTS.—A grant awarded under this section may not be used to satisfy any private matching requirement under any other provision of law.

"(e) ANNUAL REPORT.—Not later than December 15 in each of the calendar years 2009 through 2011, the Secretary shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report—

"(1) describing each grant awarded under this section during the preceding fiscal year; and

"(2) assessing the impact of each award of a grant under this section in a fiscal year preceding the fiscal year referred to in paragraph (1) on workers receiving training under section 236.

"SEC. 279. AUTHORIZATION OF APPROPRIATIONS.

"(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Labor $40,000,000 for each of the fiscal years 2009 and 2010, and $10,000,000 for the period beginning October 1, 2010, and ending December 31, 2010, to fund the Community College and Career Training Grant Program. Funds appropriated pursuant to this section shall remain available until expended.

"(b) SUPPLEMENT NOT SUPPLANT.—Funds appropriated pursuant to this section shall be used to supplement and not supplant other Federal, State, and local public funds expended to support community college and career training programs.

"Subchapter C—Industry or Sector Partnership Grant Program for Communities Impacted by Trade

"SEC. 279A. INDUSTRY OR SECTOR PARTNERSHIP GRANT PROGRAM FOR COMMUNITIES IMPACTED BY TRADE.

"(a) PURPOSE.—The purpose of this subchapter is to facilitate efforts by industry or sector partnerships to strengthen and revitalize industries and create employment opportunities for workers in communities impacted by trade.

"(b) DEFINITIONS.—In this subchapter:

"(1) COMMUNITY IMPACTED BY TRADE.—The term 'community impacted by trade' has the meaning given that term in section 271.

"(2) DISLOCATED WORKER.—The term 'dislocated worker' means a worker who has been totally or partially separated, or is threatened with total or partial separation, from employment in an industry or sector in a community impacted by trade.

"(3) ELIGIBLE PARTNERSHIP.—The term 'eligible partnership' means a voluntary partnership composed of public and private persons, firms, or other entities within a community impacted by trade, that shall include representatives of—

"(A) an industry or sector within the community, including an industry association;

"(B) local, county, or State government;

"(C) multiple firms in the industry or sector, including small- and medium-sized firms, within the community;

"(D) local workforce investment boards established under section 117 of the Workforce Investment Act of 1998 (29 U.S.C. 2832);

"(E) labor organizations, including State labor federations and labor-management initiatives, representing workers in the community; and

"(F) educational institutions, local educational agencies, or other training providers serving the community.

"(4) LEAD ENTITY.—The term 'lead entity' means—

"(A) an entity designated by the eligible partnership to be responsible for submitting a grant proposal under subsection (e) and serving as the eligible partnership's fiscal agent in expending any Sector Partnership Grant awarded under this section; or

"(B) a State agency designated by the Governor of the State to carry out the responsibilities described in subparagraph (A).

"(5) SECRETARY.—The term 'Secretary' means the Secretary of Labor.

"(6) TARGETED INDUSTRY OR SECTOR.—The term 'targeted industry or sector' means the industry or sector represented by an eligible partnership.

"(c) SECTOR PARTNERSHIP GRANTS AUTHORIZED.—Beginning on August 1, 2009, and subject to the appropriation of funds, the Secretary shall award Sector Partnership Grants to eligible partnerships to assist the eligible partnerships in carrying out projects, over periods of not more than 3 years, to strengthen and revitalize industries and sectors and create employment opportunities for dislocated workers.

"(d) USE OF SECTOR PARTNERSHIP GRANTS.—An eligible partnership may use a Sector Partnership Grant to carry out any project that the Secretary determines will further the purpose of this subchapter, which may include—

"(1) identifying the skill needs of the targeted industry or sector and any gaps in the available supply of skilled workers in the community impacted by trade, and developing strategies for filling the gaps, including by—

"(A) developing systems to better link firms in the targeted industry or sector to available skilled workers;

"(B) helping firms in the targeted industry or sector to obtain access to new sources of qualified job applicants;

"(C) retraining dislocated and incumbent workers; or

"(D) facilitating the training of new skilled workers by aligning the instruction provided by local suppliers of education and training services with the needs of the targeted industry or sector;

"(2) analyzing the skills and education levels of dislocated and incumbent workers and developing training to address skill gaps that prevent such workers from obtaining jobs in the targeted industry or sector;

"(3) helping firms, especially small- and medium-sized firms, in the targeted industry or sector increase their productivity and the productivity of their workers;

"(4) helping such firms retain incumbent workers;

"(5) developing learning consortia of small- and medium-sized firms in the targeted industry or sector with similar training needs to enable the firms to combine their purchases of training services, and thereby lower their training costs;

"(6) providing information and outreach activities to firms in the targeted industry or sector regarding the activities of the eligible partnership and other local service suppliers that could assist the firms in meeting needs for skilled workers;

"(7) seeking, applying, and disseminating best practices learned from similarly situated communities impacted by trade in the development and implementation of economic growth and revitalization strategies; and

"(8) identifying additional public and private resources to support the activities described in this subsection, which may include the option to apply for a community grant under section 275 or a Community College and Career Training Grant under section 278 (subject to meeting any additional requirements of those sections).

"(e) GRANT PROPOSALS.—

"(1) IN GENERAL.—The lead entity of an eligible partnership seeking to receive a Sector Partnership Grant under this section shall submit a grant proposal to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

"(2) GENERAL REQUIREMENTS OF GRANT PROPOSALS.—A grant proposal submitted under paragraph (1) shall, at a minimum—

"(A) identify the members of the eligible partnership;

"(B) identify the targeted industry or sector for which the eligible partnership intends to carry out projects using the Sector Partnership Grant;

"(C) describe the goals that the eligible partnership intends to achieve to promote the targeted industry or sector;

"(D) describe the projects that the eligible partnership will undertake to achieve such goals;

"(E) demonstrate that the eligible partnership has the organizational capacity to carry out the projects described in subparagraph (D);

"(F) explain—

"(i) whether—

"(I) the community impacted by trade has sought or received a community grant under section 275;

"(II) an eligible institution in the community has sought or received a Community College and Career Training Grant under section 278; or

"(III) any other entity in the community has received funds pursuant to any other federally funded training project; and

"(ii) how the eligible partnership will coordinate its use of a Sector Partnership Grant with the use of such other grants or funds in order to enhance the effectiveness of each grant and any such funds and avoid duplication of efforts; and

"(G) include performance measures, developed based on the performance measures issued by the Secretary under subsection (g)(2), and a timeline for measuring progress toward achieving the goals described in subparagraph (C).

"(f) AWARD OF GRANTS.—

"(1) IN GENERAL.—Upon application by the lead entity of an eligible partnership, the Secretary may award a Sector Partnership Grant to the eligible partnership to assist the partnership in carrying out any of the projects in the grant proposal that the Secretary determines will further the purposes of this subchapter.

"(2) LIMITATIONS.—An eligible partnership may not be awarded—

"(A) more than one Sector Partnership Grant; or

"(B) a total grant award under this subchapter in excess of—

"(i) except as provided in clause (ii), $2,500,000; or

"(ii) in the case of an eligible partnership located within a community impacted by trade that is not served by an institution receiving a Community College and Career Training Grant under section 278, $3,000,000.

"(g) ADMINISTRATION BY THE SECRETARY.—

"(1) TECHNICAL ASSISTANCE AND OVERSIGHT.—

"(A) IN GENERAL.—The Secretary shall provide technical assistance to, and oversight of, the lead entity of an eligible partnership in applying for and administering Sector Partnership Grants awarded under this section.

"(B) TECHNICAL ASSISTANCE.—Technical assistance provided under subparagraph (A) shall include providing conferences and such other methods of collecting and disseminating information on best practices developed by eligible partnerships as the Secretary determines appropriate.

"(C) GRANTS OR CONTRACTS FOR TECHNICAL ASSISTANCE.—The Secretary may award a grant or contract to one or more national or State organizations to provide technical assistance to foster the planning, formation, and implementation of eligible partnerships.

"(2) PERFORMANCE MEASURES.—The Secretary shall issue a range of performance measures, with quantifiable benchmarks, and methodologies that eligible partnerships may use to meas-

ure progress toward the goals described in subsection (e). In developing such measures, the Secretary shall consider the benefits of the eligible partnership and its activities for workers, firms, industries, and communities.

"(h) REPORTS.—

"(1) PROGRESS REPORT.—Not later than 1 year after receiving a Sector Partnership Grant, and 3 years thereafter, the lead entity shall submit to the Secretary, on behalf of the eligible partnership, a report containing—

"(A) a detailed description of the progress made toward achieving the goals described in subsection (e)(2)(C), using the performance measures required under subsection (e)(2)(G);

"(B) a detailed evaluation of the impact of the grant award on workers and employers in the community impacted by trade; and

"(C) a detailed description of all expenditures of funds awarded to the eligible partnership under the Sector Partnership Grant approved by the Secretary under this subchapter.

"(2) ANNUAL REPORT.—Not later than December 15 in each of the calendar years 2009 through 2011, the Secretary shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report—

"(A) describing each Sector Partnership Grant awarded to an eligible partnership during the preceding fiscal year; and

"(B) assessing the impact of each Sector Partnership Grant awarded in a fiscal year preceding the fiscal year referred to in subparagraph (A) on workers and employers in communities impacted by trade.

"SEC. 279B. AUTHORIZATION OF APPROPRIATIONS.

"(a) IN GENERAL.—There are authorized to be appropriated to the Secretary of Labor $40,000,000 for each of the fiscal years 2009 and 2010, and $10,000,000 for the period beginning October 1, 2010, and ending December 31, 2010, to carry out the Sector Partnership Grant program under section 279A. Funds appropriated pursuant to this section shall remain available until expended.

"(b) SUPPLEMENT NOT SUPPLANT.—Funds appropriated pursuant to this section shall be used to supplement and not supplant other Federal, State, and local public funds expended to support the economic development of local communities.

"(c) ADMINISTRATIVE COSTS.—The Secretary may retain not more than 5 percent of the funds appropriated pursuant to this section for each fiscal year to administer the Sector Partnership Grant program under section 279A.

"Subchapter D—General Provisions

"SEC. 279C. RULE OF CONSTRUCTION.

"Nothing in this chapter prevents a worker from receiving trade adjustment assistance under chapter 2 of this title at the same time the worker is receiving assistance in any manner from—

"(1) a community receiving a community grant under subchapter A;

"(2) an eligible institution receiving a Community College and Career Training Grant under subchapter B; or

"(3) an eligible partnership receiving a Sector Partnership Grant under subchapter C.".

SEC. 1873. CONFORMING AMENDMENTS.

(a) TABLE OF CONTENTS.—The table of contents of the Trade Act of 1974 is amended by striking the items relating to chapter 4 of title II and inserting the following:

"CHAPTER 4—TRADE ADJUSTMENT ASSISTANCE FOR COMMUNITIES

"Subchapter A—Trade Adjustment Assistance for Communities

"Sec. 271. Definitions.
"Sec. 272. Establishment of trade adjustment assistance for communities program.
"Sec. 273. Eligibility; notification.
"Sec. 274. Technical assistance.
"Sec. 275. Grants for eligible communities.
"Sec. 276. Strategic plans.
"Sec. 277. General provisions.

"Subchapter B—Community College and Career Training Grant Program

"Sec. 278. Community college and career training grant program.
"Sec. 279. Authorization of appropriations.

"Subchapter C—Industry or Sector Partnership Grant Program for Communities Impacted by Trade

"Sec. 279A. Industry or sector partnership grant program for communities impacted by trade.
"Sec. 279B. Authorization of appropriations.

"Subchapter D—General Provisions

"Sec. 279C. Rule of construction."

(b) JUDICIAL REVIEW.—

(1) Section 284(a) of the Trade Act of 1974 (19 U.S.C. 2395(a)) is amended—

(A) by inserting "or 296" after "section 293";

(B) by striking "or any other interested domestic party" and inserting "or authorized representative of a community"; and

(C) by striking "section 271" and inserting "section 273".

(2) Section 1581(d) of title 28, United States Code, is amended—

(A) in paragraph (2), by striking "; and" and inserting a semicolon;

(B) in paragraph (3)—

(i) by striking "271" and inserting "273"; and

(ii) by striking the period and inserting "; and"; and

(C) by adding at the end the following:

"(4) any final determination of the Secretary of Agriculture under section 293 or 296 of the Trade Act of 1974 (19 U.S.C. 2401b) with respect to the eligibility of a group of agricultural commodity producers for adjustment assistance under such Act.".

PART IV—TRADE ADJUSTMENT ASSISTANCE FOR FARMERS

SEC. 1881. DEFINITIONS.

Section 291 of the Trade Act of 1974 (19 U.S.C. 2401) is amended—

(1) by amending paragraph (1) to read as follows:

"(1) AGRICULTURAL COMMODITY.—The term 'agricultural commodity' includes—

"(A) any agricultural commodity (including livestock) in its raw or natural state;

"(B) any class of goods within an agricultural commodity; and

"(C) in the case of an agricultural commodity producer described in paragraph (2)(B), wild-caught aquatic species.";

(2) by amending paragraph (2) to read as follows:

"(2) AGRICULTURAL COMMODITY PRODUCER.—The term 'agricultural commodity producer' means—

"(A) a person that shares in the risk of producing an agricultural commodity and that is entitled to a share of the commodity for marketing, including an operator, a sharecropper, or a person that owns or rents the land on which the commodity is produced; or

"(B) a person that reports gain or loss from the trade or business of fishing on the person's annual Federal income tax return for the taxable year that most closely corresponds to the marketing year with respect to which a petition is filed under section 292."; and

(3) by adding at the end the following:

"(7) MARKETING YEAR.—The term 'marketing year' means—

"(A) a marketing year designated by the Secretary with respect to an agricultural commodity; or

"(B) in the case of an agricultural commodity with respect to which the Secretary does not designate a marketing year, a calendar year.".

SEC. 1882. ELIGIBILITY.

(a) IN GENERAL.—Section 292 of the Trade Act of 1974 (19 U.S.C. 2401a) is amended by striking subsections (c) through (e) and inserting the following:

"(c) GROUP ELIGIBILITY REQUIREMENTS.—The Secretary shall certify a group of agricultural commodity producers as eligible to apply for adjustment assistance under this chapter if the Secretary determines that—

"(1)(A) the national average price of the agricultural commodity produced by the group during the most recent marketing year for which data are available is less than 85 percent of the average of the national average price for the commodity in the 3 marketing years preceding such marketing year;

"(B) the quantity of production of the agricultural commodity produced by the group during such marketing year is less than 85 percent of the average of the quantity of production of the commodity produced by the group in the 3 marketing years preceding such marketing year;

"(C) the value of production of the agricultural commodity produced by the group during such marketing year is less than 85 percent of the average value of production of the commodity produced by the group in the 3 marketing years preceding such marketing year; or

"(D) the cash receipts for the agricultural commodity produced by the group during such marketing year are less than 85 percent of the average of the cash receipts for the commodity produced by the group in the 3 marketing years preceding such marketing year;

"(2) the volume of imports of articles like or directly competitive with the agricultural commodity produced by the group in the marketing year with respect to which the group files the petition increased compared to the average volume of such imports during the 3 marketing years preceding such marketing year; and

"(3) the increase in such imports contributed importantly to the decrease in the national average price, quantity of production, or value of production of, or cash receipts for, the agricultural commodity, as described in paragraph (1).

"(d) ELIGIBILITY OF CERTAIN OTHER PRODUCERS.—An agricultural commodity producer or group of producers that resides outside of the State or region identified in the petition filed under subsection (a) may file a request to become a party to that petition not later than 15 days after the date the notice is published in the Federal Register under subsection (a) with respect to that petition.

"(e) TREATMENT OF CLASSES OF GOODS WITHIN A COMMODITY.—In any case in which there are separate classes of goods within an agricultural commodity, the Secretary shall treat each class as a separate commodity in determining under subsection (c)—

"(1) group eligibility;

"(2) the national average price, quantity of production, or value of production, or cash receipts; and

"(3) the volume of imports.".

(b) CONFORMING AMENDMENTS.—Section 293 of the Trade Act of 1974 (19 U.S.C. 2401b) is amended—

(1) in subsection (a), by striking "section 292 (c) or (d), as the case may be," and inserting "section 292(c)"; and

(2) in subsection (c), by striking "decline in price for" and inserting "decrease in the national average price, quantity of production, or value of production of, or cash receipts for,".

SEC. 1883. BENEFITS.

(a) IN GENERAL.—Section 296 of the Trade Act of 1974 (19 U.S.C. 2401e) is amended to read as follows:

"SEC. 296. QUALIFYING REQUIREMENTS AND BENEFITS FOR AGRICULTURAL COMMODITY PRODUCERS.

"(a) IN GENERAL.—

"(1) REQUIREMENTS.—

"(A) IN GENERAL.—Benefits under this chapter shall be available to an agricultural commodity producer covered by a certification under this chapter who files an application for such benefits not later than 90 days after the date on which the Secretary makes a determination and issues a certification of eligibility under section 293, if the producer

submits to the Secretary sufficient information to establish that—

"(i) the producer produced the agricultural commodity covered by the application filed under this subsection in the marketing year with respect to which the petition is filed and in at least 1 of the 3 marketing years preceding that marketing year;

"(ii)(I) the quantity of the agricultural commodity that was produced by the producer in the marketing year with respect to which the petition is filed has decreased compared to the most recent marketing year preceding that marketing year for which data are available; or

"(II)(aa) the price received for the agricultural commodity by the producer during the marketing year with respect to which the petition is filed has decreased compared to the average price for the commodity received by the producer in the 3 marketing years preceding that marketing year; or

"(bb) the county level price maintained by the Secretary for the agricultural commodity on the date on which the petition is filed has decreased compared to the average county level price for the commodity in the 3 marketing years preceding the date on which the petition is filed; and

"(iii) the producer is not receiving—

"(I) cash benefits under chapter 2 or 3; or

"(II) benefits based on the production of an agricultural commodity covered by another petition filed under this chapter.

"(B) SPECIAL RULE WITH RESPECT TO CROPS NOT GROWN EVERY YEAR.—For purposes of subparagraph (A)(ii)(II)(aa), if a petition is filed with respect to an agricultural commodity that is not produced by the producer every year, an agricultural commodity producer producing that commodity may establish the average price received for the commodity by the producer in the 3 marketing years preceding the year with respect to which the petition is filed by using average price data for the 3 most recent marketing years in which the producer produced the commodity and for which data are available.

"(2) LIMITATIONS BASED ON ADJUSTED GROSS INCOME.—

"(A) IN GENERAL.—Notwithstanding any other provision of this chapter, an agricultural commodity producer shall not be eligible for assistance under this chapter in any year in which the average adjusted gross income (as defined in section 1001D(a) of the Food Security Act of 1985 (7 U.S.C. 1308–3a(a))) of the producer exceeds the level set forth in subparagraph (A) or (B) of section 1001D(b)(1) of the Food Security Act of 1985 (7 U.S.C. 1308–3a(b)(1)), whichever is applicable.

"(B) DEMONSTRATION OF COMPLIANCE.—An agricultural commodity producer shall provide to the Secretary such information as the Secretary determines necessary to

demonstrate that the producer is in compliance with the limitation under subparagraph (A).

"(C) COUNTER-CYCLICAL AND ACRE PAYMENTS.—The total amount of payments made to an agricultural commodity producer under this chapter during any crop year may not exceed the limitations on payments set forth in subsections (b)(2), (b)(3), (c)(2), and (c)(3) of section 1001 of the Food Security Act of 1985 (7 U.S.C. 1308).

"(b) TECHNICAL ASSISTANCE.—

"(1) INITIAL TECHNICAL ASSISTANCE.—

"(A) IN GENERAL.—An agricultural commodity producer that files an application and meets the requirements under subsection (a)(1) shall be entitled to receive initial technical assistance designed to improve the competitiveness of the production and marketing of the agricultural commodity with respect to which the producer was certified under this chapter. Such assistance shall include information regarding—

"(i) improving the yield and marketing of that agricultural commodity; and

"(ii) the feasibility and desirability of substituting one or more alternative agricultural commodities for that agricultural commodity.

"(B) TRANSPORTATION AND SUBSISTENCE EXPENSES.—

"(i) IN GENERAL.—The Secretary may authorize supplemental assistance necessary to defray reasonable transportation and subsistence expenses incurred by an agricultural commodity producer in connection with initial technical assistance under subparagraph (A) if such assistance is provided at facilities that are not within normal commuting distance of the regular place of residence of the producer.

"(ii) EXCEPTIONS.—The Secretary may not authorize payments to an agricultural commodity producer under clause (i)—

"(I) for subsistence expenses that exceed the lesser of—

"(aa) the actual per diem expenses for subsistence incurred by the producer; or

"(bb) the prevailing per diem allowance rate authorized under Federal travel regulations; or

"(II) for travel expenses that exceed the prevailing mileage rate authorized under the Federal travel regulations.

"(2) INTENSIVE TECHNICAL ASSISTANCE.—A producer that has completed initial technical assistance under paragraph (1) shall be eligible to participate in intensive technical assistance. Such assistance shall consist of—

"(A) a series of courses to further assist the producer in improving the competitiveness of the producer in producing—

"(i) the agricultural commodity with respect to which the producer was certified under this chapter; or

"(ii) another agricultural commodity; and

"(B) assistance in developing an initial business plan based on the courses completed under subparagraph (A).

"(3) INITIAL BUSINESS PLAN.—

"(A) APPROVAL BY SECRETARY.—The Secretary shall approve an initial business plan developed under paragraph (2)(B) if the plan—

"(i) reflects the skills gained by the producer through the courses described in paragraph (2)(A); and

"(ii) demonstrates how the producer will apply those skills to the circumstances of the producer.

"(B) FINANCIAL ASSISTANCE FOR IMPLEMENTING INITIAL BUSINESS PLAN.—Upon approval of the producer's initial business plan by the Secretary under subparagraph (A), a producer shall be entitled to an amount not to exceed $4,000 to—

"(i) implement the initial business plan; or

"(ii) develop a long-term business adjustment plan under paragraph (4).

"(4) LONG-TERM BUSINESS ADJUSTMENT PLAN.—

"(A) IN GENERAL.—A producer that has completed intensive technical assistance under paragraph (2) and whose initial business plan has been approved under paragraph (3)(A) shall be eligible for, in addition to the amount under subparagraph (C), assistance in developing a long-term business adjustment plan.

"(B) APPROVAL OF LONG-TERM BUSINESS ADJUSTMENT PLANS.—The Secretary shall approve a long-term business adjustment plan developed under subparagraph (A) if the Secretary determines that the plan—

"(i) includes steps reasonably calculated to materially contribute to the economic adjustment of the producer to changing market conditions;

"(ii) takes into consideration the interests of the workers employed by the producer; and

"(iii) demonstrates that the producer will have sufficient resources to implement the business plan.

"(C) PLAN IMPLEMENTATION.—Upon approval of the producer's long-term business adjustment plan under subparagraph (B), a producer shall be entitled to an amount not to exceed $8,000 to implement the long-term business adjustment plan.

"(c) MAXIMUM AMOUNT OF ASSISTANCE.—An agricultural commodity producer may receive not more than $12,000 under paragraphs (3) and (4) of subsection (b) in the 36-month period following certification under section 293.

"(d) LIMITATIONS ON OTHER ASSISTANCE.—An agricultural commodity producer that receives benefits under this chapter (other than initial technical assistance under subsection (b)(1)) shall not be eligible for cash benefits under chapter 2 or 3.".

(b) CLERICAL AMENDMENT.—The table of contents of the Trade Act of 1974 is amended by striking the item relating to section 296 and inserting the following:

"Sec. 296. Qualifying requirements and benefits for agricultural commodity producers.".

SEC. 1884. REPORT.

Section 293 of the Trade Act of 1974 (19 U.S.C. 2401b) is amended by adding at the end the following:

"(d) REPORT BY THE SECRETARY.—Not later than January 30, 2010, and annually thereafter, the Secretary of Agriculture shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report containing the following information with respect to adjustment assistance provided under this chapter during the preceding fiscal year:

"(1) A list of the agricultural commodities covered by a certification under this chapter.

"(2) The States or regions in which such commodities are produced and the aggregate amount of such commodities produced in each such State or region.

"(3) The total number of agricultural commodity producers, by congressional district, receiving benefits under this chapter.

"(4) The total number of agricultural commodity producers, by congressional district, receiving technical assistance under this chapter.".

SEC. 1885. FRAUD AND RECOVERY OF OVERPAYMENTS.

Section 297(a)(1) of the Trade Act of 1974 (19 U.S.C. 2401f(a)(1)) is amended by inserting "or has expended funds received under this chapter for a purpose that was not approved by the Secretary," after "entitled,".

SEC. 1886. DETERMINATION OF INCREASES OF IMPORTS FOR CERTAIN FISHERMEN.

For purposes of chapters 2 and 6 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.), in the case of an agricultural commodity producer that—

(1) is a fisherman or aquaculture producer, and

(2) is otherwise eligible for adjustment assistance under chapter 2 or 6, as the case may be,

the increase in imports of articles like or directly competitive with the agricultural commodity produced by such producer may be based on imports of wild-caught seafood, farm-raised seafood, or both.

SEC. 1887. EXTENSION OF TRADE ADJUSTMENT ASSISTANCE FOR FARMERS.

Section 298(a) of the Trade Act of 1974 (19 U.S.C. 2401g(a)) is amended by striking "fiscal years 2003 through 2007" and all that follows through the end period and inserting "fiscal years 2009 and 2010, and $22,500,000 for the period beginning October 1, 2010, and ending December 31, 2010, to carry out the purposes of this chapter, including administrative costs, and salaries and expenses of employees of the Department of Agriculture.".

PART V—GENERAL PROVISIONS

SEC. 1891. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise provided in this subtitle, and subsection (b) of this section, this subtitle and the amendments made by this subtitle—

(1) shall take effect upon the expiration of the 90-day period beginning on the date of the enactment of this Act; and

(2) shall apply to—

(A) petitions for certification filed under chapter 2, 3, or 6 of title II of the Trade Act of 1974 on or after the effective date described in paragraph (1); and

(B) petitions for assistance and proposals for grants filed under chapter 4 of title II of the Trade Act of 1974 on or after such effective date.

(b) CERTIFICATIONS MADE BEFORE EFFECTIVE DATE.—Notwithstanding subsection (a)—

(1) a worker shall continue to receive (or be eligible to receive) trade adjustment assistance and other benefits under subchapter B of chapter 2 of title II of the Trade Act of 1974, as in effect on the day before the effective date described in subsection (a)(1), for any week for which the worker meets the eligibility requirements of such chapter 2 as in effect on the day before such effective date, if the worker—

(A) is certified as eligible for trade adjustment assistance benefits under such chapter 2 pursuant to a petition filed under section 221 of the Trade Act of 1974 on or before such effective date; and

(B) would otherwise be eligible to receive trade adjustment assistance benefits under such chapter as in effect on the day before such effective date;

(2) a worker shall continue to receive (or be eligible to receive) benefits under section 246(a)(2) of the Trade Act of 1974, as in effect on the day before the effective date described in subsection (a)(1), for such period for which the worker meets the eligibility requirements of section 246 of that Act as in effect on the day before such effective date, if the worker—

(A) is certified as eligible for benefits under such section 246 pursuant to a petition filed under section 221 of the Trade Act of 1974 on or before such effective date; and

(B) would otherwise be eligible to receive benefits under such section 246(a)(2) as in effect on the day before such effective date; and

(3) a firm shall continue to receive (or be eligible to receive) adjustment assistance under chapter 3 of title II of the Trade Act of 1974, as in effect on the day before the effective date described in subsection (a)(1), for such period for which the firm meets the eligibility requirements of such chapter 3 as in effect on the day before such effective date, if the firm—

(A) is certified as eligible for benefits under such chapter 3 pursuant to a petition filed under section 251 of the Trade Act of 1974 on or before such effective date; and

(B) would otherwise be eligible to receive benefits under such chapter 3 as in effect on the day before such effective date.

SEC. 1892. EXTENSION OF TRADE ADJUSTMENT ASSISTANCE PROGRAMS.

(a) FOR WORKERS.—Section 245(a) of the Trade Act of 1974 (19 U.S.C. 2317(a)) is amended by striking "December 31, 2007" and inserting "December 31, 2010".

(b) TERMINATION.—Section 285 of the Trade Act of 1974 (19 U.S.C. 2271 note prec.) is amended—

(1) in subsection (a), by striking "December 31, 2007" each place it appears and inserting "December 31, 2010"; and

(2) by amending subsection (b) to read as follows:

"(b) OTHER ASSISTANCE.—

"(1) ASSISTANCE FOR FIRMS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), technical assistance and grants may not be provided under chapter 3 after December 31, 2010.

"(B) EXCEPTION.—Notwithstanding subparagraph (A), any technical assistance or grant approved under chapter 3 on or before December 31, 2010, may be provided—

"(i) to the extent funds are available pursuant to such chapter for such purpose; and

"(ii) to the extent the recipient of the technical assistance or grant is otherwise eligible to receive such technical assistance or grant, as the case may be.

"(2) FARMERS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), technical assistance and financial assistance may not be provided under chapter 6 after December 31, 2010.

"(B) EXCEPTION.—Notwithstanding subparagraph (A), any technical or financial assistance approved under chapter 6 on or before December 31, 2010, may be provided—

"(i) to the extent funds are available pursuant to such chapter for such purpose; and

"(ii) to the extent the recipient of the technical or financial assistance is otherwise eligible to receive such technical or financial assistance, as the case may be.

"(3) ASSISTANCE FOR COMMUNITIES.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), technical assistance and grants may not be provided under chapter 4 after December 31, 2010.

"(B) EXCEPTION.—Notwithstanding subparagraph (A), any technical assistance or grant approved under chapter 4 on or before December 31, 2010, may be provided—

"(i) to the extent funds are available pursuant to such chapter for such purpose; and

"(ii) to the extent the recipient of the technical assistance or grant is otherwise eligible to receive such technical assistance or grant, as the case may be.".

SEC. 1893. TERMINATION; RELATED PROVISIONS.

(a) SUNSET.—

(1) IN GENERAL.—Subject to paragraph (2), the amendments made by this subtitle to chapters 2, 3, 4, 5, and 6 of title II of the Trade Act of 1974 (19 U.S.C. 2271 et seq.) shall not apply on or after January 1, 2011.

(2) EXCEPTION.—The amendments made by this subtitle to section 285 of the Trade Act of 1974 shall continue to apply on and after January 1, 2011, with respect to—

(A) workers certified as eligible for trade adjustment assistance benefits under chapter 2 of title II of that Act pursuant to petitions filed under section 221 of that Act before January 1, 2011;

(B) firms certified as eligible for technical assistance or grants under chapter 3 of title II of that Act pursuant to petitions filed under section 251 of that Act before January 1, 2011;

(C) recipients approved for technical assistance or grants under chapter 4 of title II of that Act pursuant to petitions for assistance or proposals for grants (as the case may be) filed pursuant to such chapter before January 1, 2011; and

(D) agricultural commodity producers certified as eligible for technical or financial assistance under chapter 6 of title II of that Act pursuant to petitions filed under section 292 of that Act before January 1, 2011.

(b) APPLICATION OF PRIOR LAW.—Chapters 2, 3, 4, 5, and 6 of title II of the Trade Act of 1974 (19 U.S.C. 2271 et seq.) shall be applied and administered beginning January 1, 2011, as if the amendments made by this subtitle (other than part VI) had never been enacted, except that in applying and administering such chapters—

(1) section 245 of that Act shall be applied and administered by substituting "2011" for "2007";

(2) section 246(b) of that Act shall be applied and administered by substituting "December 31, 2011" for "the date that is 5 years" and all that follows through "State";

(3) section 256(b) of that Act shall be applied and administered by substituting "the 1-year period beginning January 1, 2011" for "each of fiscal years 2003 through 2007, and $4,000,000 for the 3-month period beginning October 1, 2007";

(4) section 298(a) of that Act shall be applied and administered by substituting "the 1-year period beginning January 1, 2011" for "each of the fiscal years" and all that follows through "October 1, 2007"; and

(5) subject to subsection (a)(2), section 285 of that Act shall be applied and administered—

(A) in subsection (a), by substituting "2011" for "2007" each place it appears; and

(B) by applying and administering subsection (b) as if it read as follows:

"(b) OTHER ASSISTANCE.—

"(1) ASSISTANCE FOR FIRMS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), assistance may not be provided under chapter 3 after December 31, 2011.

"(B) EXCEPTION.—Notwithstanding subparagraph (A), any assistance approved under chapter 3 on or before December 31, 2011, may be provided—

"(i) to the extent funds are available pursuant to such chapter for such purpose; and

"(ii) to the extent the recipient of the assistance is otherwise eligible to receive such assistance.

"(2) FARMERS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), assistance may not be provided under chapter 6 after December 31, 2011.

"(B) EXCEPTION.—Notwithstanding subparagraph (A), any assistance approved under chapter 6 on or before December 31, 2011, may be provided—

"(i) to the extent funds are available pursuant to such chapter for such purpose; and

"(ii) to the extent the recipient of the assistance is otherwise eligible to receive such assistance.".

SEC. 1894. GOVERNMENT ACCOUNTABILITY OFFICE REPORT.

Not later than September 30, 2012, the Comptroller General of the United States shall prepare and submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a comprehensive report on the operation and effectiveness of the amendments made by this subtitle to chapters 2, 3, 4, and 6 of the Trade Act of 1974.

SEC. 1895. EMERGENCY DESIGNATION.

Amounts appropriated pursuant to this subtitle are designated as an emergency requirement and necessary to meet emergency needs pursuant to section 204(a) of S. Con. Res. 21 (110th Congress) and section 301(b)(2) of S. Con. Res. 70 (110th Congress), the concurrent resolutions on the budget for fiscal years 2008 and 2009.

PART VI—HEALTH COVERAGE IMPROVEMENT

SEC. 1899. SHORT TITLE.

This part may be cited as the "TAA Health Coverage Improvement Act of 2009".

SEC. 1899A. IMPROVEMENT OF THE AFFORDABILITY OF THE CREDIT.

(a) IMPROVEMENT OF AFFORDABILITY.—

(1) IN GENERAL.—Section 35(a) of the Internal Revenue Code of 1986 (relating to credit for health insurance costs of eligible individuals) is amended by inserting "(80 percent in the case of eligible coverage months beginning before January 1, 2011)" after "65 percent".

(2) CONFORMING AMENDMENT.—Section 7527(b) of such Code (relating to advance payment of credit for health insurance costs of eligible individuals) is amended by inserting "(80 percent in the case of eligible coverage months beginning before January 1, 2011)" after "65 percent".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to coverage months beginning on or after the first day of the first month beginning 60 days after the date of the enactment of this Act.

SEC. 1899B. PAYMENT FOR MONTHLY PREMIUMS PAID PRIOR TO COMMENCEMENT OF ADVANCE PAYMENTS OF CREDIT.

(a) PAYMENT FOR PREMIUMS DUE PRIOR TO COMMENCEMENT OF ADVANCE PAYMENTS OF CREDIT.—Section 7527 of the Internal Revenue Code of 1986 (relating to advance payment of credit for health insurance costs of eligible individuals) is amended by adding at the end the following new subsection:

"(e) PAYMENT FOR PREMIUMS DUE PRIOR TO COMMENCEMENT OF ADVANCE PAYMENTS.—In the case of eligible coverage months beginning before January 1, 2011—

"(1) IN GENERAL.—The program established under subsection (a) shall provide that the Secretary shall make 1 or

more retroactive payments on behalf of a certified individual in an aggregate amount equal to 80 percent of the premiums for coverage of the taxpayer and qualifying family members under qualified health insurance for eligible coverage months (as defined in section 35(b)) occurring prior to the first month for which an advance payment is made on behalf of such individual under subsection (a).

"(2) REDUCTION OF PAYMENT FOR AMOUNTS RECEIVED UNDER NATIONAL EMERGENCY GRANTS.—The amount of any payment determined under paragraph (1) shall be reduced by the amount of any payment made to the taxpayer for the purchase of qualified health insurance under a national emergency grant pursuant to section 173(f) of the Workforce Investment Act of 1998 for a taxable year including the eligible coverage months described in paragraph (1).".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to coverage months beginning after December 31, 2008.

(c) TRANSITIONAL RULE.—The Secretary of the Treasury shall not be required to make any payments under section 7527(e) of the Internal Revenue Code of 1986, as added by this section, until after the date that is 6 months after the date of the enactment of this Act.

SEC. 1899C. TAA RECIPIENTS NOT ENROLLED IN TRAINING PROGRAMS ELIGIBLE FOR CREDIT.

(a) IN GENERAL.—Paragraph (2) of section 35(c) of the Internal Revenue Code of 1986 (defining eligible TAA recipient) is amended to read as follows:

"(2) ELIGIBLE TAA RECIPIENT.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'eligible TAA recipient' means, with respect to any month, any individual who is receiving for any day of such month a trade readjustment allowance under chapter 2 of title II of the Trade Act of 1974 or who would be eligible to receive such allowance if section 231 of such Act were applied without regard to subsection (a)(3)(B) of such section. An individual shall continue to be treated as an eligible TAA recipient during the first month that such individual would otherwise cease to be an eligible TAA recipient by reason of the preceding sentence.

"(B) SPECIAL RULE.—In the case of any eligible coverage month beginning after the date of the enactment of this paragraph and before January 1, 2011, the term 'eligible TAA recipient' means, with respect to any month, any individual who—

"(i) is receiving for any day of such month a trade readjustment allowance under chapter 2 of title II of the Trade Act of 1974,

"(ii) would be eligible to receive such allowance except that such individual is in a break in training provided under a training program approved under section 236 of such Act that exceeds the period specified in section 233(e) of such Act, but is within the period for receiving such allowances provided under section 233(a) of such Act, or

"(iii) is receiving unemployment compensation (as defined in section 85(b)) for any day of such month and

who would be eligible to receive such allowance for such month if section 231 of such Act were applied without regard to subsections (a)(3)(B) and (a)(5) thereof.

An individual shall continue to be treated as an eligible TAA recipient during the first month that such individual would otherwise cease to be an eligible TAA recipient by reason of the preceding sentence.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to coverage months beginning after the date of the enactment of this Act.

SEC. 1899D. TAA PRE-CERTIFICATION PERIOD RULE FOR PURPOSES OF DETERMINING WHETHER THERE IS A 63-DAY LAPSE IN CREDITABLE COVERAGE.

(a) IRC AMENDMENT.—Section 9801(c)(2) of the Internal Revenue Code of 1986 (relating to not counting periods before significant breaks in creditable coverage) is amended by adding at the end the following new subparagraph:

"(D) TAA-ELIGIBLE INDIVIDUALS.—In the case of plan years beginning before January 1, 2011—

"(i) TAA PRE-CERTIFICATION PERIOD RULE.—In the case of a TAA-eligible individual, the period beginning on the date the individual has a TAA-related loss of coverage and ending on the date which is 7 days after the date of the issuance by the Secretary (or by any person or entity designated by the Secretary) of a qualified health insurance costs credit eligibility certificate for such individual for purposes of section 7527 shall not be taken into account in determining the continuous period under subparagraph (A).

"(ii) DEFINITIONS.—The terms 'TAA-eligible individual' and 'TAA-related loss of coverage' have the meanings given such terms in section 4980B(f)(5)(C)(iv).".

(b) ERISA AMENDMENT.—Section 701(c)(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1181(c)(2)) is amended by adding at the end the following new subparagraph:

"(C) TAA-ELIGIBLE INDIVIDUALS.—In the case of plan years beginning before January 1, 2011—

"(i) TAA PRE-CERTIFICATION PERIOD RULE.—In the case of a TAA-eligible individual, the period beginning on the date the individual has a TAA-related loss of coverage and ending on the date that is 7 days after the date of the issuance by the Secretary (or by any person or entity designated by the Secretary) of a qualified health insurance costs credit eligibility certificate for such individual for purposes of section 7527 of the Internal Revenue Code of 1986 shall not be taken into account in determining the continuous period under subparagraph (A).

"(ii) DEFINITIONS.—The terms 'TAA-eligible individual' and 'TAA-related loss of coverage' have the meanings given such terms in section 605(b)(4).".

(c) PHSA AMENDMENT.—Section 2701(c)(2) of the Public Health Service Act (42 U.S.C. 300gg(c)(2)) is amended by adding at the end the following new subparagraph:

"(C) TAA-ELIGIBLE INDIVIDUALS.—In the case of plan years beginning before January 1, 2011—

"(i) TAA PRE-CERTIFICATION PERIOD RULE.—In the case of a TAA-eligible individual, the period beginning on the date the individual has a TAA-related loss of coverage and ending on the date that is 7 days after the date of the issuance by the Secretary (or by any person or entity designated by the Secretary) of a qualified health insurance costs credit eligibility certificate for such individual for purposes of section 7527 of the Internal Revenue Code of 1986 shall not be taken into account in determining the continuous period under subparagraph (A).

"(ii) DEFINITIONS.—The terms 'TAA-eligible individual' and 'TAA-related loss of coverage' have the meanings given such terms in section 2205(b)(4).".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after the date of the enactment of this Act.

SEC. 1899E. CONTINUED QUALIFICATION OF FAMILY MEMBERS AFTER CERTAIN EVENTS.

(a) IN GENERAL.—Subsection (g) of section 35 of such Code is amended by redesignating paragraph (9) as paragraph (10) and inserting after paragraph (8) the following new paragraph:

"(9) CONTINUED QUALIFICATION OF FAMILY MEMBERS AFTER CERTAIN EVENTS.—In the case of eligible coverage months beginning before January 1, 2011—

"(A) MEDICARE ELIGIBILITY.—In the case of any month which would be an eligible coverage month with respect to an eligible individual but for subsection (f)(2)(A), such month shall be treated as an eligible coverage month with respect to such eligible individual solely for purposes of determining the amount of the credit under this section with respect to any qualifying family members of such individual (and any advance payment of such credit under section 7527). This subparagraph shall only apply with respect to the first 24 months after such eligible individual is first entitled to the benefits described in subsection (f)(2)(A).

"(B) DIVORCE.—In the case of the finalization of a divorce between an eligible individual and such individual's spouse, such spouse shall be treated as an eligible individual for purposes of this section and section 7527 for a period of 24 months beginning with the date of such finalization, except that the only qualifying family members who may be taken into account with respect to such spouse are those individuals who were qualifying family members immediately before such finalization.

"(C) DEATH.—In the case of the death of an eligible individual—

"(i) any spouse of such individual (determined at the time of such death) shall be treated as an eligible

individual for purposes of this section and section 7527 for a period of 24 months beginning with the date of such death, except that the only qualifying family members who may be taken into account with respect to such spouse are those individuals who were qualifying family members immediately before such death, and

"(ii) any individual who was a qualifying family member of the decedent immediately before such death (or, in the case of an individual to whom paragraph (4) applies, the taxpayer to whom the deduction under section 151 is allowable) shall be treated as an eligible individual for purposes of this section and section 7527 for a period of 24 months beginning with the date of such death, except that in determining the amount of such credit only such qualifying family member may be taken into account.".

(b) CONFORMING AMENDMENT.—Section 173(f) of the Workforce Investment Act of 1998 (29 U.S.C. 2918(f)) is amended by adding at the end the following:

"(8) CONTINUED QUALIFICATION OF FAMILY MEMBERS AFTER CERTAIN EVENTS.—In the case of eligible coverage months beginning before January 1, 2011—

"(A) MEDICARE ELIGIBILITY.—In the case of any month which would be an eligible coverage month with respect to an eligible individual but for paragraph (7)(B)(i), such month shall be treated as an eligible coverage month with respect to such eligible individual solely for purposes of determining the eligibility of qualifying family members of such individual under this subsection. This subparagraph shall only apply with respect to the first 24 months after such eligible individual is first entitled to the benefits described in paragraph (7)(B)(i).

"(B) DIVORCE.—In the case of the finalization of a divorce between an eligible individual and such individual's spouse, such spouse shall be treated as an eligible individual for purposes of this subsection for a period of 24 months beginning with the date of such finalization, except that the only qualifying family members who may be taken into account with respect to such spouse are those individuals who were qualifying family members immediately before such finalization.

"(C) DEATH.—In the case of the death of an eligible individual—

"(i) any spouse of such individual (determined at the time of such death) shall be treated as an eligible individual for purposes of this subsection for a period of 24 months beginning with the date of such death, except that the only qualifying family members who may be taken into account with respect to such spouse are those individuals who were qualifying family members immediately before such death, and

"(ii) any individual who was a qualifying family member of the decedent immediately before such death shall be treated as an eligible individual for purposes

of this subsection for a period of 24 months beginning with the date of such death, except that no qualifying family members may be taken into account with respect to such individual.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to months beginning after December 31, 2009.

SEC. 1899F. EXTENSION OF COBRA BENEFITS FOR CERTAIN TAA-ELIGIBLE INDIVIDUALS AND PBGC RECIPIENTS.

(a) ERISA AMENDMENTS.—Section 602(2)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1162(2)(A)) is amended—

(1) by moving clause (v) to after clause (iv) and before the flush left sentence beginning with "In the case of a qualified beneficiary";

(2) by striking "In the case of a qualified beneficiary" and inserting the following:

"(vi) SPECIAL RULE FOR DISABILITY.—In the case of a qualified beneficiary"; and

(3) by redesignating clauses (v) and (vi), as amended by paragraphs (1) and (2), as clauses (vii) and (viii), respectively, and by inserting after clause (iv) the following new clauses:

"(v) SPECIAL RULE FOR PBGC RECIPIENTS.—In the case of a qualifying event described in section 603(2) with respect to a covered employee who (as of such qualifying event) has a nonforfeitable right to a benefit any portion of which is to be paid by the Pension Benefit Guaranty Corporation under title IV, notwithstanding clause (i) or (ii), the date of the death of the covered employee, or in the case of the surviving spouse or dependent children of the covered employee, 24 months after the date of the death of the covered employee. The preceding sentence shall not require any period of coverage to extend beyond December 31, 2010.

"(vi) SPECIAL RULE FOR TAA-ELIGIBLE INDIVIDUALS.—In the case of a qualifying event described in section 603(2) with respect to a covered employee who is (as of the date that the period of coverage would, but for this clause or clause (vii), otherwise terminate under clause (i) or (ii)) a TAA-eligible individual (as defined in section 605(b)(4)(B)), the period of coverage shall not terminate by reason of clause (i) or (ii), as the case may be, before the later of the date specified in such clause or the date on which such individual ceases to be such a TAA-eligible individual. The preceding sentence shall not require any period of coverage to extend beyond December 31, 2010.".

(b) IRC AMENDMENTS.—Clause (i) of section 4980B(f)(2)(B) of the Internal Revenue Code of 1986 is amended—

(1) by striking "In the case of a qualified beneficiary" and inserting the following:

"(VI) SPECIAL RULE FOR DISABILITY.—In the case of a qualified beneficiary", and

(2) by redesignating subclauses (V) and (VI), as amended by paragraph (1), as subclauses (VII) and (VIII), respectively, and by inserting after clause (IV) the following new subclauses:

"(V) SPECIAL RULE FOR PBGC RECIPIENTS.—In the case of a qualifying event described in paragraph (3)(B) with respect to a covered employee who (as of such qualifying event) has a nonforfeitable right to a benefit any portion of which is to be paid by the Pension Benefit Guaranty Corporation under title IV of the Employee Retirement Income Security Act of 1974, notwithstanding subclause (I) or (II), the date of the death of the covered employee, or in the case of the surviving spouse or dependent children of the covered employee, 24 months after the date of the death of the covered employee. The preceding sentence shall not require any period of coverage to extend beyond December 31, 2010.

"(VI) SPECIAL RULE FOR TAA-ELIGIBLE INDIVIDUALS.—In the case of a qualifying event described in paragraph (3)(B) with respect to a covered employee who is (as of the date that the period of coverage would, but for this subclause or subclause (VII), otherwise terminate under subclause (I) or (II)) a TAA-eligible individual (as defined in paragraph (5)(C)(iv)(II)), the period of coverage shall not terminate by reason of subclause (I) or (II), as the case may be, before the later of the date specified in such subclause or the date on which such individual ceases to be such a TAA-eligible individual. The preceding sentence shall not require any period of coverage to extend beyond December 31, 2010.".

(c) PHSA AMENDMENTS.—Section 2202(2)(A) of the Public Health Service Act (42 U.S.C. 300bb–2(2)(A)) is amended—

(1) by striking "In the case of a qualified beneficiary" and inserting the following:

"(v) SPECIAL RULE FOR DISABILITY.—In the case of a qualified beneficiary"; and

(2) by redesignating clauses (iv) and (v), as amended by paragraph (1), as clauses (v) and (vi), respectively, and by inserting after clause (iii) the following new clause:

"(iv) SPECIAL RULE FOR TAA-ELIGIBLE INDIVIDUALS.—In the case of a qualifying event described in section 2203(2) with respect to a covered employee who is (as of the date that the period of coverage would, but for this clause or clause (v), otherwise terminate under clause (i) or (ii)) a TAA-eligible individual (as defined in section 2205(b)(4)(B)), the period of coverage shall not terminate by reason of clause (i) or (ii), as the case may be, before the later of the date specified in such clause or the date on which such individual ceases to be such a TAA-eligible individual. The preceding sentence shall not require any period of coverage to extend beyond December 31, 2010.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to periods of coverage which would (without regard to

the amendments made by this section) end on or after the date of the enactment of this Act.

SEC. 1899G. ADDITION OF COVERAGE THROUGH VOLUNTARY EMPLOYEES' BENEFICIARY ASSOCIATIONS.

(a) IN GENERAL.—Paragraph (1) of section 35(e) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

> *"(K) In the case of eligible coverage months beginning before January 1, 2011, coverage under an employee benefit plan funded by a voluntary employees' beneficiary association (as defined in section 501(c)(9)) established pursuant to an order of a bankruptcy court, or by agreement with an authorized representative, as provided in section 1114 of title 11, United States Code.".*

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to coverage months beginning after the date of the enactment of this Act.

SEC. 1899H. NOTICE REQUIREMENTS.

(a) IN GENERAL.—Subsection (d) of section 7527 of the Internal Revenue Code of 1986 (relating to qualified health insurance costs credit eligibility certificate) is amended to read as follows:

"(d) QUALIFIED HEALTH INSURANCE COSTS ELIGIBILITY CERTIFICATE.—

> *"(1) IN GENERAL.—For purposes of this section, the term 'qualified health insurance costs eligibility certificate' means any written statement that an individual is an eligible individual (as defined in section 35(c)) if such statement provides such information as the Secretary may require for purposes of this section and—*
>
> > *"(A) in the case of an eligible TAA recipient (as defined in section 35(c)(2)) or an eligible alternative TAA recipient (as defined in section 35(c)(3)), is certified by the Secretary of Labor (or by any other person or entity designated by the Secretary), or*
> >
> > *"(B) in the case of an eligible PBGC pension recipient (as defined in section 35(c)(4)), is certified by the Pension Benefit Guaranty Corporation (or by any other person or entity designated by the Secretary).*
>
> *"(2) INCLUSION OF CERTAIN INFORMATION.—In the case of any statement described in paragraph (1) which is issued before January 1, 2011, such statement shall not be treated as a qualified health insurance costs credit eligibility certificate unless such statement includes—*
>
> > *"(A) the name, address, and telephone number of the State office or offices responsible for providing the individual with assistance with enrollment in qualified health insurance (as defined in section 35(e)),*
> >
> > *"(B) a list of the coverage options that are treated as qualified health insurance (as so defined) by the State in which the individual resides, and*
> >
> > *"(C) in the case of a TAA-eligible individual (as defined in section 4980B(f)(5)(C)(iv)(II)), a statement informing the individual that the individual has 63 days from the date that is 7 days after the date of the issuance of such certifi-*

cate to enroll in such insurance without a lapse in creditable coverage (as defined in section 9801(c)).".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to certificates issued after the date that is 6 months after the date of the enactment of this Act.

SEC. 1899I. SURVEY AND REPORT ON ENHANCED HEALTH COVERAGE TAX CREDIT PROGRAM.

(a) SURVEY.—

(1) IN GENERAL.—The Secretary of the Treasury shall conduct a biennial survey of eligible individuals (as defined in section 35(c) of the Internal Revenue Code of 1986) relating to the health coverage tax credit under section 35 of the Internal Revenue Code of 1986 (hereinafter in this section referred to as the "health coverage tax credit").

(2) INFORMATION OBTAINED.—The survey conducted under subsection (a) shall obtain the following information:

(A) HCTC PARTICIPANTS.—In the case of eligible individuals receiving the health coverage tax credit (including individuals participating in the health coverage tax credit program under section 7527 of such Code, hereinafter in this section referred to as the "HCTC program")—

(i) demographic information of such individuals, including income and education levels,

(ii) satisfaction of such individuals with the enrollment process in the HCTC program,

(iii) satisfaction of such individuals with available health coverage options under the credit, including level of premiums, benefits, deductibles, cost-sharing requirements, and the adequacy of provider networks, and

(iv) any other information that the Secretary determines is appropriate.

(B) NON-HCTC PARTICIPANTS.—In the case of eligible individuals not receiving the health coverage tax credit—

(i) demographic information of each individual, including income and education levels,

(ii) whether the individual was aware of the health coverage tax credit or the HCTC program,

(iii) the reasons the individual has not enrolled in the HCTC program, including whether such reasons include the burden of the process of enrollment and the affordability of coverage,

(iv) whether the individual has health insurance coverage, and, if so, the source of such coverage, and

(v) any other information that the Secretary determines is appropriate.

(3) REPORT.—Not later than December 31 of each year in which a survey is conducted under paragraph (1) (beginning in 2010), the Secretary of the Treasury shall report to the Committee on Finance and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Ways and Means, the Committee on Education and Labor, and the Committee on Energy and Commerce of the House of Representatives the findings of the most recent survey conducted under paragraph (1).

(b) REPORT.—Not later than October 1 of each year (beginning in 2010), the Secretary of the Treasury (after consultation with the Secretary of Health and Human Services, and, in the case of the information required under paragraph (7), the Secretary of Labor) shall report to the Committee on Finance and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Ways and Means, the Committee on Education and Labor, and the Committee on Energy and Commerce of the House of Representatives the following information with respect to the most recent taxable year ending before such date:

(1) In each State and nationally—

(A) the total number of eligible individuals (as defined in section 35(c) of the Internal Revenue Code of 1986) and the number of eligible individuals receiving the health coverage tax credit,

(B) the total number of such eligible individuals who receive an advance payment of the health coverage tax credit through the HCTC program,

(C) the average length of the time period of the participation of eligible individuals in the HCTC program, and

(D) the total number of participating eligible individuals in the HCTC program who are enrolled in each category of coverage as described in section 35(e)(1) of such Code,

with respect to each category of eligible individuals described in section 35(c)(1) of such Code.

(2) In each State and nationally, an analysis of—

(A) the range of monthly health insurance premiums, for self-only coverage and for family coverage, for individuals receiving the health coverage tax credit, and

(B) the average and median monthly health insurance premiums, for self-only coverage and for family coverage, for individuals receiving the health coverage tax credit,

with respect to each category of coverage as described in section 35(e)(1) of such Code.

(3) In each State and nationally, an analysis of the following information with respect to the health insurance coverage of individuals receiving the health coverage tax credit who are enrolled in coverage described in subparagraphs (B) through (H) of section 35(e)(1) of such Code:

(A) Deductible amounts.

(B) Other out-of-pocket cost-sharing amounts.

(C) A description of any annual or lifetime limits on coverage or any other significant limits on coverage services, or benefits.

The information required under this paragraph shall be reported with respect to each category of coverage described in such subparagraphs.

(4) In each State and nationally, the gender and average age of eligible individuals (as defined in section 35(c) of such Code) who receive the health coverage tax credit, in each category of coverage described in section 35(e)(1) of such Code, with respect to each category of eligible individuals described in such section.

(5) The steps taken by the Secretary of the Treasury to increase the participation rates in the HCTC program among eligible individuals, including outreach and enrollment activities.

(6) The cost of administering the HCTC program by function, including the cost of subcontractors, and recommendations on ways to reduce administrative costs, including recommended statutory changes.

(7) The number of States applying for and receiving national emergency grants under section 173(f) of the Workforce Investment Act of 1998 (29 U.S.C. 2918(f)), the activities funded by such grants on a State-by-State basis, and the time necessary for application approval of such grants.

SEC. 1899J. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated $80,000,000 for the period of fiscal years 2009 through 2010 to implement the amendments made by, and the provisions of, sections 1899 through 1899I of this part.

SEC. 1899K. EXTENSION OF NATIONAL EMERGENCY GRANTS.

(a) IN GENERAL.—Section 173(f) of the Workforce Investment Act of 1998 (29 U.S.C. 2918(f)), as amended by this Act, is amended—

(1) by striking paragraph (1) and inserting the following new paragraph:

"(1) USE OF FUNDS.—

"(A) HEALTH INSURANCE COVERAGE FOR ELIGIBLE INDIVIDUALS IN ORDER TO OBTAIN QUALIFIED HEALTH INSURANCE THAT HAS GUARANTEED ISSUE AND OTHER CONSUMER PROTECTIONS.—Funds made available to a State or entity under paragraph (4)(A) of subsection (a) may be used to provide an eligible individual described in paragraph (4)(C) and such individual's qualifying family members with health insurance coverage for the 3-month period that immediately precedes the first eligible coverage month (as defined in section 35(b) of the Internal Revenue Code of 1986) in which such eligible individual and such individual's qualifying family members are covered by qualified health insurance that meets the requirements described in clauses (i) through (v) of section 35(e)(2)(A) of the Internal Revenue Code of 1986 (or such longer minimum period as is necessary in order for such eligible individual and such individual's qualifying family members to be covered by qualified health insurance that meets such requirements).

"(B) ADDITIONAL USES.—Funds made available to a State or entity under paragraph (4)(A) of subsection (a) may be used by the State or entity for the following:

"(i) HEALTH INSURANCE COVERAGE.—To assist an eligible individual and such individual's qualifying family members with enrolling in health insurance coverage and qualified health insurance or paying premiums for such coverage or insurance.

"(ii) ADMINISTRATIVE EXPENSES AND START-UP EXPENSES TO ESTABLISH GROUP HEALTH PLAN COVERAGE OPTIONS FOR QUALIFIED HEALTH INSURANCE.—To pay the administrative expenses related to the enrollment of

eligible individuals and such individuals' qualifying family members in health insurance coverage and qualified health insurance, including—

"(I) eligibility verification activities;

"(II) the notification of eligible individuals of available health insurance and qualified health insurance options;

"(III) processing qualified health insurance costs credit eligibility certificates provided for under section 7527 of the Internal Revenue Code of 1986;

"(IV) providing assistance to eligible individuals in enrolling in health insurance coverage and qualified health insurance;

"(V) the development or installation of necessary data management systems; and

"(VI) any other expenses determined appropriate by the Secretary, including start-up costs and on going administrative expenses, in order for the State to treat the coverage described in subparagraphs (C) through (H) of section 35(e)(1) of the Internal Revenue Code of 1986 as qualified health insurance under that section.

"(iii) OUTREACH.—To pay for outreach to eligible individuals to inform such individuals of available health insurance and qualified health insurance options, including outreach consisting of notice to eligible individuals of such options made available after the date of enactment of this clause and direct assistance to help potentially eligible individuals and such individual's qualifying family members qualify and remain eligible for the credit established under section 35 of the Internal Revenue Code of 1986 and advance payment of such credit under section 7527 of such Code.

"(iv) BRIDGE FUNDING.—To assist potentially eligible individuals to purchase qualified health insurance coverage prior to issuance of a qualified health insurance costs credit eligibility certificate under section 7527 of the Internal Revenue Code of 1986 and commencement of advance payment, and receipt of expedited payment, under subsections (a) and (e), respectively, of that section.

"(C) RULE OF CONSTRUCTION.—The inclusion of a permitted use under this paragraph shall not be construed as prohibiting a similar use of funds permitted under subsection (g).''; and

(2) by striking paragraph (2) and inserting the following new paragraph:

"(2) QUALIFIED HEALTH INSURANCE.—For purposes of this subsection and subsection (g), the term 'qualified health insurance' has the meaning given that term in section 35(e) of the Internal Revenue Code of 1986.".

(b) FUNDING.—Section 174(c)(1) of the Workforce Investment Act of 1998 (29 U.S.C. 2919(c)(1)) is amended—

(1) in the paragraph heading, by striking "AUTHORIZATION AND APPROPRIATION FOR FISCAL YEAR 2002" and inserting "APPROPRIATIONS"; and

(2) by striking subparagraph (A) and inserting the following new subparagraph:

"(A) to carry out subsection (a)(4)(A) of section 173—

"(i) $10,000,000 for fiscal year 2002; and

"(ii) $150,000,000 for the period of fiscal years 2009 through 2010; and".

SEC. 1899L. GAO STUDY AND REPORT.

(a) STUDY.—The Comptroller General of the United States shall conduct a study regarding the health insurance tax credit allowed under section 35 of the Internal Revenue Code of 1986.

(b) REPORT.—Not later than March 1, 2010, the Comptroller General shall submit a report to Congress regarding the results of the study conducted under subsection (a). Such report shall include an analysis of—

(1) the administrative costs—

(A) of the Federal Government with respect to such credit and the advance payment of such credit under section 7527 of such Code, and

(B) of providers of qualified health insurance with respect to providing such insurance to eligible individuals and their qualifying family members,

(2) the health status and relative risk status of eligible individuals and qualifying family members covered under such insurance,

(3) participation in such credit and the advance payment of such credit by eligible individuals and their qualifying family members, including the reasons why such individuals did or did not participate and the effect of the amendments made by this part on such participation, and

(4) the extent to which eligible individuals and their qualifying family members—

(A) obtained health insurance other than qualifying health insurance, or

(B) went without health insurance coverage.

(c) ACCESS TO RECORDS.—For purposes of conducting the study required under this section, the Comptroller General and any of his duly authorized representatives shall have access to, and the right to examine and copy, all documents, records, and other recorded information—

(1) within the possession or control of providers of qualified health insurance, and

(2) determined by the Comptroller General (or any such representative) to be relevant to the study.

The Comptroller General shall not disclose the identity of any provider of qualified health insurance or any eligible individual in making any information obtained under this section available to the public.

(d) DEFINITIONS.—Any term which is defined in section 35 of the Internal Revenue Code of 1986 shall have the same meaning when used in this section.

TITLE II—ASSISTANCE FOR UNEMPLOYED WORKERS AND STRUGGLING FAMILIES

SEC. 2000. SHORT TITLE; TABLE OF CONTENTS OF TITLE.

(a) SHORT TITLE.—This title may be cited as the "Assistance for Unemployed Workers and Struggling Families Act".

(b) TABLE OF CONTENTS OF TITLE.—The table of contents of this title is as follows:

TITLE II—ASSISTANCE FOR UNEMPLOYED WORKERS AND STRUGGLING FAMILIES

Sec. 2000. Short title; table of contents of title.

Subtitle A—Unemployment Insurance

Sec. 2001. Extension of emergency unemployment compensation program.
Sec. 2002. Increase in unemployment compensation benefits.
Sec. 2003. Special transfers for unemployment compensation modernization.
Sec. 2004. Temporary assistance for states with advances.
Sec. 2005. Full Federal funding of extended unemployment compensation for a limited period.
Sec. 2006. Temporary increase in extended unemployment benefits under the Railroad Unemployment Insurance Act.

Subtitle B—Assistance for Vulnerable Individuals

Sec. 2101. Emergency fund for TANF program.
Sec. 2102. Extension of TANF supplemental grants.
Sec. 2103. Clarification of authority of States to use TANF funds carried over from prior years to provide TANF benefits and services.
Sec. 2104. Temporary resumption of prior child support law.

Subtitle C—Economic Recovery Payments to Certain Individuals

Sec. 2201. Economic recovery payment to recipients of social security, supplemental security income, railroad retirement benefits, and veterans disability compensation or pension benefits.
Sec. 2202. Special credit for certain government retirees.

Subtitle A—Unemployment Insurance

SEC. 2001. EXTENSION OF EMERGENCY UNEMPLOYMENT COMPENSATION PROGRAM.

(a) IN GENERAL.—Section 4007 of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 26 U.S.C. 3304 note), as amended by section 4 of the Unemployment Compensation Extension Act of 2008 (Public Law 110–449; 122 Stat. 5015), is amended—

(1) by striking "March 31, 2009" each place it appears and inserting "December 31, 2009";

(2) in the heading for subsection (b)(2), by striking "MARCH 31, 2009" and inserting "DECEMBER 31, 2009"; and

(3) in subsection (b)(3), by striking "August 27, 2009" and inserting "May 31, 2010".

(b) FINANCING PROVISIONS.—Section 4004 of such Act is amended by adding at the end the following:

"(e) TRANSFER OF FUNDS.—Notwithstanding any other provision of law, the Secretary of the Treasury shall transfer from the general fund of the Treasury (from funds not otherwise appropriated)—

"(1) to the extended unemployment compensation account (as established by section 905 of the Social Security Act) such

sums as the Secretary of Labor estimates to be necessary to make payments to States under this title by reason of the amendments made by section 2001(a) of the Assistance for Unemployed Workers and Struggling Families Act; and

"(2) to the employment security administration account (as established by section 901 of the Social Security Act) such sums as the Secretary of Labor estimates to be necessary for purposes of assisting States in meeting administrative costs by reason of the amendments referred to in paragraph (1).

There are appropriated from the general fund of the Treasury, without fiscal year limitation, the sums referred to in the preceding sentence and such sums shall not be required to be repaid.".

SEC. 2002. INCREASE IN UNEMPLOYMENT COMPENSATION BENEFITS.

(a) FEDERAL-STATE AGREEMENTS.—Any State which desires to do so may enter into and participate in an agreement under this section with the Secretary of Labor (hereinafter in this section referred to as the "Secretary"). Any State which is a party to an agreement under this section may, upon providing 30 days' written notice to the Secretary, terminate such agreement.

(b) PROVISIONS OF AGREEMENT.—

(1) ADDITIONAL COMPENSATION.—Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to the amount determined under the State law (before the application of this paragraph) plus an additional $25.

(2) ALLOWABLE METHODS OF PAYMENT.—Any additional compensation provided for in accordance with paragraph (1) shall be payable either—

(A) as an amount which is paid at the same time and in the same manner as any regular compensation otherwise payable for the week involved; or

(B) at the option of the State, by payments which are made separately from, but on the same weekly basis as, any regular compensation otherwise payable.

(c) NONREDUCTION RULE.—An agreement under this section shall not apply (or shall cease to apply) with respect to a State upon a determination by the Secretary that the method governing the computation of regular compensation under the State law of that State has been modified in a manner such that—

(1) the average weekly benefit amount of regular compensation which will be payable during the period of the agreement (determined disregarding any additional amounts attributable to the modification described in subsection (b)(1)) will be less than

(2) the average weekly benefit amount of regular compensation which would otherwise have been payable during such period under the State law, as in effect on December 31, 2008.

(d) PAYMENTS TO STATES.—

(1) IN GENERAL.—

(A) FULL REIMBURSEMENT.—There shall be paid to each State which has entered into an agreement under this section an amount equal to 100 percent of—

(i) the total amount of additional compensation (as described in subsection (b)(1)) paid to individuals by the State pursuant to such agreement; and

(ii) any additional administrative expenses incurred by the State by reason of such agreement (as determined by the Secretary).

(B) TERMS OF PAYMENTS.—Sums payable to any State by reason of such State's having an agreement under this section shall be payable, either in advance or by way of reimbursement (as determined by the Secretary), in such amounts as the Secretary estimates the State will be entitled to receive under this section for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that his estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

(2) CERTIFICATIONS.—The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this section.

(3) APPROPRIATION.—There are appropriated from the general fund of the Treasury, without fiscal year limitation, such sums as may be necessary for purposes of this subsection.

(e) APPLICABILITY.—

(1) IN GENERAL.—An agreement entered into under this section shall apply to weeks of unemployment—

(A) beginning after the date on which such agreement is entered into; and

(B) ending before January 1, 2010.

(2) TRANSITION RULE FOR INDIVIDUALS REMAINING ENTITLED TO REGULAR COMPENSATION AS OF JANUARY 1, 2010.—In the case of any individual who, as of the date specified in paragraph (1)(B), has not yet exhausted all rights to regular compensation under the State law of a State with respect to a benefit year that began before such date, additional compensation (as described in subsection (b)(1)) shall continue to be payable to such individual for any week beginning on or after such date for which the individual is otherwise eligible for regular compensation with respect to such benefit year.

(3) TERMINATION.—Notwithstanding any other provision of this subsection, no additional compensation (as described in subsection (b)(1)) shall be payable for any week beginning after June 30, 2010.

(f) FRAUD AND OVERPAYMENTS.—The provisions of section 4005 of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 122 Stat. 2356) shall apply with respect to additional compensation (as described in subsection (b)(1)) to the same extent and in the same manner as in the case of emergency unemployment compensation.

(g) APPLICATION TO OTHER UNEMPLOYMENT BENEFITS.—

(1) IN GENERAL.—Each agreement under this section shall include provisions to provide that the purposes of the preceding provisions of this section shall be applied with respect to unemployment benefits described in subsection (i)(3) to the same extent and in the same manner as if those benefits were regular compensation.

(2) ELIGIBILITY AND TERMINATION RULES.—Additional compensation (as described in subsection (b)(1))—

(A) shall not be payable, pursuant to this subsection, with respect to any unemployment benefits described in subsection (i)(3) for any week beginning on or after the date specified in subsection (e)(1)(B), except in the case of an individual who was eligible to receive additional compensation (as so described) in connection with any regular compensation or any unemployment benefits described in subsection (i)(3) for any period of unemployment ending before such date; and

(B) shall in no event be payable for any week beginning after the date specified in subsection (e)(3).

(h) DISREGARD OF ADDITIONAL COMPENSATION FOR PURPOSES OF MEDICAID AND SCHIP.—The monthly equivalent of any additional compensation paid under this section shall be disregarded in considering the amount of income of an individual for any purposes under title XIX and title XXI of the Social Security Act.

(i) DEFINITIONS.—For purposes of this section—

(1) the terms "compensation", "regular compensation", "benefit year", "State", "State agency", "State law", and "week" have the respective meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note);

(2) the term "emergency unemployment compensation" means emergency unemployment compensation under title IV of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 122 Stat. 2353); and

(3) any reference to unemployment benefits described in this paragraph shall be considered to refer to—

(A) extended compensation (as defined by section 205 of the Federal-State Extended Unemployment Compensation Act of 1970); and

(B) unemployment compensation (as defined by section 85(b) of the Internal Revenue Code of 1986) provided under any program administered by a State under an agreement with the Secretary.

SEC. 2003. SPECIAL TRANSFERS FOR UNEMPLOYMENT COMPENSATION MODERNIZATION.

(a) IN GENERAL.—Section 903 of the Social Security Act (42 U.S.C. 1103) is amended by adding at the end the following:

"Special Transfers in Fiscal Years 2009, 2010, and 2011 for Modernization

"(f)(1)(A) In addition to any other amounts, the Secretary of Labor shall provide for the making of unemployment compensation modernization incentive payments (hereinafter 'incentive payments')

to the accounts of the States in the Unemployment Trust Fund, by transfer from amounts reserved for that purpose in the Federal unemployment account, in accordance with succeeding provisions of this subsection.

"(B) The maximum incentive payment allowable under this subsection with respect to any State shall, as determined by the Secretary of Labor, be equal to the amount obtained by multiplying $7,000,000,000 by the same ratio as would apply under subsection (a)(2)(B) for purposes of determining such State's share of any excess amount (as described in subsection (a)(1)) that would have been subject to transfer to State accounts, as of October 1, 2008, under the provisions of subsection (a).

"(C) Of the maximum incentive payment determined under subparagraph (B) with respect to a State—

"(i) one-third shall be transferred to the account of such State upon a certification under paragraph (4)(B) that the State law of such State meets the requirements of paragraph (2); and

"(ii) the remainder shall be transferred to the account of such State upon a certification under paragraph (4)(B) that the State law of such State meets the requirements of paragraph (3).

"(2) The State law of a State meets the requirements of this paragraph if such State law—

"(A) uses a base period that includes the most recently completed calendar quarter before the start of the benefit year for purposes of determining eligibility for unemployment compensation; or

"(B) provides that, in the case of an individual who would not otherwise be eligible for unemployment compensation under the State law because of the use of a base period that does not include the most recently completed calendar quarter before the start of the benefit year, eligibility shall be determined using a base period that includes such calendar quarter.

"(3) The State law of a State meets the requirements of this paragraph if such State law includes provisions to carry out at least 2 of the following subparagraphs:

"(A) An individual shall not be denied regular unemployment compensation under any State law provisions relating to availability for work, active search for work, or refusal to accept work, solely because such individual is seeking only part-time work (as defined by the Secretary of Labor), except that the State law provisions carrying out this subparagraph may exclude an individual if a majority of the weeks of work in such individual's base period do not include part-time work (as so defined).

"(B) An individual shall not be disqualified from regular unemployment compensation for separating from employment if that separation is for any compelling family reason. For purposes of this subparagraph, the term 'compelling family reason' means the following:

"(i) Domestic violence, verified by such reasonable and confidential documentation as the State law may require, which causes the individual reasonably to believe that such individual's continued employment would jeopardize the safety of the individual or of any member of the individ-

ual's immediate family (as defined by the Secretary of Labor).

"(ii) The illness or disability of a member of the individual's immediate family (as those terms are defined by the Secretary of Labor).

"(iii) The need for the individual to accompany such individual's spouse—

"(I) to a place from which it is impractical for such individual to commute; and

"(II) due to a change in location of the spouse's employment.

"(C)(i) Weekly unemployment compensation is payable under this subparagraph to any individual who is unemployed (as determined under the State unemployment compensation law), has exhausted all rights to regular unemployment compensation under the State law, and is enrolled and making satisfactory progress in a State-approved training program or in a job training program authorized under the Workforce Investment Act of 1998, except that such compensation is not required to be paid to an individual who is receiving similar stipends or other training allowances for non-training costs.

"(ii) Each State-approved training program or job training program referred to in clause (i) shall prepare individuals who have been separated from a declining occupation, or who have been involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations at the individual's place of employment, for entry into a high-demand occupation.

"(iii) The amount of unemployment compensation payable under this subparagraph to an individual for a week of unemployment shall be equal to—

"(I) the individual's average weekly benefit amount (including dependents' allowances) for the most recent benefit year, less

"(II) any deductible income, as determined under State law.

The total amount of unemployment compensation payable under this subparagraph to any individual shall be equal to at least 26 times the individual's average weekly benefit amount (including dependents' allowances) for the most recent benefit year.

"(D) Dependents' allowances are provided, in the case of any individual who is entitled to receive regular unemployment compensation and who has any dependents (as defined by State law), in an amount equal to at least $15 per dependent per week, subject to any aggregate limitation on such allowances which the State law may establish (but which aggregate limitation on the total allowance for dependents paid to an individual may not be less than $50 for each week of unemployment or 50 percent of the individual's weekly benefit amount for the benefit year, whichever is less), except that a State law may provide for a reasonable reduction in the amount of any such allowance for a week of less than total unemployment.

"(4)(A) Any State seeking an incentive payment under this subsection shall submit an application therefor at such time, in such

manner, and complete with such information as the Secretary of Labor may within 60 days after the date of the enactment of this subsection prescribe (whether by regulation or otherwise), including information relating to compliance with the requirements of paragraph (2) or (3), as well as how the State intends to use the incentive payment to improve or strengthen the State's unemployment compensation program. The Secretary of Labor shall, within 30 days after receiving a complete application, notify the State agency of the State of the Secretary's findings with respect to the requirements of paragraph (2) or (3) (or both).

"(B)(i) If the Secretary of Labor finds that the State law provisions (disregarding any State law provisions which are not then currently in effect as permanent law or which are subject to discontinuation) meet the requirements of paragraph (2) or (3), as the case may be, the Secretary of Labor shall thereupon make a certification to that effect to the Secretary of the Treasury, together with a certification as to the amount of the incentive payment to be transferred to the State account pursuant to that finding. The Secretary of the Treasury shall make the appropriate transfer within 7 days after receiving such certification.

"(ii) For purposes of clause (i), State law provisions which are to take effect within 12 months after the date of their certification under this subparagraph shall be considered to be in effect as of the date of such certification.

"(C)(i) No certification of compliance with the requirements of paragraph (2) or (3) may be made with respect to any State whose State law is not otherwise eligible for certification under section 303 or approvable under section 3304 of the Federal Unemployment Tax Act.

"(ii) No certification of compliance with the requirements of paragraph (3) may be made with respect to any State whose State law is not in compliance with the requirements of paragraph (2).

"(iii) No application under subparagraph (A) may be considered if submitted before the date of the enactment of this subsection or after the latest date necessary (as specified by the Secretary of Labor) to ensure that all incentive payments under this subsection are made before October 1, 2011.

"(5)(A) Except as provided in subparagraph (B), any amount transferred to the account of a State under this subsection may be used by such State only in the payment of cash benefits to individuals with respect to their unemployment (including for dependents' allowances and for unemployment compensation under paragraph (3)(C)), exclusive of expenses of administration.

"(B) A State may, subject to the same conditions as set forth in subsection (c)(2) (excluding subparagraph (B) thereof, and deeming the reference to 'subsections (a) and (b)' in subparagraph (D) thereof to include this subsection), use any amount transferred to the account of such State under this subsection for the administration of its unemployment compensation law and public employment offices.

"(6) Out of any money in the Federal unemployment account not otherwise appropriated, the Secretary of the Treasury shall reserve $7,000,000,000 for incentive payments under this subsection. Any amount so reserved shall not be taken into account for purposes of any determination under section 902, 910, or 1203 of the amount in the Federal unemployment account as of any given time. Any

amount so reserved for which the Secretary of the Treasury has not received a certification under paragraph (4)(B) by the deadline described in paragraph (4)(C)(iii) shall, upon the close of fiscal year 2011, become unrestricted as to use as part of the Federal unemployment account.

"(7) For purposes of this subsection, the terms 'benefit year', 'base period', and 'week' have the respective meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note).

"Special Transfer in Fiscal Year 2009 for Administration

"(g)(1) In addition to any other amounts, the Secretary of the Treasury shall transfer from the employment security administration account to the account of each State in the Unemployment Trust Fund, within 30 days after the date of the enactment of this subsection, the amount determined with respect to such State under paragraph (2).

"(2) The amount to be transferred under this subsection to a State account shall (as determined by the Secretary of Labor and certified by such Secretary to the Secretary of the Treasury) be equal to the amount obtained by multiplying $500,000,000 by the same ratio as determined under subsection (f)(1)(B) with respect to such State.

"(3) Any amount transferred to the account of a State as a result of the enactment of this subsection may be used by the State agency of such State only in the payment of expenses incurred by it for—

"(A) the administration of the provisions of its State law carrying out the purposes of subsection (f)(2) or any subparagraph of subsection (f)(3);

"(B) improved outreach to individuals who might be eligible for regular unemployment compensation by virtue of any provisions of the State law which are described in subparagraph (A);

"(C) the improvement of unemployment benefit and unemployment tax operations, including responding to increased demand for unemployment compensation; and

"(D) staff-assisted reemployment services for unemployment compensation claimants.".

(b) REGULATIONS.—The Secretary of Labor may prescribe any regulations, operating instructions, or other guidance necessary to carry out the amendment made by subsection (a).

SEC. 2004. TEMPORARY ASSISTANCE FOR STATES WITH ADVANCES.

Section 1202(b) of the Social Security Act (42 U.S.C. 1322(b)) is amended by adding at the end the following new paragraph:

"(10)(A) With respect to the period beginning on the date of enactment of this paragraph and ending on December 31, 2010—

"(i) any interest payment otherwise due from a State under this subsection during such period shall be deemed to have been made by the State; and

"(ii) no interest shall accrue during such period on any advance or advances made under section 1201 to a State.

"(B) The provisions of subparagraph (A) shall have no effect on the requirement for interest payments under this subsection after the

period described in such subparagraph or on the accrual of interest under this subsection after such period.".

SEC. 2005. FULL FEDERAL FUNDING OF EXTENDED UNEMPLOYMENT COMPENSATION FOR A LIMITED PERIOD.

(a) IN GENERAL.—In the case of sharable extended compensation and sharable regular compensation paid for weeks of unemployment beginning after the date of the enactment of this section and before January 1, 2010, section 204(a)(1) of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) shall be applied by substituting "100 percent of" for "one-half of".

(b) SPECIAL RULE.—At the option of a State, for any weeks of unemployment beginning after the date of the enactment of this section and before January 1, 2010, an individual's eligibility period (as described in section 203(c) of the Federal-State Extended Unemployment Compensation Act of 1970) shall, for purposes of any determination of eligibility for extended compensation under the State law of such State, be considered to include any week which begins—

(1) after the date as of which such individual exhausts all rights to emergency unemployment compensation; and

(2) during an extended benefit period that began on or before the date described in paragraph (1).

(c) LIMITED EXTENSION.—In the case of an individual who receives extended compensation with respect to 1 or more weeks of unemployment beginning after the date of the enactment of this Act and before January 1, 2010, the provisions of subsections (a) and (b) shall, at the option of a State, be applied by substituting "ending before June 1, 2010" for "before January 1, 2010".

(d) EXTENSION OF TEMPORARY FEDERAL MATCHING FOR THE FIRST WEEK OF EXTENDED BENEFITS FOR STATES WITH NO WAITING WEEK.—

(1) IN GENERAL.—Section 5 of the Unemployment Compensation Extension Act of 2008 (Public Law 110–449) is amended by striking "December 8, 2009" and inserting "May 30, 2010".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if included in the enactment of the Unemployment Compensation Extension Act of 2008 (Public Law 110–449).

(e) DEFINITIONS.—For purposes of this section—

(1) the terms "sharable extended compensation" and "sharable regular compensation" have the respective meanings given such terms under section 204 of the Federal-State Extended Unemployment Compensation Act of 1970;

(2) the terms "extended compensation", "State", "State law", and "week" have the respective meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970;

(3) the term "emergency unemployment compensation" means benefits payable to individuals under title IV of the Supplemental Appropriations Act, 2008 with respect to their unemployment; and

(4) the term "extended benefit period" means an extended benefit period as determined in accordance with applicable pro-

visions of the Federal-State Extended Unemployment Compensation Act of 1970.

(f) REGULATIONS.—The Secretary of Labor may prescribe any operating instructions or regulations necessary to carry out this section.

SEC. 2006. TEMPORARY INCREASE IN EXTENDED UNEMPLOYMENT BENEFITS UNDER THE RAILROAD UNEMPLOYMENT INSURANCE ACT.

(a) IN GENERAL.—Section 2(c)(2) of the Railroad Unemployment Insurance Act (45 U.S.C. 352(c)(2)) is amended by adding at the end the following:

"(D) TEMPORARY INCREASE IN EXTENDED UNEMPLOYMENT BENEFITS.—

"(i) EMPLOYEES WITH 10 OR MORE YEARS OF SERVICE.—Subject to clause (iii), in the case of an employee who has 10 or more years of service (as so defined), with respect to extended unemployment benefits—

"(I) subparagraph (A) shall be applied by substituting '130 days of unemployment' for '65 days of unemployment'; and

"(II) subparagraph (B) shall be applied by inserting '(or, in the case of unemployment benefits, 13 consecutive 14-day periods)' after '7 consecutive 14-day periods'.

"(ii) EMPLOYEES WITH LESS THAN 10 YEARS OF SERVICE.—Subject to clause (iii), in the case of an employee who has less than 10 years of service (as so defined), with respect to extended unemployment benefits, this paragraph shall apply to such an employee in the same manner as this paragraph would apply to an employee described in clause (i) if such clause had not been enacted.

"(iii) APPLICATION.—The provisions of clauses (i) and (ii) shall apply to an employee who received normal benefits for days of unemployment under this Act during the period beginning July 1, 2008, and ending on June 30, 2009, except that no extended benefit period under this paragraph shall begin after December 31, 2009. Notwithstanding the preceding sentence, no benefits shall be payable under this subparagraph and clauses (i) and (ii) shall no longer be applicable upon the exhaustion of the funds appropriated under clause (iv) for payment of benefits under this subparagraph.

"(iv) APPROPRIATION.—Out of any funds in the Treasury not otherwise appropriated, there are appropriated $20,000,000 to cover the cost of additional extended unemployment benefits provided under this subparagraph, to remain available until expended.".

(b) FUNDING FOR ADMINISTRATION.—Out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Railroad Retirement Board $80,000 to cover the administrative expenses associated with the payment of additional extended unemployment benefits under section 2(c)(2)(D) of the Railroad Unemployment Insurance Act, as added by subsection (a), to remain available until expended.

Subtitle B—Assistance for Vulnerable Individuals

SEC. 2101. EMERGENCY FUND FOR TANF PROGRAM.

(a) TEMPORARY FUND.—

(1) IN GENERAL.—Section 403 of the Social Security Act (42 U.S.C. 603) is amended by adding at the end the following:

"(c) EMERGENCY FUND.—

"(1) ESTABLISHMENT.—There is established in the Treasury of the United States a fund which shall be known as the 'Emergency Contingency Fund for State Temporary Assistance for Needy Families Programs' (in this subsection referred to as the 'Emergency Fund').

"(2) DEPOSITS INTO FUND.—

"(A) IN GENERAL.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for fiscal year 2009, $5,000,000,000 for payment to the Emergency Fund.

"(B) AVAILABILITY AND USE OF FUNDS.—The amounts appropriated to the Emergency Fund under subparagraph (A) shall remain available through fiscal year 2010 and shall be used to make grants to States in each of fiscal years 2009 and 2010 in accordance with the requirements of paragraph (3).

"(C) LIMITATION.—In no case may the Secretary make a grant from the Emergency Fund for a fiscal year after fiscal year 2010.

"(3) GRANTS.—

"(A) GRANT RELATED TO CASELOAD INCREASES.—

"(i) IN GENERAL.—For each calendar quarter in fiscal year 2009 or 2010, the Secretary shall make a grant from the Emergency Fund to each State that—

"(I) requests a grant under this subparagraph for the quarter; and

"(II) meets the requirement of clause (ii) for the quarter.

"(ii) CASELOAD INCREASE REQUIREMENT.—A State meets the requirement of this clause for a quarter if the average monthly assistance caseload of the State for the quarter exceeds the average monthly assistance caseload of the State for the corresponding quarter in the emergency fund base year of the State.

"(iii) AMOUNT OF GRANT.—Subject to paragraph (5), the amount of the grant to be made to a State under this subparagraph for a quarter shall be an amount equal to 80 percent of the amount (if any) by which the total expenditures of the State for basic assistance (as defined by the Secretary) in the quarter, whether under the State program funded under this part or as qualified State expenditures, exceeds the total expenditures of the State for such assistance for the corresponding quarter in the emergency fund base year of the State.

"(B) GRANT RELATED TO INCREASED EXPENDITURES FOR NON-RECURRENT SHORT TERM BENEFITS.—

"(i) IN GENERAL.—For each calendar quarter in fiscal year 2009 or 2010, the Secretary shall make a grant from the Emergency Fund to each State that—

"(I) requests a grant under this subparagraph for the quarter; and

"(II) meets the requirement of clause (ii) for the quarter.

"(ii) NON-RECURRENT SHORT TERM EXPENDITURE REQUIREMENT.—A State meets the requirement of this clause for a quarter if the total expenditures of the State for non-recurrent short term benefits in the quarter, whether under the State program funded under this part or as qualified State expenditures, exceeds the total expenditures of the State for non-recurrent short term benefits in the corresponding quarter in the emergency fund base year of the State.

"(iii) AMOUNT OF GRANT.—Subject to paragraph (5), the amount of the grant to be made to a State under this subparagraph for a quarter shall be an amount equal to 80 percent of the excess described in clause (ii).

"(C) GRANT RELATED TO INCREASED EXPENDITURES FOR SUBSIDIZED EMPLOYMENT.—

"(i) IN GENERAL.—For each calendar quarter in fiscal year 2009 or 2010, the Secretary shall make a grant from the Emergency Fund to each State that—

"(I) requests a grant under this subparagraph for the quarter; and

"(II) meets the requirement of clause (ii) for the quarter.

"(ii) SUBSIDIZED EMPLOYMENT EXPENDITURE REQUIREMENT.—A State meets the requirement of this clause for a quarter if the total expenditures of the State for subsidized employment in the quarter, whether under the State program funded under this part or as qualified State expenditures, exceeds the total such expenditures of the State in the corresponding quarter in the emergency fund base year of the State.

"(iii) AMOUNT OF GRANT.—Subject to paragraph (5), the amount of the grant to be made to a State under this subparagraph for a quarter shall be an amount equal to 80 percent of the excess described in clause (ii).

"(4) AUTHORITY TO MAKE NECESSARY ADJUSTMENTS TO DATA AND COLLECT NEEDED DATA.—In determining the size of the caseload of a State and the expenditures of a State for basic assistance, non-recurrent short-term benefits, and subsidized employment, during any period for which the State requests funds under this subsection, and during the emergency fund base year of the State, the Secretary may make appropriate adjustments to the data, on a State-by-State basis, to ensure that the data are comparable with respect to the groups of families served and the types of aid provided. The Secretary may develop a mechanism for collecting expenditure data, including

procedures which allow States to make reasonable estimates, and may set deadlines for making revisions to the data.

"(5) LIMITATION.—The total amount payable to a single State under subsection (b) and this subsection for fiscal years 2009 and 2010 combined shall not exceed 50 percent of the annual State family assistance grant.

"(6) LIMITATIONS ON USE OF FUNDS.—A State to which an amount is paid under this subsection may use the amount only as authorized by section 404.

"(7) TIMING OF IMPLEMENTATION.—The Secretary shall implement this subsection as quickly as reasonably possible, pursuant to appropriate guidance to States.

"(8) APPLICATION TO INDIAN TRIBES.—This subsection shall apply to an Indian tribe with an approved tribal family assistance plan under section 412 in the same manner as this subsection applies to a State.

"(9) DEFINITIONS.—In this subsection:

"(A) AVERAGE MONTHLY ASSISTANCE CASELOAD DEFINED.—The term 'average monthly assistance caseload' means, with respect to a State and a quarter, the number of families receiving assistance during the quarter under the State program funded under this part or as qualified State expenditures, subject to adjustment under paragraph (4).

"(B) EMERGENCY FUND BASE YEAR.—

"(i) IN GENERAL.—The term 'emergency fund base year' means, with respect to a State and a category described in clause (ii), whichever of fiscal year 2007 or 2008 is the fiscal year in which the amount described by the category with respect to the State is the lesser.

"(ii) CATEGORIES DESCRIBED.—The categories described in this clause are the following:

"(I) The average monthly assistance caseload of the State.

"(II) The total expenditures of the State for non-recurrent short term benefits, whether under the State program funded under this part or as qualified State expenditures.

"(III) The total expenditures of the State for subsidized employment, whether under the State program funded under this part or as qualified State expenditures.

"(C) QUALIFIED STATE EXPENDITURES.—The term 'qualified State expenditures' has the meaning given the term in section 409(a)(7).".

(2) REPEAL.—Effective October 1, 2010, subsection (c) of section 403 of the Social Security Act (42 U.S.C. 603) (as added by paragraph (1)) is repealed, except that paragraph (9) of such subsection shall remain in effect until October 1, 2011, but only with respect to section 407(b)(3)(A)(i) of such Act.

(b) TEMPORARY MODIFICATION OF CASELOAD REDUCTION CREDIT.—Section 407(b)(3)(A)(i) of such Act (42 U.S.C. 607(b)(3)(A)(i)) is amended by inserting "(or if the immediately preceding fiscal year is fiscal year 2008, 2009, or 2010, then, at State option, during the emergency fund base year of the State with respect to the average

monthly assistance caseload of the State (within the meaning of section 403(c)(9)), except that, if a State elects such option for fiscal year 2008, the emergency fund base year of the State with respect to such caseload shall be fiscal year 2007))" before "under the State".

(c) DISREGARD FROM LIMITATION ON TOTAL PAYMENTS TO TERRITORIES.—Section 1108(a)(2) of the Social Security Act (42 U.S.C. 1308(a)(2)) is amended by inserting "403(c)(3)," after "403(a)(5),".

(d) SUNSET OF OTHER TEMPORARY PROVISIONS.—

(1) DISREGARD FROM LIMITATION ON TOTAL PAYMENTS TO TERRITORIES.—Effective October 1, 2010, section 1108(a)(2) of the Social Security Act (42 U.S.C. 1308(a)(2)) is amended by striking "403(c)(3)," (as added by subsection (c)).

(2) CASELOAD REDUCTION CREDIT.—Effective October 1, 2011, section 407(b)(3)(A)(i) of such Act (42 U.S.C. 607(b)(3)(A)(i)) is amended by striking "(or if the immediately preceding fiscal year is fiscal year 2008, 2009, or 2010, then, at State option, during the emergency fund base year of the State with respect to the average monthly assistance caseload of the State (within the meaning of section 403(c)(9)), except that, if a State elects such option for fiscal year 2008, the emergency fund base year of the State with respect to such caseload shall be fiscal year 2007))" (as added by subsection (b)).

SEC. 2102. EXTENSION OF TANF SUPPLEMENTAL GRANTS.

(a) EXTENSION THROUGH FISCAL YEAR 2010.—Section 7101(a) of the Deficit Reduction Act of 2005 (Public Law 109–171; 120 Stat. 135), as amended by section 301(a) of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110–275), is amended by striking "fiscal year 2009" and inserting "fiscal year 2010".

(b) CONFORMING AMENDMENT.—Section 403(a)(3)(H)(ii) of the Social Security Act (42 U.S.C. 603(a)(3)(H)(ii)) is amended to read as follows:

> *"(ii) subparagraph (G) shall be applied as if 'fiscal year 2010' were substituted for 'fiscal year 2001'; and".*

SEC. 2103. CLARIFICATION OF AUTHORITY OF STATES TO USE TANF FUNDS CARRIED OVER FROM PRIOR YEARS TO PROVIDE TANF BENEFITS AND SERVICES.

Section 404(e) of the Social Security Act (42 U.S.C. 604(e)) is amended to read as follows:

"(e) AUTHORITY TO CARRY OVER CERTAIN AMOUNTS FOR BENEFITS OR SERVICES OR FOR FUTURE CONTINGENCIES.—A State or tribe may use a grant made to the State or tribe under this part for any fiscal year to provide, without fiscal year limitation, any benefit or service that may be provided under the State or tribal program funded under this part.".

SEC. 2104. TEMPORARY RESUMPTION OF PRIOR CHILD SUPPORT LAW.

During the period that begins on October 1, 2008, and ends on September 30, 2010, section 455(a)(1) of the Social Security Act (42 U.S.C. 655(a)(1)) shall be applied and administered as if the phrase "from amounts paid to the State under section 458 or" does not appear in such section.

Subtitle C—Economic Recovery Payments to Certain Individuals

SEC. 2201. ECONOMIC RECOVERY PAYMENT TO RECIPIENTS OF SOCIAL SECURITY, SUPPLEMENTAL SECURITY INCOME, RAILROAD RETIREMENT BENEFITS, AND VETERANS DISABILITY COMPENSATION OR PENSION BENEFITS.

(a) AUTHORITY TO MAKE PAYMENTS.—

(1) ELIGIBILITY.—

(A) IN GENERAL.—Subject to paragraph (5)(B), the Secretary of the Treasury shall disburse a $250 payment to each individual who, for any month during the 3-month period ending with the month which ends prior to the month that includes the date of the enactment of this Act, is entitled to a benefit payment described in clause (i), (ii), or (iii) of subparagraph (B) or is eligible for a SSI cash benefit described in subparagraph (C).

(B) BENEFIT PAYMENT DESCRIBED.—For purposes of subparagraph (A):

(i) TITLE II BENEFIT.—A benefit payment described in this clause is a monthly insurance benefit payable (without regard to sections 202(j)(1) and 223(b) of the Social Security Act (42 U.S.C. 402(j)(1), 423(b)) under—

(I) section 202(a) of such Act (42 U.S.C. 402(a));

(II) section 202(b) of such Act (42 U.S.C. 402(b));

(III) section 202(c) of such Act (42 U.S.C. 402(c));

(IV) section 202(d)(1)(B)(ii) of such Act (42 U.S.C. 402(d)(1)(B)(ii));

(V) section 202(e) of such Act (42 U.S.C. 402(e));

(VI) section 202(f) of such Act (42 U.S.C. 402(f));

(VII) section 202(g) of such Act (42 U.S.C. 402(g));

(VIII) section 202(h) of such Act (42 U.S.C. 402(h));

(IX) section 223(a) of such Act (42 U.S.C. 423(a));

(X) section 227 of such Act (42 U.S.C. 427); or

(XI) section 228 of such Act (42 U.S.C. 428).

(ii) RAILROAD RETIREMENT BENEFIT.—A benefit payment described in this clause is a monthly annuity or pension payment payable (without regard to section 5(a)(ii) of the Railroad Retirement Act of 1974 (45 U.S.C. 231d(a)(ii))) under—

(I) section 2(a)(1) of such Act (45 U.S.C. 231a(a)(1));

(II) section 2(c) of such Act (45 U.S.C. 231a(c));

(III) section 2(d)(1)(i) of such Act (45 U.S.C. 231a(d)(1)(i));

(IV) section 2(d)(1)(ii) of such Act (45 U.S.C. 231a(d)(1)(ii));

(V) section 2(d)(1)(iii)(C) of such Act to an adult disabled child (45 U.S.C. 231a(d)(1)(iii)(C));

(VI) section 2(d)(1)(iv) of such Act (45 U.S.C. 231a(d)(1)(iv));

(VII) section 2(d)(1)(v) of such Act (45 U.S.C. 231a(d)(1)(v)); or

(VIII) section 7(b)(2) of such Act (45 U.S.C. 231f(b)(2)) with respect to any of the benefit payments described in clause (i) of this subparagraph.

(iii) VETERANS BENEFIT.—A benefit payment described in this clause is a compensation or pension payment payable under—

(I) section 1110, 1117, 1121, 1131, 1141, or 1151 of title 38, United States Code;

(II) section 1310, 1312, 1313, 1315, 1316, or 1318 of title 38, United States Code;

(III) section 1513, 1521, 1533, 1536, 1537, 1541, 1542, or 1562 of title 38, United States Code; or

(IV) section 1805, 1815, or 1821 of title 38, United States Code,

to a veteran, surviving spouse, child, or parent as described in paragraph (2), (3), (4)(A)(ii), or (5) of section 101, title 38, United States Code, who received that benefit during any month within the 3 month period ending with the month which ends prior to the month that includes the date of the enactment of this Act.

(C) SSI CASH BENEFIT DESCRIBED.—A SSI cash benefit described in this subparagraph is a cash benefit payable under section 1611 (other than under subsection (e)(1)(B) of such section) or 1619(a) of the Social Security Act (42 U.S.C. 1382, 1382h).

(2) REQUIREMENT.—A payment shall be made under paragraph (1) only to individuals who reside in 1 of the 50 States, the District of Columbia, Puerto Rico, Guam, the United States Virgin Islands, American Samoa, or the Northern Mariana Islands. For purposes of the preceding sentence, the determination of the individual's residence shall be based on the current address of record under a program specified in paragraph (1).

(3) NO DOUBLE PAYMENTS.—An individual shall be paid only 1 payment under this section, regardless of whether the individual is entitled to, or eligible for, more than 1 benefit or cash payment described in paragraph (1).

(4) LIMITATION.—A payment under this section shall not be made—

(A) in the case of an individual entitled to a benefit specified in paragraph (1)(B)(i) or paragraph (1)(B)(ii)(VIII) if, for the most recent month of such individual's entitlement in the 3-month period described in paragraph (1), such individual's benefit under such paragraph was not payable by reason of subsection (x) or (y) of section 202 the Social Security Act (42 U.S.C. 402) or section 1129A of such Act (42 U.S.C. 1320a–8a);

(B) in the case of an individual entitled to a benefit specified in paragraph (1)(B)(iii) if, for the most recent month of such individual's entitlement in the 3 month period described in paragraph (1), such individual's benefit under such paragraph was not payable, or was reduced, by reason of section 1505, 5313, or 5313B of title 38, United States Code;

(C) in the case of an individual entitled to a benefit specified in paragraph (1)(C) if, for such most recent month, such individual's benefit under such paragraph was not payable by reason of subsection (e)(1)(A) or (e)(4) of section 1611 (42 U.S.C. 1382) or section 1129A of such Act (42 U.S.C. 1320a–8a); or

(D) in the case of any individual whose date of death occurs before the date on which the individual is certified under subsection (b) to receive a payment under this section.

(5) TIMING AND MANNER OF PAYMENTS.—

(A) IN GENERAL.—The Secretary of the Treasury shall commence disbursing payments under this section at the earliest practicable date but in no event later than 120 days after the date of enactment of this Act. The Secretary of the Treasury may disburse any payment electronically to an individual in such manner as if such payment was a benefit payment or cash benefit to such individual under the applicable program described in subparagraph (B) or (C) of paragraph (1).

(B) DEADLINE.—No payments shall be disbursed under this section after December 31, 2010, regardless of any determinations of entitlement to, or eligibility for, such payments made after such date.

(b) IDENTIFICATION OF RECIPIENTS.—The Commissioner of Social Security, the Railroad Retirement Board, and the Secretary of Veterans Affairs shall certify the individuals entitled to receive payments under this section and provide the Secretary of the Treasury with the information needed to disburse such payments. A certification of an individual shall be unaffected by any subsequent determination or redetermination of the individual's entitlement to, or eligibility for, a benefit specified in subparagraph (B) or (C) of subsection (a)(1).

(c) TREATMENT OF PAYMENTS.—

(1) PAYMENT TO BE DISREGARDED FOR PURPOSES OF ALL FEDERAL AND FEDERALLY ASSISTED PROGRAMS.—A payment under subsection (a) shall not be regarded as income and shall not be regarded as a resource for the month of receipt and the following 9 months, for purposes of determining the eligibility of the recipient (or the recipient's spouse or family) for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program or under any State or local program financed in whole or in part with Federal funds.

(2) PAYMENT NOT CONSIDERED INCOME FOR PURPOSES OF TAXATION.—A payment under subsection (a) shall not be considered as gross income for purposes of the Internal Revenue Code of 1986.

(3) PAYMENTS PROTECTED FROM ASSIGNMENT.—The provisions of sections 207 and 1631(d)(1) of the Social Security Act (42 U.S.C. 407, 1383(d)(1)), section 14(a) of the Railroad Retirement Act of 1974 (45 U.S.C. 231m(a)), and section 5301 of title 38, United States Code, shall apply to any payment made under subsection (a) as if such payment was a benefit payment or cash benefit to such individual under the applicable program described in subparagraph (B) or (C) of subsection (a)(1).

(4) PAYMENTS SUBJECT TO OFFSET.—Notwithstanding paragraph (3), for purposes of section 3716 of title 31, United States Code, any payment made under this section shall not be considered a benefit payment or cash benefit made under the applicable program described in subparagraph (B) or (C) of subsection (a)(1) and all amounts paid shall be subject to offset to collect delinquent debts.

(d) PAYMENT TO REPRESENTATIVE PAYEES AND FIDUCIARIES.—

(1) IN GENERAL.—In any case in which an individual who is entitled to a payment under subsection (a) and whose benefit payment or cash benefit described in paragraph (1) of that subsection is paid to a representative payee or fiduciary, the payment under subsection (a) shall be made to the individual's representative payee or fiduciary and the entire payment shall be used only for the benefit of the individual who is entitled to the payment.

(2) APPLICABILITY.—

(A) PAYMENT ON THE BASIS OF A TITLE II OR SSI BENEFIT.—Section 1129(a)(3) of the Social Security Act (42 U.S.C. 1320a–8(a)(3)) shall apply to any payment made on the basis of an entitlement to a benefit specified in paragraph (1)(B)(i) or (1)(C) of subsection (a) in the same manner as such section applies to a payment under title II or XVI of such Act.

(B) PAYMENT ON THE BASIS OF A RAILROAD RETIREMENT BENEFIT.—Section 13 of the Railroad Retirement Act (45 U.S.C. 231l) shall apply to any payment made on the basis of an entitlement to a benefit specified in paragraph (1)(B)(ii) of subsection (a) in the same manner as such section applies to a payment under such Act.

(C) PAYMENT ON THE BASIS OF A VETERANS BENEFIT.—Sections 5502, 6106, and 6108 of title 38, United States Code, shall apply to any payment made on the basis of an entitlement to a benefit specified in paragraph (1)(B)(iii) of subsection (a) in the same manner as those sections apply to a payment under that title.

(e) APPROPRIATION.—Out of any sums in the Treasury of the United States not otherwise appropriated, the following sums are appropriated for the period of fiscal years 2009 through 2011, to remain available until expended, to carry out this section:

(1) For the Secretary of the Treasury, $131,000,000 for administrative costs incurred in carrying out this section, section 2202, section 36A of the Internal Revenue Code of 1986 (as added by this Act), and other provisions of this Act or the amendments made by this Act relating to the Internal Revenue Code of 1986.

(2) For the Commissioner of Social Security—

(A) such sums as may be necessary for payments to individuals certified by the Commissioner of Social Security as entitled to receive a payment under this section; and

(B) $90,000,000 for the Social Security Administration's Limitation on Administrative Expenses for costs incurred in carrying out this section.

(3) For the Railroad Retirement Board—

(A) such sums as may be necessary for payments to individuals certified by the Railroad Retirement Board as entitled to receive a payment under this section; and

(B) $1,400,000 to the Railroad Retirement Board's Limitation on Administration for administrative costs incurred in carrying out this section.

(4)(A) For the Secretary of Veterans Affairs—

(i) such sums as may be necessary for the Compensation and Pensions account, for payments to individuals certified by the Secretary of Veterans Affairs as entitled to receive a payment under this section; and

(ii) $100,000 for the Information Systems Technology account and $7,100,000 for the General Operating Expenses account for administrative costs incurred in carrying out this section.

(B) The Department of Veterans Affairs Compensation and Pensions account shall hereinafter be available for payments authorized under subsection (a)(1)(A) to individuals entitled to a benefit payment described in subsection (a)(1)(B)(iii).

SEC. 2202. SPECIAL CREDIT FOR CERTAIN GOVERNMENT RETIREES.

(a) IN GENERAL.—In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by subtitle A of the Internal Revenue Code of 1986 for the first taxable year beginning in 2009 an amount equal $250 ($500 in the case of a joint return where both spouses are eligible individuals).

(b) ELIGIBLE INDIVIDUAL.—For purposes of this section—

(1) IN GENERAL.—The term "eligible individual" means any individual—

(A) who receives during the first taxable year beginning in 2009 any amount as a pension or annuity for service performed in the employ of the United States or any State, or any instrumentality thereof, which is not considered employment for purposes of chapter 21 of the Internal Revenue Code of 1986, and

(B) who does not receive a payment under section 2201 during such taxable year.

(2) IDENTIFICATION NUMBER REQUIREMENT.—Such term shall not include any individual who does not include on the return of tax for the taxable year—

(A) such individual's social security account number, and

(B) in the case of a joint return, the social security account number of one of the taxpayers on such return.

For purposes of the preceding sentence, the social security account number shall not include a TIN (as defined in section 7701(a)(41) of the Internal Revenue Code of 1986) issued by the Internal Revenue Service. Any omission of a correct social security account number required under this subparagraph shall be

treated as a mathematical or clerical error for purposes of applying section 6213(g)(2) of such Code to such omission.

(c) TREATMENT OF CREDIT.—

(1) REFUNDABLE CREDIT.—

(A) IN GENERAL.—The credit allowed by subsection (a) shall be treated as allowed by subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986.

(B) APPROPRIATIONS.—For purposes of section 1324(b)(2) of title 31, United States Code, the credit allowed by subsection (a) shall be treated in the same manner a refund from the credit allowed under section 36A of the Internal Revenue Code of 1986 (as added by this Act).

(2) DEFICIENCY RULES.—For purposes of section 6211(b)(4)(A) of the Internal Revenue Code of 1986, the credit allowable by subsection (a) shall be treated in the same manner as the credit allowable under section 36A of the Internal Revenue Code of 1986 (as added by this Act).

(d) REFUNDS DISREGARDED IN THE ADMINISTRATION OF FEDERAL PROGRAMS AND FEDERALLY ASSISTED PROGRAMS.—Any credit or refund allowed or made to any individual by reason of this section shall not be taken into account as income and shall not be taken into account as resources for the month of receipt and the following 2 months, for purposes of determining the eligibility of such individual or any other individual for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program or under any State or local program financed in whole or in part with Federal funds.

TITLE III—PREMIUM ASSISTANCE FOR COBRA BENEFITS

SEC. 3000. TABLE OF CONTENTS.

The table of contents of this title is as follows:

TITLE III—PREMIUM ASSISTANCE FOR COBRA BENEFITS

Sec. 3000. Table of contents.
Sec. 3001. Premium assistance for COBRA benefits.

SEC. 3001. PREMIUM ASSISTANCE FOR COBRA BENEFITS.

(a) PREMIUM ASSISTANCE FOR COBRA CONTINUATION COVERAGE FOR INDIVIDUALS AND THEIR FAMILIES.—

(1) PROVISION OF PREMIUM ASSISTANCE.—

(A) REDUCTION OF PREMIUMS PAYABLE.—In the case of any premium for a period of coverage beginning on or after the date of the enactment of this Act for COBRA continuation coverage with respect to any assistance eligible individual, such individual shall be treated for purposes of any COBRA continuation provision as having paid the amount of such premium if such individual pays (or a person other than such individual's employer pays on behalf of such individual) 35 percent of the amount of such premium (as determined without regard to this subsection).

(B) PLAN ENROLLMENT OPTION.—

(i) IN GENERAL.—Notwithstanding the COBRA continuation provisions, an assistance eligible indi-

vidual may, not later than 90 days after the date of notice of the plan enrollment option described in this subparagraph, elect to enroll in coverage under a plan offered by the employer involved, or the employee organization involved (including, for this purpose, a joint board of trustees of a multiemployer trust affiliated with one or more multiemployer plans), that is different than coverage under the plan in which such individual was enrolled at the time the qualifying event occurred, and such coverage shall be treated as COBRA continuation coverage for purposes of the applicable COBRA continuation coverage provision.

(ii) REQUIREMENTS.—An assistance eligible individual may elect to enroll in different coverage as described in clause (i) only if—

(I) the employer involved has made a determination that such employer will permit assistance eligible individuals to enroll in different coverage as provided for this subparagraph;

(II) the premium for such different coverage does not exceed the premium for coverage in which the individual was enrolled at the time the qualifying event occurred;

(III) the different coverage in which the individual elects to enroll is coverage that is also offered to the active employees of the employer at the time at which such election is made; and

(IV) the different coverage is not—

(aa) coverage that provides only dental, vision, counseling, or referral services (or a combination of such services);

(bb) a flexible spending arrangement (as defined in section 106(c)(2) of the Internal Revenue Code of 1986); or

(cc) coverage that provides coverage for services or treatments furnished in an on-site medical facility maintained by the employer and that consists primarily of first-aid services, prevention and wellness care, or similar care (or a combination of such care).

(C) PREMIUM REIMBURSEMENT.—For provisions providing the balance of such premium, see section 6432 of the Internal Revenue Code of 1986, as added by paragraph (12).

(2) LIMITATION OF PERIOD OF PREMIUM ASSISTANCE.—

(A) IN GENERAL.—Paragraph (1)(A) shall not apply with respect to any assistance eligible individual for months of coverage beginning on or after the earlier of—

(i) the first date that such individual is eligible for coverage under any other group health plan (other than coverage consisting of only dental, vision, counseling, or referral services (or a combination thereof), coverage under a flexible spending arrangement (as defined in section 106(c)(2) of the Internal Revenue Code of 1986), or coverage of treatment that is furnished in

an on-site medical facility maintained by the employer and that consists primarily of first-aid services, prevention and wellness care, or similar care (or a combination thereof)) or is eligible for benefits under title XVIII of the Social Security Act, or

(ii) the earliest of—

(I) the date which is 9 months after the first day of the first month that paragraph (1)(A) applies with respect to such individual,

(II) the date following the expiration of the maximum period of continuation coverage required under the applicable COBRA continuation coverage provision, or

(III) the date following the expiration of the period of continuation coverage allowed under paragraph (4)(B)(ii).

(B) TIMING OF ELIGIBILITY FOR ADDITIONAL COVERAGE.—For purposes of subparagraph (A)(i), an individual shall not be treated as eligible for coverage under a group health plan before the first date on which such individual could be covered under such plan.

(C) NOTIFICATION REQUIREMENT.—An assistance eligible individual shall notify in writing the group health plan with respect to which paragraph (1)(A) applies if such paragraph ceases to apply by reason of subparagraph (A)(i). Such notice shall be provided to the group health plan in such time and manner as may be specified by the Secretary of Labor.

(3) ASSISTANCE ELIGIBLE INDIVIDUAL.—For purposes of this section, the term "assistance eligible individual" means any qualified beneficiary if—

(A) at any time during the period that begins with September 1, 2008, and ends with December 31, 2009, such qualified beneficiary is eligible for COBRA continuation coverage,

(B) such qualified beneficiary elects such coverage, and

(C) the qualifying event with respect to the COBRA continuation coverage consists of the involuntary termination of the covered employee's employment and occurred during such period.

(4) EXTENSION OF ELECTION PERIOD AND EFFECT ON COVERAGE.—

(A) IN GENERAL.—For purposes of applying section 605(a) of the Employee Retirement Income Security Act of 1974, section 4980B(f)(5)(A) of the Internal Revenue Code of 1986, section 2205(a) of the Public Health Service Act, and section 8905a(c)(2) of title 5, United States Code, in the case of an individual who does not have an election of COBRA continuation coverage in effect on the date of the enactment of this Act but who would be an assistance eligible individual if such election were so in effect, such individual may elect the COBRA continuation coverage under the COBRA continuation coverage provisions containing such sections during the period beginning on the date of the enactment of this Act and ending 60 days after the date on

which the notification required under paragraph (7)(C) is provided to such individual.

(B) COMMENCEMENT OF COVERAGE; NO REACH-BACK.—Any COBRA continuation coverage elected by a qualified beneficiary during an extended election period under subparagraph (A)—

(i) shall commence with the first period of coverage beginning on or after the date of the enactment of this Act, and

(ii) shall not extend beyond the period of COBRA continuation coverage that would have been required under the applicable COBRA continuation coverage provision if the coverage had been elected as required under such provision.

(C) PREEXISTING CONDITIONS.—With respect to a qualified beneficiary who elects COBRA continuation coverage pursuant to subparagraph (A), the period—

(i) beginning on the date of the qualifying event, and

(ii) ending with the beginning of the period described in subparagraph (B)(i), shall be disregarded for purposes of determining the 63-day periods referred to in section 701(c)(2) of the Employee Retirement Income Security Act of 1974, section 9801(c)(2) of the Internal Revenue Code of 1986, and section 2701(c)(2) of the Public Health Service Act.

(5) EXPEDITED REVIEW OF DENIALS OF PREMIUM ASSISTANCE.—In any case in which an individual requests treatment as an assistance eligible individual and is denied such treatment by the group health plan, the Secretary of Labor (or the Secretary of Health and Human Services in connection with COBRA continuation coverage which is provided other than pursuant to part 6 of subtitle B of title I of the Employee Retirement Income Security Act of 1974), in consultation with the Secretary of the Treasury, shall provide for expedited review of such denial. An individual shall be entitled to such review upon application to such Secretary in such form and manner as shall be provided by such Secretary. Such Secretary shall make a determination regarding such individual's eligibility within 15 business days after receipt of such individual's application for review under this paragraph. Either Secretary's determination upon review of the denial shall be de novo and shall be the final determination of such Secretary. A reviewing court shall grant deference to such Secretary's determination. The provisions of this paragraph, paragraphs (1) through (4), and paragraph (7) shall be treated as provisions of title I of the Employee Retirement Income Security Act of 1974 for purposes of part 5 of subtitle B of such title.

(6) DISREGARD OF SUBSIDIES FOR PURPOSES OF FEDERAL AND STATE PROGRAMS.—Notwithstanding any other provision of law, any premium reduction with respect to an assistance eligible individual under this subsection shall not be considered income or resources in determining eligibility for, or the amount of assistance or benefits provided under, any other public ben-

efit provided under Federal law or the law of any State or political subdivision thereof.

(7) NOTICES TO INDIVIDUALS.—

(A) GENERAL NOTICE.—

(i) IN GENERAL.—In the case of notices provided under section 606(a)(4) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1166(4)), section 4980B(f)(6)(D) of the Internal Revenue Code of 1986, section 2206(4) of the Public Health Service Act (42 U.S.C. 300bb-6(4)), or section 8905a(f)(2)(A) of title 5, United States Code, with respect to individuals who, during the period described in paragraph (3)(A), become entitled to elect COBRA continuation coverage, the requirements of such sections shall not be treated as met unless such notices include an additional notification to the recipient of—

(I) the availability of premium reduction with respect to such coverage under this subsection, and

(II) the option to enroll in different coverage if the employer permits assistance eligible individuals to elect enrollment in different coverage (as described in paragraph (1)(B)).

(ii) ALTERNATIVE NOTICE.—In the case of COBRA continuation coverage to which the notice provision under such sections does not apply, the Secretary of Labor, in consultation with the Secretary of the Treasury and the Secretary of Health and Human Services, shall, in consultation with administrators of the group health plans (or other entities) that provide or administer the COBRA continuation coverage involved, provide rules requiring the provision of such notice.

(iii) FORM.—The requirement of the additional notification under this subparagraph may be met by amendment of existing notice forms or by inclusion of a separate document with the notice otherwise required.

(B) SPECIFIC REQUIREMENTS.—Each additional notification under subparagraph (A) shall include—

(i) the forms necessary for establishing eligibility for premium reduction under this subsection,

(ii) the name, address, and telephone number necessary to contact the plan administrator and any other person maintaining relevant information in connection with such premium reduction,

(iii) a description of the extended election period provided for in paragraph (4)(A),

(iv) a description of the obligation of the qualified beneficiary under paragraph (2)(C) to notify the plan providing continuation coverage of eligibility for subsequent coverage under another group health plan or eligibility for benefits under title XVIII of the Social Security Act and the penalty provided under section 6720C of the Internal Revenue Code of 1986 for failure to so notify the plan,

(v) a description, displayed in a prominent manner, of the qualified beneficiary's right to a reduced premium and any conditions on entitlement to the reduced premium, and

(vi) a description of the option of the qualified beneficiary to enroll in different coverage if the employer permits such beneficiary to elect to enroll in such different coverage under paragraph (1)(B).

(C) NOTICE IN CONNECTION WITH EXTENDED ELECTION PERIODS.—In the case of any assistance eligible individual (or any individual described in paragraph (4)(A)) who became entitled to elect COBRA continuation coverage before the date of the enactment of this Act, the administrator of the group health plan (or other entity) involved shall provide (within 60 days after the date of enactment of this Act) for the additional notification required to be provided under subparagraph (A) and failure to provide such notice shall be treated as a failure to meet the notice requirements under the applicable COBRA continuation provision.

(D) MODEL NOTICES.—Not later than 30 days after the date of enactment of this Act—

(i) the Secretary of Labor, in consultation with the Secretary of the Treasury and the Secretary of Health and Human Services, shall prescribe models for the additional notification required under this paragraph (other than the additional notification described in clause (ii)), and

(ii) in the case of any additional notification provided pursuant to subparagraph (A) under section 8905a(f)(2)(A) of title 5, United States Code, the Office of Personnel Management shall prescribe a model for such additional notification.

(8) REGULATIONS.—The Secretary of the Treasury may prescribe such regulations or other guidance as may be necessary or appropriate to carry out the provisions of this subsection, including the prevention of fraud and abuse under this subsection, except that the Secretary of Labor and the Secretary of Health and Human Services may prescribe such regulations (including interim final regulations) or other guidance as may be necessary or appropriate to carry out the provisions of paragraphs (5), (7), and (9).

(9) OUTREACH.—The Secretary of Labor, in consultation with the Secretary of the Treasury and the Secretary of Health and Human Services, shall provide outreach consisting of public education and enrollment assistance relating to premium reduction provided under this subsection. Such outreach shall target employers, group health plan administrators, public assistance programs, States, insurers, and other entities as determined appropriate by such Secretaries. Such outreach shall include an initial focus on those individuals electing continuation coverage who are referred to in paragraph (7)(C). Information on such premium reduction, including enrollment, shall also be made available on websites of the Departments of Labor, Treasury, and Health and Human Services.

(10) DEFINITIONS.—For purposes of this section—

(A) ADMINISTRATOR.—The term "administrator" has the meaning given such term in section 3(16)(A) of the Employee Retirement Income Security Act of 1974.

(B) COBRA CONTINUATION COVERAGE.—The term "COBRA continuation coverage" means continuation coverage provided pursuant to part 6 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (other than under section 609), title XXII of the Public Health Service Act, section 4980B of the Internal Revenue Code of 1986 (other than subsection (f)(1) of such section insofar as it relates to pediatric vaccines), or section 8905a of title 5, United States Code, or under a State program that provides comparable continuation coverage. Such term does not include coverage under a health flexible spending arrangement under a cafeteria plan within the meaning of section 125 of the Internal Revenue Code of 1986.

(C) COBRA CONTINUATION PROVISION.—The term "COBRA continuation provision" means the provisions of law described in subparagraph (B).

(D) COVERED EMPLOYEE.—The term "covered employee" has the meaning given such term in section 607(2) of the Employee Retirement Income Security Act of 1974.

(E) QUALIFIED BENEFICIARY.—The term "qualified beneficiary" has the meaning given such term in section 607(3) of the Employee Retirement Income Security Act of 1974.

(F) GROUP HEALTH PLAN.—The term "group health plan" has the meaning given such term in section 607(1) of the Employee Retirement Income Security Act of 1974.

(G) STATE.—The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(H) PERIOD OF COVERAGE.—Any reference in this subsection to a period of coverage shall be treated as a reference to a monthly or shorter period of coverage with respect to which premiums are charged with respect to such coverage.

(11) REPORTS.—

(A) INTERIM REPORT.—The Secretary of the Treasury shall submit an interim report to the Committee on Education and Labor, the Committee on Ways and Means, and the Committee on Energy and Commerce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions and the Committee on Finance of the Senate regarding the premium reduction provided under this subsection that includes—

(i) the number of individuals provided such assistance as of the date of the report; and

(ii) the total amount of expenditures incurred (with administrative expenditures noted separately) in connection with such assistance as of the date of the report.

(B) FINAL REPORT.—As soon as practicable after the last period of COBRA continuation coverage for which premium reduction is provided under this section, the Sec-

retary of the Treasury shall submit a final report to each Committee referred to in subparagraph (A) that includes—

(i) the number of individuals provided premium reduction under this section;

(ii) the average dollar amount (monthly and annually) of premium reductions provided to such individuals; and

(iii) the total amount of expenditures incurred (with administrative expenditures noted separately) in connection with premium reduction under this section.

(12) COBRA PREMIUM ASSISTANCE.—

(A) IN GENERAL.—Subchapter B of chapter 65 of the Internal Revenue Code of 1986, as amended by this Act, is amended by adding at the end the following new section:

"SEC. 6432. COBRA PREMIUM ASSISTANCE.

"(a) IN GENERAL.—The person to whom premiums are payable under COBRA continuation coverage shall be reimbursed as provided in subsection (c) for the amount of premiums not paid by assistance eligible individuals by reason of section 3002(a) of the Health Insurance Assistance for the Unemployed Act of 2009.

"(b) PERSON ENTITLED TO REIMBURSEMENT.—For purposes of subsection (a), except as otherwise provided by the Secretary, the person to whom premiums are payable under COBRA continuation coverage shall be treated as being—

"(1) in the case of any group health plan which is a multiemployer plan (as defined in section 3(37) of the Employee Retirement Income Security Act of 1974), the plan,

"(2) in the case of any group health plan not described in paragraph (1)—

"(A) which is subject to the COBRA continuation provisions contained in—

"(i) the Internal Revenue Code of 1986,

"(ii) the Employee Retirement Income Security Act of 1974,

"(iii) the Public Health Service Act, or

"(iv) title 5, United States Code, or

"(B) under which some or all of the coverage is not provided by insurance,

the employer maintaining the plan, and

"(3) in the case of any group health plan not described in paragraph (1) or (2), the insurer providing the coverage under the group health plan.

"(c) METHOD OF REIMBURSEMENT.—Except as otherwise provided by the Secretary—

"(1) TREATMENT AS PAYMENT OF PAYROLL TAXES.—Each person entitled to reimbursement under subsection (a) (and filing a claim for such reimbursement at such time and in such manner as the Secretary may require) shall be treated for purposes of this title and section 1324(b)(2) of title 31, United States Code, as having paid to the Secretary, on the date that the assistance eligible individual's premium payment is received, payroll taxes in an amount equal to the portion of such reimbursement which relates to such premium. To the extent that the amount treated as paid under the preceding sentence exceeds the amount of such person's liability for such taxes, the

Secretary shall credit or refund such excess in the same manner as if it were an overpayment of such taxes.

"(2) OVERSTATEMENTS.—Any overstatement of the reimbursement to which a person is entitled under this section (and any amount paid by the Secretary as a result of such overstatement) shall be treated as an underpayment of payroll taxes by such person and may be assessed and collected by the Secretary in the same manner as payroll taxes.

"(3) REIMBURSEMENT CONTINGENT ON PAYMENT OF REMAINING PREMIUM.—No reimbursement may be made under this section to a person with respect to any assistance eligible individual until after the reduced premium required under section 3002(a)(1)(A) of such Act with respect to such individual has been received.

"(d) DEFINITIONS.—For purposes of this section—

"(1) PAYROLL TAXES.—The term 'payroll taxes' means—

"(A) amounts required to be deducted and withheld for the payroll period under section 3402 (relating to wage withholding),

"(B) amounts required to be deducted for the payroll period under section 3102 (relating to FICA employee taxes), and

"(C) amounts of the taxes imposed for the payroll period under section 3111 (relating to FICA employer taxes).

"(2) PERSON.—The term 'person' includes any governmental entity.

"(e) REPORTING.—Each person entitled to reimbursement under subsection (a) for any period shall submit such reports (at such time and in such manner) as the Secretary may require, including—

"(1) an attestation of involuntary termination of employment for each covered employee on the basis of whose termination entitlement to reimbursement is claimed under subsection (a),

"(2) a report of the amount of payroll taxes offset under subsection (a) for the reporting period and the estimated offsets of such taxes for the subsequent reporting period in connection with reimbursements under subsection (a), and

"(3) a report containing the TINs of all covered employees, the amount of subsidy reimbursed with respect to each covered employee and qualified beneficiaries, and a designation with respect to each covered employee as to whether the subsidy reimbursement is for coverage of 1 individual or 2 or more individuals.

"(f) REGULATIONS.—The Secretary shall issue such regulations or other guidance as may be necessary or appropriate to carry out this section, including—

"(1) the requirement to report information or the establishment of other methods for verifying the correct amounts of reimbursements under this section, and

"(2) the application of this section to group health plans that are multiemployer plans (as defined in section 3(37) of the Employee Retirement Income Security Act of 1974).".

(B) SOCIAL SECURITY TRUST FUNDS HELD HARMLESS.—In determining any amount transferred or appropriated to any fund under the Social Security Act, section 6432 of the

Internal Revenue Code of 1986 shall not be taken into account.

(C) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 65 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

"Sec. 6432. COBRA premium assistance.".

(D) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to premiums to which subsection (a)(1)(A) applies.

(E) SPECIAL RULE.—

(i) IN GENERAL.—In the case of an assistance eligible individual who pays, with respect to the first period of COBRA continuation coverage to which subsection (a)(1)(A) applies or the immediately subsequent period, the full premium amount for such coverage, the person to whom such payment is payable shall—

(I) make a reimbursement payment to such individual for the amount of such premium paid in excess of the amount required to be paid under subsection (a)(1)(A); or

(II) provide credit to the individual for such amount in a manner that reduces one or more subsequent premium payments that the individual is required to pay under such subsection for the coverage involved.

(ii) REIMBURSING EMPLOYER.—A person to which clause (i) applies shall be reimbursed as provided for in section 6432 of the Internal Revenue Code of 1986 for any payment made, or credit provided, to the employee under such clause.

(iii) PAYMENT OR CREDITS.—Unless it is reasonable to believe that the credit for the excess payment in clause (i)(II) will be used by the assistance eligible individual within 180 days of the date on which the person receives from the individual the payment of the full premium amount, a person to which clause (i) applies shall make the payment required under such clause to the individual within 60 days of such payment of the full premium amount. If, as of any day within the 180-day period, it is no longer reasonable to believe that the credit will be used during that period, payment equal to the remainder of the credit outstanding shall be made to the individual within 60 days of such day.

(13) PENALTY FOR FAILURE TO NOTIFY HEALTH PLAN OF CESSATION OF ELIGIBILITY FOR PREMIUM ASSISTANCE.—

(A) IN GENERAL.—Part I of subchapter B of chapter 68 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

"SEC. 6720C. PENALTY FOR FAILURE TO NOTIFY HEALTH PLAN OF CESSATION OF ELIGIBILITY FOR COBRA PREMIUM ASSISTANCE.

"(a) IN GENERAL.—Any person required to notify a group health plan under section 3002(a)(2)(C)) of the Health Insurance Assistance

for the Unemployed Act of 2009 who fails to make such a notification at such time and in such manner as the Secretary of Labor may require shall pay a penalty of 110 percent of the premium reduction provided under such section after termination of eligibility under such subsection.

"(b) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under subsection (a) with respect to any failure if it is shown that such failure is due to reasonable cause and not to willful neglect.".

(B) CLERICAL AMENDMENT.—The table of sections of part I of subchapter B of chapter 68 of such Code is amended by adding at the end the following new item:

"Sec. 6720C. Penalty for failure to notify health plan of cessation of eligibility for COBRA premium assistance.".

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to failures occurring after the date of the enactment of this Act.

(14) COORDINATION WITH HCTC.—

(A) IN GENERAL.—Subsection (g) of section 35 of the Internal Revenue Code of 1986 is amended by redesignating paragraph (9) as paragraph (10) and inserting after paragraph (8) the following new paragraph:

"(9) COBRA PREMIUM ASSISTANCE.—In the case of an assistance eligible individual who receives premium reduction for COBRA continuation coverage under section 3002(a) of the Health Insurance Assistance for the Unemployed Act of 2009 for any month during the taxable year, such individual shall not be treated as an eligible individual, a certified individual, or a qualifying family member for purposes of this section or section 7527 with respect to such month.".

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall apply to taxable years ending after the date of the enactment of this Act.

(15) EXCLUSION OF COBRA PREMIUM ASSISTANCE FROM GROSS INCOME.—

(A) IN GENERAL.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 139B the following new section:

"SEC. 139C. COBRA PREMIUM ASSISTANCE.

"In the case of an assistance eligible individual (as defined in section 3002 of the Health Insurance Assistance for the Unemployed Act of 2009), gross income does not include any premium reduction provided under subsection (a) of such section.".

(B) CLERICAL AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 of such Code is amended by inserting after the item relating to section 139B the following new item:

"Sec. 139C. COBRA premium assistance.".

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to taxable years ending after the date of the enactment of this Act.

(b) ELIMINATION OF PREMIUM SUBSIDY FOR HIGH-INCOME INDIVIDUALS.—

(1) RECAPTURE OF SUBSIDY FOR HIGH-INCOME INDIVIDUALS.—If—

(A) premium assistance is provided under this section with respect to any COBRA continuation coverage which covers the taxpayer, the taxpayer's spouse, or any dependent (within the meaning of section 152 of the Internal Revenue Code of 1986, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of the taxpayer during any portion of the taxable year, and

(B) the taxpayer's modified adjusted gross income for such taxable year exceeds $125,000 ($250,000 in the case of a joint return),

then the tax imposed by chapter 1 of such Code with respect to the taxpayer for such taxable year shall be increased by the amount of such assistance.

(2) PHASE-IN OF RECAPTURE.—

(A) IN GENERAL.—In the case of a taxpayer whose modified adjusted gross income for the taxable year does not exceed $145,000 ($290,000 in the case of a joint return), the increase in the tax imposed under paragraph (1) shall not exceed the phase-in percentage of such increase (determined without regard to this paragraph).

(B) PHASE-IN PERCENTAGE.—For purposes of this subsection, the term "phase-in percentage" means the ratio (expressed as a percentage) obtained by dividing—

(i) the excess of described in subparagraph (B) of paragraph (1), by

(ii) $20,000 ($40,000 in the case of a joint return).

(3) OPTION FOR HIGH-INCOME INDIVIDUALS TO WAIVE ASSISTANCE AND AVOID RECAPTURE.—Notwithstanding subsection (a)(3), an individual shall not be treated as an assistance eligible individual for purposes of this section and section 6432 of the Internal Revenue Code of 1986 if such individual—

(A) makes a permanent election (at such time and in such form and manner as the Secretary of the Treasury may prescribe) to waive the right to the premium assistance provided under this section, and

(B) notifies the entity to whom premiums are reimbursed under section 6432(a) of such Code of such election.

(4) MODIFIED ADJUSTED GROSS INCOME.—For purposes of this subsection, the term "modified adjusted gross income" means the adjusted gross income (as defined in section 62 of the Internal Revenue Code of 1986) of the taxpayer for the taxable year increased by any amount excluded from gross income under section 911, 931, or 933 of such Code.

(5) CREDITS NOT ALLOWED AGAINST TAX, ETC.—For purposes determining regular tax liability under section 26(b) of such Code, the increase in tax under this subsection shall not be treated as a tax imposed under chapter 1 of such Code.

(6) REGULATIONS.—The Secretary of the Treasury shall issue such regulations or other guidance as are necessary or appropriate to carry out this subsection, including requirements that the entity to whom premiums are reimbursed under section 6432(a) of the Internal Revenue Code of 1986 report to the Secretary, and to each assistance eligible individual, the amount of

premium assistance provided under subsection (a) with respect to each such individual.

(7) EFFECTIVE DATE.—The provisions of this subsection shall apply to taxable years ending after the date of the enactment of this Act.

TITLE IV—MEDICARE AND MEDICAID HEALTH INFORMATION TECHNOLOGY; MISCELLANEOUS MEDICARE PROVISIONS

SEC. 4001. TABLE OF CONTENTS OF TITLE.

The table of contents of this title is as follows:

TITLE IV—MEDICARE AND MEDICAID HEALTH INFORMATION TECHNOLOGY; MISCELLANEOUS MEDICARE PROVISIONS

Sec. 4001. Table of contents of title.

Subtitle A—Medicare Incentives

Sec. 4101. Incentives for eligible professionals.
Sec. 4102. Incentives for hospitals.
Sec. 4103. Treatment of payments and savings; implementation funding.
Sec. 4104. Studies and reports on health information technology.

Subtitle B—Medicaid Incentives

Sec. 4201. Medicaid provider HIT adoption and operation payments; implementation funding.

Subtitle C—Miscellaneous Medicare Provisions

Sec. 4301. Moratoria on certain Medicare regulations.
Sec. 4302. Long-term care hospital technical corrections.

Subtitle A—Medicare Incentives

SEC. 4101. INCENTIVES FOR ELIGIBLE PROFESSIONALS.

(a) INCENTIVE PAYMENTS.—Section 1848 of the Social Security Act (42 U.S.C. 1395w–4) is amended by adding at the end the following new subsection:

"(o) INCENTIVES FOR ADOPTION AND MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY.—

"(1) INCENTIVE PAYMENTS.—

"(A) IN GENERAL.—

"(i) IN GENERAL.—Subject to the succeeding subparagraphs of this paragraph, with respect to covered professional services furnished by an eligible professional during a payment year (as defined in subparagraph (E)), if the eligible professional is a meaningful EHR user (as determined under paragraph (2)) for the EHR reporting period with respect to such year, in addition to the amount otherwise paid under this part, there also shall be paid to the eligible professional (or to an employer or facility in the cases described in clause (A) of section 1842(b)(6)), from the Federal Supplementary Medical Insurance Trust Fund established under section 1841 an amount equal to 75 percent of the Secretary's estimate (based on claims submitted not later than 2 months after the end of the payment year) of the allowed charges under this part for all such cov-

ered professional services furnished by the eligible professional during such year.

"(ii) NO INCENTIVE PAYMENTS WITH RESPECT TO YEARS AFTER 2016.—No incentive payments may be made under this subsection with respect to a year after 2016.

"(B) LIMITATIONS ON AMOUNTS OF INCENTIVE PAYMENTS.—

"(i) IN GENERAL.—In no case shall the amount of the incentive payment provided under this paragraph for an eligible professional for a payment year exceed the applicable amount specified under this subparagraph with respect to such eligible professional and such year.

"(ii) AMOUNT.—Subject to clauses (iii) through (v), the applicable amount specified in this subparagraph for an eligible professional is as follows:

"(I) For the first payment year for such professional, $15,000 (or, if the first payment year for such eligible professional is 2011 or 2012, $18,000).

"(II) For the second payment year for such professional, $12,000.

"(III) For the third payment year for such professional, $8,000.

"(IV) For the fourth payment year for such professional, $4,000.

"(V) For the fifth payment year for such professional, $2,000.

"(VI) For any succeeding payment year for such professional, $0.

"(iii) PHASE DOWN FOR ELIGIBLE PROFESSIONALS FIRST ADOPTING EHR AFTER 2013.—If the first payment year for an eligible professional is after 2013, then the amount specified in this subparagraph for a payment year for such professional is the same as the amount specified in clause (ii) for such payment year for an eligible professional whose first payment year is 2013.

"(iv) INCREASE FOR CERTAIN ELIGIBLE PROFESSIONALS.—In the case of an eligible professional who predominantly furnishes services under this part in an area that is designated by the Secretary (under section 332(a)(1)(A) of the Public Health Service Act) as a health professional shortage area, the amount that would otherwise apply for a payment year for such professional under subclauses (I) through (V) of clause (ii) shall be increased by 10 percent. In implementing the preceding sentence, the Secretary may, as determined appropriate, apply provisions of subsections (m) and (u) of section 1833 in a similar manner as such provisions apply under such subsection.

"(v) NO INCENTIVE PAYMENT IF FIRST ADOPTING AFTER 2014.—If the first payment year for an eligible professional is after 2014 then the applicable amount

specified in this subparagraph for such professional for such year and any subsequent year shall be $0.

"(C) NON-APPLICATION TO HOSPITAL-BASED ELIGIBLE PROFESSIONALS.—

"(i) IN GENERAL.—No incentive payment may be made under this paragraph in the case of a hospital-based eligible professional.

"(ii) HOSPITAL-BASED ELIGIBLE PROFESSIONAL.—For purposes of clause (i), the term 'hospital-based eligible professional' means, with respect to covered professional services furnished by an eligible professional during the EHR reporting period for a payment year, an eligible professional, such as a pathologist, anesthesiologist, or emergency physician, who furnishes substantially all of such services in a hospital setting (whether inpatient or outpatient) and through the use of the facilities and equipment, including qualified electronic health records, of the hospital. The determination of whether an eligible professional is a hospital-based eligible professional shall be made on the basis of the site of service (as defined by the Secretary) and without regard to any employment or billing arrangement between the eligible professional and any other provider.

"(D) PAYMENT.—

"(i) FORM OF PAYMENT.—The payment under this paragraph may be in the form of a single consolidated payment or in the form of such periodic installments as the Secretary may specify.

"(ii) COORDINATION OF APPLICATION OF LIMITATION FOR PROFESSIONALS IN DIFFERENT PRACTICES.—In the case of an eligible professional furnishing covered professional services in more than one practice (as specified by the Secretary), the Secretary shall establish rules to coordinate the incentive payments, including the application of the limitation on amounts of such incentive payments under this paragraph, among such practices.

"(iii) COORDINATION WITH MEDICAID.—The Secretary shall seek, to the maximum extent practicable, to avoid duplicative requirements from Federal and State governments to demonstrate meaningful use of certified EHR technology under this title and title XIX. The Secretary may also adjust the reporting periods under such title and such subsections in order to carry out this clause.

"(E) PAYMENT YEAR DEFINED.—

"(i) IN GENERAL.—For purposes of this subsection, the term 'payment year' means a year beginning with 2011.

"(ii) FIRST, SECOND, ETC., PAYMENT YEAR.—The term 'first payment year' means, with respect to covered professional services furnished by an eligible professional, the first year for which an incentive payment is made for such services under this subsection. The

terms 'second payment year', 'third payment year', 'fourth payment year', and 'fifth payment year' mean, with respect to covered professional services furnished by such eligible professional, each successive year immediately following the first payment year for such professional.

"(2) MEANINGFUL EHR USER.—

"(A) IN GENERAL.—For purposes of paragraph (1), an eligible professional shall be treated as a meaningful EHR user for an EHR reporting period for a payment year (or, for purposes of subsection (a)(7), for an EHR reporting period under such subsection for a year) if each of the following requirements is met:

"(i) MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY.—The eligible professional demonstrates to the satisfaction of the Secretary, in accordance with subparagraph (C)(i), that during such period the professional is using certified EHR technology in a meaningful manner, which shall include the use of electronic prescribing as determined to be appropriate by the Secretary.

"(ii) INFORMATION EXCHANGE.—The eligible professional demonstrates to the satisfaction of the Secretary, in accordance with subparagraph (C)(i), that during such period such certified EHR technology is connected in a manner that provides, in accordance with law and standards applicable to the exchange of information, for the electronic exchange of health information to improve the quality of health care, such as promoting care coordination.

"(iii) REPORTING ON MEASURES USING EHR.—Subject to subparagraph (B)(ii) and using such certified EHR technology, the eligible professional submits information for such period, in a form and manner specified by the Secretary, on such clinical quality measures and such other measures as selected by the Secretary under subparagraph (B)(i).

The Secretary may provide for the use of alternative means for meeting the requirements of clauses (i), (ii), and (iii) in the case of an eligible professional furnishing covered professional services in a group practice (as defined by the Secretary). The Secretary shall seek to improve the use of electronic health records and health care quality over time by requiring more stringent measures of meaningful use selected under this paragraph.

"(B) REPORTING ON MEASURES.—

"(i) SELECTION.—The Secretary shall select measures for purposes of subparagraph (A)(iii) but only consistent with the following:

"(I) The Secretary shall provide preference to clinical quality measures that have been endorsed by the entity with a contract with the Secretary under section 1890(a).

"(II) Prior to any measure being selected under this subparagraph, the Secretary shall publish in

the Federal Register such measure and provide for a period of public comment on such measure.

"(ii) LIMITATION.—The Secretary may not require the electronic reporting of information on clinical quality measures under subparagraph (A)(iii) unless the Secretary has the capacity to accept the information electronically, which may be on a pilot basis.

"(iii) COORDINATION OF REPORTING OF INFORMATION.—In selecting such measures, and in establishing the form and manner for reporting measures under subparagraph (A)(iii), the Secretary shall seek to avoid redundant or duplicative reporting otherwise required, including reporting under subsection (k)(2)(C).

"(C) DEMONSTRATION OF MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY AND INFORMATION EXCHANGE.—

"(i) IN GENERAL.—A professional may satisfy the demonstration requirement of clauses (i) and (ii) of subparagraph (A) through means specified by the Secretary, which may include—

"(I) an attestation;

"(II) the submission of claims with appropriate coding (such as a code indicating that a patient encounter was documented using certified EHR technology);

"(III) a survey response;

"(IV) reporting under subparagraph (A)(iii); and

"(V) other means specified by the Secretary.

"(ii) USE OF PART D DATA.—Notwithstanding sections 1860D–15(d)(2)(B) and 1860D–15(f)(2), the Secretary may use data regarding drug claims submitted for purposes of section 1860D–15 that are necessary for purposes of subparagraph (A).

"(3) APPLICATION.—

"(A) PHYSICIAN REPORTING SYSTEM RULES.—Paragraphs (5), (6), and (8) of subsection (k) shall apply for purposes of this subsection in the same manner as they apply for purposes of such subsection.

"(B) COORDINATION WITH OTHER PAYMENTS.—The provisions of this subsection shall not be taken into account in applying the provisions of subsection (m) of this section and of section 1833(m) and any payment under such provisions shall not be taken into account in computing allowable charges under this subsection.

"(C) LIMITATIONS ON REVIEW.—There shall be no administrative or judicial review under section 1869, section 1878, or otherwise, of—

"(i) the methodology and standards for determining payment amounts under this subsection and payment adjustments under subsection (a)(7)(A), including the limitation under paragraph (1)(B) and coordination under clauses (ii) and (iii) of paragraph (1)(D);

"(ii) the methodology and standards for determining a meaningful EHR user under paragraph (2),

including selection of measures under paragraph (2)(B), specification of the means of demonstrating meaningful EHR use under paragraph (2)(C), and the hardship exception under subsection (a)(7)(B);

"(iii) the methodology and standards for determining a hospital-based eligible professional under paragraph (1)(C); and

"(iv) the specification of reporting periods under paragraph (5) and the selection of the form of payment under paragraph (1)(D)(i).

"(D) POSTING ON WEBSITE.—The Secretary shall post on the Internet website of the Centers for Medicare & Medicaid Services, in an easily understandable format, a list of the names, business addresses, and business phone numbers of the eligible professionals who are meaningful EHR users and, as determined appropriate by the Secretary, of group practices receiving incentive payments under paragraph (1).

"(4) CERTIFIED EHR TECHNOLOGY DEFINED.—For purposes of this section, the term 'certified EHR technology' means a qualified electronic health record (as defined in section 3000(13) of the Public Health Service Act) that is certified pursuant to section 3001(c)(5) of such Act as meeting standards adopted under section 3004 of such Act that are applicable to the type of record involved (as determined by the Secretary, such as an ambulatory electronic health record for office-based physicians or an inpatient hospital electronic health record for hospitals).

"(5) DEFINITIONS.—For purposes of this subsection:

"(A) COVERED PROFESSIONAL SERVICES.—The term 'covered professional services' has the meaning given such term in subsection (k)(3).

"(B) EHR REPORTING PERIOD.—The term 'EHR reporting period' means, with respect to a payment year, any period (or periods) as specified by the Secretary.

"(C) ELIGIBLE PROFESSIONAL.—The term 'eligible professional' means a physician, as defined in section 1861(r).".

(b) INCENTIVE PAYMENT ADJUSTMENT.—Section 1848(a) of the Social Security Act (42 U.S.C. 1395w–4(a)) is amended by adding at the end the following new paragraph:

"(7) INCENTIVES FOR MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY.—

"(A) ADJUSTMENT.—

"(i) IN GENERAL.—Subject to subparagraphs (B) and (D), with respect to covered professional services furnished by an eligible professional during 2015 or any subsequent payment year, if the eligible professional is not a meaningful EHR user (as determined under subsection (o)(2)) for an EHR reporting period for the year, the fee schedule amount for such services furnished by such professional during the year (including the fee schedule amount for purposes of determining a payment based on such amount) shall be equal to the applicable percent of the fee schedule amount that would otherwise apply to such services

under this subsection (determined after application of paragraph (3) but without regard to this paragraph).

"(ii) APPLICABLE PERCENT.—Subject to clause (iii), for purposes of clause (i), the term 'applicable percent' means—

"(I) for 2015, 99 percent (or, in the case of an eligible professional who was subject to the application of the payment adjustment under section 1848(a)(5) for 2014, 98 percent);

"(II) for 2016, 98 percent; and

"(III) for 2017 and each subsequent year, 97 percent.

"(iii) AUTHORITY TO DECREASE APPLICABLE PERCENTAGE FOR 2018 AND SUBSEQUENT YEARS.—For 2018 and each subsequent year, if the Secretary finds that the proportion of eligible professionals who are meaningful EHR users (as determined under subsection (o)(2)) is less than 75 percent, the applicable percent shall be decreased by 1 percentage point from the applicable percent in the preceding year, but in no case shall the applicable percent be less than 95 percent.

"(B) SIGNIFICANT HARDSHIP EXCEPTION.—The Secretary may, on a case-by-case basis, exempt an eligible professional from the application of the payment adjustment under subparagraph (A) if the Secretary determines, subject to annual renewal, that compliance with the requirement for being a meaningful EHR user would result in a significant hardship, such as in the case of an eligible professional who practices in a rural area without sufficient Internet access. In no case may an eligible professional be granted an exemption under this subparagraph for more than 5 years.

"(C) APPLICATION OF PHYSICIAN REPORTING SYSTEM RULES.—Paragraphs (5), (6), and (8) of subsection (k) shall apply for purposes of this paragraph in the same manner as they apply for purposes of such subsection.

"(D) NON-APPLICATION TO HOSPITAL-BASED ELIGIBLE PROFESSIONALS.—No payment adjustment may be made under subparagraph (A) in the case of hospital-based eligible professionals (as defined in subsection (o)(1)(C)(ii)).

"(E) DEFINITIONS.—For purposes of this paragraph:

"(i) COVERED PROFESSIONAL SERVICES.—The term 'covered professional services' has the meaning given such term in subsection (k)(3).

"(ii) EHR REPORTING PERIOD.—The term 'EHR reporting period' means, with respect to a year, a period (or periods) specified by the Secretary.

"(iii) ELIGIBLE PROFESSIONAL.—The term 'eligible professional' means a physician, as defined in section 1861(r).".

(c) APPLICATION TO CERTAIN MA-AFFILIATED ELIGIBLE PROFESSIONALS.—Section 1853 of the Social Security Act (42 U.S.C. 1395w–23) is amended by adding at the end the following new subsection:

"(l) APPLICATION OF ELIGIBLE PROFESSIONAL INCENTIVES FOR CERTAIN MA ORGANIZATIONS FOR ADOPTION AND MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY.—

"(1) IN GENERAL.—Subject to paragraphs (3) and (4), in the case of a qualifying MA organization, the provisions of sections 1848(o) and 1848(a)(7) shall apply with respect to eligible professionals described in paragraph (2) of the organization who the organization attests under paragraph (6) to be meaningful EHR users in a similar manner as they apply to eligible professionals under such sections. Incentive payments under paragraph (3) shall be made to and payment adjustments under paragraph (4) shall apply to such qualifying organizations.

"(2) ELIGIBLE PROFESSIONAL DESCRIBED.—With respect to a qualifying MA organization, an eligible professional described in this paragraph is an eligible professional (as defined for purposes of section 1848(o)) who—

"(A)(i) is employed by the organization; or

"(ii)(I) is employed by, or is a partner of, an entity that through contract with the organization furnishes at least 80 percent of the entity's Medicare patient care services to enrollees of such organization; and

"(II) furnishes at least 80 percent of the professional services of the eligible professional covered under this title to enrollees of the organization; and

"(B) furnishes, on average, at least 20 hours per week of patient care services.

"(3) ELIGIBLE PROFESSIONAL INCENTIVE PAYMENTS.—

"(A) IN GENERAL.—In applying section 1848(o) under paragraph (1), instead of the additional payment amount under section 1848(o)(1)(A) and subject to subparagraph (B), the Secretary may substitute an amount determined by the Secretary to the extent feasible and practical to be similar to the estimated amount in the aggregate that would be payable if payment for services furnished by such professionals was payable under part B instead of this part.

"(B) AVOIDING DUPLICATION OF PAYMENTS.—

"(i) IN GENERAL.—In the case of an eligible professional described in paragraph (2)—

"(I) that is eligible for the maximum incentive payment under section 1848(o)(1)(A) for the same payment period, the payment incentive shall be made only under such section and not under this subsection; and

"(II) that is eligible for less than such maximum incentive payment for the same payment period, the payment incentive shall be made only under this subsection and not under section 1848(o)(1)(A).

"(ii) METHODS.—In the case of an eligible professional described in paragraph (2) who is eligible for an incentive payment under section 1848(o)(1)(A) but is not described in clause (i) for the same payment period, the Secretary shall develop a process—

"(I) to ensure that duplicate payments are not made with respect to an eligible professional both

under this subsection and under section 1848(o)(1)(A); and

"(II) to collect data from Medicare Advantage organizations to ensure against such duplicate payments.

"(C) FIXED SCHEDULE FOR APPLICATION OF LIMITATION ON INCENTIVE PAYMENTS FOR ALL ELIGIBLE PROFESSIONALS.—In applying section 1848(o)(1)(B)(ii) under subparagraph (A), in accordance with rules specified by the Secretary, a qualifying MA organization shall specify a year (not earlier than 2011) that shall be treated as the first payment year for all eligible professionals with respect to such organization.

"(4) PAYMENT ADJUSTMENT.—

"(A) IN GENERAL.—In applying section 1848(a)(7) under paragraph (1), instead of the payment adjustment being an applicable percent of the fee schedule amount for a year under such section, subject to subparagraph (D), the payment adjustment under paragraph (1) shall be equal to the percent specified in subparagraph (B) for such year of the payment amount otherwise provided under this section for such year.

"(B) SPECIFIED PERCENT.—The percent specified under this subparagraph for a year is 100 percent minus a number of percentage points equal to the product of—

"(i) the number of percentage points by which the applicable percent (under section 1848(a)(7)(A)(ii)) for the year is less than 100 percent; and

"(ii) the Medicare physician expenditure proportion specified in subparagraph (C) for the year.

"(C) MEDICARE PHYSICIAN EXPENDITURE PROPORTION.—The Medicare physician expenditure proportion under this subparagraph for a year is the Secretary's estimate of the proportion, of the expenditures under parts A and B that are not attributable to this part, that are attributable to expenditures for physicians' services.

"(D) APPLICATION OF PAYMENT ADJUSTMENT.—In the case that a qualifying MA organization attests that not all eligible professionals of the organization are meaningful EHR users with respect to a year, the Secretary shall apply the payment adjustment under this paragraph based on the proportion of all such eligible professionals of the organization that are not meaningful EHR users for such year.

"(5) QUALIFYING MA ORGANIZATION DEFINED.—In this subsection and subsection (m), the term 'qualifying MA organization' means a Medicare Advantage organization that is organized as a health maintenance organization (as defined in section 2791(b)(3) of the Public Health Service Act).

"(6) MEANINGFUL EHR USER ATTESTATION.—For purposes of this subsection and subsection (m), a qualifying MA organization shall submit an attestation, in a form and manner specified by the Secretary which may include the submission of such attestation as part of submission of the initial bid under section 1854(a)(1)(A)(iv), identifying—

"(A) whether each eligible professional described in paragraph (2), with respect to such organization is a meaningful EHR user (as defined in section 1848(o)(2)) for a year specified by the Secretary; and

"(B) whether each eligible hospital described in subsection (m)(1), with respect to such organization, is a meaningful EHR user (as defined in section 1886(n)(3)) for an applicable period specified by the Secretary.

"(7) POSTING ON WEBSITE.—The Secretary shall post on the Internet website of the Centers for Medicare & Medicaid Services, in an easily understandable format, a list of the names, business addresses, and business phone numbers of—

"(A) each qualifying MA organization receiving an incentive payment under this subsection for eligible professionals of the organization; and

"(B) the eligible professionals of such organization for which such incentive payment is based.

"(8) LIMITATION ON REVIEW.—There shall be no administrative or judicial review under section 1869, section 1878, or otherwise, of—

"(A) the methodology and standards for determining payment amounts and payment adjustments under this subsection, including avoiding duplication of payments under paragraph (3)(B) and the specification of rules for the fixed schedule for application of limitation on incentive payments for all eligible professionals under paragraph (3)(C);

"(B) the methodology and standards for determining eligible professionals under paragraph (2); and

"(C) the methodology and standards for determining a meaningful EHR user under section 1848(o)(2), including specification of the means of demonstrating meaningful EHR use under section 1848(o)(3)(C) and selection of measures under section 1848(o)(3)(B).".

(d) STUDY AND REPORT RELATING TO MA ORGANIZATIONS.—

(1) STUDY.—The Secretary of Health and Human Services shall conduct a study on the extent to which and manner in which payment incentives and adjustments (such as under sections 1848(o) and 1848(a)(7) of the Social Security Act) could be made available to professionals, as defined in 1861(r), who are not eligible for HIT incentive payments under section 1848(o) and receive payments for Medicare patient services nearly-exclusively through contractual arrangements with one or more Medicare Advantage organizations, or an intermediary organization or organizations with contracts with Medicare Advantage organizations. Such study shall assess approaches for measuring meaningful use of qualified EHR technology among such professionals and mechanisms for delivering incentives and adjustments to those professionals, including through incentive payments and adjustments through Medicare Advantage organizations or intermediary organizations.

(2) REPORT.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit to Congress a report on the findings and the conclusions of the study conducted under paragraph (1), to-

gether with recommendations for such legislation and administrative action as the Secretary determines appropriate.

(e) CONFORMING AMENDMENTS.—Section 1853 of the Social Security Act (42 U.S.C. 1395w–23) is amended—

(1) in subsection (a)(1)(A), by striking "and (i)" and inserting "(i), and (l)";

(2) in subsection (c)—

(A) in paragraph (1)(D)(i), by striking "section 1886(h)" and inserting "sections 1848(o) and 1886(h)"; and

(B) in paragraph (6)(A), by inserting after "under part B," the following: "excluding expenditures attributable to subsections (a)(7) and (o) of section 1848,"; and

(3) in subsection (f), by inserting "and for payments under subsection (l)" after "with the organization".

(f) CONFORMING AMENDMENTS TO E-PRESCRIBING.—

(1) Section 1848(a)(5)(A) of the Social Security Act (42 U.S.C. 1395w–4(a)(5)(A)) is amended—

(A) in clause (i), by striking "or any subsequent year" and inserting ", 2013 or 2014"; and

(B) in clause (ii), by striking "and each subsequent year".

(2) Section 1848(m)(2) of such Act (42 U.S.C. 1395w–4(m)(2)) is amended—

(A) in subparagraph (A), by striking "For 2009" and inserting "Subject to subparagraph (D), for 2009"; and

(B) by adding at the end the following new subparagraph:

"(D) LIMITATION WITH RESPECT TO EHR INCENTIVE PAYMENTS.—The provisions of this paragraph shall not apply to an eligible professional (or, in the case of a group practice under paragraph (3)(C), to the group practice) if, for the EHR reporting period the eligible professional (or group practice) receives an incentive payment under subsection (o)(1)(A) with respect to a certified EHR technology (as defined in subsection (o)(4)) that has the capability of electronic prescribing.".

SEC. 4102. INCENTIVES FOR HOSPITALS.

(a) INCENTIVE PAYMENT.—

(1) IN GENERAL.—Section 1886 of the Social Security Act (42 U.S.C. 1395ww) is amended by adding at the end the following new subsection:

"(n) INCENTIVES FOR ADOPTION AND MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY.—

"(1) IN GENERAL.—Subject to the succeeding provisions of this subsection, with respect to inpatient hospital services furnished by an eligible hospital during a payment year (as defined in paragraph (2)(G)), if the eligible hospital is a meaningful EHR user (as determined under paragraph (3)) for the EHR reporting period with respect to such year, in addition to the amount otherwise paid under this section, there also shall be paid to the eligible hospital, from the Federal Hospital Insurance Trust Fund established under section 1817, an amount equal to the applicable amount specified in paragraph (2)(A) for the hospital for such payment year.

"(2) PAYMENT AMOUNT.—

"(A) IN GENERAL.—Subject to the succeeding subparagraphs of this paragraph, the applicable amount specified in this subparagraph for an eligible hospital for a payment year is equal to the product of the following:

"(i) INITIAL AMOUNT.—The sum of—

"(I) the base amount specified in subparagraph (B); plus

"(II) the discharge related amount specified in subparagraph (C) for a 12-month period selected by the Secretary with respect to such payment year.

"(ii) MEDICARE SHARE.—The Medicare share as specified in subparagraph (D) for the eligible hospital for a period selected by the Secretary with respect to such payment year.

"(iii) TRANSITION FACTOR.—The transition factor specified in subparagraph (E) for the eligible hospital for the payment year.

"(B) BASE AMOUNT.—The base amount specified in this subparagraph is $2,000,000.

"(C) DISCHARGE RELATED AMOUNT.—The discharge related amount specified in this subparagraph for a 12-month period selected by the Secretary shall be determined as the sum of the amount, estimated based upon total discharges for the eligible hospital (regardless of any source of payment) for the period, for each discharge up to the 23,000th discharge as follows:

"(i) For the first through 1,149th discharge, $0.

"(ii) For the 1,150th through the 23,000th discharge, $200.

"(iii) For any discharge greater than the 23,000th, $0.

"(D) MEDICARE SHARE.—The Medicare share specified under this subparagraph for an eligible hospital for a period selected by the Secretary for a payment year is equal to the fraction—

"(i) the numerator of which is the sum (for such period and with respect to the eligible hospital) of—

"(I) the estimated number of inpatient-bed-days (as established by the Secretary) which are attributable to individuals with respect to whom payment may be made under part A; and

"(II) the estimated number of inpatient-bed-days (as so established) which are attributable to individuals who are enrolled with a Medicare Advantage organization under part C; and

"(ii) the denominator of which is the product of—

"(I) the estimated total number of inpatient-bed-days with respect to the eligible hospital during such period; and

"(II) the estimated total amount of the eligible hospital's charges during such period, not including any charges that are attributable to charity care (as such term is used for purposes of hospital cost reporting under this title), divided by the esti-

mated total amount of the hospital's charges during such period.

Insofar as the Secretary determines that data are not available on charity care necessary to calculate the portion of the formula specified in clause (ii)(II), the Secretary shall use data on uncompensated care and may adjust such data so as to be an appropriate proxy for charity care including a downward adjustment to eliminate bad debt data from uncompensated care data. In the absence of the data necessary, with respect to a hospital, for the Secretary to compute the amount described in clause (ii)(II), the amount under such clause shall be deemed to be 1. In the absence of data, with respect to a hospital, necessary to compute the amount described in clause (i)(II), the amount under such clause shall be deemed to be 0.

"(E) TRANSITION FACTOR SPECIFIED.—

"(i) IN GENERAL.—Subject to clause (ii), the transition factor specified in this subparagraph for an eligible hospital for a payment year is as follows:

"(I) For the first payment year for such hospital, 1.

"(II) For the second payment year for such hospital, 3/4.

"(III) For the third payment year for such hospital, 1/2.

"(IV) For the fourth payment year for such hospital, 1/4.

"(V) For any succeeding payment year for such hospital, 0.

"(ii) PHASE DOWN FOR ELIGIBLE HOSPITALS FIRST ADOPTING EHR AFTER 2013.—If the first payment year for an eligible hospital is after 2013, then the transition factor specified in this subparagraph for a payment year for such hospital is the same as the amount specified in clause (i) for such payment year for an eligible hospital for which the first payment year is 2013. If the first payment year for an eligible hospital is after 2015 then the transition factor specified in this subparagraph for such hospital and for such year and any subsequent year shall be 0.

"(F) FORM OF PAYMENT.—The payment under this subsection for a payment year may be in the form of a single consolidated payment or in the form of such periodic installments as the Secretary may specify.

"(G) PAYMENT YEAR DEFINED.—

"(i) IN GENERAL.—For purposes of this subsection, the term 'payment year' means a fiscal year beginning with fiscal year 2011.

"(ii) FIRST, SECOND, ETC. PAYMENT YEAR.—The term 'first payment year' means, with respect to inpatient hospital services furnished by an eligible hospital, the first fiscal year for which an incentive payment is made for such services under this subsection. The terms 'second payment year', 'third payment year', and 'fourth payment year' mean, with respect to an eligible

hospital, each successive year immediately following the first payment year for that hospital.

"(3) MEANINGFUL EHR USER.—

"(A) IN GENERAL.—For purposes of paragraph (1), an eligible hospital shall be treated as a meaningful EHR user for an EHR reporting period for a payment year (or, for purposes of subsection (b)(3)(B)(ix), for an EHR reporting period under such subsection for a fiscal year) if each of the following requirements are met:

"(i) MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY.—The eligible hospital demonstrates to the satisfaction of the Secretary, in accordance with subparagraph (C)(i), that during such period the hospital is using certified EHR technology in a meaningful manner.

"(ii) INFORMATION EXCHANGE.—The eligible hospital demonstrates to the satisfaction of the Secretary, in accordance with subparagraph (C)(i), that during such period such certified EHR technology is connected in a manner that provides, in accordance with law and standards applicable to the exchange of information, for the electronic exchange of health information to improve the quality of health care, such as promoting care coordination.

"(iii) REPORTING ON MEASURES USING EHR.—Subject to subparagraph (B)(ii) and using such certified EHR technology, the eligible hospital submits information for such period, in a form and manner specified by the Secretary, on such clinical quality measures and such other measures as selected by the Secretary under subparagraph (B)(i).

The Secretary shall seek to improve the use of electronic health records and health care quality over time by requiring more stringent measures of meaningful use selected under this paragraph.

"(B) REPORTING ON MEASURES.—

"(i) SELECTION.—The Secretary shall select measures for purposes of subparagraph (A)(iii) but only consistent with the following:

"(I) The Secretary shall provide preference to clinical quality measures that have been selected for purposes of applying subsection (b)(3)(B)(viii) or that have been endorsed by the entity with a contract with the Secretary under section 1890(a).

"(II) Prior to any measure (other than a clinical quality measure that has been selected for purposes of applying subsection (b)(3)(B)(viii)) being selected under this subparagraph, the Secretary shall publish in the Federal Register such measure and provide for a period of public comment on such measure.

"(ii) LIMITATIONS.—The Secretary may not require the electronic reporting of information on clinical quality measures under subparagraph (A)(iii) unless the

Secretary has the capacity to accept the information electronically, which may be on a pilot basis.

"(iii) COORDINATION OF REPORTING OF INFORMATION.—In selecting such measures, and in establishing the form and manner for reporting measures under subparagraph (A)(iii), the Secretary shall seek to avoid redundant or duplicative reporting with reporting otherwise required, including reporting under subsection (b)(3)(B)(viii).

"(C) DEMONSTRATION OF MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY AND INFORMATION EXCHANGE.—

"(i) IN GENERAL.—An eligible hospital may satisfy the demonstration requirement of clauses (i) and (ii) of subparagraph (A) through means specified by the Secretary, which may include—

"(I) an attestation;

"(II) the submission of claims with appropriate coding (such as a code indicating that inpatient care was documented using certified EHR technology);

"(III) a survey response;

"(IV) reporting under subparagraph (A)(iii); and

"(V) other means specified by the Secretary.

"(ii) USE OF PART D DATA.—Notwithstanding sections 1860D–15(d)(2)(B) and 1860D–15(f)(2), the Secretary may use data regarding drug claims submitted for purposes of section 1860D–15 that are necessary for purposes of subparagraph (A).

"(4) APPLICATION.—

"(A) LIMITATIONS ON REVIEW.—There shall be no administrative or judicial review under section 1869, section 1878, or otherwise, of—

"(i) the methodology and standards for determining payment amounts under this subsection and payment adjustments under subsection (b)(3)(B)(ix), including selection of periods under paragraph (2) for determining, and making estimates or using proxies of, discharges under paragraph (2)(C) and inpatient-bed-days, hospital charges, charity charges, and Medicare share under paragraph (2)(D);

"(ii) the methodology and standards for determining a meaningful EHR user under paragraph (3), including selection of measures under paragraph (3)(B), specification of the means of demonstrating meaningful EHR use under paragraph (3)(C), and the hardship exception under subsection (b)(3)(B)(ix)(II); and

"(iii) the specification of EHR reporting periods under paragraph (6)(B) and the selection of the form of payment under paragraph (2)(F).

"(B) POSTING ON WEBSITE.—The Secretary shall post on the Internet website of the Centers for Medicare & Medicaid Services, in an easily understandable format, a list of the names of the eligible hospitals that are meaningful

EHR users under this subsection or subsection (b)(3)(B)(ix) (and a list of the names of critical access hospitals to which paragraph (3) or (4) of section 1814(l) applies), and other relevant data as determined appropriate by the Secretary. The Secretary shall ensure that an eligible hospital (or critical access hospital) has the opportunity to review the other relevant data that are to be made public with respect to the hospital (or critical access hospital) prior to such data being made public.

"(5) CERTIFIED EHR TECHNOLOGY DEFINED.—The term 'certified EHR technology' has the meaning given such term in section 1848(o)(4).

"(6) DEFINITIONS.—For purposes of this subsection:

"(A) EHR REPORTING PERIOD.—The term 'EHR reporting period' means, with respect to a payment year, any period (or periods) as specified by the Secretary.

"(B) ELIGIBLE HOSPITAL.—The term 'eligible hospital' means a subsection (d) hospital.".

(2) CRITICAL ACCESS HOSPITALS.—Section 1814(l) of the Social Security Act (42 U.S.C. 1395f(l)) is amended—

(A) in paragraph (1), by striking "paragraph (2)" and inserting "the subsequent paragraphs of this subsection"; and

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

"(3)(A) The following rules shall apply in determining payment and reasonable costs under paragraph (1) for costs described in subparagraph (C) for a critical access hospital that would be a meaningful EHR user (as would be determined under paragraph (3) of section 1886(n)) for an EHR reporting period for a cost reporting period beginning during a payment year if such critical access hospital was treated as an eligible hospital under such section:

"(i) The Secretary shall compute reasonable costs by expensing such costs in a single payment year and not depreciating such costs over a period of years (and shall include as costs with respect to cost reporting periods beginning during a payment year costs from previous cost reporting periods to the extent they have not been fully depreciated as of the period involved).

"(ii) There shall be substituted for the Medicare share that would otherwise be applied under paragraph (1) a percent (not to exceed 100 percent) equal to the sum of—

"(I) the Medicare share (as would be specified under paragraph (2)(D) of section 1886(n)) for such critical access hospital if such critical access hospital was treated as an eligible hospital under such section; and

"(II) 20 percentage points.

"(B) The payment under this paragraph with respect to a critical access hospital shall be paid through a prompt interim payment (subject to reconciliation) after submission and review of such information (as specified by the Secretary) necessary to make such payment, including information necessary to apply this paragraph. In no case may payment under this paragraph be made with respect to a cost reporting period beginning during a payment year after 2015 and in no case may a critical access hospital receive payment

under this paragraph with respect to more than 4 consecutive payment years.

"(C) The costs described in this subparagraph are costs for the purchase of certified EHR technology to which purchase depreciation (excluding interest) would apply if payment was made under paragraph (1) and not under this paragraph.

"(D) For purposes of this paragraph, paragraph (4), and paragraph (5), the terms 'certified EHR technology', 'eligible hospital', 'EHR reporting period', and 'payment year' have the meanings given such terms in sections 1886(n).".

(b) INCENTIVE MARKET BASKET ADJUSTMENT.—

(1) IN GENERAL.—Section 1886(b)(3)(B) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)) is amended—

(A) in clause (viii)(I), by inserting "(or, beginning with fiscal year 2015, by one-quarter)" after "2.0 percentage points"; and

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

"(ix)(I) For purposes of clause (i) for fiscal year 2015 and each subsequent fiscal year, in the case of an eligible hospital (as defined in subsection (n)(6)(A)) that is not a meaningful EHR user (as defined in subsection (n)(3)) for an EHR reporting period for such fiscal year, three-quarters of the applicable percentage increase otherwise applicable under clause (i) for such fiscal year shall be reduced by 33⅓ percent for fiscal year 2015, 66⅔ percent for fiscal year 2016, and 100 percent for fiscal year 2017 and each subsequent fiscal year. Such reduction shall apply only with respect to the fiscal year involved and the Secretary shall not take into account such reduction in computing the applicable percentage increase under clause (i) for a subsequent fiscal year.

"(II) The Secretary may, on a case-by-case basis, exempt a subsection (d) hospital from the application of subclause (I) with respect to a fiscal year if the Secretary determines, subject to annual renewal, that requiring such hospital to be a meaningful EHR user during such fiscal year would result in a significant hardship, such as in the case of a hospital in a rural area without sufficient Internet access. In no case may a hospital be granted an exemption under this subclause for more than 5 years.

"(III) For fiscal year 2015 and each subsequent fiscal year, a State in which hospitals are paid for services under section 1814(b)(3) shall adjust the payments to each subsection (d) hospital in the State that is not a meaningful EHR user (as defined in subsection (n)(3)) in a manner that is designed to result in an aggregate reduction in payments to hospitals in the State that is equivalent to the aggregate reduction that would have occurred if payments had been reduced to each subsection (d) hospital in the State in a manner comparable to the reduction under the previous provisions of this clause. The State shall report to the Secretary the methodology it will use to make the payment adjustment under the previous sentence.

"(IV) For purposes of this clause, the term 'EHR reporting period' means, with respect to a fiscal year, any period (or periods) as specified by the Secretary.".

(2) CRITICAL ACCESS HOSPITALS.—Section 1814(l) of the Social Security Act (42 U.S.C. 1395f(l)), as amended by subsection

(a)(2), is further amended by adding at the end the following new paragraphs:

"(4)(A) Subject to subparagraph (C), for cost reporting periods beginning in fiscal year 2015 or a subsequent fiscal year, in the case of a critical access hospital that is not a meaningful EHR user (as would be determined under paragraph (3) of section 1886(n) if such critical access hospital was treated as an eligible hospital under such section) for an EHR reporting period with respect to such fiscal year, paragraph (1) shall be applied by substituting the applicable percent under subparagraph (B) for the percent described in such paragraph (1).

"(B) The percent described in this subparagraph is—

"(i) for fiscal year 2015, 100.66 percent;

"(ii) for fiscal year 2016, 100.33 percent; and

"(iii) for fiscal year 2017 and each subsequent fiscal year, 100 percent.

"(C) The provisions of subclause (II) of section 1886(b)(3)(B)(ix) shall apply with respect to subparagraph (A) for a critical access hospital with respect to a cost reporting period beginning in a fiscal year in the same manner as such subclause applies with respect to subclause (I) of such section for a subsection (d) hospital with respect to such fiscal year.

"(5) There shall be no administrative or judicial review under section 1869, section 1878, or otherwise, of—

"(A) the methodology and standards for determining the amount of payment and reasonable cost under paragraph (3) and payment adjustments under paragraph (4), including selection of periods under section 1886(n)(2) for determining, and making estimates or using proxies of, inpatient-bed-days, hospital charges, charity charges, and Medicare share under subparagraph (D) of section 1886(n)(2);

"(B) the methodology and standards for determining a meaningful EHR user under section 1886(n)(3) as would apply if the hospital was treated as an eligible hospital under section 1886(n), and the hardship exception under paragraph (4)(C);

"(C) the specification of EHR reporting periods under section 1886(n)(6)(B) as applied under paragraphs (3) and (4); and

"(D) the identification of costs for purposes of paragraph (3)(C).".

(c) APPLICATION TO CERTAIN MA-AFFILIATED ELIGIBLE HOSPITALS.—Section 1853 of the Social Security Act (42 U.S.C. 1395w–23), as amended by section 4101(c), is further amended by adding at the end the following new subsection:

"(m) APPLICATION OF ELIGIBLE HOSPITAL INCENTIVES FOR CERTAIN MA ORGANIZATIONS FOR ADOPTION AND MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY.—

"(1) APPLICATION.—Subject to paragraphs (3) and (4), in the case of a qualifying MA organization, the provisions of sections 1886(n) and 1886(b)(3)(B)(ix) shall apply with respect to eligible hospitals described in paragraph (2) of the organization which the organization attests under subsection (l)(6) to be meaningful EHR users in a similar manner as they apply to eligible hospitals under such sections. Incentive payments under paragraph (3) shall be made to and payment adjustments

under paragraph (4) shall apply to such qualifying organizations.

"(2) ELIGIBLE HOSPITAL DESCRIBED.—With respect to a qualifying MA organization, an eligible hospital described in this paragraph is an eligible hospital (as defined in section 1886(n)(6)(A)) that is under common corporate governance with such organization and serves individuals enrolled under an MA plan offered by such organization.

"(3) ELIGIBLE HOSPITAL INCENTIVE PAYMENTS.—

"(A) IN GENERAL.—In applying section 1886(n)(2) under paragraph (1), instead of the additional payment amount under section 1886(n)(2), there shall be substituted an amount determined by the Secretary to be similar to the estimated amount in the aggregate that would be payable if payment for services furnished by such hospitals was payable under part A instead of this part. In implementing the previous sentence, the Secretary—

"(i) shall, insofar as data to determine the discharge related amount under section 1886(n)(2)(C) for an eligible hospital are not available to the Secretary, use such alternative data and methodology to estimate such discharge related amount as the Secretary determines appropriate; and

"(ii) shall, insofar as data to determine the medicare share described in section 1886(n)(2)(D) for an eligible hospital are not available to the Secretary, use such alternative data and methodology to estimate such share, which data and methodology may include use of the inpatient-bed-days (or discharges) with respect to an eligible hospital during the appropriate period which are attributable to both individuals for whom payment may be made under part A or individuals enrolled in an MA plan under a Medicare Advantage organization under this part as a proportion of the estimated total number of patient-bed-days (or discharges) with respect to such hospital during such period.

"(B) AVOIDING DUPLICATION OF PAYMENTS.—

"(i) IN GENERAL.—In the case of a hospital that for a payment year is an eligible hospital described in paragraph (2) and for which at least one-third of their discharges (or bed-days) of Medicare patients for the year are covered under part A, payment for the payment year shall be made only under section 1886(n) and not under this subsection.

"(ii) METHODS.—In the case of a hospital that is an eligible hospital described in paragraph (2) and also is eligible for an incentive payment under section 1886(n) but is not described in clause (i) for the same payment period, the Secretary shall develop a process—

"(I) to ensure that duplicate payments are not made with respect to an eligible hospital both under this subsection and under section 1886(n); and

"(II) to collect data from Medicare Advantage organizations to ensure against such duplicate payments.

"(4) PAYMENT ADJUSTMENT.—

"(A) Subject to paragraph (3), in the case of a qualifying MA organization (as defined in section 1853(l)(5)), if, according to the attestation of the organization submitted under subsection (l)(6) for an applicable period, one or more eligible hospitals (as defined in section 1886(n)(6)(A)) that are under common corporate governance with such organization and that serve individuals enrolled under a plan offered by such organization are not meaningful EHR users (as defined in section 1886(n)(3)) with respect to a period, the payment amount payable under this section for such organization for such period shall be the percent specified in subparagraph (B) for such period of the payment amount otherwise provided under this section for such period.

"(B) SPECIFIED PERCENT.—The percent specified under this subparagraph for a year is 100 percent minus a number of percentage points equal to the product of—

"(i) the number of the percentage point reduction effected under section 1886(b)(3)(B)(ix)(I) for the period; and

"(ii) the Medicare hospital expenditure proportion specified in subparagraph (C) for the year.

"(C) MEDICARE HOSPITAL EXPENDITURE PROPORTION.—The Medicare hospital expenditure proportion under this subparagraph for a year is the Secretary's estimate of the proportion, of the expenditures under parts A and B that are not attributable to this part, that are attributable to expenditures for inpatient hospital services.

"(D) APPLICATION OF PAYMENT ADJUSTMENT.—In the case that a qualifying MA organization attests that not all eligible hospitals are meaningful EHR users with respect to an applicable period, the Secretary shall apply the payment adjustment under this paragraph based on a methodology specified by the Secretary, taking into account the proportion of such eligible hospitals, or discharges from such hospitals, that are not meaningful EHR users for such period.

"(5) POSTING ON WEBSITE.—The Secretary shall post on the Internet website of the Centers for Medicare & Medicaid Services, in an easily understandable format—

"(A) a list of the names, business addresses, and business phone numbers of each qualifying MA organization receiving an incentive payment under this subsection for eligible hospitals described in paragraph (2); and

"(B) a list of the names of the eligible hospitals for which such incentive payment is based.

"(6) LIMITATIONS ON REVIEW.—There shall be no administrative or judicial review under section 1869, section 1878, or otherwise, of—

"(A) the methodology and standards for determining payment amounts and payment adjustments under this

subsection, including avoiding duplication of payments under paragraph (3)(B);

"(B) the methodology and standards for determining eligible hospitals under paragraph (2); and

"(C) the methodology and standards for determining a meaningful EHR user under section 1886(n)(3), including specification of the means of demonstrating meaningful EHR use under subparagraph (C) of such section and selection of measures under subparagraph (B) of such section.".

(d) CONFORMING AMENDMENTS.—

(1) Section 1814(b) of the Social Security Act (42 U.S.C. 1395f(b)) is amended—

(A) in paragraph (3), in the matter preceding subparagraph (A), by inserting ", subject to section 1886(d)(3)(B)(ix)(III)," after "then"; and

(B) by adding at the end the following: "For purposes of applying paragraph (3), there shall be taken into account incentive payments, and payment adjustments under subsection (b)(3)(B)(ix) or (n) of section 1886.".

(2) Section 1851(i)(1) of the Social Security Act (42 U.S.C. 1395w–21(i)(1)) is amended by striking "and 1886(h)(3)(D)" and inserting "1886(h)(3)(D), and 1853(m)".

(3) Section 1853 of the Social Security Act (42 U.S.C. 1395w–23), as amended by section 4101(d), is amended—

(A) in subsection (c)—

(i) in paragraph (1)(D)(i), by striking "1848(o)" and inserting ", 1848(o), and 1886(n)"; and

(ii) in paragraph (6)(A), by inserting "and subsections (b)(3)(B)(ix) and (n) of section 1886" after "section 1848"; and

(B) in subsection (f), by inserting "and subsection (m)" after "under subsection (l)".

SEC. 4103. TREATMENT OF PAYMENTS AND SAVINGS; IMPLEMENTATION FUNDING.

(a) PREMIUM HOLD HARMLESS.—

(1) IN GENERAL.—Section 1839(a)(1) of the Social Security Act (42 U.S.C. 1395r(a)(1)) is amended by adding at the end the following: "In applying this paragraph there shall not be taken into account additional payments under section 1848(o) and section 1853(l)(3) and the Government contribution under section 1844(a)(3).".

(2) PAYMENT.—Section 1844(a) of such Act (42 U.S.C. 1395w(a)) is amended—

(A) in paragraph (2), by striking the period at the end and inserting "; plus"; and

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

"(3) a Government contribution equal to the amount of payment incentives payable under sections 1848(o) and 1853(l)(3).".

(b) MEDICARE IMPROVEMENT FUND.—Section 1898 of the Social Security Act (42 U.S.C. 1395iii), as added by section 7002(a) of the Supplemental Appropriations Act, 2008 (Public Law 110–252) and as amended by section 188(a)(2) of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110–275; 122 Stat. 2589) and by section 6 of the QI Program Supplemental Funding Act of 2008, is amended—

(1) in subsection (a)—

(A) by inserting "medicare" before "fee-for-service"; and

(B) by inserting before the period at the end the following: "including, but not limited to, an increase in the conversion factor under section 1848(d) to address, in whole or in part, any projected shortfall in the conversion factor for 2014 relative to the conversion factor for 2008 and adjustments to payments for items and services furnished by providers of services and suppliers under such original medicare fee-for-service program"; and

(2) in subsection (b)—

(A) in paragraph (1), by striking "during fiscal year 2014," and all that follows and inserting the following: "during—

"(A) fiscal year 2014, $22,290,000,000; and

"(B) fiscal year 2020 and each subsequent fiscal year, the Secretary's estimate, as of July 1 of the fiscal year, of the aggregate reduction in expenditures under this title during the preceding fiscal year directly resulting from the reduction in payment amounts under sections 1848(a)(7), 1853(l)(4), 1853(m)(4), and 1886(b)(3)(B)(ix).."; and

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

"(4) NO EFFECT ON PAYMENTS IN SUBSEQUENT YEARS.—In the case that expenditures from the Fund are applied to, or otherwise affect, a payment rate for an item or service under this title for a year, the payment rate for such item or service shall be computed for a subsequent year as if such application or effect had never occurred.".

(c) IMPLEMENTATION FUNDING.—In addition to funds otherwise available, out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary of Health and Human Services for the Center for Medicare & Medicaid Services Program Management Account, $100,000,000 for each of fiscal years 2009 through 2015 and $45,000,000 for fiscal year 2016, which shall be available for purposes of carrying out the provisions of (and amendments made by) this subtitle. Amounts appropriated under this subsection for a fiscal year shall be available until expended.

SEC. 4104. STUDIES AND REPORTS ON HEALTH INFORMATION TECHNOLOGY.

(a) STUDY AND REPORT ON APPLICATION OF EHR PAYMENT INCENTIVES FOR PROVIDERS NOT RECEIVING OTHER INCENTIVE PAYMENTS.—

(1) STUDY.—

(A) IN GENERAL.—The Secretary of Health and Human Services shall conduct a study to determine the extent to which and manner in which payment incentives (such as under title XVIII or XIX of the Social Security Act) and other funding for purposes of implementing and using certified EHR technology (as defined in section 1848(o)(4) of the Social Security Act, as added by section 4101(a)) should be made available to health care providers who are receiving minimal or no payment incentives or other funding under this Act, under title XIII of division A, under title XVIII or XIX of such Act, or otherwise, for such purposes.

(B) DETAILS OF STUDY.—Such study shall include an examination of—

(i) the adoption rates of certified EHR technology by such health care providers;

(ii) the clinical utility of such technology by such health care providers;

(iii) whether the services furnished by such health care providers are appropriate for or would benefit from the use of such technology;

(iv) the extent to which such health care providers work in settings that might otherwise receive an incentive payment or other funding under this Act, under title XIII of division A, under title XVIII or XIX of the Social Security Act, or otherwise;

(v) the potential costs and the potential benefits of making payment incentives and other funding available to such health care providers; and

(vi) any other issues the Secretary deems to be appropriate.

(2) REPORT.—Not later than June 30, 2010, the Secretary shall submit to Congress a report on the findings and conclusions of the study conducted under paragraph (1).

(b) STUDY AND REPORT ON AVAILABILITY OF OPEN SOURCE HEALTH INFORMATION TECHNOLOGY SYSTEMS.—

(1) STUDY.—

(A) IN GENERAL.—The Secretary of Health and Human Services shall, in consultation with the Under Secretary for Health of the Veterans Health Administration, the Director of the Indian Health Service, the Secretary of Defense, the Director of the Agency for Healthcare Research and Quality, the Administrator of the Health Resources and Services Administration, and the Chairman of the Federal Communications Commission, conduct a study on—

(i) the current availability of open source health information technology systems to Federal safety net providers (including small, rural providers);

(ii) the total cost of ownership of such systems in comparison to the cost of proprietary commercial products available;

(iii) the ability of such systems to respond to the needs of, and be applied to, various populations (including children and disabled individuals); and

(iv) the capacity of such systems to facilitate interoperability.

(B) CONSIDERATIONS.—In conducting the study under subparagraph (A), the Secretary of Health and Human Services shall take into account the circumstances of smaller health care providers, health care providers located in rural or other medically underserved areas, and safety net providers that deliver a significant level of health care to uninsured individuals, Medicaid beneficiaries, SCHIP beneficiaries, and other vulnerable individuals.

(2) REPORT.—Not later than October 1, 2010, the Secretary of Health and Human Services shall submit to Congress a report on the findings and the conclusions of the study conducted

under paragraph (1), together with recommendations for such legislation and administrative action as the Secretary determines appropriate.

Subtitle B—Medicaid Incentives

SEC. 4201. MEDICAID PROVIDER HIT ADOPTION AND OPERATION PAYMENTS; IMPLEMENTATION FUNDING.

(a) IN GENERAL.—Section 1903 of the Social Security Act (42 U.S.C. 1396b) is amended—

(1) in subsection (a)(3)—

(A) by striking "and" at the end of subparagraph (D);

(B) by striking "plus" at the end of subparagraph (E) and inserting "and"; and

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

"(F)(i) 100 percent of so much of the sums expended during such quarter as are attributable to payments to Medicaid providers described in subsection (t)(1) to encourage the adoption and use of certified EHR technology; and

"(ii) 90 percent of so much of the sums expended during such quarter as are attributable to payments for reasonable administrative expenses related to the administration of payments described in clause (i) if the State meets the condition described in subsection (t)(9); plus"; and

(2) by inserting after subsection (s) the following new subsection:

"(t)(1) For purposes of subsection (a)(3)(F), the payments described in this paragraph to encourage the adoption and use of certified EHR technology are payments made by the State in accordance with this subsection—

"(A) to Medicaid providers described in paragraph (2)(A) not in excess of 85 percent of net average allowable costs (as defined in paragraph (3)(E)) for certified EHR technology (and support services including maintenance and training that is for, or is necessary for the adoption and operation of, such technology) with respect to such providers; and

"(B) to Medicaid providers described in paragraph (2)(B) not in excess of the maximum amount permitted under paragraph (5) for the provider involved.

"(2) In this subsection and subsection (a)(3)(F), the term 'Medicaid provider' means—

"(A) an eligible professional (as defined in paragraph (3)(B))—

"(i) who is not hospital-based and has at least 30 percent of the professional's patient volume (as estimated in accordance with a methodology established by the Secretary) attributable to individuals who are receiving medical assistance under this title;

"(ii) who is not described in clause (i), who is a pediatrician, who is not hospital-based, and who has at least 20 percent of the professional's patient volume (as estimated in accordance with a methodology established by the Secretary) attributable to individuals who are receiving medical assistance under this title; and

"(iii) who practices predominantly in a Federally qualified health center or rural health clinic and has at least 30 percent of the professional's patient volume (as estimated in accordance with a methodology established by the Secretary) attributable to needy individuals (as defined in paragraph (3)(F)); and

"(B)(i) a children's hospital, or

"(ii) an acute-care hospital that is not described in clause (i) and that has at least 10 percent of the hospital's patient volume (as estimated in accordance with a methodology established by the Secretary) attributable to individuals who are receiving medical assistance under this title.

An eligible professional shall not qualify as a Medicaid provider under this subsection unless any right to payment under sections 1848(o) and 1853(l) with respect to the eligible professional has been waived in a manner specified by the Secretary. For purposes of calculating patient volume under subparagraph (A)(iii), insofar as it is related to uncompensated care, the Secretary may require the adjustment of such uncompensated care data so that it would be an appropriate proxy for charity care, including a downward adjustment to eliminate bad debt data from uncompensated care. In applying subparagraphs (A) and (B)(ii), the methodology established by the Secretary for patient volume shall include individuals enrolled in a Medicaid managed care plan (under section 1903(m) or section 1932).

"(3) In this subsection and subsection (a)(3)(F):

"(A) The term 'certified EHR technology' means a qualified electronic health record (as defined in 3000(13) of the Public Health Service Act) that is certified pursuant to section 3001(c)(5) of such Act as meeting standards adopted under section 3004 of such Act that are applicable to the type of record involved (as determined by the Secretary, such as an ambulatory electronic health record for office-based physicians or an inpatient hospital electronic health record for hospitals).

"(B) The term 'eligible professional' means a—

"(i) physician;

"(ii) dentist;

"(iii) certified nurse mid-wife;

"(iv) nurse practitioner; and

"(v) physician assistant insofar as the assistant is practicing in a rural health clinic that is led by a physician assistant or is practicing in a Federally qualified health center that is so led.

"(C) The term 'average allowable costs' means, with respect to certified EHR technology of Medicaid providers described in paragraph (2)(A) for—

"(i) the first year of payment with respect to such a provider, the average costs for the purchase and initial implementation or upgrade of such technology (and support services including training that is for, or is necessary for the adoption and initial operation of, such technology) for such providers, as determined by the Secretary based upon studies conducted under paragraph (4)(C); and

"(ii) a subsequent year of payment with respect to such a provider, the average costs not described in clause (i) re-

lating to the operation, maintenance, and use of such technology for such providers, as determined by the Secretary based upon studies conducted under paragraph (4)(C).

"(D) The term 'hospital-based' means, with respect to an eligible professional, a professional (such as a pathologist, anesthesiologist, or emergency physician) who furnishes substantially all of the individual's professional services in a hospital setting (whether inpatient or outpatient) and through the use of the facilities and equipment, including qualified electronic health records, of the hospital. The determination of whether an eligible professional is a hospital-based eligible professional shall be made on the basis of the site of service (as defined by the Secretary) and without regard to any employment or billing arrangement between the eligible professional and any other provider.

"(E) The term 'net average allowable costs' means, with respect to a Medicaid provider described in paragraph (2)(A), average allowable costs reduced by any payment that is made to such Medicaid provider from any other source (other than under this subsection or by a State or local government) that is directly attributable to payment for certified EHR technology or support services described in subparagraph (C).

"(F) The term 'needy individual' means, with respect to a Medicaid provider, an individual—

"(i) who is receiving assistance under this title;

"(ii) who is receiving assistance under title XXI;

"(iii) who is furnished uncompensated care by the provider; or

"(iv) for whom charges are reduced by the provider on a sliding scale basis based on an individual's ability to pay.

"(4)(A) With respect to a Medicaid provider described in paragraph (2)(A), subject to subparagraph (B), in no case shall—

"(i) the net average allowable costs under this subsection for the first year of payment (which may not be later than 2016), which is intended to cover the costs described in paragraph (3)(C)(i), exceed $25,000 (or such lesser amount as the Secretary determines based on studies conducted under subparagraph (C));

"(ii) the net average allowable costs under this subsection for a subsequent year of payment, which is intended to cover costs described in paragraph (3)(C)(ii), exceed $10,000; and

"(iii) payments be made for costs described in clause (ii) after 2021 or over a period of longer than 5 years.

"(B) In the case of Medicaid provider described in paragraph (2)(A)(ii), the dollar amounts specified in subparagraph (A) shall be 2/3 of the dollar amounts otherwise specified.

"(C) For the purposes of determining average allowable costs under this subsection, the Secretary shall study the average costs to Medicaid providers described in paragraph (2)(A) of purchase and initial implementation and upgrade of certified EHR technology described in paragraph (3)(C)(i) and the average costs to such providers of operations, maintenance, and use of such technology described in paragraph (3)(C)(ii). In determining such costs for such

providers, the Secretary may utilize studies of such amounts submitted by States.

"(5)(A) In no case shall the payments described in paragraph (1)(B) with respect to a Medicaid provider described in paragraph (2)(B) exceed—

"(i) in the aggregate the product of—

"(I) the overall hospital EHR amount for the provider computed under subparagraph (B); and

"(II) the Medicaid share for such provider computed under subparagraph (C);

"(ii) in any year 50 percent of the product described in clause (i); and

"(iii) in any 2-year period 90 percent of such product.

"(B) For purposes of this paragraph, the overall hospital EHR amount, with respect to a Medicaid provider, is the sum of the applicable amounts specified in section 1886(n)(2)(A) for such provider for the first 4 payment years (as estimated by the Secretary) determined as if the Medicare share specified in clause (ii) of such section were 1. The Secretary shall establish, in consultation with the State, the overall hospital EHR amount for each such Medicaid provider eligible for payments under paragraph (1)(B). For purposes of this subparagraph in computing the amounts under section 1886(n)(2)(C) for payment years after the first payment year, the Secretary shall assume that in subsequent payment years discharges increase at the average annual rate of growth of the most recent 3 years for which discharge data are available per year.

"(C) The Medicaid share computed under this subparagraph, for a Medicaid provider for a period specified by the Secretary, shall be calculated in the same manner as the Medicare share under section 1886(n)(2)(D) for such a hospital and period, except that there shall be substituted for the numerator under clause (i) of such section the amount that is equal to the number of inpatient-bed-days (as established by the Secretary) which are attributable to individuals who are receiving medical assistance under this title and who are not described in section 1886(n)(2)(D)(i). In computing inpatient-bed-days under the previous sentence, the Secretary shall take into account inpatient-bed-days attributable to inpatient-bed-days that are paid for individuals enrolled in a Medicaid managed care plan (under section 1903(m) or section 1932).

"(D) In no case may the payments described in paragraph (1)(B) with respect to a Medicaid provider described in paragraph (2)(B) be paid—

"(i) for any year beginning after 2016 unless the provider has been provided payment under paragraph (1)(B) for the previous year; and

"(ii) over a period of more than 6 years of payment.

"(6) Payments described in paragraph (1) are not in accordance with this subsection unless the following requirements are met:

"(A)(i) The State provides assurances satisfactory to the Secretary that amounts received under subsection (a)(3)(F) with respect to payments to a Medicaid provider are paid, subject to clause (ii), directly to such provider (or to an employer or facility to which such provider has assigned payments) without any deduction or rebate.

"(ii) Amounts described in clause (i) may also be paid to an entity promoting the adoption of certified EHR technology, as designated by the State, if participation in such a payment arrangement is voluntary for the eligible professional involved and if such entity does not retain more than 5 percent of such payments for costs not related to certified EHR technology (and support services including maintenance and training) that is for, or is necessary for the operation of, such technology.

"(B) A Medicaid provider described in paragraph (2)(A) is responsible for payment of the remaining 15 percent of the net average allowable cost.

"(C)(i) Subject to clause (ii), with respect to payments to a Medicaid provider—

"(I) for the first year of payment to the Medicaid provider under this subsection, the Medicaid provider demonstrates that it is engaged in efforts to adopt, implement, or upgrade certified EHR technology; and

"(II) for a year of payment, other than the first year of payment to the Medicaid provider under this subsection, the Medicaid provider demonstrates meaningful use of certified EHR technology through a means that is approved by the State and acceptable to the Secretary, and that may be based upon the methodologies applied under section 1848(o) or 1886(n).

"(ii) In the case of a Medicaid provider who has completed adopting, implementing, or upgrading such technology prior to the first year of payment to the Medicaid provider under this subsection, clause (i)(I) shall not apply and clause (i)(II) shall apply to each year of payment to the Medicaid provider under this subsection, including the first year of payment.

"(D) To the extent specified by the Secretary, the certified EHR technology is compatible with State or Federal administrative management systems.

For purposes of subparagraph (B), a Medicaid provider described in paragraph (2)(A) may accept payments for the costs described in such subparagraph from a State or local government. For purposes of subparagraph (C), in establishing the means described in such subparagraph, which may include clinical quality reporting to the State, the State shall ensure that populations with unique needs, such as children, are appropriately addressed.

"(7) With respect to Medicaid providers described in paragraph (2)(A), the Secretary shall ensure coordination of payment with respect to such providers under sections 1848(o) and 1853(l) and under this subsection to assure no duplication of funding. Such coordination shall include, to the extent practicable, a data matching process between State Medicaid agencies and the Centers for Medicare & Medicaid Services using national provider identifiers. For such purposes, the Secretary may require the submission of such data relating to payments to such Medicaid providers as the Secretary may specify.

"(8) In carrying out paragraph (6)(C), the State and Secretary shall seek, to the maximum extent practicable, to avoid duplicative requirements from Federal and State governments to demonstrate meaningful use of certified EHR technology under this title and title XVIII. In doing so, the Secretary may deem satisfaction of require-

ments for such meaningful use for a payment year under title XVIII to be sufficient to qualify as meaningful use under this subsection. The Secretary may also specify the reporting periods under this subsection in order to carry out this paragraph.

"(9) In order to be provided Federal financial participation under subsection (a)(3)(F)(ii), a State must demonstrate to the satisfaction of the Secretary, that the State—

"(A) is using the funds provided for the purposes of administering payments under this subsection, including tracking of meaningful use by Medicaid providers;

"(B) is conducting adequate oversight of the program under this subsection, including routine tracking of meaningful use attestations and reporting mechanisms; and

"(C) is pursuing initiatives to encourage the adoption of certified EHR technology to promote health care quality and the exchange of health care information under this title, subject to applicable laws and regulations governing such exchange.

"(10) The Secretary shall periodically submit reports to the Committee on Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate on status, progress, and oversight of payments described in paragraph (1), including steps taken to carry out paragraph (7). Such reports shall also describe the extent of adoption of certified EHR technology among Medicaid providers resulting from the provisions of this subsection and any improvements in health outcomes, clinical quality, or efficiency resulting from such adoption.".

(b) IMPLEMENTATION FUNDING.—In addition to funds otherwise available, out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary of Health and Human Services for the Centers for Medicare & Medicaid Services Program Management Account, $40,000,000 for each of fiscal years 2009 through 2015 and $20,000,000 for fiscal year 2016, which shall be available for purposes of carrying out the provisions of (and the amendments made by) this section. Amounts appropriated under this subsection for a fiscal year shall be available until expended.

Subtitle C—Miscellaneous Medicare Provisions

SEC. 4301. MORATORIA ON CERTAIN MEDICARE REGULATIONS.

(a) DELAY IN PHASE OUT OF MEDICARE HOSPICE BUDGET NEUTRALITY ADJUSTMENT FACTOR DURING FISCAL YEAR 2009.—Notwithstanding any other provision of law, including the final rule published on August 8, 2008, 73 Federal Register 46464 et seq., relating to Medicare Program; Hospice Wage Index for Fiscal Year 2009, the Secretary of Health and Human Services shall not phase out or eliminate the budget neutrality adjustment factor in the Medicare hospice wage index before October 1, 2009, and the Secretary shall recompute and apply the final Medicare hospice wage index for fiscal year 2009 as if there had been no reduction in the budget neutrality adjustment factor.

(b) NON-APPLICATION OF PHASED-OUT INDIRECT MEDICAL EDUCATION (IME) ADJUSTMENT FACTOR FOR FISCAL YEAR 2009.—

(1) IN GENERAL.—Section 412.322 of title 42, Code of Federal Regulations, shall be applied without regard to paragraph (c) of such section, and the Secretary of Health and Human

Services shall recompute payments for discharges occurring on or after October 1, 2008, as if such paragraph had never been in effect.

(2) NO EFFECT ON SUBSEQUENT YEARS.—Nothing in paragraph (1) shall be construed as having any effect on the application of paragraph (d) of section 412.322 of title 42, Code of Federal Regulations.

(c) FUNDING FOR IMPLEMENTATION.—In addition to funds otherwise available, for purposes of implementing the provisions of subsections (a) and (b), including costs incurred in reprocessing claims in carrying out such provisions, the Secretary of Health and Human Services shall provide for the transfer from the Federal Hospital Insurance Trust Fund established under section 1817 of the Social Security Act (42 U.S.C. 1395i) to the Centers for Medicare & Medicaid Services Program Management Account of $2,000,000 for fiscal year 2009.

SEC. 4302. LONG-TERM CARE HOSPITAL TECHNICAL CORRECTIONS.

(a) PAYMENT.—Subsection (c) of section 114 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110–173) is amended—

(1) in paragraph (1)—

(A) by amending the heading to read as follows: "DELAY IN APPLICATION OF 25 PERCENT PATIENT THRESHOLD PAYMENT ADJUSTMENT";

(B) by striking "the date of the enactment of this Act" and inserting "July 1, 2007,"; and

(C) in subparagraph (A), by inserting "or to a long-term care hospital, or satellite facility, that as of December 29, 2007, was co-located with an entity that is a provider-based, off-campus location of a subsection (d) hospital which did not provide services payable under section 1886(d) of the Social Security Act at the off-campus location" after "freestanding long-term care hospitals"; and

(2) in paragraph (2)—

(A) in subparagraph (B)(ii), by inserting "or that is described in section 412.22(h)(3)(i) of such title" before the period; and

(B) in subparagraph (C), by striking "the date of the enactment of this Act" and inserting "October 1, 2007 (or July 1, 2007, in the case of a satellite facility described in section 412.22(h)(3)(i) of title 42, Code of Federal Regulations)".

(b) MORATORIUM.—Subsection (d)(3)(A) of such section is amended by striking "if the hospital or facility" and inserting "if the hospital or facility obtained a certificate of need for an increase in beds that is in a State for which such certificate of need is required and that was issued on or after April 1, 2005, and before December 29, 2007, or if the hospital or facility".

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective and apply as if included in the enactment of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110–173).

TITLE V—STATE FISCAL RELIEF

SEC. 5000. PURPOSES; TABLE OF CONTENTS.

(a) PURPOSES.—The purposes of this title are as follows:

(1) To provide fiscal relief to States in a period of economic downturn.

(2) To protect and maintain State Medicaid programs during a period of economic downturn, including by helping to avert cuts to provider payment rates and benefits or services, and to prevent constrictions of income eligibility requirements for such programs, but not to promote increases in such requirements.

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

TITLE V—STATE FISCAL RELIEF

Sec. 5000. Purposes; table of contents.
Sec. 5001. Temporary increase of Medicaid FMAP.
Sec. 5002. Temporary increase in DSH allotments during recession.
Sec. 5003. Extension of moratoria on certain Medicaid final regulations.
Sec. 5004. Extension of transitional medical assistance (TMA).
Sec. 5005. Extension of the qualifying individual (QI) program.
Sec. 5006. Protections for Indians under Medicaid and CHIP.
Sec. 5007. Funding for oversight and implementation.
Sec. 5008. GAO study and report regarding State needs during periods of national economic downturn.

SEC. 5001. TEMPORARY INCREASE OF MEDICAID FMAP.

(a) PERMITTING MAINTENANCE OF FMAP.—Subject to subsections (e), (f), and (g), if the FMAP determined without regard to this section for a State for—

(1) fiscal year 2009 is less than the FMAP as so determined for fiscal year 2008, the FMAP for the State for fiscal year 2008 shall be substituted for the State's FMAP for fiscal year 2009, before the application of this section;

(2) fiscal year 2010 is less than the FMAP as so determined for fiscal year 2008 or fiscal year 2009 (after the application of paragraph (1)), the greater of such FMAP for the State for fiscal year 2008 or fiscal year 2009 shall be substituted for the State's FMAP for fiscal year 2010, before the application of this section; and

(3) fiscal year 2011 is less than the FMAP as so determined for fiscal year 2008, fiscal year 2009 (after the application of paragraph (1)), or fiscal year 2010 (after the application of paragraph (2)), the greatest of such FMAP for the State for fiscal year 2008, fiscal year 2009, or fiscal year 2010 shall be substituted for the State's FMAP for fiscal year 2011, before the application of this section, but only for the first calendar quarter in fiscal year 2011.

(b) GENERAL 6.2 PERCENTAGE POINT INCREASE.—

(1) IN GENERAL.—Subject to subsections (e), (f), and (g) and paragraph (2), for each State for calendar quarters during the recession adjustment period (as defined in subsection (h)(3)), the FMAP (after the application of subsection (a)) shall be increased (without regard to any limitation otherwise specified in section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b))) by 6.2 percentage points.

(2) SPECIAL ELECTION FOR TERRITORIES.—In the case of a State that is not one of the 50 States or the District of Columbia, paragraph (1) shall only apply if the State makes a one-time election, in a form and manner specified by the Secretary and for the entire recession adjustment period, to apply the increase in FMAP under paragraph (1) and a 15 percent increase under subsection (d) instead of applying a 30 percent increase under subsection (d).

(c) ADDITIONAL RELIEF BASED ON INCREASE IN UNEMPLOYMENT.—

(1) IN GENERAL.—Subject to subsections (e), (f), and (g), if a State is a qualifying State under paragraph (2) for a calendar quarter occurring during the recession adjustment period, the FMAP for the State shall be further increased by the number of percentage points equal to the product of—

(A) the State percentage applicable for the State under section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)) after the application of subsection (a) and after the application of ½ of the increase under subsection (b); and

(B) the applicable percent determined in paragraph (3) for the calendar quarter (or, if greater, for a previous such calendar quarter).

(2) QUALIFYING CRITERIA.—

(A) IN GENERAL.—For purposes of paragraph (1), a State qualifies for additional relief under this subsection for a calendar quarter occurring during the recession adjustment period if the State is 1 of the 50 States or the District of Columbia and the State satisfies any of the following criteria for the quarter:

(i) The State unemployment increase percentage (as defined in paragraph (4)) for the quarter is at least 1.5 percentage points but less than 2.5 percentage points.

(ii) The State unemployment increase percentage for the quarter is at least 2.5 percentage points but less than 3.5 percentage points.

(iii) The State unemployment increase percentage for the quarter is at least 3.5 percentage points.

(B) MAINTENANCE OF STATUS.—If a State qualifies for additional relief under this subsection for a calendar quarter, it shall be deemed to have qualified for such relief for each subsequent calendar quarter ending before July 1, 2010.

(3) APPLICABLE PERCENT.—

(A) IN GENERAL.—For purposes of paragraph (1), subject to subparagraph (B), the applicable percent is—

(i) 5.5 percent, if the State satisfies the criteria described in paragraph (2)(A)(i) for the calendar quarter;

(ii) 8.5 percent if the State satisfies the criteria described in paragraph (2)(A)(ii) for the calendar quarter; and

(iii) 11.5 percent if the State satisfies the criteria described in paragraph (2)(A)(iii) for the calendar quarter.

(B) MAINTENANCE OF HIGHER APPLICABLE PERCENT.—

(i) HOLD HARMLESS PERIOD.—If the percent applied to a State under subparagraph (A) for any calendar quarter in the recession adjustment period beginning on or after January 1, 2009, and ending before July 1, 2010, (determined without regard to this subparagraph) is less than the percent applied for the preceding quarter (as so determined), the higher applicable percent shall continue in effect for each subsequent calendar quarter ending before July 1, 2010.

(ii) NOTICE OF LOWER APPLICABLE PERCENT.—The Secretary shall notify a State at least 60 days prior to applying any lower applicable percent to the State under this paragraph.

(4) COMPUTATION OF STATE UNEMPLOYMENT INCREASE PERCENTAGE.—

(A) IN GENERAL.—In this subsection, the "State unemployment increase percentage" for a State for a calendar quarter is equal to the number of percentage points (if any) by which—

(i) the average monthly unemployment rate for the State for months in the most recent previous 3-consecutive-month period for which data are available, subject to subparagraph (C); exceeds

(ii) the lowest average monthly unemployment rate for the State for any 3-consecutive-month period preceding the period described in clause (i) and beginning on or after January 1, 2006.

(B) AVERAGE MONTHLY UNEMPLOYMENT RATE DEFINED.—In this paragraph, the term "average monthly unemployment rate" means the average of the monthly number unemployed, divided by the average of the monthly civilian labor force, seasonally adjusted, as determined based on the most recent monthly publications of the Bureau of Labor Statistics of the Department of Labor.

(C) SPECIAL RULE.—With respect to—

(i) the first 2 calendar quarters of the recession adjustment period, the most recent previous 3-consecutive-month period described in subparagraph (A)(i) shall be the 3-consecutive-month period beginning with October 2008; and

(ii) the last 2 calendar quarters of the recession adjustment period, the most recent previous 3-consecutive-month period described in such subparagraph shall be the 3-consecutive-month period beginning with December 2009, or, if it results in a higher applicable percent under paragraph (3), the 3-consecutive-month period beginning with January 2010.

(d) INCREASE IN CAP ON MEDICAID PAYMENTS TO TERRITORIES.—Subject to subsections (f) and (g), with respect to entire fiscal years occurring during the recession adjustment period and with respect to fiscal years only a portion of which occurs during such period (and in proportion to the portion of the fiscal year that occurs during such period), the amounts otherwise determined for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and

American Samoa under subsections (f) and (g) of section 1108 of the Social Security Act (42 6 U.S.C. 1308) shall each be increased by 30 percent (or, in the case of an election under subsection (b)(2), 15 percent). In the case of such an election by a territory, subsection (a)(1) of such section shall be applied without regard to any increase in payment made to the territory under part E of title IV of such Act that is attributable to the increase in FMAP effected under subsection (b) for the territory.

(e) SCOPE OF APPLICATION.—The increases in the FMAP for a State under this section shall apply for purposes of title XIX of the Social Security Act and shall not apply with respect to—

(1) disproportionate share hospital payments described in section 1923 of such Act (42 U.S.C. 1396r–4);

(2) payments under title IV of such Act (42 U.S.C. 601 et seq.) (except that the increases under subsections (a) and (b) shall apply to payments under part E of title IV of such Act (42 U.S.C. 670 et seq.) and, for purposes of the application of this section to the District of Columbia, payments under such part shall be deemed to be made on the basis of the FMAP applied with respect to such District for purposes of title XIX and as increased under subsection (b));

(3) payments under title XXI of such Act (42 U.S.C. 1397aa et seq.);

(4) any payments under title XIX of such Act that are based on the enhanced FMAP described in section 2105(b) of such Act (42 U.S.C. 1397ee(b)); or

(5) any payments under title XIX of such Act that are attributable to expenditures for medical assistance provided to individuals made eligible under a State plan under title XIX of the Social Security Act (including under any waiver under such title or under section 1115 of such Act (42 U.S.C. 1315)) because of income standards (expressed as a percentage of the poverty line) for eligibility for medical assistance that are higher than the income standards (as so expressed) for such eligibility as in effect on July 1, 2008, (including as such standards were proposed to be in effect under a State law enacted but not effective as of such date or a State plan amendment or waiver request under title XIX of such Act that was pending approval on such date).

(f) STATE INELIGIBILITY; LIMITATION; SPECIAL RULES.—

(1) MAINTENANCE OF ELIGIBILITY REQUIREMENTS.—

(A) IN GENERAL.—Subject to subparagraphs (B) and (C), a State is not eligible for an increase in its FMAP under subsection (a), (b), or (c), or an increase in a cap amount under subsection (d), if eligibility standards, methodologies, or procedures under its State plan under title XIX of the Social Security Act (including any waiver under such title or under section 1115 of such Act (42 U.S.C. 1315)) are more restrictive than the eligibility standards, methodologies, or procedures, respectively, under such plan (or waiver) as in effect on July 1, 2008.

(B) STATE REINSTATEMENT OF ELIGIBILITY PERMITTED.—Subject to subparagraph (C), a State that has restricted eligibility standards, methodologies, or procedures under its State plan under title XIX of the Social Security

Act (including any waiver under such title or under section 1115 of such Act (42 U.S.C. 1315)) after July 1, 2008, is no longer ineligible under subparagraph (A) beginning with the first calendar quarter in which the State has reinstated eligibility standards, methodologies, or procedures that are no more restrictive than the eligibility standards, methodologies, or procedures, respectively, under such plan (or waiver) as in effect on July 1, 2008.

(C) SPECIAL RULES.—A State shall not be ineligible under subparagraph (A)—

(i) for the calendar quarters before July 1, 2009, on the basis of a restriction that was applied after July 1, 2008, and before the date of the enactment of this Act, if the State prior to July 1, 2009, has reinstated eligibility standards, methodologies, or procedures that are no more restrictive than the eligibility standards, methodologies, or procedures, respectively, under such plan (or waiver) as in effect on July 1, 2008; or

(ii) on the basis of a restriction that was directed to be made under State law as in effect on July 1, 2008, and would have been in effect as of such date, but for a delay in the effective date of a waiver under section 1115 of such Act with respect to such restriction.

(2) COMPLIANCE WITH PROMPT PAY REQUIREMENTS.—

(A) APPLICATION TO PRACTITIONERS.—

(i) IN GENERAL.—Subject to the succeeding provisions of this subparagraph, no State shall be eligible for an increased FMAP rate as provided under this section for any claim received by a State from a practitioner subject to the terms of section 1902(a)(37)(A) of the Social Security Act (42 U.S.C. 1396a(a)(37)(A)) for such days during any period in which that State has failed to pay claims in accordance with such section as applied under title XIX of such Act.

(ii) REPORTING REQUIREMENT.—Each State shall report to the Secretary, on a quarterly basis, its compliance with the requirements of clause (i) as such requirements pertain to claims made for covered services during each month of the preceding quarter.

(iii) WAIVER AUTHORITY.—The Secretary may waive the application of clause (i) to a State, or the reporting requirement imposed under clause (ii), during any period in which there are exigent circumstances, including natural disasters, that prevent the timely processing of claims or the submission of such a report.

(iv) APPLICATION TO CLAIMS.—Clauses (i) and (ii) shall only apply to claims made for covered services after the date of enactment of this Act.

(B) APPLICATION TO NURSING FACILITIES AND HOSPITALS.—

(i) IN GENERAL.—Subject to clause (ii), the provisions of subparagraph (A) shall apply with respect to a nursing facility or hospital, insofar as it is paid under title XIX of the Social Security Act on the basis

of submission of claims, in the same or similar manner (but within the same timeframe) as such provisions apply to practitioners described in such subparagraph.

(ii) GRACE PERIOD.—Notwithstanding clause (i), no period of ineligibility shall be imposed against a State prior to June 1, 2009, on the basis of the State failing to pay a claim in accordance with such clause.

(3) STATE'S APPLICATION TOWARD RAINY DAY FUND.—A State is not eligible for an increase in its FMAP under subsection (b) or (c), or an increase in a cap amount under subsection (d), if any amounts attributable (directly or indirectly) to such increase are deposited or credited into any reserve or rainy day fund of the State.

(4) NO WAIVER AUTHORITY.—Except as provided in paragraph (2)(A)(iii), the Secretary may not waive the application of this subsection or subsection (g) under section 1115 of the Social Security Act or otherwise.

(5) LIMITATION OF FMAP TO 100 PERCENT.—In no case shall an increase in FMAP under this section result in an FMAP that exceeds 100 percent.

(6) TREATMENT OF CERTAIN EXPENDITURES.—With respect to expenditures described in section 2105(a)(1)(B) of the Social Security Act (42 U.S.C. 1397ee(a)(1)(B)), as in effect before April 1, 2009, that are made during the period beginning on October 1, 2008, and ending on March 31, 2009, any additional Federal funds that are paid to a State as a result of this section that are attributable to such expenditures shall not be counted against any allotment under section 2104 of such Act (42 U.S.C. 1397dd).

(g) REQUIREMENTS.—

(1) STATE REPORTS.—Each State that is paid additional Federal funds as a result of this section shall, not later than September 30, 2011, submit a report to the Secretary, in such form and such manner as the Secretary shall determine, regarding how the additional Federal funds were expended.

(2) ADDITIONAL REQUIREMENT FOR CERTAIN STATES.—In the case of a State that requires political subdivisions within the State to contribute toward the non-Federal share of expenditures under the State Medicaid plan required under section 1902(a)(2) of the Social Security Act (42 U.S.C. 1396a(a)(2)), the State is not eligible for an increase in its FMAP under subsection (b) or (c), or an increase in a cap amount under subsection (d), if it requires that such political subdivisions pay for quarters during the recession adjustment period a greater percentage of the non-Federal share of such expenditures, or a greater percentage of the non-Federal share of payments under section 1923, than the respective percentage that would have been required by the State under such plan on September 30, 2008, prior to application of this section.

(h) DEFINITIONS.—In this section, except as otherwise provided:

(1) FMAP.—The term "FMAP" means the Federal medical assistance percentage, as defined in section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)), as determined without regard to this section except as otherwise specified.

(2) POVERTY LINE.—The term "poverty line" has the meaning given such term in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), including any revision required by such section.

(3) RECESSION ADJUSTMENT PERIOD.—The term "recession adjustment period" means the period beginning on October 1, 2008, and ending on December 31, 2010.

(4) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services.

(5) STATE.—The term "State" has the meaning given such term in section 1101(a)(1) of the Social Security Act (42 U.S.C. 1301(a)(1)) for purposes of title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(i) SUNSET.—This section shall not apply to items and services furnished after the end of the recession adjustment period.

(j) LIMITATION ON FMAP CHANGE.—The increase in FMAP effected under section 614 of the Children's Health Insurance Program Reauthorization Act of 2009 shall not apply in the computation of the enhanced FMAP under title XXI or XIX of the Social Security Act for any period (notwithstanding subsection (i)).

SEC. 5002. TEMPORARY INCREASE IN DSH ALLOTMENTS DURING RECESSION.

Section 1923(f)(3) of the Social Security Act (42 U.S.C. 1396r–4(f)(3)) is amended—

(1) in subparagraph (A), by striking "paragraph (6)" and inserting "paragraph (6) and subparagraph (E)"; and

(2) by adding at the end the following new subparagraph:

"(E) TEMPORARY INCREASE IN ALLOTMENTS DURING RECESSION.—

"(i) IN GENERAL.—Subject to clause (ii), the DSH allotment for any State—

"(I) for fiscal year 2009 is equal to 102.5 percent of the DSH allotment that would be determined under this paragraph for the State for fiscal year 2009 without application of this subparagraph, notwithstanding subparagraphs (B) and (C);

"(II) for fiscal year 2010 is equal to 102.5 percent of the DSH allotment for the State for fiscal year 2009, as determined under subclause (I); and

"(III) for each succeeding fiscal year is equal to the DSH allotment for the State under this paragraph determined without applying subclauses (I) and (II).

"(ii) APPLICATION.—Clause (i) shall not apply to a State for a year in the case that the DSH allotment for such State for such year under this paragraph determined without applying clause (i) would grow higher than the DSH allotment specified under clause (i) for the State for such year.".

SEC. 5003. EXTENSION OF MORATORIA ON CERTAIN MEDICAID FINAL REGULATIONS.

(a) FINAL REGULATIONS RELATING TO OPTIONAL CASE MANAGEMENT SERVICES AND ALLOWABLE PROVIDER TAXES.—Section 7001(a)(3)(A) of the Supplemental Appropriations Act, 2008 (Public

Law 110–252) is amended by striking "April 1, 2009" and inserting "July 1, 2009".

(b) FINAL REGULATION RELATING TO SCHOOL-BASED ADMINISTRATION AND SCHOOL-BASED TRANSPORTATION.—Section 206 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110–173), as amended by section 7001(a)(2) of the Supplemental Appropriations Act, 2008 (Public Law 110–252), is amended by inserting "(July 1, 2009, in the case of the final regulation relating to school-based administration and school-based transportation)" after "April 1, 2009,".

(c) FINAL REGULATION RELATING TO OUTPATIENT HOSPITAL FACILITY SERVICES.—Notwithstanding any other provision of law, with respect to expenditures for services furnished during the period beginning on December 8, 2008, and ending on June 30, 2009, the Secretary of Health and Human Services shall not take any action (through promulgation of regulation, issuance of regulatory guidance, use of Federal payment audit procedures, or other administrative action, policy, or practice, including a Medical Assistance Manual transmittal or letter to State Medicaid directors) to implement the final regulation relating to clarification of the definition of outpatient hospital facility services under the Medicaid program published on November 7, 2008 (73 Federal Register 66187).

(d) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of Health and Human Services should not promulgate as final regulations any of the following proposed Medicaid regulations:

(1) COST LIMITS FOR CERTAIN PROVIDERS.—The proposed regulation published on January 18, 2007, (72 Federal Register 2236) (and the purported final regulation published on May 29, 2007 (72 Federal Register 29748) and determined by the United States District Court for the District of Columbia to have been "improperly promulgated", Alameda County Medical Center, et al., v. Leavitt, et al., Civil Action No. 08–0422, Mem. at 4 (D.D.C. May 23, 2008)).

(2) PAYMENTS FOR GRADUATE MEDICAL EDUCATION.—The proposed regulation published on May 23, 2007 (72 Federal Register 28930).

(3) REHABILITATIVE SERVICES.—The proposed regulation published on August 13, 2007 (72 Federal Register 45201).

SEC. 5004. EXTENSION OF TRANSITIONAL MEDICAL ASSISTANCE (TMA).

(a) 18-MONTH EXTENSION.—

(1) IN GENERAL.—Sections 1902(e)(1)(B) and 1925(f) of the Social Security Act (42 U.S.C. 1396a(e)(1)(B), 1396r–6(f)) are each amended by striking "September 30, 2003" and inserting "December 31, 2010".

(2) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on July 1, 2009.

(b) STATE OPTION OF INITIAL 12-MONTH ELIGIBILITY.—Section 1925 of the Social Security Act (42 U.S.C. 1396r–6) is amended—

(1) in subsection (a)(1), by inserting "but subject to paragraph (5)" after "Notwithstanding any other provision of this title";

(2) by adding at the end of subsection (a) the following:

"(5) OPTION OF 12-MONTH INITIAL ELIGIBILITY PERIOD.—A State may elect to treat any reference in this subsection to a 6-month period (or 6 months) as a reference to a 12-month period (or 12 months). In the case of such an election, subsection (b) shall not apply."; and

(3) in subsection (b)(1), by inserting "but subject to subsection (a)(5)" after "Notwithstanding any other provision of this title".

(c) REMOVAL OF REQUIREMENT FOR PREVIOUS RECEIPT OF MEDICAL ASSISTANCE.—Section 1925(a)(1) of such Act (42 U.S.C. 1396r–6(a)(1)), as amended by subsection (b)(1), is further amended—

(1) by inserting "subparagraph (B) and" before "paragraph (5)";

(2) by redesignating the matter after "REQUIREMENT.—" as a subparagraph (A) with the heading "IN GENERAL.—" and with the same indentation as subparagraph (B) (as added by paragraph (3)); and

(3) by adding at the end the following:

"(B) STATE OPTION TO WAIVE REQUIREMENT FOR 3 MONTHS BEFORE RECEIPT OF MEDICAL ASSISTANCE.—A State may, at its option, elect also to apply subparagraph (A) in the case of a family that was receiving such aid for fewer than three months or that had applied for and was eligible for such aid for fewer than 3 months during the 6 immediately preceding months described in such subparagraph.".

(d) CMS REPORT ON ENROLLMENT AND PARTICIPATION RATES UNDER TMA.—Section 1925 of such Act (42 U.S.C. 1396r–6), as amended by this section, is further amended by adding at the end the following new subsection:

"(g) COLLECTION AND REPORTING OF PARTICIPATION INFORMATION.—

"(1) COLLECTION OF INFORMATION FROM STATES.—Each State shall collect and submit to the Secretary (and make publicly available), in a format specified by the Secretary, information on average monthly enrollment and average monthly participation rates for adults and children under this section and of the number and percentage of children who become ineligible for medical assistance under this section whose medical assistance is continued under another eligibility category or who are enrolled under the State's child health plan under title XXI. Such information shall be submitted at the same time and frequency in which other enrollment information under this title is submitted to the Secretary.

"(2) ANNUAL REPORTS TO CONGRESS.—Using the information submitted under paragraph (1), the Secretary shall submit to Congress annual reports concerning enrollment and participation rates described in such paragraph.".

(e) EFFECTIVE DATE.—The amendments made by subsections (b) through (d) shall take effect on July 1, 2009.

SEC. 5005. EXTENSION OF THE QUALIFYING INDIVIDUAL (QI) PROGRAM.

(a) EXTENSION.—Section 1902(a)(10)(E)(iv) of the Social Security Act (42 U.S.C. 1396a(a)(10)(E)(iv)) is amended by striking "December 2009" and inserting "December 2010".

(b) EXTENDING TOTAL AMOUNT AVAILABLE FOR ALLOCATION.—Section 1933(g) of such Act (42 U.S.C. 1396u–3(g)) is amended—

(1) in paragraph (2)—

(A) by striking "and" at the end of subparagraph (K);

(B) in subparagraph (L), by striking the period at the end and inserting a semicolon; and

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

"(M) for the period that begins on January 1, 2010, and ends on September 30, 2010, the total allocation amount is $412,500,000; and

"(N) for the period that begins on October 1, 2010, and ends on December 31, 2010, the total allocation amount is $150,000,000."; and

(2) in paragraph (3), in the matter preceding subparagraph (A), by striking "or (L)" and inserting "(L), or (N)".

SEC. 5006. PROTECTIONS FOR INDIANS UNDER MEDICAID AND CHIP.

(a) PREMIUMS AND COST SHARING PROTECTION UNDER MEDICAID.—

(1) IN GENERAL.—Section 1916 of the Social Security Act (42 U.S.C. 1396o) is amended—

(A) in subsection (a), in the matter preceding paragraph (1), by striking "and (i)" and inserting ", (i), and (j)"; and

(B) by adding at the end the following new subsection:

"(j) NO PREMIUMS OR COST SHARING FOR INDIANS FURNISHED ITEMS OR SERVICES DIRECTLY BY INDIAN HEALTH PROGRAMS OR THROUGH REFERRAL UNDER CONTRACT HEALTH SERVICES.—

"(1) NO COST SHARING FOR ITEMS OR SERVICES FURNISHED TO INDIANS THROUGH INDIAN HEALTH PROGRAMS.—

"(A) IN GENERAL.—No enrollment fee, premium, or similar charge, and no deduction, copayment, cost sharing, or similar charge shall be imposed against an Indian who is furnished an item or service directly by the Indian Health Service, an Indian Tribe, Tribal Organization, or Urban Indian Organization or through referral under contract health services for which payment may be made under this title.

"(B) NO REDUCTION IN AMOUNT OF PAYMENT TO INDIAN HEALTH PROVIDERS.—Payment due under this title to the Indian Health Service, an Indian Tribe, Tribal Organization, or Urban Indian Organization, or a health care provider through referral under contract health services for the furnishing of an item or service to an Indian who is eligible for assistance under such title, may not be reduced by the amount of any enrollment fee, premium, or similar charge, or any deduction, copayment, cost sharing, or similar charge that would be due from the Indian but for the operation of subparagraph (A).

"(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed as restricting the application of any other limitations on the imposition of premiums or cost sharing that may apply to an individual receiving medical assistance under this title who is an Indian.".

(2) CONFORMING AMENDMENT.—Section 1916A(b)(3) of such Act (42 U.S.C. 1396o–1(b)(3)) is amended—

(A) in subparagraph (A), by adding at the end the following new clause:

"(vii) An Indian who is furnished an item or service directly by the Indian Health Service, an Indian Tribe, Tribal Organization or Urban Indian Organization or through referral under contract health services."; and

(B) in subparagraph (B), by adding at the end the following new clause:

"(x) Items and services furnished to an Indian directly by the Indian Health Service, an Indian Tribe, Tribal Organization or Urban Indian Organization or through referral under contract health services.".

(b) TREATMENT OF CERTAIN PROPERTY FROM RESOURCES FOR MEDICAID AND CHIP ELIGIBILITY.—

(1) MEDICAID.—Section 1902 of the Social Security Act (42 U.S.C. 1396a), as amended by sections 203(c) and 211(a)(1)(A)(ii) of the Children's Health Insurance Program Reauthorization Act of 2009 (Public Law 111–3), is amended by adding at the end the following new subsection:

"(ff) Notwithstanding any other requirement of this title or any other provision of Federal or State law, a State shall disregard the following property from resources for purposes of determining the eligibility of an individual who is an Indian for medical assistance under this title:

"(1) Property, including real property and improvements, that is held in trust, subject to Federal restrictions, or otherwise under the supervision of the Secretary of the Interior, located on a reservation, including any federally recognized Indian Tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established by the Alaska Native Claims Settlement Act, and Indian allotments on or near a reservation as designated and approved by the Bureau of Indian Affairs of the Department of the Interior.

"(2) For any federally recognized Tribe not described in paragraph (1), property located within the most recent boundaries of a prior Federal reservation.

"(3) Ownership interests in rents, leases, royalties, or usage rights related to natural resources (including extraction of natural resources or harvesting of timber, other plants and plant products, animals, fish, and shellfish) resulting from the exercise of federally protected rights.

"(4) Ownership interests in or usage rights to items not covered by paragraphs (1) through (3) that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional lifestyle according to applicable tribal law or custom.".

(2) APPLICATION TO CHIP.—Section 2107(e)(1) of such Act (42 U.S.C. 1397gg(e)(1)), as amended by sections 203(a)(2), 203(d)(2), 214(b), 501(d)(2), and 503(a)(1) of the Children's Health Insurance Program Reauthorization Act of 2009 (Public Law 111–3), is amended—

(A) by redesignating subparagraphs (C) through (I), as subparagraphs (D) through (J), respectively; and

(B) by inserting after subparagraph (B), the following new subparagraph:

"(C) Section 1902(ff) (relating to disregard of certain property for purposes of making eligibility determinations).".

(c) CONTINUATION OF CURRENT LAW PROTECTIONS OF CERTAIN INDIAN PROPERTY FROM MEDICAID ESTATE RECOVERY.—Section 1917(b)(3) of the Social Security Act (42 U.S.C. 1396p(b)(3)) is amended—

(1) by inserting "(A)" after "(3)"; and

(2) by adding at the end the following new subparagraph:

"(B) The standards specified by the Secretary under subparagraph (A) shall require that the procedures established by the State agency under subparagraph (A) exempt income, resources, and property that are exempt from the application of this subsection as of April 1, 2003, under manual instructions issued to carry out this subsection (as in effect on such date) because of the Federal responsibility for Indian Tribes and Alaska Native Villages. Nothing in this subparagraph shall be construed as preventing the Secretary from providing additional estate recovery exemptions under this title for Indians.".

(d) RULES APPLICABLE UNDER MEDICAID AND CHIP TO MANAGED CARE ENTITIES WITH RESPECT TO INDIAN ENROLLEES AND INDIAN HEALTH CARE PROVIDERS AND INDIAN MANAGED CARE ENTITIES.—

(1) IN GENERAL.—Section 1932 of the Social Security Act (42 U.S.C. 1396u–2) is amended by adding at the end the following new subsection:

"(h) SPECIAL RULES WITH RESPECT TO INDIAN ENROLLEES, INDIAN HEALTH CARE PROVIDERS, AND INDIAN MANAGED CARE ENTITIES.—

"(1) ENROLLEE OPTION TO SELECT AN INDIAN HEALTH CARE PROVIDER AS PRIMARY CARE PROVIDER.—In the case of a non-Indian Medicaid managed care entity that—

"(A) has an Indian enrolled with the entity; and

"(B) has an Indian health care provider that is participating as a primary care provider within the network of the entity,

insofar as the Indian is otherwise eligible to receive services from such Indian health care provider and the Indian health care provider has the capacity to provide primary care services to such Indian, the contract with the entity under section 1903(m) or under section 1905(t)(3) shall require, as a condition of receiving payment under such contract, that the Indian shall be allowed to choose such Indian health care provider as the Indian's primary care provider under the entity.

"(2) ASSURANCE OF PAYMENT TO INDIAN HEALTH CARE PROVIDERS FOR PROVISION OF COVERED SERVICES.—Each contract with a managed care entity under section 1903(m) or under section 1905(t)(3) shall require any such entity, as a condition of receiving payment under such contract, to satisfy the following requirements:

"(A) DEMONSTRATION OF ACCESS TO INDIAN HEALTH CARE PROVIDERS AND APPLICATION OF ALTERNATIVE PAYMENT ARRANGEMENTS.—Subject to subparagraph (C), to—

"(i) demonstrate that the number of Indian health care providers that are participating providers with respect to such entity are sufficient to ensure timely access to covered Medicaid managed care services for those Indian enrollees who are eligible to receive services from such providers; and

"(ii) agree to pay Indian health care providers, whether such providers are participating or nonparticipating providers with respect to the entity, for covered Medicaid managed care services provided to those Indian enrollees who are eligible to receive services from such providers at a rate equal to the rate negotiated between such entity and the provider involved or, if such a rate has not been negotiated, at a rate that is not less than the level and amount of payment which the entity would make for the services if the services were furnished by a participating provider which is not an Indian health care provider.

The Secretary shall establish procedures for applying the requirements of clause (i) in States where there are no or few Indian health providers.

"(B) PROMPT PAYMENT.—To agree to make prompt payment (consistent with rule for prompt payment of providers under section 1932(f)) to Indian health care providers that are participating providers with respect to such entity or, in the case of an entity to which subparagraph (A)(ii) or (C) applies, that the entity is required to pay in accordance with that subparagraph.

"(C) APPLICATION OF SPECIAL PAYMENT REQUIREMENTS FOR FEDERALLY-QUALIFIED HEALTH CENTERS AND FOR SERVICES PROVIDED BY CERTAIN INDIAN HEALTH CARE PROVIDERS.—

"(i) FEDERALLY-QUALIFIED HEALTH CENTERS.—

"(I) MANAGED CARE ENTITY PAYMENT REQUIREMENT.—To agree to pay any Indian health care provider that is a federally-qualified health center under this title but not a participating provider with respect to the entity, for the provision of covered Medicaid managed care services by such provider to an Indian enrollee of the entity at a rate equal to the amount of payment that the entity would pay a federally-qualified health center that is a participating provider with respect to the entity but is not an Indian health care provider for such services.

"(II) CONTINUED APPLICATION OF STATE REQUIREMENT TO MAKE SUPPLEMENTAL PAYMENT.—Nothing in subclause (I) or subparagraph (A) or (B) shall be construed as waiving the application of section 1902(bb)(5) regarding the State plan requirement to make any supplemental payment due under such section to a federally-qualified health

center for services furnished by such center to an enrollee of a managed care entity (regardless of whether the federally-qualified health center is or is not a participating provider with the entity).

"(ii) PAYMENT RATE FOR SERVICES PROVIDED BY CERTAIN INDIAN HEALTH CARE PROVIDERS.—If the amount paid by a managed care entity to an Indian health care provider that is not a federally-qualified health center for services provided by the provider to an Indian enrollee with the managed care entity is less than the rate that applies to the provision of such services by the provider under the State plan, the plan shall provide for payment to the Indian health care provider, whether the provider is a participating or nonparticipating provider with respect to the entity, of the difference between such applicable rate and the amount paid by the managed care entity to the provider for such services.

"(D) CONSTRUCTION.—Nothing in this paragraph shall be construed as waiving the application of section 1902(a)(30)(A) (relating to application of standards to assure that payments are consistent with efficiency, economy, and quality of care).

"(3) SPECIAL RULE FOR ENROLLMENT FOR INDIAN MANAGED CARE ENTITIES.—Regarding the application of a Medicaid managed care program to Indian Medicaid managed care entities, an Indian Medicaid managed care entity may restrict enrollment under such program to Indians in the same manner as Indian Health Programs may restrict the delivery of services to Indians.

"(4) DEFINITIONS.—For purposes of this subsection:

"(A) INDIAN HEALTH CARE PROVIDER.—The term 'Indian health care provider' means an Indian Health Program or an Urban Indian Organization.

"(B) INDIAN MEDICAID MANAGED CARE ENTITY.—The term 'Indian Medicaid managed care entity' means a managed care entity that is controlled (within the meaning of the last sentence of section 1903(m)(1)(C)) by the Indian Health Service, a Tribe, Tribal Organization, or Urban Indian Organization, or a consortium, which may be composed of 1 or more Tribes, Tribal Organizations, or Urban Indian Organizations, and which also may include the Service.

"(C) NON-INDIAN MEDICAID MANAGED CARE ENTITY.—The term 'non-Indian Medicaid managed care entity' means a managed care entity that is not an Indian Medicaid managed care entity.

"(D) COVERED MEDICAID MANAGED CARE SERVICES.—The term 'covered Medicaid managed care services' means, with respect to an individual enrolled with a managed care entity, items and services for which benefits are available with respect to the individual under the contract between the entity and the State involved.

"(E) MEDICAID MANAGED CARE PROGRAM.—The term 'Medicaid managed care program' means a program under

sections 1903(m), 1905(t), and 1932 and includes a managed care program operating under a waiver under section 1915(b) or 1115 or otherwise.".

(2) APPLICATION TO CHIP.—Section 2107(e)(1) of such Act (42 U.S.C. 1397gg(1)), as amended by subsection (b)(2), is amended—

(A) by redesignating subparagraph (J) as subparagraph (K); and

(B) by inserting after subparagraph (I) the following new subparagraph:

"(J) Subsections (a)(2)(C) and (h) of section 1932.".

(e) CONSULTATION ON MEDICAID, CHIP, AND OTHER HEALTH CARE PROGRAMS FUNDED UNDER THE SOCIAL SECURITY ACT INVOLVING INDIAN HEALTH PROGRAMS AND URBAN INDIAN ORGANIZATIONS.—

(1) CONSULTATION WITH TRIBAL TECHNICAL ADVISORY GROUP (TTAG).—The Secretary of Health and Human Services shall maintain within the Centers for Medicaid & Medicare Services (CMS) a Tribal Technical Advisory Group (TTAG), which was first established in accordance with requirements of the charter dated September 30, 2003, and the Secretary of Health and Human Services shall include in such Group a representative of a national urban Indian health organization and a representative of the Indian Health Service. The inclusion of a representative of a national urban Indian health organization in such Group shall not affect the nonapplication of the Federal Advisory Committee Act (5 U.S.C. App.) to such Group.

(2) SOLICITATION OF ADVICE UNDER MEDICAID AND CHIP.—

(A) MEDICAID STATE PLAN AMENDMENT.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)), as amended by section 501(d)(1) of the Children's Health Insurance Program Reauthorization Act of 2009 (Public Law 111–3), (42 U.S.C. 1396a(a)) is amended—

(i) in paragraph (71), by striking "and" at the end;

(ii) in paragraph (72), by striking the period at the end and inserting "; and"; and

(iii) by inserting after paragraph (72), the following new paragraph:

"(73) in the case of any State in which 1 or more Indian Health Programs or Urban Indian Organizations furnishes health care services, provide for a process under which the State seeks advice on a regular, ongoing basis from designees of such Indian Health Programs and Urban Indian Organizations on matters relating to the application of this title that are likely to have a direct effect on such Indian Health Programs and Urban Indian Organizations and that—

"(A) shall include solicitation of advice prior to submission of any plan amendments, waiver requests, and proposals for demonstration projects likely to have a direct effect on Indians, Indian Health Programs, or Urban Indian Organizations; and

"(B) may include appointment of an advisory committee and of a designee of such Indian Health Programs and Urban Indian Organizations to the medical care advi-

sory committee advising the State on its State plan under this title.".

(B) APPLICATION TO CHIP.—Section 2107(e)(1) of such Act (42 U.S.C. 1397gg(1)), as amended by subsections (b)(2) and (d) (2), is amended—

(i) by redesignating subparagraphs (B), (C), (D), (E), (F), (G), (H), (I), (J), and (K) as subparagraphs (D), (F), (B), (E), (G), (I), (H), (J), (K), and (L), respectively;

(ii) by moving such subparagraphs so as to appear in alphabetical order; and

(iii) by inserting after subparagraph (B) (as so redesiganted and moved) the following new subparagraph:

"(C) Section 1902(a)(73) (relating to requiring certain States to seek advice from designees of Indian Health Programs and Urban Indian Organizations).".

(3) RULE OF CONSTRUCTION.—Nothing in the amendments made by this subsection shall be construed as superseding existing advisory committees, working groups, guidance, or other advisory procedures established by the Secretary of Health and Human Services or by any State with respect to the provision of health care to Indians.

(f) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 1, 2009.

SEC. 5007. FUNDING FOR OVERSIGHT AND IMPLEMENTATION.

(a) OVERSIGHT.—For purposes of ensuring the proper expenditure of Federal funds under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.), there is appropriated to the Office of the Inspector General of the Department of Health and Human Services, out of any money in the Treasury not otherwise appropriated and without further appropriation, $31,250,000 for fiscal year 2009, which shall remain available for expenditure until September 30, 2011, and shall be in addition to any other amounts appropriated or made available to such Office for such purposes.

(b) IMPLEMENTATION OF INCREASED FMAP.—For purposes of carrying out section 5001, there is appropriated to the Secretary of Health and Human Services, out of any money in the Treasury not otherwise appropriated and without further appropriation, $5,000,000 for fiscal year 2009, which shall remain available for expenditure until September 30, 2011, and shall be in addition to any other amounts appropriated or made available to such Secretary for such purposes.

SEC. 5008. GAO STUDY AND REPORT REGARDING STATE NEEDS DURING PERIODS OF NATIONAL ECONOMIC DOWNTURN.

(a) IN GENERAL.—The Comptroller General of the United States shall study the period of national economic downturn in effect on the date of enactment of this Act, as well as previous periods of national economic downturn since 1974, for the purpose of developing recommendations for addressing the needs of States during such periods. As part of such analysis, the Comptroller General shall study the past and projected effects of temporary increases in the Federal medical assistance percentage under the Medicaid program with respect to such periods.

(b) REPORT.—Not later than April 1, 2011, the Comptroller General of the United States shall submit a report to the appropriate committees of Congress on the results of the study conducted under paragraph (1). Such report shall include the following:

(1) Such recommendations as the Comptroller General determines appropriate for modifying the national economic downturn assistance formula for temporary adjustment of the Federal medical assistance percentage under Medicaid (also referred to as a "countercyclical FMAP") described in GAO report number GAO–07–97 to improve the effectiveness of the application of such percentage in addressing the needs of States during periods of national economic downturn, including recommendations for—

(A) improvements to the factors that would begin and end the application of such percentage;

(B) how the determination of the amount of such percentage could be adjusted to address State and regional economic variations during such periods; and

(C) how the determination of the amount of such percentage could be adjusted to be more responsive to actual Medicaid costs incurred by States during such periods.

(2) An analysis of the impact on States during such periods of—

(A) declines in private health benefits coverage;

(B) declines in State revenues; and

(C) caseload maintenance and growth under Medicaid, the Children's Health Insurance Program, or any other publicly-funded programs to provide health benefits coverage for State residents.

(3) Identification of, and recommendations for addressing, the effects on States of any other specific economic indicators that the Comptroller General determines appropriate.

TITLE VI—BROADBAND TECHNOLOGY OPPORTUNITIES PROGRAM

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Sec. 6001. Broadband Technology Opportunities Program.

SEC. 6001. BROADBAND TECHNOLOGY OPPORTUNITIES PROGRAM.

(a) The Assistant Secretary of Commerce for Communications and Information (Assistant Secretary), in consultation with the Federal Communications Commission (Commission), shall establish a national broadband service development and expansion program in conjunction with the technology opportunities program, which shall be referred to as the Broadband Technology Opportunities Program. The Assistant Secretary shall ensure that the program complements and enhances and does not conflict with other Federal broadband initiatives and programs.

(b) The purposes of the program are to—

(1) provide access to broadband service to consumers residing in unserved areas of the United States;

(2) provide improved access to broadband service to consumers residing in underserved areas of the United States;

(3) provide broadband education, awareness, training, access, equipment, and support to—

(A) schools, libraries, medical and healthcare providers, community colleges and other institutions of higher education, and other community support organizations and entities to facilitate greater use of broadband service by or through these organizations;

(B) organizations and agencies that provide outreach, access, equipment, and support services to facilitate greater use of broadband service by low-income, unemployed, aged, and otherwise vulnerable populations; and

(C) job-creating strategic facilities located within a State-designated economic zone, Economic Development District designated by the Department of Commerce, Renewal Community or Empowerment Zone designated by the Department of Housing and Urban Development, or Enterprise Community designated by the Department of Agriculture;

(4) improve access to, and use of, broadband service by public safety agencies; and

(5) stimulate the demand for broadband, economic growth, and job creation.

(c) The Assistant Secretary may consult a State, the District of Columbia, or territory or possession of the United States with respect to—

(1) the identification of areas described in subsection (b)(1) or (2) located in that State; and

(2) the allocation of grant funds within that State for projects in or affecting the State.

(d) The Assistant Secretary shall—

(1) establish and implement the grant program as expeditiously as practicable;

(2) ensure that all awards are made before the end of fiscal year 2010;

(3) seek such assurances as may be necessary or appropriate from grantees under the program that they will substantially complete projects supported by the program in accordance with project timelines, not to exceed 2 years following an award; and

(4) report on the status of the program to the Committees on Appropriations of the House of Representatives and the Senate, the Committee on Energy and Commerce of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate, every 90 days.

(e) To be eligible for a grant under the program, an applicant shall—

(1)(A) be a State or political subdivision thereof, the District of Columbia, a territory or possession of the United States, an Indian tribe (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(b)) or native Hawaiian organization;

(B) a nonprofit—

(i) foundation,

(ii) corporation,
(iii) institution, or
(iv) association; or

(C) any other entity, including a broadband service or infrastructure provider, that the Assistant Secretary finds by rule to be in the public interest. In establishing such rule, the Assistant Secretary shall to the extent practicable promote the purposes of this section in a technologically neutral manner;

(2) submit an application, at such time, in such form, and containing such information as the Assistant Secretary may require;

(3) provide a detailed explanation of how any amount received under the program will be used to carry out the purposes of this section in an efficient and expeditious manner, including a showing that the project would not have been implemented during the grant period without Federal grant assistance;

(4) demonstrate, to the satisfaction of the Assistant Secretary, that it is capable of carrying out the project or function to which the application relates in a competent manner in compliance with all applicable Federal, State, and local laws;

(5) demonstrate, to the satisfaction of the Assistant Secretary, that it will appropriate (if the applicant is a State or local government agency) or otherwise unconditionally obligate, from non-Federal sources, funds required to meet the requirements of subsection (f);

(6) disclose to the Assistant Secretary the source and amount of other Federal or State funding sources from which the applicant receives, or has applied for, funding for activities or projects to which the application relates; and

(7) provide such assurances and procedures as the Assistant Secretary may require to ensure that grant funds are used and accounted for in an appropriate manner.

(f) The Federal share of any project may not exceed 80 percent, except that the Assistant Secretary may increase the Federal share of a project above 80 percent if—

(1) the applicant petitions the Assistant Secretary for a waiver; and

(2) the Assistant Secretary determines that the petition demonstrates financial need.

(g) The Assistant Secretary may make competitive grants under the program to—

(1) acquire equipment, instrumentation, networking capability, hardware and software, digital network technology, and infrastructure for broadband services;

(2) construct and deploy broadband service related infrastructure;

(3) ensure access to broadband service by community anchor institutions;

(4) facilitate access to broadband service by low-income, unemployed, aged, and otherwise vulnerable populations in order to provide educational and employment opportunities to members of such populations;

(5) construct and deploy broadband facilities that improve public safety broadband communications services; and

(6) undertake such other projects and activities as the Assistant Secretary finds to be consistent with the purposes for which the program is established.

(h) The Assistant Secretary, in awarding grants under this section, shall, to the extent practical—

(1) award not less than 1 grant in each State;

(2) consider whether an application to deploy infrastructure in an area—

(A) will, if approved, increase the affordability of, and subscribership to, service to the greatest population of users in the area;

(B) will, if approved, provide the greatest broadband speed possible to the greatest population of users in the area;

(C) will, if approved, enhance service for health care delivery, education, or children to the greatest population of users in the area; and

(D) will, if approved, not result in unjust enrichment as a result of support for non-recurring costs through another Federal program for service in the area; and

(3) consider whether the applicant is a socially and economically disadvantaged small business concern as defined under section 8(a) of the Small Business Act (15 U.S.C. 637).

(i) The Assistant Secretary—

(1) shall require any entity receiving a grant pursuant to this section to report quarterly, in a format specified by the Assistant Secretary, on such entity's use of the assistance and progress fulfilling the objectives for which such funds were granted, and the Assistant Secretary shall make these reports available to the public;

(2) may establish additional reporting and information requirements for any recipient of any assistance made available pursuant to this section;

(3) shall establish appropriate mechanisms to ensure appropriate use and compliance with all terms of any use of funds made available pursuant to this section;

(4) may, in addition to other authority under applicable law, deobligate awards to grantees that demonstrate an insufficient level of performance, or wasteful or fraudulent spending, as defined in advance by the Assistant Secretary, and award these funds competitively to new or existing applicants consistent with this section; and

(5) shall create and maintain a fully searchable database, accessible on the Internet at no cost to the public, that contains at least a list of each entity that has applied for a grant under this section, a description of each application, the status of each such application, the name of each entity receiving funds made available pursuant to this section, the purpose for which such entity is receiving such funds, each quarterly report submitted by the entity pursuant to this section, and such other information sufficient to allow the public to understand and monitor grants awarded under the program.

(j) Concurrent with the issuance of the Request for Proposal for grant applications pursuant to this section, the Assistant Secretary shall, in coordination with the Commission, publish the non-dis-

crimination and network interconnection obligations that shall be contractual conditions of grants awarded under this section, including, at a minimum, adherence to the principles contained in the Commission's broadband policy statement (FCC 05–15, adopted August 5, 2005).

(k)(1) Not later than 1 year after the date of enactment of this section, the Commission shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, a report containing a national broadband plan.

(2) The national broadband plan required by this section shall seek to ensure that all people of the United States have access to broadband capability and shall establish benchmarks for meeting that goal. The plan shall also include—

(A) an analysis of the most effective and efficient mechanisms for ensuring broadband access by all people of the United States;

(B) a detailed strategy for achieving affordability of such service and maximum utilization of broadband infrastructure and service by the public;

(C) an evaluation of the status of deployment of broadband service, including progress of projects supported by the grants made pursuant to this section; and

(D) a plan for use of broadband infrastructure and services in advancing consumer welfare, civic participation, public safety and homeland security, community development, health care delivery, energy independence and efficiency, education, worker training, private sector investment, entrepreneurial activity, job creation and economic growth, and other national purposes.

(3) In developing the plan, the Commission shall have access to data provided to other Government agencies under the Broadband Data Improvement Act (47 U.S.C. 1301 note).

(l) The Assistant Secretary shall develop and maintain a comprehensive nationwide inventory map of existing broadband service capability and availability in the United States that depicts the geographic extent to which broadband service capability is deployed and available from a commercial provider or public provider throughout each State. Not later than 2 years after the date of the enactment of this Act, the Assistant Secretary shall make the broadband inventory map developed and maintained pursuant to this section accessible by the public on a World Wide Web site of the National Telecommunications and Information Administration in a form that is interactive and searchable.

(m) The Assistant Secretary shall have the authority to prescribe such rules as are necessary to carry out the purposes of this section.

TITLE VII—LIMITS ON EXECUTIVE COMPENSATION

SEC. 7000. TABLE OF CONTENTS.

The table of contents of this title is as follows:

TITLE VII—LIMITS ON EXECUTIVE COMPENSATION

Sec. 7000. Table of contents.
Sec. 7001. Executive compensation and corporate governance.
Sec. 7002. Applicability with respect to loan modifications.

SEC. 7001. EXECUTIVE COMPENSATION AND CORPORATE GOVERNANCE.

Section 111 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5221) is amended to read as follows:

"SEC. 111. EXECUTIVE COMPENSATION AND CORPORATE GOVERNANCE.

"(a) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

"(1) SENIOR EXECUTIVE OFFICER.—The term 'senior executive officer' means an individual who is 1 of the top 5 most highly paid executives of a public company, whose compensation is required to be disclosed pursuant to the Securities Exchange Act of 1934, and any regulations issued thereunder, and non-public company counterparts.

"(2) GOLDEN PARACHUTE PAYMENT.—The term 'golden parachute payment' means any payment to a senior executive officer for departure from a company for any reason, except for payments for services performed or benefits accrued.

"(3) TARP RECIPIENT.—The term 'TARP recipient' means any entity that has received or will receive financial assistance under the financial assistance provided under the TARP.

"(4) COMMISSION.—The term 'Commission' means the Securities and Exchange Commission.

"(5) PERIOD IN WHICH OBLIGATION IS OUTSTANDING; RULE OF CONSTRUCTION.—For purposes of this section, the period in which any obligation arising from financial assistance provided under the TARP remains outstanding does not include any period during which the Federal Government only holds warrants to purchase common stock of the TARP recipient.

"(b) EXECUTIVE COMPENSATION AND CORPORATE GOVERNANCE.—

"(1) ESTABLISHMENT OF STANDARDS.—During the period in which any obligation arising from financial assistance provided under the TARP remains outstanding, each TARP recipient shall be subject to—

"(A) the standards established by the Secretary under this section; and

"(B) the provisions of section 162(m)(5) of the Internal Revenue Code of 1986, as applicable.

"(2) STANDARDS REQUIRED.—The Secretary shall require each TARP recipient to meet appropriate standards for executive compensation and corporate governance.

"(3) SPECIFIC REQUIREMENTS.—The standards established under paragraph (2) shall include the following:

"(A) Limits on compensation that exclude incentives for senior executive officers of the TARP recipient to take unnecessary and excessive risks that threaten the value of such recipient during the period in which any obligation arising from financial assistance provided under the TARP remains outstanding.

"(B) A provision for the recovery by such TARP recipient of any bonus, retention award, or incentive compensation paid to a senior executive officer and any of the next 20 most highly-compensated employees of the TARP recipient based on statements of earnings, revenues, gains, or other criteria that are later found to be materially inaccurate.

"(C) A prohibition on such TARP recipient making any golden parachute payment to a senior executive officer or any of the next 5 most highly-compensated employees of the TARP recipient during the period in which any obligation arising from financial assistance provided under the TARP remains outstanding.

"(D)(i) A prohibition on such TARP recipient paying or accruing any bonus, retention award, or incentive compensation during the period in which any obligation arising from financial assistance provided under the TARP remains outstanding, except that any prohibition developed under this paragraph shall not apply to the payment of long-term restricted stock by such TARP recipient, provided that such long-term restricted stock—

"(I) does not fully vest during the period in which any obligation arising from financial assistance provided to that TARP recipient remains outstanding;

"(II) has a value in an amount that is not greater than 1/3 of the total amount of annual compensation of the employee receiving the stock; and

"(III) is subject to such other terms and conditions as the Secretary may determine is in the public interest.

"(ii) The prohibition required under clause (i) shall apply as follows:

"(I) For any financial institution that received financial assistance provided under the TARP equal to less than $25,000,000, the prohibition shall apply only to the most highly compensated employee of the financial institution.

"(II) For any financial institution that received financial assistance provided under the TARP equal to at least $25,000,000, but less than $250,000,000, the prohibition shall apply to at least the 5 most highly-compensated employees of the financial institution, or such higher number as the Secretary may determine is in the public interest with respect to any TARP recipient.

"(III) For any financial institution that received financial assistance provided under the TARP equal to at least $250,000,000, but less than $500,000,000, the prohibition shall apply to the senior executive officers and at least the 10 next most highly-compensated employees, or such higher number as the Secretary may determine is in the public interest with respect to any TARP recipient.

"(IV) For any financial institution that received financial assistance provided under the TARP equal to

$500,000,000 or more, the prohibition shall apply to the senior executive officers and at least the 20 next most highly-compensated employees, or such higher number as the Secretary may determine is in the public interest with respect to any TARP recipient.

"(iii) The prohibition required under clause (i) shall not be construed to prohibit any bonus payment required to be paid pursuant to a written employment contract executed on or before February 11, 2009, as such valid employment contracts are determined by the Secretary or the designee of the Secretary.

"(E) A prohibition on any compensation plan that would encourage manipulation of the reported earnings of such TARP recipient to enhance the compensation of any of its employees.

"(F) A requirement for the establishment of a Board Compensation Committee that meets the requirements of subsection (c).

"(4) CERTIFICATION OF COMPLIANCE.—The chief executive officer and chief financial officer (or the equivalents thereof) of each TARP recipient shall provide a written certification of compliance by the TARP recipient with the requirements of this section—

"(A) in the case of a TARP recipient, the securities of which are publicly traded, to the Securities and Exchange Commission, together with annual filings required under the securities laws; and

"(B) in the case of a TARP recipient that is not a publicly traded company, to the Secretary.

"(c) BOARD COMPENSATION COMMITTEE.—

"(1) ESTABLISHMENT OF BOARD REQUIRED.—Each TARP recipient shall establish a Board Compensation Committee, comprised entirely of independent directors, for the purpose of reviewing employee compensation plans.

"(2) MEETINGS.—The Board Compensation Committee of each TARP recipient shall meet at least semiannually to discuss and evaluate employee compensation plans in light of an assessment of any risk posed to the TARP recipient from such plans.

"(3) COMPLIANCE BY NON-SEC REGISTRANTS.—In the case of any TARP recipient, the common or preferred stock of which is not registered pursuant to the Securities Exchange Act of 1934, and that has received $25,000,000 or less of TARP assistance, the duties of the Board Compensation Committee under this subsection shall be carried out by the board of directors of such TARP recipient.

"(d) LIMITATION ON LUXURY EXPENDITURES.—The board of directors of any TARP recipient shall have in place a company-wide policy regarding excessive or luxury expenditures, as identified by the Secretary, which may include excessive expenditures on—

"(1) entertainment or events;

"(2) office and facility renovations;

"(3) aviation or other transportation services; or

"(4) other activities or events that are not reasonable expenditures for staff development, reasonable performance incen-

tives, or other similar measures conducted in the normal course of the business operations of the TARP recipient.

"(e) SHAREHOLDER APPROVAL OF EXECUTIVE COMPENSATION.—

"(1) ANNUAL SHAREHOLDER APPROVAL OF EXECUTIVE COMPENSATION.—Any proxy or consent or authorization for an annual or other meeting of the shareholders of any TARP recipient during the period in which any obligation arising from financial assistance provided under the TARP remains outstanding shall permit a separate shareholder vote to approve the compensation of executives, as disclosed pursuant to the compensation disclosure rules of the Commission (which disclosure shall include the compensation discussion and analysis, the compensation tables, and any related material).

"(2) NONBINDING VOTE.—A shareholder vote described in paragraph (1) shall not be binding on the board of directors of a TARP recipient, and may not be construed as overruling a decision by such board, nor to create or imply any additional fiduciary duty by such board, nor shall such vote be construed to restrict or limit the ability of shareholders to make proposals for inclusion in proxy materials related to executive compensation.

"(3) DEADLINE FOR RULEMAKING.—Not later than 1 year after the date of enactment of the American Recovery and Reinvestment Act of 2009, the Commission shall issue any final rules and regulations required by this subsection.

"(f) REVIEW OF PRIOR PAYMENTS TO EXECUTIVES.—

"(1) IN GENERAL.—The Secretary shall review bonuses, retention awards, and other compensation paid to the senior executive officers and the next 20 most highly-compensated employees of each entity receiving TARP assistance before the date of enactment of the American Recovery and Reinvestment Act of 2009, to determine whether any such payments were inconsistent with the purposes of this section or the TARP or were otherwise contrary to the public interest.

"(2) NEGOTIATIONS FOR REIMBURSEMENT.—If the Secretary makes a determination described in paragraph (1), the Secretary shall seek to negotiate with the TARP recipient and the subject employee for appropriate reimbursements to the Federal Government with respect to compensation or bonuses.

"(g) NO IMPEDIMENT TO WITHDRAWAL BY TARP RECIPIENTS.—Subject to consultation with the appropriate Federal banking agency (as that term is defined in section 3 of the Federal Deposit Insurance Act), if any, the Secretary shall permit a TARP recipient to repay any assistance previously provided under the TARP to such financial institution, without regard to whether the financial institution has replaced such funds from any other source or to any waiting period, and when such assistance is repaid, the Secretary shall liquidate warrants associated with such assistance at the current market price.

"(h) REGULATIONS.—The Secretary shall promulgate regulations to implement this section.".

SEC. 7002. APPLICABILITY WITH RESPECT TO LOAN MODIFICATIONS.

Section 109(a) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5219(a)) is amended—

(1) by striking "To the extent" and inserting the following:

"(1) IN GENERAL.—To the extent"; and

(2) by adding at the end the following:

"(2) WAIVER OF CERTAIN PROVISIONS IN CONNECTION WITH LOAN MODIFICATIONS.—The Secretary shall not be required to apply executive compensation restrictions under section 111, or to receive warrants or debt instruments under section 113, solely in connection with any loan modification under this section.".

And the Senate agreed to the same.

DAVID OBEY,
CHARLES RANGEL,
HENRY WAXMAN,
Managers on the Part of the House.

DANIEL K. INOUYE,
MAX BAUCUS,
HARRY REID,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1), a bill making supplemental appropriations for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and State and local fiscal stabilization, for the fiscal year ending September 30, 2009, and for other purposes, submit the following joint statement to the House and Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report.

The Senate amendment to the text deleted the entire House bill after the enacting clause and inserted the Senate bill. This conference agreement includes a revised bill.

The conference agreement designates amounts in the Act as emergency requirements pursuant to section 204(a) of S. Con. Res. 21 (110th Congress) and section 301(b)(2) of S. Con. Res. 70 (110th Congress), the concurrent resolutions on the budget for fiscal years 2008 and 2009. All applicable provisions in the Act are designated as an emergency for purposes of pay-as-you-go principles.

DIVISION A—APPROPRIATIONS PROVISIONS

TITLE I—AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES

DEPARTMENT OF AGRICULTURE

AGRICULTURE BUILDINGS AND FACILITIES AND RENTAL PAYMENTS

The conference agreement provides $24,000,000 for the Agriculture Buildings and Facilities and Rental Payments account instead of $44,000,000 as proposed by the House. The Senate bill contained no such account.

The conference agreement provides funding to address priority maintenance, repair, and modernization investments in USDA's headquarter buildings and facilities.

OFFICE OF INSPECTOR GENERAL

The conference agreement provides $22,500,000 for the Office of Inspector General as proposed by both the House and Senate.

The conference agreement provides funding to enhance oversight and improve accountability of the use of economic recovery funds appropriated to the Department of Agriculture in this Act, including $7,500,000 for the U.S. Forest Service.

AGRICULTURAL RESEARCH SERVICE

BUILDINGS AND FACILITIES

The conference agreement provides $176,000,000 for the Agricultural Research Service, Buildings and Facilities account instead of $209,000,000 as proposed by the House. The Senate bill contained no such account.

The conference agreement provides funding to address critical deferred maintenance of the agency's aging laboratory and research infrastructure.

FARM SERVICE AGENCY

SALARIES AND EXPENSES

The conference agreement provides $50,000,000 for the Farm Service Agency, Salaries and Expenses account instead of $245,000,000 as proposed by the House. The Senate bill contained no such account.

The conference agreement provides funding to maintain and modernize the information technology system.

NATURAL RESOURCES CONSERVATION SERVICE

WATERSHED AND FLOOD PREVENTION OPERATIONS

The conference agreement provides $290,000,000 for the Watershed and Flood Prevention Operations program instead of $350,000,000 as proposed by the House and $275,000,000 as proposed by the Senate.

Of the total amount, $145,000,000 is for purchasing and restoring floodplain easements under the authorities of the Emergency Watershed Protection Program. Funding is provided for conducting a floodplain restoration enrollment process that encompasses multiple regions of the country and that will provide the greatest public and environmental benefits.

The conference agreement provides funding to invest in both structural and non-structural watershed infrastructure improvements. When considering project applications, the agency is directed to prioritize funding for projects that most cost-effectively provide the greatest public safety, flood protection, economic, and environmental benefits.

With the funds provided, the agency is directed to complete existing infrastructure projects that have already initiated planning, design, or construction work, as well as prioritize funding for projects that are prepared to initiate work as soon as possible. The agency is further directed to fully fund the cost of completing discrete functional components of both structural and non-structural projects initiated with the dollars provided in this conference agreement.

WATERSHED REHABILITATION PROGRAM

The conference agreement provides $50,000,000 for the Watershed Rehabilitation Program as proposed by the House instead of $65,000,000 as proposed by the Senate.

The conference agreement provides funding to rehabilitate aging flood control infrastructure. The agency is directed to prioritize funding for projects that are at greatest risk of failure and present threats to public safety. The agency is further directed to prioritize funding for projects that can obligate and expend funds both cost effectively and rapidly. Finally, the agency is directed to fully fund the cost of completing rehabilitation projects initiated with the dollars provided in this conference agreement.

RURAL HOUSING SERVICE

RURAL HOUSING INSURANCE FUND PROGRAM ACCOUNT

The conference agreement provides $200,000,000 in budget authority as proposed by the Senate instead of $500,000,000 as proposed by the House. The amount of funding provided by the conference agreement will support $11,472,000,000 in direct and guaranteed single family housing loans under the Rural Housing Insurance Fund, of which $1,000,000,000 is for direct single family housing loans and $10,472,000,000 is for guaranteed single family housing loans.

RURAL COMMUNITY FACILITIES PROGRAM ACCOUNT

The conference agreement includes $130,000,000 in budget authority for loans and grants for rural community facilities instead of $200,000,000 as proposed by the House and $127,000,000 as proposed by the Senate.

The conference agreement provides funding to support $1,234,000,000 in loans and grants for essential rural community facilities including hospitals, health clinics, health and safety vehicles and equipment, public buildings, and child and elder care facilities. Of this amount, $1,171,000,000 is for direct community facility loans and $63,000,000 is for community facility grants.

RURAL BUSINESS—COOPERATIVE SERVICE

RURAL BUSINESS PROGRAM ACCOUNT

The conference agreement includes $150,000,000 in budget authority for rural business loans and grants as proposed by the Senate instead of $100,000,000 as proposed by the House. The amount of funding provided by the conference agreement will support $3,010,000,000 in rural business loans and grants. Of this amount, $2,990,000,000 is for guaranteed business and industry loans and $20,000,000 is for rural business enterprise grants.

RURAL UTILITIES SERVICE

RURAL WATER AND WASTE DISPOSAL PROGRAM ACCOUNT

The conference agreement includes $1,380,000,000 in budget authority for loans and grants for water and waste disposal facilities instead of $1,500,000,000 as proposed by the House and $1,375,000,000 as proposed by the Senate. The amount of funding provided by the conference agreement will support $3,788,000,000 in loans and grants for water and waste disposal facilities in rural

areas. Of this amount, $2,820,000,000 is for direct loans and $968,000,000 is for grants.

DISTANCE LEARNING, TELEMEDICINE, AND BROADBAND PROGRAM

The conference agreement includes $2,500,000,000 for the distance learning, telemedicine, and broadband program instead of $2,825,000,000 as proposed by the House and $100,000,000 as proposed by the Senate.

FOOD AND NUTRITION SERVICE

CHILD NUTRITION PROGRAMS

The conference agreement includes $100,000,000 for a grant program for National School Lunch Program equipment assistance as proposed by the Senate. The House bill contained no such account.

SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC)

The conference agreement includes $500,000,000 for the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) as proposed by the Senate instead of $100,000,000 as proposed by the House.

Of the total amount provided by the conference agreement, $400,000,000 is for the program's contingency reserve to ensure that the WIC program will have adequate funds to cover potential increased participation or food costs as a result of economic uncertainty. The conference agreement also provides $100,000,000 from the total amount to help state agencies implement new management information systems or improve existing management information systems for the program.

COMMODITY ASSISTANCE PROGRAM

The conference agreement includes $150,000,000 for the Emergency Food Assistance Program for food purchases as proposed by both the House and Senate. Of the total amount provided by the conference agreement, up to $50,000,000 may be used for administrative funding.

GENERAL PROVISIONS—THIS TITLE

SEC. 101. The conference agreement includes language to increase the value of benefits provided through the Supplemental Nutrition Assistance Program by 13.6 percent. The conference agreement also includes $295,000,000 for the cost of state administrative expenses and $5,000,000 in administrative funding for the Food Distribution Program on Indian Reservations.

SEC. 102. The conference agreement includes language to provide for transitional agricultural disaster assistance.

SEC. 103. The conference agreement includes language to carry out the Food, Conservation, and Energy Act of 2008.

SEC. 104. The conference agreement includes language to carry out the rural development loan and grant programs funded in this title.

SEC. 105. The conference agreement includes language to specify the use of funds in persistent poverty counties.

TITLE II—COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES

DEPARTMENT OF COMMERCE

The Department is directed to submit to the House and Senate Committees on Appropriations spending plans, signed by the Secretary, detailing its intended allocation of funds provided in this Act within 60 days of enactment of this Act.

ECONOMIC DEVELOPMENT ADMINISTRATION

ECONOMIC DEVELOPMENT ASSISTANCE PROGRAMS

The conference agreement includes $150,000,000 for Economic Development Assistance Programs to leverage private investment, stimulate employment and increase incomes in economically distressed communities. Of the amounts provided, $50,000,000 shall be for economic adjustment assistance to help communities recover from sudden and severe economic dislocation and massive job losses due to corporate restructuring and $50,000,000 may be transferred to federally authorized, regional economic development commissions.

BUREAU OF THE CENSUS

PERIODIC CENSUSES AND PROGRAMS

To ensure a successful 2010 Decennial, the conference agreement includes $1,000,000,000 to hire additional personnel, provide required training, increase targeted media purchases, and improve management of other operational and programmatic risks. Of the amounts provided, up to $250,000,000 shall be for partnership and outreach efforts to minority communities and hard-to-reach populations.

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

BROADBAND TECHNOLOGY OPPORTUNITIES PROGRAM

The conference agreement includes $4,700,000,000 for NTIA's Broadband Technology Opportunities Program (TOP), to be available until September 30, 2010. Funding is provided to award competitive grants to accelerate broadband deployment in unserved and underserved areas and to strategic institutions that are likely to create jobs or provide significant public benefits. Of the amounts provided, $350,000,000 shall establish the State Broadband Data and Development Grant program, as authorized by Public Law 110–385 and for the development and maintenance of a national broadband inventory map as authorized by division B of this Act. In addition, $200,000,000 shall be for competitive grants for expanding public computer center capacity; $250,000,000 shall be for competitive grants for innovative programs to encourage sustainable broadband adoption; and $10,000,000 is to be transferred to

the Department of Commerce Inspector General for audits and oversight of funds provided under this heading, to be available until expended.

DIGITAL-TO-ANALOG CONVERTER BOX PROGRAM

The conference agreement includes $650,000,000 for additional implementation and administration of the digital-to-analog converter box coupon program, including additional coupons to meet new projected demands and consumer support, outreach and administration. Of the amounts provided, up to $90,000,000 may be used for education and outreach to vulnerable populations, including one-on-one assistance for converter box installation.

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

SCIENTIFIC AND TECHNICAL RESEARCH AND SERVICES

The conference agreement includes $220,000,000 for research, competitive grants, additional research fellowships and advanced research and measurement equipment and supplies. In addition, $20,000,000 is provided by transfer from the Health Information Technology (HIT) initiative within this Act. For HIT activities, NIST is directed to create and test standards related to health security and interoperability in conjunction with partners at the Department of Health and Human Services.

CONSTRUCTION OF RESEARCH FACILITIES

The conference agreement includes $360,000,000 to address NIST's backlog of maintenance and renovation and for construction of new facilities and laboratories. Of the amounts provided, $180,000,000 shall be for the competitive construction grant program for research science buildings, including fiscal year 2008 and 2009 competitions.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

OPERATIONS, RESEARCH, AND FACILITIES

The conference agreement includes $230,000,000 for NOAA operations, research, and facilities to address a backlog of research, restoration, navigation, conservation and management activities.

PROCUREMENT, ACQUISITION AND CONSTRUCTION

The conference agreement includes $600,000,000 for construction and repair of NOAA facilities, ships and equipment, to improve weather forecasting and to support satellite development. Of the amounts provided, $170,000,000 shall address critical gaps in climate modeling and establish climate data records for continuing research into the cause, effects and ways to mitigate climate change.

OFFICE OF INSPECTOR GENERAL

The conference agreement includes $6,000,000 for the Office of Inspector General, to remain available until September 30, 2013.

DEPARTMENT OF JUSTICE

The Department is directed to submit to the House and Senate Committees on Appropriations a spending plan, signed by the Attorney General, detailing its intended allocation of funds provided in this Act within 60 days of enactment of this Act.

GENERAL ADMINISTRATION

OFFICE OF INSPECTOR GENERAL

The conference agreement includes $2,000,000 for the Office of Inspector General, to be available until September 30, 2013.

STATE AND LOCAL LAW ENFORCEMENT ACTIVITIES

OFFICE ON VIOLENCE AGAINST WOMEN

VIOLENCE AGAINST WOMEN PREVENTION AND PROSECUTION PROGRAMS

The conference agreement provides $225,000,000 for Violence Against Women Prevention and Prosecution Programs, to be available until September 30, 2010, of which $175,000,000 is for the STOP Violence Against Women Formula Assistance Program, and $50,000,000 is for transitional housing assistance grants. No administrative overhead costs shall be deducted from the programs funded under this accout.

OFFICE OF JUSTICE PROGRAMS

STATE AND LOCAL LAW ENFORCEMENT ASSISTANCE

The conference agreement includes a total of $2,765,000,000 for the following state and local law enforcement assistance programs, to be available until September 30, 2010. No administrative overhead costs shall be deducted from the programs funded under this account.

Edward Byrne Memorial Justice Assistance Grants	$2,000,000,000
Byrne competitive grants	225,000,000
Rural Law Enforcement	125,000,000
Southwest Border/Project Gunrunner	40,000,000
Victims Compensation	100,000,000
Tribal Law Enforcement Assistance	225,000,000
Internet Crimes Against Children Task Force	50,000,000
Total	2,765,000,000

Byrne-Justice Assistance Grants.—The conference agreement provides $2,000,000,000 for Edward Byrne Memorial Justice Assistance Grants. This funding is allocated by formula to State and local law enforcement agencies to help prevent, fight, and prosecute crime.

Byrne Competitive Grants.—The conference agreement provides $225,000,000 for competitive, peer-reviewed grants to units of State, local, and tribal government, and to national, regional, and local non-profit organizations to prevent crime, improve the administration of justice, provide services to victims of crime, support critical nurturing and mentoring of at-risk children and youth, and for other similar activities.

Rural Law Enforcement.—The conference agreement provides $125,000,000 for grants to combat the persistent problems of drug-related crime in rural America. Funds will be available on a competitive basis for drug enforcement and other law enforcement activities in rural states and rural areas, including for the hiring of police officers and for community drug prevention and treatment programs.

Southwest Border/Project Gunrunner.—The conference agreement provides $40,000,000 for competitive grants for programs that provide assistance and equipment to local law enforcement along the Southern border or in High-Intensity Drug Trafficking Areas to combat criminal narcotic activity, of which $10,000,000 shall be available, by transfer, to the Bureau of Alcohol, Tobacco, Firearms, and Explosives for Project Gunrunner.

Victims Compensation.—The conference agreement provides $100,000,000 for formula grants to be administered through the Justice Department's Office for Victims of Crime to support State compensation and assistance programs for victims and survivors of domestic violence, sexual assault, child abuse, drunk driving, homicide, and other Federal and state crimes.

Tribal Law Enforcement Assistance.—The conference agreement provides $225,000,000 for grants to assist American Indian and Alaska Native tribes, to be distributed under the guidelines set forth by the Correctional Facilities on Tribal Lands program. The Department is directed to coordinate with the Bureau of Indian Affairs, and to consider the following in the grant approval process: (1) the detention bed space needs of an applicant tribe; and (2) the violent crime statistics of the tribe.

Internet Crimes Against Children (ICAC) Task Force Program.—The conference agreement provides $50,000,000 to help State and local law enforcement agencies enhance investigative responses to offenders who use the Internet, online communication systems, or other computer technology to sexually exploit children.

COMMUNITY ORIENTED POLICING SERVICES

COPS Hiring Grants.—The conference agreement provides $1,000,000,000 for grants to State, local, and tribal governments for the hiring of additional law enforcement officers, to be available until September 30, 2010. No administrative overhead costs shall be deducted from the programs funded under this account.

SALARIES AND EXPENSES

The conference agreement provides $10,000,000 for management and administrative costs of Department of Justice grants funded in this Act.

SCIENCE

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

NASA is directed to submit to the House and Senate Committees on Appropriations a spending plan, signed by the Administrator, detailing its intended allocation of funds provided in this Act within 60 days of enactment of this Act.

SCIENCE

The conference agreement includes $400,000,000 for Science, to remain available until September 30, 2010. Funding is included herein to accelerate the development of the tier 1 set of Earth science climate research missions recommended by the National Academies Decadal Survey and to increase the agency's supercomputing capabilities.

AERONAUTICS

The conference agreement includes $150,000,000 for aeronautics, to remain available until September 30, 2010. These funds are available for system-level research, development and demonstration activities related to aviation safety, environmental impact mitigation and the Next Generation Air Transportation System (NextGen).

EXPLORATION

The conference agreement includes $400,000,000 for exploration, to remain available until September 30, 2010.

CROSS AGENCY SUPPORT

The conference agreement includes $50,000,000 for cross agency support, to remain available until September 30, 2010. In allocating these funds, NASA shall give its highest priority to restore NASA-owned facilities damaged from hurricanes and other natural disasters occurring during calendar year 2008.

OFFICE OF INSPECTOR GENERAL

The conference agreement includes $2,000,000 for the Office of Inspector General, to remain available until September 30, 2013.

NATIONAL SCIENCE FOUNDATION

NSF is directed to submit to the House and Senate Committees on Appropriations a spending plan, signed by the Director, detailing its intended allocation of funds provided in this Act within 60 days of enactment of this Act.

RESEARCH AND RELATED ACTIVITIES

For research and related activities, the conference agreement provides a total of $2,500,000,000, to remain available until September 30, 2010. Within this amount, $300,000,000 shall be available solely for the major research instrumentation program and $200,000,000 shall be available for activities authorized by title II of Public Law 100–570 for academic facilities modernization. In allocating the resources provided under this heading, the conferees direct that NSF support all research divisions and support advancements in supercomputing technology.

EDUCATION AND HUMAN RESOURCES

The conference agreement includes $100,000,000 for education and human resources, to remain available until September 30, 2010. These funds shall be allocated as follows:

Robert Noyce Scholarship Program	$60,000,000
Math and Science Partnerships	25,000,000
Professional Science Master's Programs	15,000,000

MAJOR RESEARCH EQUIPMENT AND FACILITIES CONSTRUCTION

The conference agreement includes $400,000,000 for major research equipment and facilities construction, to remain available until September 30, 2010.

OFFICE OF INSPECTOR GENERAL

The conference agreement includes $2,000,000 for the Office of Inspector General, to remain available until September 30, 2013.

GENERAL PROVISION—THIS TITLE

Sec. 201. For COPS Hiring Grants, waives the $75,000 per officer cap codified at 42 U.S.C. 3796dd–3(c) and the 25 percent local match requirement codified at 42 U.S.C. 3796dd(g).

TITLE III—DEFENSE

DEPARTMENT OF DEFENSE

FACILITY INFRASTRUCTURE INVESTMENTS, DEFENSE

Facilities Sustainment, Restoration and Modernization covers expenses associated with maintaining the physical plant at Department of Defense posts, camps and stations. The conference agreement provides $4,240,000,000 for Facilities Sustainment, Restoration and Modernization and directs that this funding shall only be available for facilities in the United States and its territories. Further, of the funds provided, $400,000,000 is for the Defense Health Program as described elsewhere in this statement. Of the funds provided in Operation and Maintenance, Army, $153,500,000 shall be used for barracks renovations. The remainder of the funds provided shall be used to invest in energy efficiency projects and to repair and modernize Department of Defense facilities. The Secretary of Defense shall provide a written report to the congressional defense committees no later than 60 days after enactment of this Act with a project listing of how these funds will be obligated.

NEAR TERM ENERGY EFFICIENCY TECHNOLOGY DEMONSTRATIONS AND RESEARCH

The conference agreement provides $75,000,000 for Research, Development, Test and Evaluation, Army; $75,000,000 for Research, Development, Test and Evaluation, Navy; $75,000,000 for Research, Development, Test and Evaluation, Air Force; and $75,000,000 for Research, Development, Test and Evaluation, Defense-Wide only for the funding of research, development, test and evaluation projects, including pilot projects, demonstrations and energy efficient manufacturing enhancements. Funds are for improvements in energy generation and efficiency, transmission, regulation, storage, and for use on military installations and within operational forces, to include research and development of energy from fuel cells, wind, solar, and other renewable energy sources to in-

clude biofuels and bioenergy. The Secretary of Defense is directed to provide a report to the congressional defense committees detailing the planned use of these funds within 60 days after enactment of this Act. Additionally, the Secretary of Defense is directed to provide a report on the progress made by this effort to the congressional defense committees not later than one year after enactment of this Act and an additional report not later than two years after enactment of this Act.

DEFENSE HEALTH PROGRAM

The conference agreement provides $400,000,000 for Facilities Sustainment, Restoration, and Modernization. Of these funds, $220,000,000 shall be for the Army, $50,000,000 shall be for the Navy, and $130,000,000 shall be for the Air Force. Funds shall be used to invest in energy efficiency projects and to improve, repair and modernize military medical facilities in the United States and its territories. The Service Surgeons General shall provide written reports to the congressional defense committees no later than 60 days after enactment of this Act with a project listing of how and when these funds will be obligated.

OFFICE OF THE INSPECTOR GENERAL

The conference agreement provides $15,000,000 for the Office of the Inspector General to conduct vigorous oversight of Department of Defense programs.

TITLE IV—ENERGY AND WATER DEVELOPMENT

DEPARTMENT OF DEFENSE—CIVIL

DEPARTMENT OF THE ARMY

CORPS OF ENGINEERS—CIVIL

INTRODUCTION

The conferees agree to provide an additional $4,600,000,000 for the Corps of Engineers as proposed by the Senate instead of $4,500,000,000 as proposed by the House. The conferees direct the Corps to consider the following criteria when allocating funds:

(a) Programs, projects, or activities that can be obligated/executed quickly;

(b) Programs, projects, or activities that will result in high, immediate employment;

(c) Programs, projects, or activities that have little schedule risk;

(d) Programs, projects, or activities that will be executed by contract or direct hire of temporary labor; and

(e) Programs, projects, or activities that will complete either a project phase, a project, or will provide a useful service that does not require additional funding.

Further, the Corps is directed to utilize the criteria above to execute authorized projects in order to maximize national benefits without regard to the business line amounts proposed in the Senate report, except where statutory language specifies an amount.

INVESTIGATIONS

The conferees agree to provide an additional $25,000,000 as proposed by the Senate. The House proposed no funding for this account. The conference agreement includes or modifies several provisions proposed by the Senate related to availability of funds and reprogramming.

CONSTRUCTION

The conferees agree to provide an additional $2,000,000,000 as proposed by both the House and the Senate.

The conference agreement includes a provision proposed by the Senate regarding availability of funds for authorized environmental infrastructure projects. The House bill included no similar provision.

The conference agreement includes several provisions proposed by the House and the Senate regarding limitations on reimbursement, annual program and total project cost limits, the Inland Waterways Trust Fund, and availability of funds.

The conference agreement deletes a provision proposed by the House directing the prioritization of funds. The Senate carried report language addressing prioritization.

The conference agreement includes a provision proposed by the Senate granting the Secretary of the Army unlimited reprogramming authority for funds provided under this heading. The House bill included no similar provision.

The conference agreement includes a provision proposed by the House requiring specific reports on obligation and expenditure of funds provided in this Act. The Senate bill included no similar provision.

MISSISSIPPI RIVER AND TRIBUTARIES

The conferees agree to provide an additional $375,000,000 instead of $250,000,000 as proposed by the House and $500,000,000 as proposed by the Senate.

The conference agreement deletes a provision proposed by the House directing the prioritization of funds. The Senate carried report language addressing prioritization.

The conference agreement includes several provisions proposed by the House and the Senate regarding total project cost limits and availability of funds.

The conference agreement includes a provision proposed by the Senate granting the Secretary of the Army unlimited reprogramming authority for funds provided under this heading. The House bill included no similar provision.

The conference agreement includes a provision proposed by the House requiring specific reports on obligation and expenditure of funds provided in this Act. The Senate bill included no similar provision.

OPERATION AND MAINTENANCE

The conferees agree to provide an additional $2,075,000,000 instead of $2,225,000,000 as proposed by the House and $1,900,000,000 as proposed by the Senate.

The conference agreement deletes a provision proposed by the House directing the prioritization of funds. The Senate carried report language addressing prioritization.

The conference agreement includes several provisions proposed by the House and the Senate regarding total project cost limits and availability of funds.

The conference agreement deletes a provision proposed by the Senate relating to activities authorized in section 9004 of Public Law 110–114. The House bill included no similar provision.

The conference agreement includes a provision proposed by the Senate relating to annual project limitations set forth in section 9006 of Public Law 110–114. The House bill included no similar provision.

The conference agreement includes a provision proposed by the Senate granting the Secretary of the Army unlimited reprogramming authority for funds provided under this heading. The House bill included no similar provision.

The conference agreement includes a provision proposed by the House requiring specific reports on obligation and expenditure of funds provided in this Act. The Senate bill included no similar provision.

REGULATORY PROGRAM

The conferees agree to provide an additional $25,000,000 as proposed by both the House and the Senate.

FORMERLY UTILIZED SITES REMEDIAL ACTION PROGRAM

The conferees agree to provide an additional $100,000,000 as proposed by the Senate. The House proposed no funding for this account.

The conference agreement includes or modifies several provisions proposed by the Senate related to availability of funds and reprogramming.

The conference agreement includes a new provision requiring specific reports on obligation and expenditure of funds provided in this Act.

FLOOD CONTROL AND COASTAL EMERGENCIES

The conferees provide no additional funds, as proposed by the House, instead of $50,000,000 as proposed by the Senate.

DEPARTMENT OF INTERIOR

BUREAU OF RECLAMATION

WATER AND RELATED RESOURCES

The conferees agree to provide an additional $1,000,000,000 for Water and Related Resources instead of $500,000,000 as proposed by the House and $1,400,000,000 as proposed by the Senate. The conferees direct the Bureau to consider the following criteria when allocating funds:

(a) Programs, projects, or activities that can be obligated/executed quickly;

(b) Programs, projects, or activities that will result in high, immediate employment;

(c) Programs, projects, or activities that have little schedule risk;

(d) Programs, projects, or activities that will be executed by contract or direct hire of temporary labor; and

(e) Programs, projects, or activities that will complete either a project phase, a project, or will provide a useful service that does not require additional funding.

Further, the Bureau is directed to utilize the criteria above to execute authorized projects in order to maximize national benefits without regard to the amounts proposed in the Senate report by purpose, except where statutory language specifies an amount.

The conference agreement includes a provision proposed by the House related to expenditures for authorized title XVI projects. The Senate bill included a similar provision.

The conference agreement deletes several provisions proposed by the Senate related to the Bureau of Reclamation's special fee account; contributed funds; funds advanced under 43 U.S.C. 397a; and limitations on funding programs, projects or activities that receive funding in Acts making appropriations for Energy and Water Development. The House bill included no similar provisions.

The conference agreement includes provisions proposed by the Senate relating to availability of funds for projects that can be completed with funds provided in this Act and the availability of funds for authorized activities under the Central Utah Project Completion Act, California-Bay Delta Restoration Act, and the bureauwide inspection of canals program in urbanized areas. The House bill included no similar provisions.

The conference agreement includes a provision proposed by the Senate relating to authorized rural water projects. The House bill included a similar provision.

The conference agreement modifies provisions proposed by both the House and the Senate relating to repayment of reimbursable activities.

The conference agreement includes a provision proposed by the Senate relating to availability of funds for costs associated with supervision, inspection, overhead, engineering and design on projects. The House bill included no similar provision.

The conference agreement includes a provision proposed by the Senate granting the Secretary of Interior unlimited reprogramming authority for funds provided under this heading. The House bill included no similar provision.

The conference agreement includes a new provision requiring specific reports on obligation and expenditure of funds provided in this Act.

DEPARTMENT OF ENERGY

ENERGY PROGRAMS

ENERGY EFFICIENCY AND RENEWABLE ENERGY

The conferees agree to provide an additional $16,800,000,000 for the Energy Efficiency and Renewable Energy program, instead

of $18,500,000,000 as proposed by the House and $14,398,000,000 as proposed by the Senate. The conference agreement includes $2,500,000,000 for applied research, development, demonstration and deployment activities to include $800,000,000 for projects related to biomass and $400,000,000 for geothermal activities and projects. Within available funds, the conferees direct $50,000,000 for the Department to support research to increase the efficiency of information and communications technology and improve standards.

Funds under this heading include $3,200,000,000 for the Energy Efficiency and Conservation Block Grant (EECBG) program, instead of $3,500,000,000 as proposed by the House and $4,200,000,000 as proposed by the Senate. Of the funds provided for the EECBG program, $400,000,000 shall be awarded on a competitive basis to grant applicants.

Funds under this heading include $5,000,000,000 for the Weatherization Assistance Program, instead of $6,200,000,000 as proposed in the House bill. The Senate proposed $2,900,000,000 in report language.

Funds under this heading include $3,100,000,000 for the State Energy Program, instead of $3,400,000,000 as proposed in the House bill. The Senate proposed $500,000,000 in report language.

Funds under this heading include $2,000,000,000 for Advanced Battery Manufacturing grants to support the manufacturing of advanced vehicle batteries and components, as proposed by the Senate, instead of $1,000,000,000 as proposed by the House. The conference agreement does not include the Advanced Battery Loan Guarantee program as proposed by the House. The Senate bill carried no similar provision.

Funds under this heading include $300,000,000 for the Alternative Fueled Vehicles Pilot Grant Program, instead of $400,000,000 as proposed in the House bill. The Senate proposed $350,000,000 in report language.

Funds under this heading include $400,000,000 for Transportation Electrification, instead of $200,000,000 as proposed in the House bill. The Senate proposed $200,000,000 in report language.

Funds under this heading include $300,000,000 for the Energy Efficient Appliance Rebate program and the Energy Star Program as proposed by the House. The Senate bill carried no similar provision.

The conference agreement includes language proposed by both the House and Senate that accelerates the hiring of personnel for the Energy Efficiency and Renewable Energy program.

The conference agreement does not include $500,000,000 for incentives for Energy Recovery of Industrial Waste Heat, as proposed by the House. The Senate bill carried no similar provision.

The conference agreement does not include $1,000,000,000 for grants to Institutional Entities for Energy Sustainability and Efficiency as proposed in the House bill. The Senate proposed $1,600,000,000 in report language.

The conference agreement does not include $500,000,000 for the cost of guaranteed loans to Institutional Entities for Energy Sustainability and Efficiency as proposed in the House bill. The Senate bill carried no similar provision.

ELECTRICITY DELIVERY AND ENERGY RELIABILITY

The conferees agree to provide an additional $4,500,000,000 for the Electricity Delivery and Energy Reliability program, as proposed by the House and the Senate. The conferees provide $100,000,000 within these funds for worker training, as proposed by the House and the Senate.

The conferees include language enabling the Secretary to use funds for transmission improvements authorized in any subsequent Act, as proposed by the House. The Senate bill contained no similar provision.

The conferees include language proposed by the Senate that accelerates the hiring of personnel for the Electricity Delivery and Energy Reliability program. The House bill contained no similar provision.

The conference agreement modifies bill language proposed by the Senate providing funds to conduct a resource assessment of future demand and transmission requirements. The House bill contained no similar provision.

The conference agreement modifies bill language proposed by the Senate for technical assistance to the North American Electric Reliability Corporation, the regional reliability entities, the States, and other transmission owners and operators for the formation of interconnection-based transmission plans for the Eastern and Western Interconnections and ERCOT. The House bill contained no similar provision.

The conference agreement includes bill language proposed by the Senate providing $10,000,000 to implement section 1305 of Public Law 110–140. The House bill contained no similar provision.

FOSSIL ENERGY RESEARCH AND DEVELOPMENT

The conferees agree to provide an additional $3,400,000,000 for the Fossil Energy Research and Development program, instead of $2,400,000,000 as proposed by the House and $4,600,000,000 as proposed by the Senate.

Funds under this heading include $1,000,000,000 for fossil energy research and development programs; $800,000,000 for additional amounts for the Clean Coal Power Initiative Round III Funding Opportunity Announcement; $1,520,000,000 for a competitive solicitation for a range of industrial carbon capture and energy efficiency improvement projects, including a small allocation for innovative concepts for beneficial CO_2 reuse; $50,000,000 for a competitive solicitation for site characterization activities in geologic formations; $20,000,000 for geologic sequestration training and research grants; and $10,000,000 for program direction funding.

The conference agreement does not include $2,400,000,000 for Section 702 of the Energy Independence and Security Act of 2007, as proposed by the House. The Senate bill contained no similar provision.

The conference agreement deletes several provisions proposed by the Senate delineating funding within this account. The House bill contained no similar provisions.

NON-DEFENSE ENVIRONMENTAL CLEANUP

The conferees agree to provide an additional $483,000,000 for the Non-Defense Environmental Cleanup program, as proposed by the Senate. The House bill carried no similar provision.

URANIUM ENRICHMENT DECONTAMINATION AND DECOMMISSIONING FUND

The conferees agree to provide an additional $390,000,000 for the Uranium Enrichment Decontamination and Decommissioning Fund, as proposed by the Senate. The House bill carried no similar provision. Within available funds, $70,000,000 is provided for the title X uranium and thorium program.

SCIENCE

The conferees agree to provide an additional $1,600,000,000 for the Science program. After taking into account the additional $400,000,000 provided for Advanced Research Projects Agency—Energy (ARPA–E) in a separate account, the funding level for Science is the same as proposed by the House, instead of $330,000,000 as proposed by the Senate.

The conference agreement does not include $100,000,000 for advanced scientific computing as proposed in the House bill. The Senate bill carried no similar provision.

ADVANCED RESEARCH PROJECTS AGENCY—ENERGY

The conferees agree to provide $400,000,000 for the Advanced Research Projects Agency-Energy authorized under section 5012 of the America COMPETES Act (42 U.S.C. 16538). This funding was provided by the House under "Science". The Senate bill carried no similar provision.

TITLE 17—INNOVATIVE TECHNOLOGY LOAN GUARANTEE PROGRAM

The conference agreement includes $6,000,000,000 for the cost of guaranteed loans authorized by section 1705 of the Energy Policy Act of 2005, instead of $8,000,000,000 as proposed by the House and $9,500,000,000 as proposed by the Senate.

This new loan program would provide loan guarantees for renewable technologies and transmission technologies. The $6,000,000,000 in appropriated funds is expected to support more than $60,000,000,000 in loans for these projects.

Funds under this heading include $10,000,000 for administrative expenses to support the Advanced Technology Vehicles Manufacturing Loan program. The House bill and the Senate bill included no similar provision.

The conference agreement does not include a provision proposed by the Senate providing $50,000,000,000 in additional loan authority for commitments to guarantee loans under section 1702(b)(2) of the Energy Policy Act of 2005. The House bill contained no similar provision.

OFFICE OF THE INSPECTOR GENERAL

The conferees agree to provide an additional $15,000,000 for the Office of Inspector General, as proposed by the House. The Senate bill included a similar provision.

ATOMIC ENERGY DEFENSE ACTIVITIES

NATIONAL NUCLEAR SECURITY ADMINISTRATION

WEAPONS ACTIVITIES

The conference agreement does not provide $1,000,000,000 for the National Nuclear Security Administration, Weapons Activities, as proposed by the Senate. The House bill contained no similar provision.

ENVIRONMENTAL AND OTHER DEFENSE ACTIVITIES

DEFENSE ENVIRONMENTAL CLEANUP

The conferees agree to provide an additional $5,127,000,000 for the Defense Environmental Cleanup program, instead of $500,000,000 as proposed by the House and $5,527,000,000 as proposed by the Senate.

CONSTRUCTION, REHABILITATION, OPERATION, AND MAINTENANCE, WESTERN AREA POWER ADMINISTRATION

The conference agreement includes bill language proposed by the Senate providing $10,000,000 in non-reimbursable funds for construction, rehabilitation, operations, and maintenance for the Western Area Power Administration (WAPA). The House bill contained no similar provision.

The conference agreement includes bill language proposed by the Senate providing additional staffing levels for the WAPA. The House bill contained no similar provision.

Legislative language is also included in the General Provisions of this title providing the WAPA with $3,250,000,000 in borrowing authority, as proposed by both the House and the Senate.

GENERAL PROVISIONS—THIS TITLE

The conference agreement includes a provision proposed by both the House and Senate increasing the borrowing authority ceiling for the Bonneville Power Administration by $3,250,000,000.

The conference agreement includes a provision proposed by the Senate providing the Western Area Power Administration $3,250,000,000 in borrowing authority. The House bill contained a similar provision.

The conference agreement modifies a provision proposed by the House granting transfer authority to the Secretary of Energy under specific circumstances. The Senate bill contained no similar provision.

The conference agreement includes a provision proposed by the House making technical corrections to section 543(a) of the Energy Independence and Security Act of 2007. The Senate bill contained no similar provision.

The conference agreement modifies a provision proposed by the House amending title XIII of the Energy Independence and Security Act of 2007 to provide financial support to smart grid demonstration projects including those in urban, suburban, rural and tribal areas including areas where electric system assets are controlled by nonprofit entities and areas where the electric system assets are controlled by investor owned utilities. The Senate bill contained a similar provision.

The conference agreement modifies a provision proposed by the House amending title XVII of the Energy Independence and Security Act of 2007 creating a temporary loan guarantee program for the rapid deployment of renewable energy and electric power transmission projects. The Senate bill contained a similar provision.

The conference agreement modifies a provision proposed by the House expanding the eligibility of low income households for the Weatherization Assistance Program and increasing the funding assistance level per dwelling unit. The provision also provides guidance on effective use of funds. The Senate bill contained a similar provision.

The conference agreement includes a provision proposed by the Senate making technical corrections to redesignate two paragraphs of the Public Utility Regulatory Policies Act of 1978. The House bill contained no similar provision.

The conference agreement includes a provision proposed by the House providing the Secretary of Energy further direction in completing the 2009 National Electric Transmission Congestion Study. The Senate bill contained no similar provision.

The conference agreement includes a provision proposed by the House requiring as a condition of receipt of State Energy Program grants, a Governor to notify the Secretary of Energy that the Governor has obtained certain assurances, regarding certain regulatory policies, building code requirements and the prioritization of existing state programs. The Senate bill contained a similar provision.

The conference agreement deletes a provision proposed by the House waiving per project limitations for grants provided under section 399A(f)(2), (3), and (4) of the Energy Policy and Conservation Act and establishes that grants shall be available for not more than an amount equal to 80 percent of the costs of the project for which the grant is provided. The Senate bill contained no similar provision.

TITLE V—FINANCIAL SERVICES AND GENERAL GOVERNMENT

DEPARTMENT OF THE TREASURY

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION

SALARIES AND EXPENSES

The conference agreement provides $7,000,000 for oversight and audits of the administration of the making work pay tax credit and economic recovery payments under the American Recovery and Reinvestment Act, as proposed by the Senate. The House did not include funds for this account.

COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS FUND
PROGRAM ACCOUNT

The conference agreement provides $100,000,000 for qualified applicants under the fiscal year 2009 funding round of the Community Development Financial Institutions Fund program, instead of no funds as proposed by the House and $250,000,000 as proposed by the Senate.

INTERNAL REVENUE SERVICE

HEALTH INSURANCE TAX CREDIT ADMINISTRATION

The conference agreement provides $80,000,000 to cover expected additional costs associated with implementation of the TAA Health Coverage Improvement Act of 2009.

DISTRICT OF COLUMBIA

FEDERAL PAYMENTS

FEDERAL PAYMENT TO THE DISTRICT OF COLUMBIA

WATER AND SEWER AUTHORITY

The conference agreement does not provide funding for the District of Columbia Water and Sewer Authority, instead of $125,000,000 as proposed by the Senate.

GENERAL SERVICES ADMINISTRATION

REAL PROPERTY ACTIVITIES

FEDERAL BUILDINGS FUND

LIMITATIONS ON AVAILABILITY OF REVENUE

(INCLUDING TRANSFER OF FUNDS)

The conference agreement provides $5,550,000,000, for the Federal Buildings Fund, instead of $7,700,000,000 as proposed by the House and $5,548,000,000 as proposed by the Senate. Of the amounts provided, the conference agreement includes $750,000,000 for Federal buildings and United States courthouses, $450,000,000 of which shall be for a new headquarters for the Department of Homeland Security; $300,000,000 for border stations and land ports of entry; and not less than $4,500,000,000 to convert GSA facilities to High-Performance Green buildings as defined in P.L. 110–140. The conference agreement provides $4,000,000 for the Office of Federal High-Performance Green Buildings, authorized in the Energy Independence and Security Act of 2007. The agreement also provides $3,000,000 for a training and apprenticeship program for construction, repair and alteration of Federal buildings. With any funds in the Act that are used for new United States courthouse construction, the conferees advise GSA to consider projects for which the design provides courtroom space for senior judges for up to 10 years from eligibility for senior status, not to exceed one courtroom for every two senior judges.

ENERGY-EFFICIENT FEDERAL MOTOR VEHICLE FLEET PROCUREMENT

The conference agreement includes $300,000,000 for the acquisition of motor vehicles for the Federal fleet as proposed by the Senate, instead of $600,000,000 as proposed by the House. The conferees expect that the funds provided for Federal motor vehicle fleet procurement will help to stimulate the market for high-efficiency motor vehicles and will increase the fuel efficiency and reduce carbon emissions of the Federal motor vehicle fleet. The conferees remain hopeful that domestically produced plug-in hybrid-electric vehicles will be commercially available in sufficient quantities before September 30, 2010, such that these funds could be used to acquire this technology for the Federal fleet. Vehicles must be replaced on at least a one-for-one basis. Each vehicle purchased must have a higher fuel economy, as measured by EPA, than the vehicle being replaced and the overall government-purchased vehicles must have an improved fuel economy at least 10 percent greater than the vehicles being replaced.

OFFICE OF INSPECTOR GENERAL

The conference agreement provides $7,000,000 for the General Services Administration Office of Inspector General, as proposed by the Senate, instead of $15,000,000 as proposed by the House. Funds are available through September 30, 2013 for oversight and audit of programs, activities, and projects under this title.

RECOVERY ACT ACCOUNTABILITY AND TRANSPARENCY BOARD

The conference agreement provides $84,000,000 for the Recovery Act Accountability and Transparency Board, instead of $14,000,000 as provided by the House and $7,000,000 as provided by the Senate. Funding will support activities related to accountability, transparency, and oversight of spending under the Act. Funds may be transferred to support the operations of the Recovery Independent Advisory Panel established under section 1541 of the Act and for technical and administrative services and support provided by the General Services Administration. Funds may also be transferred to the Office of Management and Budget for coordinating and overseeing the implementation of the reporting requirements established under section 1526 of the Act. Funds may be transferred not less than 15 days following the notification of such transfer to the Committees on Appropriations of the House of Representatives and the Senate.

SMALL BUSINESS ADMINISTRATION

SALARIES AND EXPENSES

The conference agreement provides $69,000,000 for Salaries and Expenses of the Small Business Administration, instead of $84,000,000 as proposed by the Senate. The House did not include funds for this account. Of the amount provided, $24,000,000 is for marketing, management, and technical assistance under the Microloan program, $20,000,000 is for improving, streamlining, and automating information technology systems related to lender proc-

esses and lender oversight, and $25,000,000 is for administrative expenses to ensure the efficient and effective management of small business programs.

OFFICE OF INSPECTOR GENERAL

The conference agreement provides $10,000,000 for the Office of Inspector General, as proposed by the House and the Senate. Funds are made available through September 30, 2013 for oversight and audit of programs, activities, and projects under this title.

SURETY BOND GUARANTEES REVOLVING FUND

The conference agreement provides $15,000,000 for the Surety Bond Guarantees Revolving Fund, as proposed by the Senate. The House did not include funds for this account.

BUSINESS LOANS PROGRAM ACCOUNT

The conference agreement provides $636,000,000 for the Business Loans Program Account, instead of $430,000,000 as proposed by the House and $621,000,000 as proposed by the Senate. Of this amount, $6,000,000 is for the cost of direct loans provided under the Microloan program. The remaining $630,000,000 will implement the fee reductions and new loan guarantee authorities under sections 501 and 506 of this title.

ADMINISTRATIVE PROVISIONS—SMALL BUSINESS ADMINISTRATION

Section 501 authorizes temporary fee reductions or eliminations in the 7(a) loan guarantee program and the 504 loan program. The Senate proposed similar language.

Section 502 authorizes up to a 90 percent Small Business Administration guarantee on 7(a) loans. The House proposed similar language.

Section 503 authorizes the establishment of a SBA Secondary Market Guarantee Authority to provide a Federal guarantee for pools of first lien 504 loans that are to be sold to third-party investors. The House proposed similar language.

Section 504 authorizes SBA to refinance community development loans under its 504 program and revises the job creation goals of the program. The House and the Senate proposed similar language.

Section 505 simplifies the maximum leverage limits and aggregate investment limits required of Small Business Investment Companies. The House and the Senate proposed similar language.

Section 506 authorizes the Small Business Administration to carry out a program to provide loans on a deferred basis to viable small business concerns that have a qualifying small business loan and are experiencing immediate financial hardship.

Section 507 requires the Government Accountability Office to report to Congress on the implementation of the Small Business Administration provisions. The House proposed a similar provision.

Section 508 provides an increase in the surety bond maximum amount and modifies size standards. The Senate proposed similar language.

Section 509 establishes a secondary market lending authority within the Small Business Administration. The House proposed similar language.

The conference agreement does not include a provision, proposed by the House, to establish a new lending and refinancing authority within the Small Business Administration.

The conference agreement does not include a provision, proposed by the Senate, regarding the 7(a) loan maximum amount.

The conference agreement does not include a provision, proposed by the Senate, regarding definitions under the heading "Small Business Administration" in this title. The conference agreement includes provisions relating to definitions of terms within the individual sections.

TITLE VI—DEPARTMENT OF HOMELAND SECURITY

OFFICE OF THE UNDER SECRETARY FOR MANAGEMENT

The conferees provide $200,000,000 for the Office of the Under Secretary for Management instead of $198,000,000 as proposed by the Senate and no funding proposed by the House. These funds are for planning, design, and construction costs necessary to consolidate the Department of Homeland Security (DHS) headquarters. DHS estimates that this project will create direct employment opportunities for 32,800 people in the region, largely within the construction and renovation industry. The conferees include bill language as proposed by the Senate to require an expenditure plan.

OFFICE OF INSPECTOR GENERAL

The conferees provide $5,000,000 for the Office of Inspector General (OIG) as proposed by the Senate instead of $2,000,000 as proposed by the House. Funding is available until September 30, 2012. These funds shall be used for oversight and audit programs, grants, and projects funded in this Title. The OIG estimates that this funding will provide for approximately 25 temporary federal positions and 40 contractor positions.

U.S. CUSTOMS AND BORDER PROTECTION

SALARIES AND EXPENSES

The conferees provide $160,000,000 for U.S. Customs and Border Protection (CBP) Salaries and Expenses instead of $100,000,000 as proposed by the House and $198,000,000 as proposed by the Senate. This includes $100,000,000 for the procurement and deployment of new or replacement non-intrusive inspection (NII) systems, and $60,000,000 for tactical communications. DHS estimates that funding for NII systems will create 148 new government and private sector jobs, and funding for tactical communications will create an estimated 319 contract positions, as well as manufacturing and systems software jobs. The conferees include

bill language as proposed by the Senate to require an expenditure plan.

BORDER SECURITY FENCING, INFRASTRUCTURE, AND TECHNOLOGY

The conferees provide $100,000,000 for Border Security Fencing, Infrastructure, and Technology instead of $200,000,000 as proposed by the Senate and no funding proposed by the House. The conferees include bill language as proposed by the Senate to require an expenditure plan.

CONSTRUCTION

The conferees provide $420,000,000 for Construction, instead of $150,000,000 as proposed by the House and $800,000,000 as proposed by the Senate. The conferees include bill language as proposed by the Senate to make funding available for planning, management, design, alteration, and construction of land ports of entry that are owned by U.S. Customs and Border Protection. Up to five percent of these funds may be used to enhance management and oversight of this construction. DHS estimates that this project will create employment for 4,584 people in the border communities, largely within the construction and renovation industry. The conferees include bill language as proposed by the Senate to require an expenditure plan.

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

AUTOMATION MODERNIZATION

The conferees provide $20,000,000 for Automation Modernization instead of $27,800,000 as proposed by the Senate and no funding proposed by the House. U.S. Immigration and Customs Enforcement has estimated this investment will create more than 120 new jobs related to the planning, manufacture, programming and installation of this equipment. The conferees include bill language as proposed by the Senate to require an expenditure plan.

TRANSPORTATION SECURITY ADMINISTRATION

AVIATION SECURITY

The conferees provide $1,000,000,000 for Aviation Security as proposed by the Senate instead of $500,000,000 as proposed by the House. This funding shall be used to procure and install checked baggage explosives detection systems and checkpoint explosives detection equipment. The Assistant Secretary of the Transportation Security Administration (TSA) should prioritize the award of these funds based on risk to accelerate the installation at locations with completed design plans. Funds must be competitively awarded. TSA estimates that this funding will create about 3,537 manufacturing and construction jobs as well as a small number of Federal positions.

The conferees include bill language as proposed by the Senate to require an expenditure plan. Consistent with direction provided previously for fiscal year 2009, if a new requirement occurs after the expenditure plan is submitted, TSA shall reassess and reallocate these funds after notifying the Committees on Appropriations.

In addition, TSA shall brief the Committees quarterly on these expenditures.

COAST GUARD

ACQUISITION, CONSTRUCTION, AND IMPROVEMENTS

The conferees provide $98,000,000 for Acquisition, Construction, and Improvements instead of $450,000,000 as proposed by the Senate and no funding proposed by the House. This funding cannot be used for pre-acquisition survey, design, or construction of a new polar icebreaker. The conferees include bill language as proposed by the Senate to require an expenditure plan. The Coast Guard estimates that this funding will create or preserve at least 435 jobs.

ALTERATION OF BRIDGES

The conferees provide $142,000,000 for Alteration of Bridges instead of $150,000,000 as proposed by the House and $240,400,000 as proposed by the Senate. The conferees include bill language as proposed by the Senate to require an expenditure plan. The Coast Guard estimates that this funding will create approximately 1,200 jobs.

FEDERAL EMERGENCY MANAGEMENT AGENCY

STATE AND LOCAL PROGRAMS

The conferees provide $300,000,000 for State and Local Programs instead of $950,000,000 as proposed by the Senate and no funding proposed by the House. Of the amount made available, $150,000,000 is for Public Transportation Security Assistance and Railroad Security Assistance, including Amtrak security, and $150,000,000 is for Port Security Grants. The Secretary shall not require a cost share for grants provided for Public Transportation Security Assistance and Railroad Security Assistance (including Amtrak security). In addition, the bill includes a provision waiving the cost-share for Port Security Grants funded in this Act.

The conferees expect funding provided under this heading to support nearly 2,900 jobs based on an estimate by the Department of Homeland Security. The conferees direct that priority be given to construction projects which address the most significant risks and can also be completed in a timely fashion.

FIREFIGHTER ASSISTANCE GRANTS

The conferees provide $210,000,000 for firefighter assistance grants instead of $500,000,000 as proposed by the Senate and no funding proposed by the House. As proposed by the Senate, funds are provided for modifying, upgrading or constructing non-Federal fire stations, not to exceed $15,000,000 per grant. The conferees expect this funding to support nearly 2,000 jobs based on an estimate by the Department of Homeland Security.

DISASTER ASSISTANCE DIRECT LOAN PROGRAM ACCOUNT

The conferees include bill language as proposed by the Senate allowing loans related to calendar year 2008 disasters to exceed

$5,000,000 and equal not more than 50 percent of the operating budget of local governments if that local government has suffered a loss of 25 percent or more in tax revenues. The House bill contained no comparable provision.

EMERGENCY FOOD AND SHELTER

The conferees provide $100,000,000 for Emergency Food and Shelter as proposed by the Senate instead of $200,000,000 as proposed by the House.

GENERAL PROVISIONS—THIS TITLE

Section 601. The conferees include a provision, as proposed by the Senate, related to Hurricanes Katrina and Rita establishing an arbitration panel under the Federal Emergency Management Agency.

Section 602. The conferees include a provision, as proposed by the Senate, regarding the Federal Emergency Management Agency's hazard mitigation grant program related to Hurricanes Katrina and Rita.

Section 603. The conferees include a provision, as proposed by the House, waiving the cost-share for grants under section 34 of the Federal Fire Prevention and Control Act of 1974 for fiscal years 2009 and 2010.

Section 604. The conferees include and modify a provision, as proposed by the House, related to the procurement of apparel and textile products by the Department of Homeland Security. This language is modeled after the Berry Amendment (10 U.S.C. 2533a), which has required the Department of Defense to purchase domestically-manufactured textiles and apparel.

PROVISIONS NOT ADOPTED

The conferees do not include section 1114 of the House bill, which relates to the E-Verify program; and sections 7001 through 7004 of the House bill, which House relate to authorization of the Basic Pilot system.

TITLE VII—DEPARTMENT OF THE INTERIOR, ENVIRONMENT, AND RELATED AGENCIES

DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

MANAGEMENT OF LANDS AND RESOURCES

The conference agreement provides $125,000,000 for management of lands and resources instead of $135,000,000 proposed by the Senate; there was no House proposal. The conference agreement provides flexibility to the agency in determining the allocation of this funding among various program activities and sub-activities. The conferees encourage that selection of individual projects be based on a prioritization process which weighs the capacity of proposals to create the largest number of jobs in the shortest period of time and which creates lasting value for the

American public. While maximizing jobs, the Bureau should consider projects on all Bureau managed lands including deferred maintenance, abandoned mine and well site remediation, road and trail maintenance, watershed improvement, and high priority habitat restoration.

CONSTRUCTION

The conference agreement provides $180,000,000 for construction as proposed by the Senate instead of $325,000,000 proposed by the House. The conference agreement provides flexibility to the agency in determining the allocation of this funding among various program activities and sub-activities. The conferees encourage that selection of individual projects be based on a prioritization process which weighs the capacity of proposals to create the largest number of jobs in the shortest period of time and which creates lasting value for the American public. While maximizing jobs, the Bureau should consider priority road, bridge, and trail repair or decommissioning, critical deferred maintenance projects, facilities construction and renovation, and remediation of abandoned mine and well sites on all Bureau managed lands.

WILDLAND FIRE MANAGEMENT

The conference agreement provides $15,000,000 for wildland fire management as proposed by the Senate; there was no House proposal. The funds should be used for high priority hazardous fuels reduction projects on Federal lands.

UNITED STATES FISH AND WILDLIFE SERVICE

RESOURCE MANAGEMENT

The conference agreement provides $165,000,000 for resource management, as proposed by the Senate; there was no House proposal for this account. The conference agreement provides flexibility to the agency in determining the allocation of this funding among various program activities and sub-activities. The conferees encourage that selection of individual projects be based on a prioritization process which weighs the capacity of proposals to create the largest number of jobs in the shortest period of time and which creates lasting value for the American public. While maximizing jobs, the Service should consider priority critical deferred maintenance and capital improvement projects, trail maintenance, and habitat restoration on National Wildlife Refuges, National Fish Hatcheries, and other Service properties.

CONSTRUCTION

The conference agreement provides $115,000,000 for construction instead of $110,000,000 as proposed by the Senate and $300,000,000 as proposed by the House. The conference agreement provides flexibility to the agency in determining the allocation of this funding among various program activities and sub-activities. The conferees encourage that selection of individual projects be based on a prioritization process which weighs the capacity of proposals to create the largest number of jobs in the shortest period

of time and which creates lasting value for the American public. While maximizing jobs, the Service should consider priority construction, reconstruction and repair, critical deferred maintenance and capital improvement projects, road maintenance, energy conservation projects and habitat restoration on National Wildlife Refuges, National Fish Hatcheries and other Service properties.

NATIONAL PARK SERVICE

OPERATION OF THE NATIONAL PARK SYSTEM

Appropriates $146,000,000 for operation of the national park system instead of $158,000,000, as proposed by the Senate. The House bill included all National Park Service funding under the construction account. Eligible projects to be funded within this account include but are not limited to repair and rehabilitation of facilities and other infrastructure, trail maintenance projects and other critical infrastructure needs. The conference agreement provides flexibility to the agency in determining the allocation of this funding among various program activities and sub-activities. The conferees encourage that selection of individual projects by the National Park Service be based on a prioritization process which weighs the capacity of proposals to create the largest number of jobs in the shortest period of time and which creates lasting value for the Park System and its visitors.

CENTENNIAL CHALLENGE

No funds are included for the Centennial Challenge program in the conference agreement. The House bill included $100,000,000 for this program. No funding was included by the Senate.

HISTORIC PRESERVATION FUND

$15,000,000 has been included for historic preservation grants for historically black colleges and universities as authorized by the Historic Preservation Fund Act, as amended. Projects will be selected competitively but the agreement waives matching requirements for grants made with these funds. The House bill included $15,000,000 for this activity under the "Construction" account. The Senate bill did not fund this program.

CONSTRUCTION

Appropriates $589,000,000 for Construction as proposed by the Senate instead of $1,700,000,000 as proposed by the House. Eligible projects include but are not limited to major facility construction, road maintenance, abandoned mine cleanup, equipment replacement, and preservation and rehabilitation of historic assets. The conference agreement provides flexibility to the agency in determining the allocation of this funding among various program activities and sub-activities. The conferees encourage that selection of individual projects by the National Park Service be based on a prioritization process which weighs the capacity of proposals to create the largest number of jobs in the shortest period of time and which creates lasting value for the Park System and its visitors.

Funding for historically black colleges and universities has been provided under the Historic Preservation Fund account.

UNITED STATES GEOLOGICAL SURVEY

SURVEYS, INVESTIGATIONS, AND RESEARCH

The conference agreement provides $140,000,000 for Surveys, Investigations and Research instead of $135,000,000 proposed by the Senate and $200,000,000 proposed by the House. The Survey should consider a wide variety of activities, including repair, construction and restoration of facilities; equipment replacement and upgrades including stream gages, seismic and volcano monitoring systems; national map activities; and other critical deferred maintenance and improvement projects which can maximize jobs and provide lasting improvement to our Nation's science capacity.

BUREAU OF INDIAN AFFAIRS

OPERATION OF INDIAN PROGRAMS

The conference agreement includes $40,000,000 for the operation of Indian programs as proposed by the Senate; there was no House proposal for this account. While maximizing jobs, the Bureau should fund workforce development and training programs and the housing improvement program.

CONSTRUCTION

The conference agreement provides $450,000,000 for construction instead of $522,000,000 as proposed by the Senate and $500,000,000 as proposed by the House. The conference agreement provides flexibility to the agency in determining the allocation of this funding among various program activities and sub-activities. The conferees encourage that selection of individual projects be based on a prioritization process which weighs the capacity of proposals to create the largest number of jobs in the shortest period of time and which creates lasting value for the American public. While maximizing jobs, the Bureau should consider priority critical facility improvement and repair, repair and restoration of roads, school replacement, school improvement and repair and detention center maintenance and repair.

INDIAN GUARANTEED LOAN PROGRAM

The conference agreement includes $10,000,000 for construction as proposed by the Senate; there was no House proposal for this account.

DEPARTMENTAL OFFICES

INSULAR AFFAIRS

ASSISTANCE TO TERRITORIES

The conference agreement provides no funding for Assistance to Territories as proposed by the House instead of $62,000,000 proposed the Senate. The managers note that the territories receive

funding under many of the infrastructure programs elsewhere in this bill.

OFFICE OF INSPECTOR GENERAL

SALARIES AND EXPENSES

The conference agreement provides $15,000,000 for the Office of Inspector General as proposed by the Senate in this title and as proposed by the House as part of Title I, section 1107. In order to provide adequate oversight of the Department of the Interior, these funds are available through September 30, 2012.

DEPARTMENT-WIDE PROGRAMS

CENTRAL HAZARDOUS MATERIALS FUND

The conference agreement does not provide funding for the central hazardous materials fund as proposed by the House instead of $20,000,000 proposed by the Senate.

ENVIRONMENTAL PROTECTION AGENCY

The amended bill includes $7,220,000,000 for the Environmental Protection Agency instead of $9,420,000,000 as proposed by the House and $7,200,000,000 as proposed by the Senate. For each account, the amended bill includes provisions to fund the Agency's program oversight and management costs. The Conferees have included an Administrative Provision which makes available until September 30, 2011 the funds provided for Agency program management and oversight and allows funds appropriated in the State and Tribal Assistance Grants account for that purpose to be transferred to the Environmental Programs and Management account, as needed.

OFFICE OF INSPECTOR GENERAL

The amended bill provides $20,000,000 for the Office of Inspector General account, as proposed by the House and instead of unspecified amounts included in each administrative set aside by the Senate. These funds are available until September 30, 2012.

HAZARDOUS SUBSTANCE SUPERFUND

The amended bill provides $600,000,000 for the Hazardous Substance Superfund as proposed by the Senate and instead of $800,000,000 as proposed by the House. The funds are limited to the Superfund Remedial program, as proposed by the House. The bill allows the Administrator to retain up to 3 percent of the funds for program management and oversight. The Administrator is directed to coordinate oversight activities with the Inspector General.

LEAKING UNDERGROUND STORAGE TANK TRUST FUND PROGRAM

The amended bill provides $200,000,000 for the Leaking Underground Storage Tank Trust Fund Account as proposed by both the House and the Senate. The funds are provided for clean up of leaking underground storage tanks as authorized by section 9003(h) of the Solid Waste Disposal Act. The bill allows the Admin-

istrator to retain up to 1.5 percent of the funds for program management and oversight. To expedite use of these funds, the bill waives the state matching requirements in section 9003(h)(7)(B) of the Solid Waste Disposal Act.

STATE AND TRIBAL ASSISTANCE GRANTS

(INCLUDING TRANSFERS OF FUNDS)

The amended bill provides $6,400,000,000 for the State and Tribal Assistance Grants account as proposed by the Senate and instead of $8,400,000,000 as proposed by the House. The amended bill includes the following program funding levels and directives:

Clean Water and Drinking Water State Revolving Funds: The amended bill provides $4,000,000,000 for the Clean Water State Revolving Funds and $2,000,000,000 for the Drinking Water State Revolving Funds. To provide for the Agency's management and oversight of these programs, the bill allows the Administrator to retain up to 1 percent of the combined total provided for the Revolving Funds and provides transfer authority to the Environmental Programs and Management account as needed. To expedite use of the funds, the bill waives the mandatory 20 percent State and District of Columbia matching requirements for both Revolving Funds.

To ensure that the funds appropriated herein for the Revolving Funds are used expeditiously to create jobs, the Conferees have included two important provisions. First, the Administrator is directed to reallocate Revolving Fund monies where projects are not under contract or construction within 12 months of the date of enactment. Second, bill language directs priority funding to projects on State priority lists that are ready to proceed to construction within 12 months of enactment.

The bill includes language to require that not less than 50 percent of the capitalization grants each State receives be used to provide assistance for additional subsidization in the form of forgiveness of principal, negative interest loans, or grants, or any combination of these. This provision provides relief to communities by requiring a greater Federal share for local clean and drinking water projects and provides flexibility for States to reach communities that would otherwise not have the resources to repay a loan with interest. The Conferees expect EPA to strongly encourage the States to maximize the use of additional subsidies and to work with the States to ensure expedited award of grants under the additional subsidy provisions. The Conferees also expect the States to continue implementation of their base loan programs funded through the annual appropriations bill. The bill does not include language proposed by the House that would require a specific amount for communities that meet affordability criteria set by the Governor. However, the Conferees expect the States to target, as much as possible, the additional subsidized monies to communities that could not otherwise afford an SRF loan.

The bill requires not less than 20 percent of each Revolving Fund be available for projects to address to green infrastructure, water and/or energy efficiency, innovative water quality improvements, decentralized wastewater treatment, stormwater runoff mitigation, and water conservation. The bill allows States to use

less than 20 percent for these types of projects only if the States lack sufficient applications. Further, the States must certify to the Agency that they lack sufficient, eligible applications for these types of projects prior to using funds for conventional projects.

Consistent with the annual appropriations bill, the Conferees have increased the tribal set-aside from the Clean Water State Revolving Funds up to 1.5 percent of the total amount appropriated. Language has also been included to allow EPA to transfer to the Indian Health Service up to 4 percent of the tribal set-aside amount in each Revolving Fund for administration and management of the projects in Indian country. This amount is consistent with the amount allowed by law for the States to manage their capitalization grants.

Language also has been included to prohibit the use of both Revolving Funds for the purchase of land or easements and to prohibit other set asides under section 1452(k) of the Safe Drinking Water Act that do not directly create jobs. To ensure that funds are used to create jobs, the bill also limits the use of the Revolving Funds to buy, refinance or restructure debt incurred prior to October 1, 2008.

Brownfields Projects: The amended bill provides $100,000,000 for Brownfields projects, as proposed by the both House and the Senate. The funds are provided to implement section 104(k) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as proposed by the House. The bill allows the Administrator to retain up to 3.5 percent of the funds for program management and oversight, with transfer authority to the Environmental Programs and Management account as needed. Bill language also waives the cost share requirements under section 104(k)(9)(B)(iii) of CERCLA.

Diesel Emission Reduction Act (DERA) Grants: The amended bill provides $300,000,000 for DERA grants as proposed by both the House and the Senate. The bill allows the Administrator to retain up to 2 percent of the funds for program management and oversight, with transfer authority to the Environmental Programs and Management account as needed. The amended bill does not include language proposed by the Senate to waive the statutory limitation on State funds. Instead, the Conferees have included language to waive the State Grant and Loan Program matching incentive provisions of DERA. The Conferees expect the DERA funds provided here to be used on projects that spur job creation, while achieving direct, measurable reductions in diesel emissions.

Competitive Grants: The Conferees expect the Agency to award both the Brownfields and DERA funds in an expeditious manner, consistent with fair and open competition. To ensure the additional goal of creating jobs as quickly as possible, the Agency may make awards for meritorious and quality proposals submitted under competitions that were initiated within the past 18 months.

ADMINISTRATIVE PROVISIONS, ENVIRONMENTAL PROTECTION AGENCY

(INCLUDING TRANSFERS OF FUNDS)

The amended bill includes language that makes set-asides for program management and oversight available through September 30, 2011. It also allows the funds provided for this purpose in the State and Tribal Assistance Grants account to be transferred to the Environmental Programs and Management account, as needed.

DEPARTMENT OF AGRICULTURE

FOREST SERVICE

CAPITAL IMPROVEMENT AND MAINTENANCE

The conference agreement provides $650,000,000 for Capital Improvement and Maintenance as proposed by both the House and the Senate. The conference agreement provides flexibility to the agency in determining the allocation of this funding among various program activities and sub-activities. The conferees encourage that selection of individual projects be based on a prioritization process which weighs the capacity of proposals to create the largest number of jobs in the shortest period of time and which creates lasting value for the American public. While maximizing jobs, the Service should consider projects involving reconstruction, capital improvement, decommissioning, and maintenance of forest roads, bridges and trails; alternative energy technologies, and deferred maintenance at Federal facilities; and remediation of abandoned mine sites, and other related critical habitat, forest improvement and watershed enhancement projects.

WILDLAND FIRE MANAGEMENT

The conference agreement provides $500,000,000 for Wildland Fire Management instead of $485,000,000 proposed by the Senate and $850,000,000 proposed by the House. This includes $250,000,000 for hazardous fuels reduction, forest health protection, rehabilitation and hazard mitigation activities on Federal lands and $250,000,000 for cooperative activities to benefit State and private lands. The conference agreement provides flexibility to the Service to allocate funds among existing State and private assistance programs to choose programs that provide the maximum public benefit. The Conferees encourage the Service to select individual projects based on a prioritization process which weighs the capacity of proposals to create the largest number of jobs in the shortest period of time and to create lasting value for the American public. The bill allows the Service to use up to $50,000,000 to make competitive grants for the purpose of creating incentives for increased use of biomass from federal and non-federal forested lands. To better address current economic conditions at the state and local level, funds provided for State and private forestry activities shall not be subject to matching or cost share requirements.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

INDIAN HEALTH SERVICE

INDIAN HEALTH SERVICES

The conference agreement includes $85,000,000 for Indian Health Services instead of $135,000,000 as proposed by the Senate; the House had no proposal for this account. The funding is for Health Information Technology for infrastructure development and deployment.

INDIAN HEALTH FACILITIES

The conference agreement includes $415,000,000 for Indian Health Facilities instead of $410,000,000 as proposed by the Senate and $550,000,000 as proposed by the House. Within this amount, $100,000,000 is for maintenance and improvement, $68,000,000 is for sanitation facilities construction, $227,000,000 is for health care facilities construction, and $20,000,000 is for equipment.

The Indian Health Service is directed to use the funding provided for health care facilities construction to complete ongoing high priority facilities construction projects.

The agreement includes language proposed by the Senate that exempts the funds provided in this bill for the purchase of medical equipment from spending caps carried in the annual appropriation bill in order to provide the maximum flexibility to the Service in meeting the highest priority needs of the tribes.

Funds are provided for the Department of Health and Human Services (HHS) under title VIII (Labor, Health and Human Services, and Education) of this Act for the purpose of providing oversight capability over all HHS programs, including the Indian Health Service.

OTHER RELATED AGENCIES

SMITHSONIAN INSTITUTION

FACILITIES CAPITAL

$25,000,000 is included in the bill for the Smithsonian Institution. The House bill included $150,000,000 for the Smithsonian and the Senate bill included $75,000,000.

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

NATIONAL ENDOWMENT FOR THE ARTS

GRANTS AND ADMINISTRATION

The conference agreement includes a total of $50,000,000 for the National Endowment for the Arts as proposed by the House. No funds were included in the Senate bill for this purpose.

GENERAL PROVISIONS—TITLE VII

INTERIOR, ENVIRONMENT AND RELATED AGENCIES

Sec. 701. The agreement includes language proposed by the Senate requiring that agencies receiving funding in the Interior and Environment sections of this Act submit a general spending plan for these appropriations to the Committees on Appropriations within 30 days of enactment and that they submit detailed project level information within 90 days of enactment. The Conferees further direct that the agencies submit bi-annual progress reports on implementation of the provisions of this Act under their jurisdiction.

Sec. 702. Modifies language proposed by the Senate requiring that the Secretaries of Interior and Agriculture utilize the Public Lands Corps, the Youth Conservation Corps, the Job Corps and the Student Conservation Corps where practicable. The House bill did not include a similar provision.

Sec. 703. Includes a new general provision not included in either the House or Senate bills providing limited transfer authority to move not to exceed 10 percent of funds from one appropriation to another if such move will increase the number of jobs created or the speed with which projects can be undertaken. Transfers are limited to accounts within a particular agency.

Administrative and support costs: The Conferees have agreed that, except where otherwise provided in the bill or this accompanying statement, amounts for administrative and support costs associated with the implementation of title VII activities of this Act shall not exceed five percent of any specific appropriation. The conferees note that this amount is a cap and encourage agencies to balance carefully the goal of proper management and fiscal prudence when setting funding levels for administrative support. In staffing up to handle the increased, but temporary, workloads associated with funding provided in the bill, it is important that the agencies limit the permanent expansion of their workforces and utilize temporary, term or contract personnel as much as possible.

TITLE VIII—DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES

DEPARTMENT OF LABOR

EMPLOYMENT AND TRAINING ADMINISTRATION

TRAINING AND EMPLOYMENT SERVICES

The conference agreement includes $3,950,000,000 for Workforce Investment Act programs, instead of $4,000,000,000 as proposed by the House and $3,250,000,000 as proposed by the Senate.

Within this amount, $2,950,000,000 is provided for formula grants to the States for training and employment services. These funds are to be allotted to States within 30 days of enactment. Since these funds will be made available during program year 2008, they shall remain available to the States only as long as the other funds allotted in that program year. The conferees intend for

these funds to be spent quickly and effectively. To facilitate increased training of individuals for high-demand occupations, the conference agreement modifies language proposed by the Senate to provide the authority for local workforce investment boards to contract with institutions of higher education and other eligible training providers as long as that authority is not used to limit customer choice.

Within the State formula grant programs, $500,000,000 is provided for services for adults. The conference agreement includes language proposed by the Senate to ensure that supportive services and needs-related payments are available to support the employment and training needs of priority populations, including recipients of public assistance and other low-income individuals.

For youth services, $1,200,000,000 is provided. The conferees are particularly interested in these funds being used to create summer employment opportunities for youth and language applying the work readiness performance indicator to such summer jobs is included as an appropriate measure for those activities. Year-round youth activities are also envisioned and the age of eligibility for youth services provided with the additional funds is extended through age 24 to allow local programs to reach young adults who have become disconnected from both education and the labor market.

For dislocated worker services $1,250,000,000 is provided. The conferees urge the Secretary to provide guidance on how States and local workforce areas can establish policies that assure that supportive services and needs-related payments that may be necessary for an individual's participation in job training are a part of the dislocated worker service strategy.

The conferees believe that the Department should integrate reporting on the expenditure of these additional formula funds into its regular reporting system, including the provision of needs-related payments and supportive services, the number of individuals from priority service populations participating in employment and training activities, and the number of youth engaged in summer employment programs. The conferees strongly urge the Department to establish appropriate procedures for monitoring the execution of priority of service provisions.

The conference agreement also includes $200,000,000 for the dislocated worker assistance national reserve, as proposed by the Senate, instead of $500,000,000 as proposed by the House. These funds will allow the Secretary of Labor to award national emergency grants to respond to plant closings, mass layoffs and other worker dislocations. The funds in the national reserve are also available for dislocated worker activities for the outlying areas, consistent with the provisions of the Workforce Investment Act.

The conference agreement includes $50,000,000 for the YouthBuild program, as proposed by the House, instead of $100,000,000 as proposed by the Senate. These funds will allow for expanded services for at-risk youth, who gain education and occupational credentials while constructing or rehabilitating affordable housing. The conference agreement includes language to allow YouthBuild grantees to serve individuals who have dropped out of

school and reenrolled in an alternative school, if that reenrollment is part of a sequential service strategy.

The conference agreement includes $750,000,000 for a program of competitive grants for worker training and placement in high growth and emerging industry sectors, as proposed by the House, rather than $250,000,000 for a similar program proposed by the Senate. Within the amount provided, $500,000,000 is designated for projects that prepare workers for careers in energy efficiency and renewable energy as described in the Green Jobs Act of 2007. Priority consideration for the balance of funds shall be given to projects that prepare workers for careers in the health care sector, which continues to grow despite the economic downturn. The conferees believe that training for wireless and broadband deployment is an eligible activity for grants for high growth and emerging industry sectors, along with advanced manufacturing and other high demand industry sectors identified by local workforce areas. In carrying out the program of competitive grants for worker training and placement in high growth and emerging industry sectors, the conferees expect the Department to use a limited portion of the program funds for technical assistance and related research.

COMMUNITY SERVICE EMPLOYMENT FOR OLDER AMERICANS

The conference agreement includes $120,000,000 for the Community Service Employment for Older Americans program, as proposed by both the House and the Senate. The economic recovery funds are to be distributed to current grantees to support additional employment opportunities for low income seniors. The wages paid to these low-income seniors will provide a direct stimulus to the economies of local communities, which will also benefit from the community service work performed by participants. The conference agreement includes language to allow for the recapture and reobligation of such funds, as proposed by the Senate and as authorized under Title V of the Older Americans Act.

STATE UNEMPLOYMENT INSURANCE AND EMPLOYMENT SERVICE OPERATIONS

The conference agreement includes $400,000,000, as proposed by the Senate, instead of $500,000,000 as proposed by the House. Within this amount, $250,000,000 is designated for reemployment services to connect unemployment insurance claimants to employment and training opportunities that will facilitate their reentry to employment. The funds provided will be distributed by the existing Wagner-Peyser formula, as proposed by the Senate, rather than under an alternative formula proposed by the House.

DEPARTMENTAL MANAGEMENT

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

The conference agreement includes $80,000,000 within the Departmental Management account for worker protection, oversight, and coordination activities, as proposed by the House. The Senate provided funds for this and other purposes through a set-aside of

funds available to the Department rather than through a direct appropriation. The conference agreement modifies language providing the Secretary of Labor with the ability to transfer such funds to a number of Department of Labor agencies which have responsibility for enforcement of worker protection laws that apply to the infrastructure investments in this economic recovery bill, and for oversight and coordination of recovery activities, including those provided for unemployment insurance.

OFFICE OF JOB CORPS

The conference agreement includes $250,000,000 for the Office of Job Corps, rather than $300,000,000 as proposed by the House and $160,000,000 as proposed by the Senate. The funds will support construction and modernization of a network of residential facilities serving at-risk youth. The funds will allow the Office of Job Corps to move forward on a number of ready-to-go rehabilitation and construction projects, including those where competitions have already been concluded. The conference agreement modifies language proposed by the House to allow funds to be used in support of multi-year arrangements where such arrangement will result in construction that can commence within 120 days of enactment. A portion of the funds are available for the operational needs of the Job Corps program, including activities to provide additional training for careers in the energy efficiency, renewable energy, and environmental protection industries.

OFFICE OF INSPECTOR GENERAL

The conference agreement includes $6,000,000 for the Department of Labor Office of Inspector General, as proposed by the House, rather than $3,000,000 as proposed by the Senate. These funds will be available through September 30, 2012 to support oversight and audit of Department of Labor programs, grants, and projects funded in this Act.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HEALTH RESOURCES AND SERVICES ADMINISTRATION

HEALTH RESOURCES AND SERVICES

The conference agreement includes $2,500,000,000 for health resources and services instead of $2,188,000,000 as proposed by the House and $1,958,000,000 as proposed by the Senate.

The conference agreement includes $500,000,000 for services provided at community health centers as proposed by the House. The Senate did not provide similar funding. These funds are to be used to support new sites and service areas, to increase services at existing sites, and to provide supplemental payments for spikes in uninsured populations. Grants for new sites and service areas are to be two years in length as startup is phased in. The conferees encourage the Health Resources and Services Administration (HRSA) to consider supporting currently unfunded but approved community health center applications.

The agreement also includes $1,500,000,000 for construction, renovation and equipment, and for the acquisition of health infor-

mation technology systems, for community health centers, including health center controlled networks receiving operating grants under section 330 of the Public Health Service ("PHS") Act, notwithstanding the limitation in section 330(e)(3). The House proposed $1,000,000,000 for this activity, while the Senate proposed $1,870,000,000.

No funding is provided for a competitive lease procurement to renovate or replace the headquarters building for the Public Health Service. The House and Senate proposed $88,000,000 for this purpose.

The conference agreement provides $500,000,000 for health professions training programs instead of $600,000,000 as proposed by the House. Within this total, $300,000,000 is allocated for National Health Service Corps (NHSC) recruitment and field activities, with $75,000,000 available through September 30, 2011 for extending service contracts and the recapture and reallocation of funds in the event that a participant fails to fulfill his or her term of service. Twenty percent of the NHSC funding shall be used for field operations.

The remaining $200,000,000 is allocated for all the disciplines trained through the primary care medicine and dentistry program, the public health and preventive medicine program, the scholarship and loan repayment programs authorized in Title VII (Health Professions) and Title VIII (Nurse Training) of the PHS Act, and grants to training programs for equipment. Funds may also be used to foster cross-State licensing agreements for healthcare specialists.

The conference agreement provides that up to 0.5 percent of the funds provided in this account may be used for administration. HRSA is required to provide an operating plan to the Committees on Appropriations of the House of Representatives and the Senate within 90 days of enactment of this Act describing activities to be supported and timelines for expenditure, as well as a report every six months on actual obligations and expenditures.

CENTERS FOR DISEASE CONTROL AND PREVENTION

DISEASE CONTROL, RESEARCH, AND TRAINING

The conference agreement does not include funding for building and facilities at the Centers for Disease Control and Prevention (CDC). The House proposed $462,000,000 and the Senate proposed $412,000,000 for this activity.

NATIONAL INSTITUTES OF HEALTH

The conference agreement provides $10,000,000,000 for the National Institutes of Health (NIH) as proposed by the Senate instead of $3,500,000,000 as proposed by the House. The components of this total are as follows:

NATIONAL CENTER FOR RESEARCH RESOURCES

The conference agreement includes $1,300,000,000 for the National Center for Research Resources (NCRR) instead of $1,500,000,000 as proposed by the House and $300,000,000 as pro-

posed by the Senate. Bill language identifies $1,000,000,000 of this total for competitive awards for the construction and renovation of extramural research facilities. The conference agreement also provides $300,000,000 for the acquisition of shared instrumentation and other capital research equipment. The conference agreement includes bill language proposed by the House for extramural facilities relating to waiver of non-Federal match requirements, primate centers, and limitation on the term of Federal interest. The conference agreement includes language proposed by the House mandating several reporting requirements on the use of the funds. The conferees expect that NCRR will give priority to those applications that are expected to generate demonstrable energy-saving or beneficial environmental effects.

OFFICE OF THE DIRECTOR

(INCLUDING TRANSFER OF FUNDS)

The conference agreement provides $8,200,000,000 for the Office of the Director instead of $1,500,000,000 as proposed by the House and $9,200,000,000 as proposed by the Senate. Of this amount, $7,400,000,000 is designated for transfer to Institutes and Centers and to the Common Fund instead of $7,850,000,000 as proposed by the Senate. The conference agreement adopts the Senate guidance that, to the extent possible, the $800,000,000 retained in the Office of the Director shall be used for purposes that can be completed within two years; priority shall be placed on short-term grants that focus on specific scientific challenges, new research that expands the scope of ongoing projects, and research on public and international health priorities. Bill language is included to permit the Director of NIH to use $400,000,000 of the funds provided in this account for the flexible research authority authorized in section 215 of Division G of P.L. 110–161.

The funds available to NIH can be used to enhance central research support activities, such as equipment for the clinical center or intramural activities, centralized information support systems, and other related activities as determined by the Director. The conferees intend that NIH take advantage of scientific opportunities using any funding mechanisms and authorities at the agency's disposal that maximize scientific and health benefit. The conferees include bill language indicating that the funds provided in this Act to NIH are not subject to Small Business Innovation Research and Small Business Technology Transfer set-aside requirements.

BUILDINGS AND FACILITIES

The conference agreement provides $500,000,000 for Buildings and Facilities as proposed by the House and the Senate. Bill language permits funding to be used for construction as well as renovation, as proposed by the Senate. The House language permitted only renovation. These funds are to be used to construct, improve, and repair NIH buildings and facilities, including projects identified in the Master Plan for Building 10.

AGENCY FOR HEALTHCARE RESEARCH AND QUALITY

HEALTHCARE RESEARCH AND QUALITY

(INCLUDING TRANSFER OF FUNDS)

The conference agreement includes $1,100,000,000 for comparative effectiveness research, which is the same level as proposed by both the House and the Senate. The conference agreement uses the term, "comparative effectiveness research", as proposed by the House and deletes without prejudice the term "clinical", which was included by the Senate. Within the total, $300,000,000 shall be administered by the Agency for Healthcare Research and Quality (AHRQ), $400,000,000 shall be transferred to the National Institutes of Health (NIH), and $400,000,000 shall be allocated at the discretion of the Secretary of Health and Human Services.

The conferees do not intend for the comparative effectiveness research funding included in the conference agreement to be used to mandate coverage, reimbursement, or other policies for any public or private payer. The funding in the conference agreement shall be used to conduct or support research to evaluate and compare the clinical outcomes, effectiveness, risk, and benefits of two or more medical treatments and services that address a particular medical condition. Further, the conferees recognize that a "one-size-fits-all" approach to patient treatment is not the most medically appropriate solution to treating various conditions and include language to ensure that subpopulations are considered when research is conducted or supported with the funds provided in the conference agreement.

ADMINISTRATION FOR CHILDREN AND FAMILIES

LOW-INCOME HOME ENERGY ASSISTANCE

The conference agreement does not include funding for the Low-Income Home Energy Assistance Program proposed by the House. The Senate did not provide funding for this program.

PAYMENTS TO STATES FOR THE CHILD CARE AND DEVELOPMENT BLOCK GRANT

The conference agreement includes $2,000,000,000 for the Child Care and Development Block Grant, as proposed by both the House and Senate. The conference agreement adopts the Senate language to make the entire amount available upon enactment, instead of the House language to divide the amount by fiscal year. The conference agreement also adopts the Senate proposal to set aside $255,186,000 of these funds for quality improvement activities, of which $93,587,000 shall be for activities to improve the quality of infant and toddler care.

SOCIAL SERVICES BLOCK GRANT

The conference agreement does not include funding for the Social Services Block Grant proposed by the Senate. The House did not provide funding for this program.

CHILDREN AND FAMILIES SERVICES PROGRAMS

The conference agreement includes $3,150,000,000 for Children and Families Services Programs, instead of $3,200,000,000 as proposed by the House and $1,250,000,000 as proposed by the Senate. The conference agreement adopts the Senate language to make the entire amount available upon enactment, instead of the House language to divide the amount by fiscal year.

Within the total provided for Children and Families Services Programs, $1,000,000,000 is provided for Head Start as proposed by the House, instead of $500,000,000 as proposed by the Senate. The Head Start funds shall be allocated according to the current statutory formula. The conferees expect the Department of Health and Human Services (HHS) to work with Head Start grantees in order to manage these resources in order to sustain fiscal year 2009 awards through fiscal year 2010.

The conference agreement also provides $1,100,000,000 for Early Head Start as proposed by the House, instead of $550,000,000 as proposed by the Senate. These funds will be awarded on a competitive basis. The conferees expect HHS to manage these resources in order to sustain fiscal year 2009 awards through fiscal year 2010. The conferees intend for regional and American Indian and Alaska Native Early Head Start programs and Migrant and Seasonal Head Start programs to benefit from the Early Head Start funds, taking into consideration the needs of the communities served by such programs. The conferees remind the Secretary of the authority to temporarily increase or waive the limit on the Federal share of a Head Start or Early Head Start grant under the circumstances described in the authorizing statute and support the Secretary's exercise of that authority where appropriate.

Within the total provided for Children and Families Services Programs, $1,000,000,000 is provided for the Community Services Block Grant (CSBG), as proposed by the House, instead of $200,000,000 as proposed by the Senate. The conference agreement adopts the Senate language to make the entire amount available upon enactment, instead of the House language to divide the amount by fiscal year. The agreement includes bill language requiring States to reserve 1 percent of their allocation for benefit coordination services and to distribute the remaining funds directly to local eligible entities. It also permits States to increase the income eligibility ceiling from 125 percent to 200 percent of the Federal poverty level for services furnished under the CSBG Act during fiscal years 2009 and 2010, as proposed by the House. The Senate did not propose similar language.

Within the total provided for Children and Families Services Programs, $50,000,000 is provided under section 1110 of the Social Security Act to establish a new initiative to award capacity-building grants directly to nonprofit organizations, instead of $100,000,000 for the Compassion Capital Fund as proposed by the House. The Senate did not propose funds for this purpose in this account. The conferees intend that this program will expand the delivery of social services to individuals and communities affected by the economic downturn. The conferees expect that grantees have

clear and measurable goals, and must be able to evaluate the success of their program.

ADMINISTRATION ON AGING

AGING SERVICES PROGRAMS

The conference agreement includes $100,000,000 for senior meals programs as proposed by the Senate, instead of $200,000,000 as proposed by the House. Within this amount, $65,000,000 is provided for Congregate Nutrition Services and $32,000,000 is provided for Home-Delivered Nutrition Services under Title III of the Older Americans Act of 1965, and $3,000,000 is provided for Native American nutrition services under Title VI of such Act. The conference agreement adopts the Senate proposal that makes all of these funds available upon enactment.

OFFICE OF THE SECRETARY

OFFICE OF THE NATIONAL COORDINATOR FOR HEALTH INFORMATION TECHNOLOGY

(INCLUDING TRANSFER OF FUNDS)

The conference agreement includes $2,000,000,000 for this activity, as proposed by the House. The Senate provided $3,000,000,000. The conferees include bill language creating a 0.25 percent set-aside of the funds provided for the Office of the National Coordinator for Health Information Technology for management and oversight activities. The House proposed similar language. Within the funds provided, the conferees appropriate $300,000,000 to support regional or sub-national efforts toward health information exchange. The conferees include bill language proposed by the House regarding certain operating plan requirements for the Office of the National Coordinator.

OFFICE OF INSPECTOR GENERAL

The conference agreement includes $17,000,000 for the Office of Inspector General instead of $19,000,000 as proposed by both the House and Senate. These funds are available until September 30, 2012 as proposed by the Senate instead of September 30, 2013 as proposed by the House.

PUBLIC HEALTH AND SOCIAL SERVICES EMERGENCY FUND

The conference agreement includes $50,000,000 for the Public Health and Social Services Emergency Fund (PHSSEF), instead of $900,000,000 as proposed by the House. The Senate did not propose funding for PHSSEF. Funding is provided to improve information technology security at the Department of Health and Human Services as proposed by the House—the Senate did not propose funding for this activity. As proposed by the Senate, the conference agreement does not include funding for pandemic influenza preparedness and biomedical advanced research and development. The House proposed $420,000,000 for pandemic influenza and $430,000,000 for biomedical advanced research and development.

PREVENTION AND WELLNESS FUND

(INCLUDING TRANSFER OF FUNDS)

The conference agreement includes $1,000,000,000 for the Prevention and Wellness Fund, instead of $3,000,000,000 as proposed by the House. The Senate did not propose funding for a Prevention and Wellness Fund. As proposed by the House, up to 0.5 percent of the funds provided may be used for management and oversight expenses. Additionally, the conference agreement includes language proposed by the House that funding may be transferred to other appropriation accounts of the Department of Health and Human Services (HHS), as determined by the Secretary of HHS to be appropriate.

Within the total, the conference agreement includes $300,000,000 to be transferred to the Centers for Disease Control and Prevention (CDC) to carry out the section 317 immunization program rather than $954,000,000 as proposed by the House. The Senate did not propose funding for this activity.

Also within the total, the conference agreement includes $50,000,000 to be provided to States for carrying out activities to implement healthcare-associated infections (HAI) reduction strategies. The House proposed $150,000,000 for similar HAI prevention activities. The Senate did not propose funding for similar activities.

Also within the total, the conference agreement includes $650,000,000 to carry out evidence-based clinical and community-based prevention and wellness strategies authorized by the Public Health Service Act, as determined by the Secretary, that deliver specific, measurable health outcomes that address chronic disease rates. The House proposed $500,000,000 for similar activities. The Senate did not propose funding for similar activities.

DEPARTMENT OF EDUCATION

EDUCATION FOR THE DISADVANTAGED

The conference agreement includes $13,000,000,000 for the Education for the Disadvantaged account, as proposed by the House. The Senate proposed $12,400,000,000 for this account. The total conference agreement includes $10,000,000,000 for title I formula grants and $3,000,000,000 for School Improvement grants. Both the House and the Senate proposed $11,000,000,000 for title I formula grants, but the House proposed $2,000,000,000 for School Improvement grants, and the Senate proposed $1,400,000,000.

The conferees intend that these funds should be available during school years 2009–2010 and 2010–2011 to help school districts mitigate the effect of the recent reduction in local revenues and State support for education.

The conferees specify that within the total provided for title I formula grants, $5,000,000,000 shall be allocated through the targeted formula and the same amount should be allocated through the education finance incentive grant formula. This language was proposed by the House and the Senate.

The conferees expect States to use some of the funding provided for early childhood programs and activities, as proposed by the Senate. The House did not propose similar language.

The conferees direct the Department to encourage States to use 40 percent of their School Improvement allocation for middle and high schools, as proposed by the Senate. The House did not propose similar language.

Each school district that receives this funding shall report to its State educational agency, a school-by-school listing of per pupil expenditures, from State and local services, during the 2008–2009 academic year, no later than December 1, 2009 as proposed by the Senate. Further, the conferees require each State to compile and submit this information to the Secretary no later than March 1, 2010.

IMPACT AID

The conference agreement includes $100,000,000 for the Impact Aid account, as proposed by the House. The Senate did not propose funding for this account.

The conferees modify current law, exclusively for the purposes of the American Recovery and Reinvestment Act, to allow for greater participation of school districts impacted by both students whose parents are associated with the military and students residing on tribal lands, and to allow funding to be better targeted to districts that have "shovel ready" facility projects, including those that address health and safety and ADA compliance issues, among other things.

SCHOOL IMPROVEMENT PROGRAMS

The conference agreement includes $720,000,000 for the School Improvement Programs account, instead of the $1,066,000,000 as proposed by the House and $1,070,000,000 as proposed by the Senate. Within the total, the conference agreement includes $650,000,000 for the Enhancing Education through Technology program. Both the House and Senate proposed $1,000,000,000 for this program. The conference agreement also includes $70,000,000 for Education for the Homeless Children and Youth program, which is the same amount proposed by the Senate. The House proposed $66,000,000 for this program.

The conferees intend that these funds should be available during school years 2009–2010 and 2010–2011 to help school districts mitigate the effect of the recent reduction in local revenues and State support for education.

The amount provided for the Education for Homeless Children and Youth programs reflects the conferees' understanding of the impact the economic crisis has had on this group of disadvantaged students, and their commitment to helping mitigate the effects. The Secretary shall provide each State a grant that is proportionate to the number of homeless students identified as such during the 2007–2008 academic year relative to the number of homeless children nationally during the same year. States shall award subgrants to local educational agencies on a competitive basis, or using a formula based on the number of homeless students identified in each school district in the State. This language was proposed by the Senate; the House did not propose similar language.

INNOVATION AND IMPROVEMENT

The conference agreement includes $200,000,000 for the Innovation and Improvement account, instead of the $225,000,000 proposed by the House. The Senate did not propose any money for this account. All of the funding provided is for the Teacher Incentive Fund (TIF) program.

The conferees require the Institute for Education Sciences to conduct a rigorous national evaluation of TIF to assess the impact of performance-based teacher and principal compensation systems. This language was proposed by the House; the Senate did not propose similar language.

The conferees specify that these funds must be expended as directed in the 5th, 6th, and 7th provisos under the "Innovation and Improvement" account in the Department of Education Appropriations Act, 2008. This language was proposed by the House; the Senate did not propose similar language.

The conferees provide that 1 percent of the total appropriation shall be for management and oversight of the Teacher Incentive Fund. This language was proposed by the House; the Senate did not propose similar language.

The conference agreement does not provide funding for the Credit Enhancement for Charter Schools program.

SPECIAL EDUCATION

The conference agreement includes $12,200,000,000 for the Special Education account, instead of $13,600,000,000 as proposed by the House and $13,500,000,000 as proposed by the Senate. Within the total, the conference agreement includes $11,300,000,000 for section 611 of part B, $400,000,000 for section 619 of part B, and $500,000,000 for part C of IDEA. The House proposed $13,000,000,000 for section 611 and $600,000,000 for part C, whereas the Senate proposed the same amount for section 611 and $500,000,000 for part C.

The conferees intend that these funds should be available during school years 2009–2010 and 2010–2011 to help school districts mitigate the effect of the recent reduction in local revenues and State support for education.

Within the amount provided for part C of IDEA, the Secretary is required to reserve the amount needed for grants under section 643(e), and allocate any remaining funds in accordance with section 643(c) of IDEA as specified by both the House and Senate.

The conferees provide that the amount set aside for the Department of the Interior transfer for Native Americans shall be equal to the lesser amount available during fiscal year 2008, increased by inflation or the percentage increase in the funds appropriated under section 611(i) (Secretary of the Interior). This language was proposed by the Senate, the House did not propose similar language.

REHABILITATION SERVICES AND DISABILITY RESEARCH

The conference agreement includes $680,000,000 for the Rehabilitation Services and Disability Research account as opposed to $700,000,000 as proposed by the House and $610,000,000 as pro-

posed by the Senate. Within the total provided, $540,000,000 is available for Vocational Rehabilitation State Grants, as opposed to $500,000,000 proposed by the House and the Senate. The conferees include $140,000,000 for Independent Living programs. The House proposed $200,000,000 for Independent Living programs, whereas the Senate proposed $110,000,000 for Independent Living programs. Specifically, of the $140,000,000 available for Independent Living programs, the funding is allocated as follows: $18,200,000 for State Grants; $87,500,000 for Independent Living Centers; and $34,300,000 for Services for Older Blind Individuals.

STUDENT FINANCIAL ASSISTANCE

The conference agreement includes $15,840,000,000 for the Student Financial Assistance account as opposed to $16,126,000,000 as proposed by the House and $13,930,000,000 as proposed by the Senate. Within the total provided, $15,640,000,000 shall be available for Pell Grants, and $200,000,000 shall be available for Work-Study. The House proposed $15,636,000,000 for Pell Grants and $490,000,000 for Work-Study; whereas the Senate proposed $13,869,000,000 for Pell Grants and no money for Work-Study.

The conference agreement does not provide funding for Perkins Loans.

The conference agreement specifies that funding is available to support a $4,860 maximum Pell Grant award for the 2009–2010 award year, as specified in the House bill. With the additional $490 in mandatory funding, combined with the increase in the fiscal year 2009 omnibus, the maximum Pell Grant award will be $5,350. This language was proposed by the House; the Senate did not propose similar language.

STUDENT AID ADMINISTRATION

The conference agreement includes $60,000,000 for the Student Aid Administration account, as opposed to the $50,000,000 as proposed by the House and $0 as proposed by the Senate.

HIGHER EDUCATION

The conference agreement includes $100,000,000 for the Higher Education account, the same amount proposed by the House. The Senate proposed $50,000,000.

INSTITUTE OF EDUCATION SCIENCES

The conference agreement includes $250,000,000 for the Institute of Education Sciences account, as proposed by the House. The Senate did not propose any funding for this program. Within this total, up to $5,000,000 may be used for State data coordinator and for awards to public or private organizations or agencies to improve data coordination, as proposed by the House.

DEPARTMENTAL MANAGEMENT

OFFICE OF THE INSPECTOR GENERAL

The conference agreement includes $14,000,000 for the Office of the Inspector General, as proposed by the House and the Senate.

RELATED AGENCIES

CORPORTATION FOR NATIONAL AND COMMUNITY SERVICE

OPERATING EXPENSES

(INCLUDING TRANSFER OF FUNDS)

The conference agreement includes $160,000,000 for the operating expenses of the programs administered by the Corporation for National and Community Service (CNCS), which is the same level as proposed by both the House and the Senate. The conference agreement includes language, as proposed by the Senate, permitting funds to be used to provide adjustments to awards for which the Chief Executive Officer of CNCS determines that a waiver of the Federal share limitation is warranted.

Within the total provided for Operating Expenses, the conference agreement includes the following amounts:

(1) $89,000,000 shall be used to make additional awards to existing AmeriCorps State and national grantees and to provide adjustments to awards made prior to September 30, 2010 for which the Chief Executive Officer of the CNCS determines that a waiver is warranted the—House proposed similar language with regard to the existing grantees and the Senate proposed similar waiver language;

(2) $6,000,000 shall be transferred to CNCS "Salaries and Expenses" for necessary expenses relating to information technology upgrades, of which up to $800,000 may be used to administer the funds provided for CNCS programs—the House proposed similar language with regard to management and oversight of funds and the Senate proposed similar language with regard to information technology upgrades;

(3) not less than $65,000,000, as proposed by the Senate, for the AmeriCorps Volunteers in Service to America (VISTA) program—the House did not propose similar language; and,

(4) up to 20 percent of the funding provided for AmeriCorps State and National grants may be used for national direct grants.

The conference agreement does not include the funding setasides proposed by the Senate for the National Civilian Community Corps, one-time supplement grants to State commissions, or national service research activities. The House did not propose similar language.

OFFICE OF INSPECTOR GENERAL

The conference agreement includes $1,000,000 for the Office of Inspector General, which is the same level as that proposed by both the House and Senate.

NATIONAL SERVICE TRUST

(INCLUDING TRANSFER OF FUNDS)

The conference agreement includes $40,000,000 for the National Service Trust (Trust), to be available until expended, which is the same level as that proposed by both the House and the Senate. The conference agreement includes language that allows funds appropriated for the Trust to be invested without regard to apportionment requirements. Additionally, bill language is included allowing for funds to be transferred to the Trust from the Operating Expenses account upon determination that such transfer is necessary to support the activities of national service participants and after notice is transmitted to the Committees on Appropriations of the House of Representatives and the Senate.

SOCIAL SECURITY ADMINISTRATION

LIMITATION ON ADMINISTRATIVE EXPENSES

(INCLUDING TRANSFER OF FUNDS)

The conference agreement includes $1,000,000,000 for the Social Security Administration (SSA), instead of $900,000,000 as proposed by the House and $890,000,000 as proposed by the Senate. Funds are provided for both infrastructure improvements and critical agency operations.

Within the amount provided, $500,000,000 is provided for a replacement of the SSA National Computer Center (NCC), which is nearly 30 years old and will soon be unable to support the critical systems necessary to SSA's mission. Funds may also be used for the technology costs associated with the new center. Language proposed by both the House and Senate is modified to provide for critical oversight of the site selection, construction and operation of the NCC, and the Committees on Appropriations of the House and the Senate expect regular updates on the progress on site selection and key construction milestones prior to solicitations of bids for these activities.

Within the amount provided, $500,000,000 is provided for processing disability and retirement workloads, including information technology acquisitions and research in support of such activities. These additional funds will allow SSA to process a growing workload of claims in a timely manner and to accelerate activities to reduce the backlog of disability claims. As the largest repository of electronic medical images in the world, SSA has a vital interest in exploring how health information technology can be integrated into the disability process through the widespread adoption of electronic medical records.μ The funds provided for agency operations therefore include resources for SSA health information technology research and activities to facilitate the adoption of electronic medical records in disability claims.

OFFICE OF INSPECTOR GENERAL

The conference agreement includes $2,000,000 for the Social Security Administration Office of Inspector General, as proposed by the House, rather than $3,000,000 as proposed by the Senate.

These funds will be available through September 30, 2012 to support oversight and audit of Social Security Administration activities funded in this Act.

GENERAL PROVISIONS—THIS TITLE

ADMINISTRATION AND OVERSIGHT OF DEPARTMENT OF LABOR ACTIVITIES

The conference agreement includes a provision similar to one proposed by the Senate that provides that up to 1 percent of the funds made available to the Department of Labor in this title may be used for the administration, management, and oversight of the programs, grants, and activities funded by such appropriation, including the evaluation of the use of such funds, subject to the provision of an operating plan. The House bill contained a set-aside for similar purposes.

MINIMUM WAGE STUDY

The conference agreement includes a modification of a provision proposed by the Senate, requiring the Government Accountability Office (GAO) to conduct a study to assess the impact of minimum wage increases that have occurred, and are scheduled to occur, in American Samoa and the Commonwealth of Northern Mariana Islands. To provide sufficient economic information for this study, additional Federal agency economic data collection in the U.S. territories is required.

FEDERAL COORDINATING COUNCIL FOR COMPARATIVE EFFECTIVENESS RESEARCH

The conference agreement includes a general provision establishing a Federal Coordinating Council for Comparative Effectiveness Research (Council), as proposed by the House. The Senate language proposed a similar Council, but included the word, "Clinical", in the title and throughout the bill language. The conference agreement includes language to clarify that the purpose of the Council is to reduce duplication of comparative effectiveness research activities within the Federal government. Duties of the Council are to (1) foster coordination of comparative effectiveness and related health services research conducted or supported by the Federal government; and (2) advise the President and Congress on strategies with respect to the infrastructure needs of comparative effectiveness research and organizational expenditures.

Additionally, the conference agreement includes language that nothing shall be construed to permit the Council to mandate coverage, reimbursement, or other policies for any public or private payer. Further, the conference agreement includes language to clarify that none of the reports submitted or recommendations made by the Council shall be construed as mandates or clinical guidelines for payment, coverage, or treatment.

GRANTS FOR IMPACT AID CONSTRUCTION

The conference agreement authorizes Impact Aid construction payments. Neither the House nor Senate included this provision.

MANDATORY PELL GRANTS

The conference agreement provides $1,474,000,000 for the mandatory part of the Pell Grant program, as proposed by the House. The Senate did not propose any funding for this program.

The additional funding will enable the mandatory add-on to be provided in both award years 2009–2010 and 2010–2011, for a total maximum Pell Grant award of $5,350 in award year 2009–2010.

PROMPT ALLOCATION OF FUNDS FOR EDUCATION

The conference agreement includes a provision enabling the Department of Education to quickly disperse funds provided under this Act. Neither the House nor Senate included this provision.

TITLE IX—LEGISLATIVE BRANCH

GOVERNMENT ACCOUNTABILITY OFFICE

SALARIES AND EXPENSES

The conference agreement provides $25,000,000 as proposed by the House instead of $20,000,000 as proposed by the Senate for the Government Accountability Office to hire temporary personnel and obtain contract services to support the agency's oversight responsibilities under this Act.

GENERAL PROVISIONS—THIS TITLE

Section 901. Charges the Government Accountability Office (GAO) with bimonthly reviews and reporting on selected States and localities' use of funds provided in this Act. These reports are to be posted on the Internet and linked to the website established under this Act by the Recovery Accountability and Transparency Board. GAO is authorized to examine any records related to the obligation and use of funds made available in this Act.

Section 902. Provides GAO authority to examine records related to contracts awarded under this Act and to interview relevant employees.

TITLE X—MILITARY CONSTRUCTION AND VETERANS AFFAIRS

Job creation.—The conferees note that the Associated General Contractors of America estimates that each $1,000,000,000 in nonresidential construction spending will create or sustain 28,500 jobs. Based on this estimate and data provided by the Department of Defense and the Department of Veterans Affairs, the conferees estimate that the construction funds and other programs in this title will create or sustain 97,200 jobs.

DEPARTMENT OF DEFENSE

MILITARY CONSTRUCTION, ARMY

The conferees agree to provide $180,000,000, instead of $920,000,000 as proposed by the House and $637,875,000 as proposed by the Senate. Within the amount, the conferees agree to

provide $80,000,000 for child development centers and $100,000,000 for warrior transition complexes.

MILITARY CONSTRUCTION, NAVY AND MARINE CORPS

The conferees agree to provide $280,000,000, instead of $350,000,000 as proposed by the House and $990,092,000 as proposed by the Senate. Within the amount, the conferees agree to provide $100,000,000 for troop housing, $80,000,000 for child development centers, and $100,000,000 for energy conservation and alternative energy projects.

MILITARY CONSTRUCTION, AIR FORCE

The conferees agree to provide $180,000,000, instead of $280,000,000 as proposed by the House and $871,332,000 as proposed by the Senate. Within the amount, the conferees agree to provide $100,000,000 for troop housing and $80,000,000 for child development centers.

MILITARY CONSTRUCTION, DEFENSE-WIDE

The conferees agree to provide $1,450,000,000, instead of $3,750,000,000 as proposed by the House and $118,560,000 as proposed by the Senate. Within the amount, the conferees agree to provide $1,330,000,000 for the construction of hospitals and $120,000,000 for the Energy Conservation Investment Program.

MILITARY CONSTRUCTION, ARMY NATIONAL GUARD

The conferees agree to provide $50,000,000, instead of $140,000,000 as proposed by the House and $150,000,000 as proposed by the Senate.

MILITARY CONSTRUCTION, AIR NATIONAL GUARD

The conferees agree to provide $50,000,000, instead of $70,000,000 as proposed by the House and $110,000,000 as proposed by the Senate.

MILITARY CONSTRUCTION, ARMY RESERVE

The conferees agree to provide no funds as proposed by the Senate, instead of $100,000,000 as proposed by the House.

MILITARY CONSTRUCTION, NAVY RESERVE

The conferees agree to provide no funds as proposed by the Senate, instead of $30,000,000 as proposed by the House.

MILITARY CONSTRUCTION, AIR FORCE RESERVE

The conferees agree to provide no funds as proposed by the Senate, instead of $60,000,000 as proposed by the House.

FAMILY HOUSING CONSTRUCTION, ARMY

The conferees agree to provide $34,507,000, instead of no funds as proposed by the House and $34,570,000 as proposed by the Senate.

FAMILY HOUSING OPERATION AND MAINTENANCE, ARMY

The conferees agree to provide $3,932,000 as proposed by the Senate, instead of no funds as proposed by the House.

FAMILY HOUSING CONSTRUCTION, AIR FORCE

The conferees agree to provide $80,100,000 as proposed by the Senate, instead of no funds as proposed by the House.

FAMILY HOUSING OPERATION AND MAINTENANCE, AIR FORCE

The conferees agree to provide $16,461,000 as proposed by the Senate, instead of no funds as proposed by the House.

HOMEOWNERS ASSISTANCE FUND

The conferees agree to provide $555,000,000, instead of no funds as proposed by the House and $410,973,000 as proposed by the Senate.

DEPARTMENT OF DEFENSE BASE CLOSURE ACCOUNT 1990

The conferees agree to provide no funds as proposed by the Senate, instead of $300,000,000 as proposed by the House.

ADMINISTRATIVE PROVISION

The conferees agree to include a provision (Sec. 1001) as proposed by the Senate, with technical changes, providing for a temporary expansion of homeowners assistance to respond to the foreclosure and credit crisis.

DEPARTMENT OF VETERANS AFFAIRS

VETERANS HEALTH ADMINISTRATION

MEDICAL SUPPORT AND COMPLIANCE

The conferees agree to provide no funds as proposed by the House, instead of $5,000,000 as proposed by the Senate.

MEDICAL FACILITIES

The conferees agree to provide $1,000,000,000, instead of $950,000,000 as proposed by the House and $1,370,459,000 as proposed by the Senate.

NATIONAL CEMETERY ADMINISTRATION

The conferees agree to provide $50,000,000 as proposed by the House, instead of $64,961,000 as proposed by the Senate.

DEPARTMENTAL ADMINISTRATION

GENERAL OPERATING EXPENSES

The conferees agree to provide $150,000,000 for a temporary increase in claims processing staff, instead of no funds as proposed by the House and $1,125,000 as proposed by the Senate for contract administration.

INFORMATION TECHNOLOGY SYSTEMS

The conferees agree to provide $50,000,000 for the Veterans Benefits Administration, instead of no funds as proposed by the House and $195,000,000 as proposed by the Senate.

OFFICE OF INSPECTOR GENERAL

The conferees agree to provide $1,000,000 as proposed by the House, instead of $4,400,000 as proposed by the Senate.

CONSTRUCTION, MAJOR PROJECTS

The conferees agree to provide no funds as proposed by the House, instead of $1,105,333,000 as proposed by the Senate.

CONSTRUCTION, MINOR PROJECTS

The conferees agree to provide no funds as proposed by the House, instead of $939,836,000 as proposed by the Senate.

GRANTS FOR CONSTRUCTION OF STATE EXTENDED CARE FACILITIES

The conferees agree to provide $150,000,000, instead of no funds as proposed by the House and $257,986,000 as proposed by the Senate.

ADMINISTRATIVE PROVISION

The conferees agree to include a provision (Sec. 1002) authorizing the Filipino Veterans Equity Compensation Fund.

DEPARTMENT OF DEFENSE—CIVIL

CEMETERIAL EXPENSES, ARMY

SALARIES AND EXPENSES

The conferees agree to provide no funds as proposed by the House, instead of $60,300,000 as proposed by the Senate.

TITLE XI—STATE, FOREIGN OPERATIONS, AND RELATED PROGRAMS

DEPARTMENT OF STATE

ADMINISTRATION OF FOREIGN AFFAIRS

DIPLOMATIC AND CONSULAR PROGRAMS

The conference agreement includes $90,000,000 for urgent domestic facilities requirements for passport and training functions, the same amount as proposed by the Senate. The House did not in-

clude any funds for this purpose. Funds under the heading are available for obligation through September 30, 2010.

The Department of State estimates that these investments will create up to 655 jobs in the United States and improve the operational and training capabilities of the Department. The conference agreement includes funds to expand passport agencies, to continue design and begin construction of a consolidated security training facility, and to enlarge domestic facilities to accommodate increased language training requirements for diplomatic and development personnel. The conferees direct that funds made available for a consolidated security training facility should be obligated in accordance with United States General Services Administration procedures.

The conference agreement requires the Secretary of State to submit to the Committees on Appropriations a detailed spending plan for funds made available under the heading not later than 90 days after enactment of this Act. For passport agencies, the spending plan is to be developed in consultation with the Department of Homeland Security and the General Services Administration to coordinate and/or co-locate such agencies with other Federal facilities, to the extent feasible. Funds provided shall be subject to the regular notification procedures of the Committees on Appropriations.

CAPITAL INVESTMENT FUND

(INCLUDING TRANSFER OF FUNDS)

The conference agreement includes $290,000,000 for immediate information technology security and upgrades to support mission-critical operations, instead of $276,000,000 as proposed by the House and $228,000,000 as proposed by the Senate. Funds under the heading are available for obligation through September 30, 2010.

Within the funds made available under the heading, the conference agreement directs that up to $38,000,000 shall be transferred to, and merged with, funds made available under the heading "Capital Investment Fund" of the United States Agency for International Development (USAID) for immediate information technology investments. The conferees direct that the Inspector General of USAID allocate sufficient resources to conduct oversight of the transferred funds.

The Department of State and USAID estimate that these investments will create at least 400 jobs in the United States and improve the security, efficiency, and capability of Department of State and USAID information technology systems. These investments will address the critical requirement of establishing back-up information management facilities in the United States to protect the systems from mission failures, enhance cyber-security, and secure immediate hardware and software upgrades.

The conference agreement includes language requiring the Secretary of State and the USAID Administrator to coordinate information technology systems, where appropriate, in order to increase efficiencies and eliminate redundancies. Such coordination should factor in the costs, service requirements, and program needs of

both agencies and should include efforts to co-locate backup information management facilities and improve cyber-security.

The conference agreement requires the Secretary of State and the USAID Administrator to submit to the Committees on Appropriations, not later than 90 days after enactment of this Act, a detailed spending plan for funds made available under the heading. Funds provided shall be subject to the regular notification procedures of the Committees on Appropriations.

OFFICE OF INSPECTOR GENERAL

The conference agreement includes $2,000,000 for the Office of Inspector General to conduct oversight of the funds made available to the Department of State by this Act, instead of $1,500,000 as proposed by the Senate. The House bill did not include a separate appropriation for this purpose. Funds provided are available for obligation through September 30, 2010.

INTERNATIONAL COMMISSIONS

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO CONSTRUCTION

(INCLUDING TRANSFER OF FUNDS)

The conference agreement includes $220,000,000 for immediate repair and rehabilitation requirements in the water quantity program, instead of $224,000,000 as proposed by the House and Senate. Funds are available for obligation through September 30, 2010.

These funds will be used for immediate infrastructure upgrades along 506 miles of flood control levees to rehabilitate the following projects identified by the International Boundary and Water Commission—United States and Mexico in their fiscal year 2009 budget request as unfunded needs: Rio Grande Flood Control System; Safety of Dams; Colorado Boundary; and Capacity Preservation. The Department of State estimates that these investments will create 305 jobs in the United States.

Within the amount provided, the conference agreement provides that up to $2,000,000 may be transferred to, and merged with, funds made available under the heading "Salaries and Expenses" of the Commission. The conference agreement also requires the Secretary of State to submit to the Committees on Appropriations, not later than 90 days after enactment of this Act, a detailed spending plan for funds made available under the heading. Funds provided shall be subject to the regular notification procedures of the Committees on Appropriations.

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

FUNDS APPROPRIATED TO THE PRESIDENT

CAPITAL INVESTMENT FUND

The conference agreement does not include a direct appropriation under this heading of $58,000,000 as proposed by the Senate. Instead, the agreement directs the transfer to USAID of up to

$38,000,000, from funds made available in this Act under the heading "Capital Investment Fund" of the Department of State, for immediate information technology investments. The House bill did not include funds for this purpose. Funds transferred are subject to the regular notification procedures of the Committees on Appropriations.

OPERATING EXPENSES OF THE UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

OFFICE OF INSPECTOR GENERAL

The conference agreement does not include $500,000 under this heading, as proposed by the Senate. The Office of Inspector General of the United States Agency for International Development is directed to conduct oversight of the funds transferred in this Act to USAID from within available funds.

TITLE XII—TRANSPORTATION AND HOUSING AND URBAN DEVELOPMENT, AND RELATED AGENCIES

DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

SUPPLEMENTAL DISCRETIONARY GRANTS FOR A NATIONAL SURFACE TRANSPORTATION SYSTEM

The conference agreement provides $1,500,000,000 instead of $5,500,000,000 as proposed by the Senate. The House did not include a similar provision. Funds will be used to award grants on a competitive basis for projects across all surface transportation modes that will have a significant impact on the Nation, a metropolitan area or a region. Provisions require the Secretary to ensure an equitable geographic distribution of funds and an appropriate balance in addressing the needs of urban and rural communities.

FEDERAL AVIATION ADMINISTRATION

SUPPLEMENTAL FUNDING FOR FACILITIES AND EQUIPMENT

The conference agreement includes $200,000,000 as proposed by the Senate. The House did not include a similar provision. Within the funds provided, $50,000,000 is included to upgrade the Federal Aviation Administration's (FAA) power systems; $50,000,000 is included to modernize aging en route air traffic control centers; $80,000,000 to replace air traffic control towers and TRACONs; and, $20,000,000 is included to install airport lighting, navigation and landing equipment.

GRANTS-IN-AID FOR AIRPORTS

The conference agreement provides $1,100,000,000 as proposed by the Senate instead of $3,000,000,000 as proposed by the House. Funds will be used by the Federal Aviation Administration to provide discretionary airport grants to repair and improve critical infrastructure at our nation's airports. These investments will serve to provide important safety and capacity benefits.

FEDERAL HIGHWAY ADMINISTRATION

HIGHWAY INFRASTRUCTURE INVESTMENT

The conference agreement provides $27,500,000,000, instead of $30,000,000,000 as proposed by the House and $27,060,000,000 as proposed by the Senate. Funds are distributed by formula, with a portion of the funds within each State being suballocated by population areas. Set asides are also provided for: management and oversight; Indian reservation roads; park roads and parkways; forest highways; refuge roads; ferry boats; on-the-job training programs focused on minorities, women, and the socially and economically disadvantaged; a bonding assistance program for minority and disadvantaged businesses; Puerto Rico and the territories; and environmentally friendly transportation enhancements.

FEDERAL RAILROAD ADMINISTRATION

CAPITAL ASSISTANCE FOR HIGH SPEED RAIL CORRIDORS AND INTERCITY PASSENGER RAIL SERVICE

The conference agreement provides $8,000,000,000 instead of $300,000,000 as proposed by the House and $2,250,000,000 as proposed by the Senate. The conferees appropriated funds for purposes outlined in both the Capital Assistance to States and the High Speed Passenger Rail program under a combined heading. The conferees have provided the Secretary flexibility in allocating resources between the programs to advance the goal of deploying intercity high speed rail systems in the United States. The Capital Assistance to States program first received funding in fiscal year 2008. The High Speed Passenger Rail program is a new initiative recently authorized under the Passenger Rail Investment and Improvement Act of 2008.

CAPITAL GRANTS TO THE NATIONAL RAILROAD PASSENGER CORPORATION

The conference agreement provides $1,300,000,000 instead of $800,000,000 as proposed by the House and $850,000,000 as proposed by the Senate. Of the total funds appropriated, the conferees provide $450,000,000 for capital grants for security improvements to include life safety improvements. The conferees also provide that no more than 60% of the remaining funds shall be spent for capital improvements on the Northeast Corridor.

FEDERAL TRANSIT ADMINISTRATION

TRANSIT CAPITAL ASSISTANCE

The conference agreement provides $6,900,000,000 instead of $8,400,000,000 as proposed by the Senate and $7,500,000,000 as proposed by the House. Within the total amount, 80 percent of the funds shall be provided through the Federal Transit Administration's (FTA) urbanized formula; 10 percent shall be provided through FTA's rural formula; and 10 percent shall be provided through FTA's growing states and high density formula. In addition, the conference agreement provides 2.5 percent of the rural funds for tribal transit needs and includes $100,000,000 (instead of

$200,000,000 as proposed by the Senate) for discretionary grants to public transit agencies for capital investments that will assist in reducing the energy consumption or greenhouse gas emissions of their public transit agencies.

FIXED GUIDEWAY INFRASTRUCTURE INVESTMENT

The conference agreement provides $750,000,000 instead of $2,000,000,000 as proposed by the House. The Senate did not include a similar provision. These funds will be distributed through an existing authorized formula for capital projects to modernize or improve existing fixed guideway systems, including purchase and rehabilitation of rolling stock, track, equipment and facilities. It is estimated that the state-of-good-repair capital backlog for existing fixed guideway systems is nearly $50 billion.

CAPITAL INVESTMENT GRANTS

The conference agreement provides $750,000,000 instead of $2,500,000,000 as proposed by the House. The Senate did not include a similar provision. The funds will be distributed on a discretionary basis for New Starts and Small Starts projects that are already in construction or are nearly ready to begin construction.

MARITIME ADMINISTRATION

SUPPLEMENTAL GRANTS FOR ASSISTANCE TO SMALL SHIPYARDS

The conference agreement provides $100,000,000 for grants to small shipyards as proposed by the Senate. The House did not include a similar provision.

OFFICE OF INSPECTOR GENERAL

SALARIES AND EXPENSES

The conference agreement provides $20,000,000 as proposed by the House and the Senate.

GENERAL PROVISION—DEPARTMENT OF TRANSPORTATION

Section 1201 ensures continued State investment in certain identified programs for which the State receives funding in this Act and requires grant recipients to report regularly on the use of those funds as proposed by the House. The Senate did not include a similar provision.

The conference agreement does not include a provision as proposed by the Senate which extends the Federal Transit Administration's contingent commitment authority.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PUBLIC AND INDIAN HOUSING

PUBLIC HOUSING CAPITAL FUND

The conference agreement provides $4,000,000,000, instead of $5,000,000,000 as proposed by both the House and the Senate. This funding will assist public housing authorities in rehabilitating and

retrofitting public housing units, including increasing the energy efficiency of units and making critical safety repairs. Of the funding provided, $3,000,000,000 will be distributed to public housing authorities through the existing formula and $1,000,000,000 will be awarded through a competitive process.

NATIVE AMERICAN HOUSING BLOCK GRANTS

The conference agreement provides $510,000,000, as proposed by the Senate, instead of $500,000,000, as proposed by the House. This funding will rehabilitate and improve energy efficiency in housing units maintained by Native American housing programs. Half of the funding will be distributed by formula and half will be competitively awarded to projects that can be started quickly.

COMMUNITY PLANNING AND DEVELOPMENT

COMMUNITY DEVELOPMENT FUND

The conference agreement provides $3,000,000,000, of which $1,000,000,000 is appropriated for the Community Development Block Grant program and $2,000,000,000 is available for the Neighborhood Stabilization Program. This funding is provided instead of the $5,190,000,000 proposed by the House. Funding was not provided in the Senate. The Neighborhood Stabilization Program funding will assist states, local governments, and nonprofits in the purchase and rehabilitation of foreclosed, vacant properties in order to create more affordable housing and reduce neighborhood blight.

HOME INVESTMENT PARTNERSHIPS PROGRAM

The conference agreement provides $2,250,000,000, as proposed by the Senate, instead of $1,500,000,000, as proposed by the House. Funds are provided to coordinate with the Low Income Housing Tax Credit to fill financing gaps caused by the collapse of the tax credit market and to jumpstart stalled housing development projects, thereby creating jobs.

SELF-HELP AND ASSISTED HOMEOWNERSHIP OPPORTUNITY PROGRAM

The conference agreement does not provide funding for this account. The House proposed $10,000,000 for this account, but the Senate did not propose funding under this heading.

HOMELESSNESS PREVENTION FUND

The conference agreement provides $1,500,000,000, as proposed by both the House and the Senate. Funding will provide short term rental assistance, housing relocation, and stabilization services for families who may become homeless due to the economic crisis. Funds are distributed by formula.

The conference agreement directs the Secretary of HUD to submit a report to the House and Senate Committees on Appropriations one year after enactment of the Act that details how the funding provided in this account has been used to alleviate the effects of the Nation's current economic recession and prevent homelessness.

HOUSING PROGRAMS

ASSISTED HOUSING STABILITY AND ENERGY AND GREEN RETROFIT INVESTMENTS

The conference agreement provides $2,250,000,000 as proposed by the Senate instead of $2,500,000,000 as proposed by the House. Of this amount, $2,000,000,000 will provide full-year payments to landlords participating in the Section 8 Project-Based program, and $250,000,000 will support a program to upgrade HUD sponsored low-income housing to increase energy efficiency, including new insulation, windows, and furnaces.

OFFICE OF LEAD HAZARD CONTROL AND HEALTHY HOMES

The conference agreement provides $100,000,000, as proposed by both the House and the Senate. Funding is provided for competitive grants to local governments and nonprofit organizations to remove lead-based paint hazards in low-income housing. Projects that were highly rated in 2008 competitions but were not funded due to constrained resources will be the focus of these resources, thereby ensuring that the funds are spent quickly and effectively.

MANAGEMENT AND ADMINISTRATION

OFFICE OF INSPECTOR GENERAL

The conference agreement provides $15,000,000 as proposed by the House and Senate. This funding will assist the IG in monitoring the use of these funds to ensure that funding provided in this bill is used in an effective and efficient manner.

GENERAL PROVISIONS—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Section 1202 raises the Federal Housing Administration (FHA) loan limits for calendar year 2009 to the level set in calendar year 2008, as proposed by the House.

Section 1203 raises the Government Sponsored Enterprise (GSE) conforming loan limit for calendar year 2009, as proposed by the House.

Section 1204 raises the Home Equity Conversion Mortgage (HECM) loan limit for calendar year 2009, as proposed by the House.

The conference agreement does not include a provision as proposed by the Senate regarding changes to the Hope for Homeowners program.

TITLE XIII—HEALTH INFORMATION TECHNOLOGY

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HEALTH INFORMATION TECHNOLOGY

Short Title; Table of Contents of Title. (House bill Sec. 4001; Senate bill Sec. 13101; Conference agreement Sec. 13001)

This provision specifies that the title may be cited as the "Health Information Technology for Economic and Clinical Health Act" or the "HITECH Act."

SUBTITLE A—PROMOTION OF HEALTH INFORMATION TECHNOLOGY

PART I—IMPROVING HEALTH CARE QUALITY, SAFETY, AND EFFICIENCY

ONCHIT; Standards Development and Adoption. (House bill Sec. 4101; Senate bill Sec. 13101; Conference agreement Sec. 13101)

Current Law

There are no existing statutory provisions regarding the current Office of the National Coordinator for Health Information Technology (ONCHIT) within the Department of Health and Human Services (HHS). ONCHIT was created by Executive Order 13335, signed by the President on April 27, 2004. The National Coordinator was instructed to develop, maintain, and direct a strategic plan to guide the nationwide implementation of interoperable health information technology (HIT) in the public and private health care sectors. In 2005, the Secretary created the American Health Information Community (AHIC), a public-private advisory body, to make recommendations to the Secretary on how to accel-

erate the development and adoption of interoperable HIT using a market-driven approach. The AHIC charter required it to provide the Secretary with recommendations to create a successor entity based in the private sector. AHIC Successor, Inc. was established in July 2008 to transition AHIC's accomplishments into a new public-private partnership. That partnership, the National eHealth Collaborative (NeHC), was launched on January 8, 2009.

ONCHIT awarded a contract to the American National Standards Institute (ANSI) to establish a public-private collaborative, known as the Healthcare Information Technology Standards Panel (HITSP), to harmonize existing HIT standards and identify and establish standards to fill gaps. To date, the Secretary has recognized over 100 harmonized standards, including many that allow interoperability of electronic health records (EHRs). To ensure that these standards are incorporated into products, a second contract was awarded to the Certification Commission for Healthcare Information Technology (CCHIT), a private, nonprofit organization created by HIT industry associations, which establishes criteria for certifying products that use recognized standards. CCHIT has certified over 150 ambulatory and inpatient EHR products.

House Bill

The House bill would establish in the Public Health Service Act (PHSA; 42 USC 201 et seq.) a new Title XXX—Health Information Technology and Quality, comprising the following sections.

Sec. 3000. Definitions. The House bill defines the following terms: certified EHR technology, enterprise integration, health care provider, health information, health information technology, health plan, HIT Policy Committee, HIT Standards Committee, individually identifiable health information, laboratory, National Coordinator, pharmacist, qualified electronic health record, and state.

Sec. 3001. Office of the National Coordinator for Health Information Technology. The House bill would establish within HHS the Office of the National Coordinator for Health Information Technology (ONCHIT). The National Coordinator would be appointed by the Secretary and report directly to the Secretary. The National Coordinator would be charged with the following duties. First, the National Coordinator would be required to review and determine whether to endorse standards recommended by the HIT Standards Committee (described below). Second, the National Coordinator would be responsible for coordinating HIT policy and programs within HHS and with those of other federal agencies and would be a leading member in the establishment of the HIT Policy Committee and the HIT Standards Committee and act as a liaison among these Committees and the federal government. Third, the National Coordinator would be required to update the Federal Health IT Strategic Plan (developed as of June 3, 2008) to include specific objectives, milestones, and metrics with respect to the electronic exchange and use of health information, the utilization of an EHR for each person in the United States by 2014, and the incorporation of privacy and security protections for the electronic exchange of an individual's health information, among other things. The plan would include measurable outcome goals and the National Coordinator would be required to republish the plan, includ-

ing all updates. Fourth, the National Coordinator would maintain and update a website to post relevant information about the work related to efforts to promote a nationwide health information technology infrastructure. Fifth, the National Coordinator would be required, in consultation with the National Institute of Standards and Technology (NIST), to develop a program for the voluntary certification of HIT as being in compliance with applicable certification criteria adopted by the Secretary. Sixth, the National Coordination would have to prepare several reports, including a report on any additional funding or authority needed to evaluate and develop standards for a nationwide health information technology infrastructure; a report on lessons learned from HIT implementation by major public and private health care systems; a report on the benefits and costs of the electronic use and exchange of health information; an assessment of the impact of HIT on communities with health disparities and in areas that serve uninsured, underinsured, and medically underserved individuals; and an estimate of the public and private resources needed annually to achieve utilization of an EHR for each person in the United States by 2014. Seventh, the National Coordinator would be required to establish a national governance mechanism for the national health information network. Finally, the National Coordinator would be permitted to accept or request federal detailees and would be required, within 12 months of enactment, to appoint a Chief Privacy Officer of the Office of the National Coordinator to advise the National Coordinator on privacy, security, and data stewardship.

Sec. 3002. HIT Policy Committee. The House bill would establish an HIT Policy committee to make policy recommendations to the National Coordinator relating to the implementation of a nationwide health information technology infrastructure. The duties of the HIT Policy Committee would include providing recommendations on a policy framework for the development and adoption of a nationwide health information technology infrastructure, recommending areas in which standards are needed for the electronic exchange and use of health information, and recommending an order of priority for the development of such standards. The Committee would be required to provide recommendations in six areas: (1) technologies that protect the privacy and security of electronic health information; (2) a nationwide HIT infrastructure that enables electronic information exchange; (3) nationwide adoption of certified EHRs; (4) EHR technologies that allow for an accounting of disclosures; (5) using EHRs to improve health care quality; and (6) encryption technologies that render individually identifiable health information unusable, unreadable, and indecipherable to unauthorized individuals. The bill describes other areas that the committee might consider, including using HIT to reduce medical errors, and telemedicine. The membership of the HIT Policy Committee would reflect (at least) providers, ancillary healthcare workers, consumers, purchasers, health plans, technology vendors, researchers, relevant federal agencies, and individuals with technical expertise on health care quality and privacy and security. The National Coordinator must ensure that the Committee's recommendations are considered in the development of policies, and the Secretary would be required to publish all of the Committee's rec-

ommendations in the Federal Register and post them on a website. The provisions of the Federal Advisory Committee Act, other than section 14, would apply to the HIT Policy Committee.

Sec. 3003. HIT Standards Committee. The House bill would establish an HIT Standards Committee to recommend to the National Coordinator standards, implementation specifications, and certification criteria for the electronic exchange of health information. Duties of the HIT Standards Committee would include the development and pilot testing of standards, and serving as a forum for the participation of a broad range of stakeholders to provide input on the development, harmonization, and recognition of standards. Not later than 90 days after enactment, the HIT Standards Committee would outline (and annually update) a schedule for assessing the policy recommendations developed by the HIT Policy Committee, and this schedule would be published in the Federal Register. In addition, the Committee would be required to conduct open public meetings and develop a process to allow for public comment on this schedule. The membership of the HIT Standards Committee would reflect (at least) providers, ancillary healthcare workers, consumers, purchasers, health plans, technology vendors, researchers, relevant federal agencies, and individuals with technical expertise on health care quality and privacy and security. The National Coordinator would be required to ensure that the Committee's recommendations are considered in the development of policies; the Secretary would be authorized to provide financial assistance to Committee members that are non-profit or consumer advocacy groups in order to defray costs associated with participating in the Committee's activities, and the Committee would be required to publish all its recommendations in the Federal Register and post them on a website. The provisions of the Federal Advisory Committee Act, other than section 14, would apply to the HIT Standards Committee.

Sec. 3004. Process for Adoption of endorsed Recommendations; Adoption of Initial Set of Standards, Implementation Specifications, and Certification Criteria. The House bill would require the Secretary, within 90 days of receiving from the National Coordinator a recommendation for HIT standards, implementation specifications, or certification criteria, to determine in consultation with representatives of other relevant federal agencies, whether or not to propose adoption of such standards, implementation specifications, or certification criteria. Adoption would be accomplished through regulation, whereas a decision by the Secretary not to adopt would have to be conveyed in writing to the National Coordinator and the HIT Standard Committee. The Secretary would be required to adopt, through rulemaking, an initial set of standards by December 31, 2009.

Sec. 3005. Application and Use of Adopted Standards and Implementation Specifications by Federal Agencies. The House bill refers to Section 4111 (see below) for the requirements relating to the application and use of adopted standards by federal agencies.

Sec. 3006. Voluntary Application and Use of Adopted Standards and Implementation Specifications by Private Entities. The House bill would make the application and use of adopted standards voluntary for private entities.

Sec. 3007. Federal Health Information Technology. The House bill would require the National Coordinator to support the development, routine updating and provision of qualified EHR technology unless the Secretary determined that the needs and demands of providers are being substantially and adequately met through the marketplace. The National Coordinator would be permitted to charge a nominal fee to providers for the adoption of this health information technology system.

Sec. 3008. Transitions. The House bill would provide for the transfer of all functions, personnel, assets, liabilities, and administrative actions of the existing ONCHIT, created under Executive Order 13335, to the new ONCHIT established by this Act. Similarly, all functions, personnel, assets, liabilities applicable to AHIC Successor, Inc., now operating as the National eHealth Collaborative (NeHC), would be transferred to the HIT Policy Committee or the HIT Standards Committee, as appropriate. Nothing in the bill would require the creation of a new entity to the extent that the existing ONCHIT is consistent with the provision of Section 3001. Similarly, nothing in the bill would prohibit NeHC from modifying its charter, duties, membership, and other functions to be consistent with Sections 3002 and 3003 in a manner that would permit the Secretary to recognize it as the HIT Policy Committee or the HIT Standards Committee.

Sec. 3009. Relation to HIPAA Privacy and Security Law. The House bill specifies that this title may not be construed as having any effect on the authorities of the Secretary under HIPAA privacy and security law.

Sec. 3010. Authorization for Appropriations. The House bill would authorize an appropriation of $250 million for FY2009 for implementing this subtitle.

Senate Bill

The Senate bill includes the same provisions as the House bill, other than an authorization for appropriations (Sec. 3010), but with the following additional language: (1) the definition of health care provider is broader than in the House bill; (2) the duties of the National Coordinator would include reviewing federal HIT investments to ensure that federal HIT programs are meeting the objectives of the strategic plan, and providing comments and advice on federal HIT programs at the request of the Office of Management and Budget (OMB); (3) the updated HIT Strategic Plan would include specific plans for ensuring that populations with unique needs, such as children, are appropriately addressed in the technology design; (4) the Secretary would be authorized to recognize an entity or entities for harmonizing or updating standards and implementation specifications; and (5) the National Coordinator's report on resource requirements for achieving nationwide EHR utilization by 2014 would include resources for health informatics and management education programs to ensure a sufficient HIT workforce.

In addition, the Senate bill would require the HIT Policy Committee to provide recommendations on the use of electronic systems to collect patient demographic data (consistent with the evaluation of health disparities data under Sec. 1809 of the Social Security

Act) and on technologies and design features that address the needs of children and other vulnerable populations, instead of providing recommendations on encryption technologies as required in the House bill. To the list of other areas that the HIT Policy Committee might consider, the Senate bill includes methods for allowing individuals and their caregivers secure access to protected health information. Unlike the House bill, the Senate bill specifies the size and composition of the HIT Policy Committee, and outlines certain details of its operation.

The Senate bill includes additional provisions regarding the operations of the HIT Standards Committee. They include conducting open and public meetings, adopting a consensus approach to standards development and harmonization, and providing an opportunity for public comment. Unlike the House bill, which would make the HIT Standards Committee subject to the Federal Advisory Committee Act, the Senate bill would apply OMB Circular A–119 (Federal Participation in the Development and Use of Voluntary Consensus Standards) to the Committee. It also would require the Secretary, as necessary and consistent with the HIT Standards Committee's published schedule, to adopt additional standards, implementation specifications, and certification criteria following the adoption of the initial set of requirements by December 31, 2009.

The Senate bill's transition provision states that nothing in the bill would require the creation of a new ONCHIT, to the extent that the existing office is consistent with the Act. Further, nothing in the bill would prohibit National eHealth Collaborative from modifying its structure and function in order to be recognized as the HIT Standards Committee. Finally, the Senate bill specifies that until recommendations are made by the HIT Policy Committee, recommendations of the HIT Standards Committee would have to be consistent with the most recent recommendations of AHIC Successor, Inc.

Conference Agreement

The conference agreement is largely similar to the provisions in both bills. Here are some additions or distinctions:

Sec. 3000.

Definitions. The conference agreement includes a broader definition of health care provider, including additions by the Senate and House. The conference agreement clarified the definition of health information technology to include internet based products and HIT aimed at usage by patients. The term "qualified electronic health record" includes computerized provider order entry systems.

Sec. 3001.

Office of the National Coordinator of Health Information Technology. The duties of the National Coordinator include the review of federal health information technology investments from the Senate bill.

The elements of the strategic plan developed by the National Coordinator include the Senate language regarding strategies to enhance increase prevention and coordination of community re-

sources and plans for ensuring that populations with unique needs are addressed in technology design, as appropriate.

The section on harmonization included in the Senate bill was modified and moved to Section 3003 and ensures that harmonization standards or updates developed by other entities can be recognized by the HIT Standards Committee.

The conference agreement retains the intent of the Senate language requiring the National Coordinator to estimate resources needed to establish a sufficient health information technology workforce.

To the extent that this section calls the National Coordinator to ensure that every person in the United States have an EHR by 2014, this goal is not intended to require individuals to receive services from providers that have electronic health records and is aimed at having the National Coordinator take steps to help providers adopt electronic health records. This provision does not constitute a legal requirement on any patient to have an electronic health record. For religious or other reasons, non-traditional health care providers may also choose not to use an electronic health record.

Sec. 3002.

HIT Policy Committee. The conference agreement includes the House language on areas required for consideration regarding security of transmitted individually identifiable health information and includes the Senate language regarding collection of demographic data and modified the Senate language regarding technology to address the needs of children.

The language on other areas of consideration includes the Senate language regarding methods to facilitate secure access by an individual to their protected health information and modified the Senate language regarding access to such information by a family member, caregiver, or guardian acting on behalf of a patient.

The conference agreement adopted the Senate specifics on the membership of the HIT Policy Committee. The conference agreement modified the language by increasing the members appointed by the Secretary and those representing patients or consumers and modified the Senate language regarding participation on the Committee and to allow the Secretary to fill seats if membership has not been filled by 45 days after enactment.

Sec. 3003.

HIT Standards Committee. The Conference report includes provisions from the House and Senate bills. The principal changes from the House-passed bill are: (1) there is a new provision allowing the Standards Committee to recognize harmonized standards from an outside entity; (2) there is a new provision requiring balanced membership and that no single sector unduly influence the recommendations or procedures of the committee; and (3) there is a new provision requiring the involvement of outside experts with relevant expertise. The principal change from the Senate-passed bill is that the Standards Committee is subject to the Federal Advisory Committee Act.

Sec. 3004.

Process for Adoption of endorsed Recommendations; Adoption of Initial Set of Standards, Implementation Specifications, and Certification Criteria. The Conference report includes provisions from the House and Senate bills. The principal change from the House-passed bill and the Senate-passed bill is that there is explicit authority to allow the Secretary to issue the initial set of standards as interim final rules. This clarification should not be read to impact the authority or discretion of the Secretary in future regulations regarding standards.

Sec. 3005.

Application and Use of Adopted Standards and Implementation Specifications by Federal Agencies. The conference report includes this provision unaltered.

Sec. 3006.

Voluntary Application and Use of Adopted Standards and Implementation Specifications by Private Entities. The Conference report contains the same policy as the House and Senate bills, with language modified for technical purposes.

Sec. 3007.

Federal Health Information Technology. The Conference report includes provisions from the House and Senate bills. The principal change from the House-passed bill is that the Secretary is authorized to "make available" rather than "provide" the technology specified under the Section. The principal change from the Senate-passed bill is that only the Secretary is charged with making the assessment of market failure.

Sec. 3008.

Transitions. The Conference report contains the same policy as the House and Senate bill, with language modified for technical purposes.

Sec. 3009.

Relation to HIPAA Privacy and Security Law. The Conference report contains the same policy as the House and Senate bills, with language modified for technical purposes. In addition, the conference report includes a provision clarifying the discretion of the Secretary.

Sec. 3010.

Authorization for Appropriations. The Conference report does not include this section.

Technical Amendment. (House bill Sec. 4102; Senate bill Sec. 13102; Conference agreement Sec. 13102)

Current Law

Under HIPAA, the definition of a health plan (42 U.S.C. 1320(d)(5)) includes Parts A, B, and C of the Medicare program.

House Bill

The House bill would amend the HIPAA definition of health plan to include Medicare Part D.

Senate Bill

Same provision.

Conference Agreement

Same provision.

PART II—APPLICATION AND USE OF ADOPTED HEALTH INFORMATION TECHNOLOGY STANDARDS; REPORTS

Coordination of Federal Activities with Adopted Standards and Implementation Specifications. (House bill Sec. 4111; Senate bill Sec. 13111; Conference agreement Sec. 13111)

Current Law

No provisions; however, in August 2006, the President issued Executive Order 13410 committing federal agencies that purchase and deliver health care to require the use of HIT that is based on interoperability standards recognized by the Secretary.

House Bill

The House bill would require federal agencies that implement, acquire, or upgrade HIT systems for the electronic exchange of health information to use HIT systems and products that meet the standards adopted by the Secretary under this Act. The President would be required to ensure that federal activities involving the collection and submission of health information are consistent with such standards within three years of their adoption.

Senate Bill

Same provision.

Conference Agreement

Same provision.

Application to Private Entities. (House bill Sec. 4112; Senate bill Sec. 13112; Conference agreement Sec. 13112)

Current Law

No provisions.

House Bill

The House bill would require health care payers and providers that contract with the federal government to use HIT systems and products that meet the standards adopted by the Secretary under this Act.

Senate Bill

Same provision.

Conference Agreement

Same provision.

Study and Reports. (House bill Sec. 4113; Senate bill Sec. 13113; Conference agreement Sec. 13113)

Current Law

No provisions.

House Bill

The House bill would require the Secretary, within two years and annually thereafter, to report to Congress on efforts to facilitate the adoption of a nationwide system for the electronic exchange of health information; to conduct a study, not later than two years after enactment, that examines methods to create efficient reimbursement incentives for improving health care quality in Federally qualified health centers, rural health clinical and free clinics; and to conduct a study, not later than 24 months after enactment, of matters relating to the potential use of new aging services technology to assist seniors, individuals with disabilities and their caregivers throughout the aging process.

Senate Bill

Same provision.

Conference Agreement

Same provision.

SUBTITLE B—TESTING OF HEALTH INFORMATION TECHNOLOGY

National Institute for Standards and Technology Testing. (House bill Sec. 4201; Senate bill Sec. 13201; Conference agreement Sec. 13201)

Current Law

No provisions; however, ONCHIT is working with the National Institute for Standards and Technology (NIST) on testing HIT standards. NIST is assisting with the HITSP standards harmonization process and with CCHIT's certification activities.

House Bill

The House bill would require NIST, in coordination with the HIT Standards Committee, to test HIT standards, as well as support the establishment of a voluntary testing program by accredited testing laboratories.

Senate Bill

Same provision.

Conference Agreement

Same provision.

Research and Development Programs. (House bill Sec. 4202; Senate bill Sec. 13202; Conference agreement Sec. 13202)

Current Law

No provisions.

House Bill

The House bill would require NIST, in consultation with the National Science Foundation and other federal agencies, to award competitive grants to universities (or research consortia) to establish multidisciplinary Centers for Health Care Information Enterprise Integration. The purpose of the Centers would be to generate innovative approaches to the development of a fully interoperable national health care infrastructure, as well as to develop and use HIT. The bill requires the National High-Performance Computing Program to coordinate federal research and development programs related to the deployment of HIT.

Senate Bill

The Senate would authorize but not require the National High-Performance Computing Program to review federal research and development programs relating to the deployment of HIT.

Conference Agreement

The conference agreement has the Senate language with an amendment. The Conference agreement retains the House and Senate language directing NIST to award competitive grants to universities to establish multidisciplinary Centers for Health Care Information Enterprise Integration. With respect to the National High-Performance Computing Program, the agreement notes that the ongoing work of the National Information Technology Research and Development (NITRD) program authorized by section 101 of the High-Performance Computing Act of 1991 (15 U.S.C. 5511) shall include health information technology research and development.

SUBTITLE C—INCENTIVES FOR THE USE OF HEALTH INFORMATION TECHNOLOGY

PART I—GRANTS AND LOANS FUNDING

Grant, Loan, and Demonstration Programs. (House bill Sec. 4301; Senate bill Sec. 13301; Conference agreement Sec. 13301)

Current Law

No provisions; however, since 2004, the Agency for Healthcare Research and Quality (AHRQ) has awarded $260 million to support and stimulate investment in HIT. AHRQ-funded projects, many of which are focused on rural and underserved populations, cover a broad range of HIT tools and systems including EHRs, personal health records (a term that refers to health information collected by and under the control of the patient), e-prescribing, privacy and security, quality measurement, and Medicaid technical assistance.

House Bill

The House bill would amend PHSA Title XXX (as added by this Act) by adding a new Subtitle B—Incentives for the Use of Information Technology.

Sec. 3011. Immediate Funding To Strengthen the Health Information Technology Infrastructure. The House bill would require the Secretary, using funds appropriated under Section 3018 and in

a manner consistent with the National Coordinator's strategic plan, to invest in HIT so as to promote the use and exchange of electronic health information. The Secretary must, to the greatest extent practicable, ensure that the funds are used to acquire HIT that meets current standards and certification criteria. Funds would be administered through different agencies with relevant expertise, including ONCHIT, AHRQ, CMS, the Centers for Disease Control and Prevention (CDC), and the Indian Health Service (IHS), to support the following: (1) HIT architecture to support the secure electronic exchange of information; (2) electronic health records for providers not eligible for HIT incentive payments under Medicare and Medicaid; (3) training and dissemination of information on best practices to integrate HIT into health care delivery; (4) telemedicine; (5) interoperable clinical data repositories; (6) technologies and best practices for protecting health information; and (7) HIT use by public health departments. The Secretary must invest $300 million to support regional health information exchanges, and may use funds to carry out other activities authorized under this Act and other relevant laws.

Sec. 3012. Health Information Technology Implementation Assistance. The House bill would require the National Coordinator, in consultation with NIST and other agencies with experience in IT services, to establish an HIT extension program to assist providers in adopting and using certified EHR technology. The Secretary would be required to create an HIT Research Center to serve as a forum for exchanging knowledge and experience, disseminating information on lessons learned and best practices, providing technical assistance to health information networks, and learning about using HIT in medically underserved communities.

The Secretary also would be required to support HIT Regional Extension Centers, affiliated with nonprofit organizations, to provide assistance to providers in the region. Priority would be given to public, nonprofit, and critical access hospitals, community health centers, individual and small group practices, and entities that serve the uninsured, underinsured, and medically underserved individuals. Centers would be permitted to receive up to 4 years of funding to cover up to 50% of their capital and annual operating and maintenance expenditures. The Secretary would be required, within 90 days of enactment, to publish a notice describing the program and the availability of funds. Each regional center receiving funding would be required to submit to a biennial evaluation of its performance against specified objectives. Continued funding after two years of support would be contingent on receiving a positive evaluation.

Sec. 3013. State Grants To Promote Health Information Technology. The National Coordinator would be authorized to award planning and implementation grants to states or qualified state-designated entities to facilitate and expand electronic health information exchange. To qualify as a state-designated entity, an entity would have to be a nonprofit organization with broad stakeholder representation on its governing board and adopt nondiscrimination and conflict of interest policies. In order to receive an implementation grant, a state or qualified state-designated entity would have to submit a plan describing the activities to be carried out (con-

sistent with the National Coordinator's strategic plan) to facilitate and expand electronic health information exchange. The Secretary would be required annually to evaluate the grant activity under this section and implement the lessons learned from each evaluation in the subsequent round of awards in such a manner as to realize the greatest improvement in health care quality, decrease in costs, and the most effective and secure electronic information exchange. Grants would require a match of at least $1 for each $10 of federal funds in FY2011, at least $1 for each $7 of federal funds in FY2012, and at least $1 for each $3 of federal funds in FY2013 and each subsequent fiscal year. For fiscal years before FY2011, the Secretary would determine whether a state match is required.

Sec. 3104. Competitive Grants to States and Indian Tribes for the Development of Loan Programs to Facilitate the Widespread Adoption of Certified EHR Technology. The House bill would authorize the National Coordinator to award competitive grants to states or Indian tribes to establish loan programs for health care providers to purchase certified EHR technology, train personnel in the use of such technology, and improve the secure electronic exchange of health information. To be eligible, grantees would be required to: (1) establish a qualified HIT loan fund; (2) submit a strategic plan, updated annually, describing the intended uses of the funds and providing assurances that loans will only be given to health care providers that submit required reports on quality measures and use the certified EHR technology supported by the loan for the electronic exchange of health information to improve the quality of care; and (3) provide matching funds of at least $1 for every $5 of federal funding. Loans would be repayable over a period of up to 10 years. Each year, the National Coordinator would be required to provide a report to Congress summarizing the annual reports submitted by grantees. Awards would not be permitted before January 1, 2010.

Sec. 3015. Demonstration Program to Integrate Information Technology into Clinical Education. The House bill would authorize the Secretary to create a demonstration program for awarding competitive grants to medical, dental, and nursing schools, and to other graduate health education programs to integrate HIT into the clinical education of health care professionals. To be eligible, grantees would have to submit a strategic plan. A grant could not cover more than 50% of the costs of any activity for which assistance is provided, though the Secretary would have the authority to waive that cost-sharing requirement. The Secretary would be required annually to report to designated House and Senate Committees on the demonstrations, with recommendations.

Sec. 3016. Information Technology Professionals in Health Care. The House bill would require the Secretary, in consultation with the Director of the National Science Foundation, to provide financial assistance to universities to establish or expand medical informatics programs. A grant could not cover more than 50% of the costs of any activity for which assistance is provided, though the Secretary would have the authority to waive that cost-sharing requirement.

Sec. 3017. General Grant and Loan Provision. The Secretary would be permitted to require that grantees, within one year of re-

ceiving an award, report on the effectiveness of the activities for which the funds were provided and the impact of the project on health care quality and safety. The House bill would require the National Coordinator annually to evaluate the grant activities under this title and implement the lessons learned from each evaluation in the subsequent round of awards in such a manner as to realize the greatest improvement in the quality and efficiency of health care.

Sec. 3018. Authorization for Appropriations. The House bill would authorize the appropriation of such sums as may be necessary for each of FY2009 through FY2013 to carry out this subtitle. Amounts so appropriated would remain available until expended.

Senate Bill

The Senate bill includes the same provisions as the House bill, but with the following additional language: (1) the list of activities for which state implementation grants may be used includes establishing models that promote lifetime access to health records; and (2) the use of loan funds by providers may include upgrading HIT to meet certification criteria.

Conference Agreement

The Conference report includes the provision from the Senate that the use of loan funds by providers may include upgrading HIT to meet certification criteria. The Conference report does not include the provision from the Senate that the list of activities for which state implementation grants may be used includes establishing models that promote lifetime access to health records.

The Conference report modifies Section 3011 to no longer include a specific description of $300 million in funding for promoting regional and sub-national health information exchange. This funding is reflected in the corresponding sections of the Economic Recovery and Reinvestment Act that appropriate funds for activities authorized under this title.

The Conference report modifies Section 3016 to no longer require matching funds from universities participating in this program.

As a result of the incentives and appropriations for health information technology provided in this bill, it is expected that nonprofit organizations may be formed to facilitate the electronic use and exchange of health-related information consistent with standards adopted by HHS, and that such organizations may seek exemption from income tax as organizations described in IRC sec. 501(c)(3). Consequently, if a nonprofit organization otherwise organized and operated exclusively for exempt purposes described in IRC sec. 501(c)(3) engages in activities to facilitate the electronic use or exchange of health-related information to advance the purposes of the bill, consistent with standards adopted by HHS, such activities will be considered activities that substantially further an exempt purpose under IRC sec. 501(c)(3), specifically the purpose of lessening the burdens of government. Private benefit attributable to cost savings realized from the conduct of such activities

will be viewed as incidental to the accomplishment of the nonprofit organization's exempt purpose.

SUBTITLE D—PRIVACY

Definitions. (House bill Sec. 4400; Senate bill Sec. 13400; Conference agreement Sec. 13400)

Current Law

Under the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA; P.L. 104–191), Congress set itself a three-year deadline to enact health information privacy legislation. If, as turned out to be the case, lawmakers were unable to pass such legislation before the deadline, the HHS Secretary was instructed to promulgate regulations containing standards to protect the privacy of individually identifiable health information. The HIPAA privacy rule (45 CFR Parts 160, 164) established a set of patient rights, including the right of access to one's medical information, and placed certain limitations on when and how health plans and health care providers may use and disclose such protected health information (PHI). Generally, plans and providers may use and disclose health information for the purpose of treatment, payment, and other health care operations without the individual's authorization and with few restrictions. In certain other circumstances (e.g., disclosures to family members and friends), the rule requires plans and providers to give the individual the opportunity to object to the disclosure. The rule also permits the use and disclosure of health information without the individual's permission for various specified activities (e.g., public health oversight, law enforcement) that are not directly connected to the treatment of the individual. For all uses and disclosures of health information that are not otherwise required or permitted by the rule, plans and providers must obtain a patient's written authorization.

The HIPAA privacy rule also permits health plans and health care providers—referred to as HIPAA covered entities—to share health information with their business associates who provide a wide variety of functions for them, including legal, actuarial, accounting, data aggregation, management, administrative, accreditation, and financial services. A covered entity is permitted to disclose health information to a business associate or to allow a business associate to create or receive health information on its behalf, provided the covered entity receives satisfactory assurance in the form of a written contract that the business associate will appropriately safeguard the information.

In addition to health information privacy standards, HIPAA's Administrative Simplification provisions instructed the Secretary to issue security standards to safeguard PHI in electronic form against unauthorized access, use, and disclosure. The security rule (45 CFR Parts 160, 164) specifies a series of administrative, technical, and physical security procedures for providers and plans to use to ensure the confidentiality of electronic health information.

House Bill

The House bill defines the following key privacy and security terms, in most cases by reference to definitions in the HIPAA Administrative Simplification standards: breach, business associate, covered entity, disclose, electronic health record, electronic medical record, health care operations, health care provider, health plan, National Coordinator, payment, personal health record, protected health information, Secretary, security, state, treatment, use, and vendor of personal health records.

Senate Bill

Same provision.

Conference Agreement

The Conference report includes some technical modifications to the definitions.

One set of such modifications is included in the definition of "breach". The Conference report includes a technical change to clarify that some inadvertent disclosures can constitute a breach under the meaning of this subtitle. The conference report clarifies the definition to stipulate that disclosures (as defined in 45 CFR 164.103) constitute a breach, except as otherwise provided under the definition. The definition provides that a disclosure where a person would not reasonably be able to retain the information disclosed is not a breach. Also not a breach is any inadvertent disclosure from an individual who is otherwise authorized to access protected health information at a facility operated by a covered entity or business associate to another similarly situated individual at same facility provided that any such information received as a result of such disclosure is not further acquired, accessed, used, or disclosed without authorization by any person.

Another set of such modifications pertains to the definition of Personal Health Records. Specifically, the report clarifies that Personal Health Records are "managed, shared, and controlled by or primarily for the individual." This technical change clarifies that PHRs include the kinds of records managed by or for individuals, but does not include the kinds of records managed by or primarily for commercial enterprises, such as life insurance companies that maintain such records for their own business purposes. By extension, a life insurance company would not be considered a PHR vendor under this subtitle. A second clarification in the definition of PHR is the use of the term "PHR individual identifiable health information" (as defined in section 13407(f)(2)). In the House and Senate bills, the term "individually identifiable health information" was used. Use of that term would have required that, to be considered a PHR, an electronic record would have to include information that was "created or received by a health care provider, health plan, employer, or health care clearinghouse." However, there is increasing use of electronic records that contain personal health information that has not been created or received by a health care provider, health plan, employer, or health care clearinghouse. Use of the term "individually identifiable health information" would have thus improperly narrowed the scope of the term Personal Health Record under this subtitle. Thus, the conference report in-

cluded the broader term, PHR individual identifiable health information, so that the scope of the term Personal Health Record would properly include electronic records of personal health information, regardless of whether they have been "created or received by a health care provider, health plan, employer, or health care clearinghouse."

PART I—IMPROVED PRIVACY PROVISIONS AND SECURITY PROVISIONS

Application of Security Provisions and Penalties to Business Associates of Covered Entities; Annual Guidance on Security Provisions. (House bill Sec. 4401; Senate bill Sec. 13401; Conference agreement Sec. 13401)

Current Law

The Security Rule promulgated pursuant to the Health Insurance Portability and Accountability Act (HIPAA) include three sets of safeguards: administrative, physical, and technical, required of covered entities (providers, health plans and healthcare clearinghouses). Administrative safeguards include such functions as assigning or delegating security responsibilities to employees, as well as security training requirements. Physical safeguards are intended to protect electronic systems and data from threats, environmental hazards, and unauthorized access. Technical safeguards are primarily IT functions used to protect and control access to data.

HIPAA permits business associates (those who perform business functions for covered entities) to create, receive, maintain or transmit electronic health information on behalf of that covered entity, provided the covered entity receives satisfactory assurance in the form of a written contract that the business associate will implement administrative, technical, and physical safeguards that reasonably and appropriately protect the information.

Violations cannot be enforced directly against business associates. Although providers and health plans are not liable for, or required to monitor, the actions of their business associates, if it finds out about a material breach or violation of the contract by a business associate, it must take reasonable steps to remedy the situation, and, if unsuccessful, terminate the contract. If termination is not feasible, the covered entity must notify HHS.

House Bill

The House bill would apply the HIPAA security standards and the civil and criminal penalties for violating those standards to business associates in the same manner as they apply to the providers and health plans for whom they are working. It also would require the Secretary, in consultation with stakeholders, to issue annual guidance on the most effective and appropriate technical safeguards, including the technologies that render information unusable, unreadable, or indecipherable recommended by the HIT Policy Committee, for protecting electronic health information.

Senate Bill

Same provision, but without any reference to recommended safeguard technologies standards.

Conference Agreement

The conference agreement includes language contained in the House bill.

Notification in the Case of Breach. (House bill Sec. 4402; Senate bill Sec. 13402; Conference agreement Sec. 13402)

Current Law

The Privacy and Security Rules promulgated pursuant to HIPAA does not require covered entities, providers, health plans or healthcare clearinghouses, to notify HHS or individuals of a breach of the privacy, security, or integrity of their protected health information.

House Bill

In the event of a breach of unsecured PHI that is discovered by a covered entity, the House bill would require the covered entity to notify each individual whose information has been, or is reasonably believed to have been, accessed, acquired, or disclosed as a result of such breach. Exceptions to the breach notification requirement are for unintentional acquisition, access, use or disclosure of protected health information. For a breach of unsecured PHI under the control of a business associate, the business associate upon discovery of the breach would be required to notify the covered entity. Notice of the breach would have to be provided to the Secretary and prominent media outlets serving a particular area if more than 500 individuals in that area were impacted. If the breach impacted fewer than 500 individuals, the covered entity involved would have to maintain a log of such breaches and annually submit it to the Secretary.

The House bill would define unsecured PHI as information that is not secured through the use of a technology or methodology identified by the Secretary as rendering the information unusable, unreadable, and undecipherable to unauthorized individuals.

The House bill would require the Secretary each year to report to appropriate committees in Congress on the number and type of breaches, actions taken in response, and recommendations made by the National Coordinator on how to reduce the number of breaches. Within 180 days of enactment, the Secretary would be required to issue interim final regulations to implement this section. The provisions in the section would apply to breaches discovered at least 30 days after the regulations were published.

Senate Bill

Same provision, but without any reference to recommended encryption standards in issuing annual guidance on securing PHI.

Conference Agreement

Similar provision to the House bill with one difference; notifications in cases of unintentional disclosures would be required unless such disclosure is to an individual authorized to access health information at the same facility.

Education on Health Information Privacy. (House bill Sec. 4403; Senate bill Sec. 13403; Conference agreement Sec. 13403)

Current Law

The Privacy Rule promulgated pursuant to HIPAA requires each covered entity to designate a privacy official for the development and implementation of its policies and procedures.

House Bill

Within six months of enactment, the House bill would require the Secretary to designate a privacy advisor in each HHS regional office to offer education and guidance to covered entities and business associates on their federal health information privacy and security rights and responsibilities. Within 12 months of enactment, OCR would be required to develop and maintain a national education program to educate the public about their privacy rights and the potential uses of their PHI.

Senate Bill

Same provision.

Conference Agreement

Same provision.

Application of Privacy Provisions and Penalties to Business Associates of Covered Entities. (House bill Sec. 4404; Senate bill Sec. 13404; Conference agreement Sec. 13404)

Current Law

The Privacy Rule promulgated pursuant to HIPAA permits a covered entity to disclose health information to a business associate or to allow a business associate to create or receive health information on its behalf, provided the covered entity receives satisfactory assurance in the form of a written contract that the business associate will appropriately safeguard the information.

Violations cannot be enforced directly against business associates. Although covered entities are not liable for, or required to monitor, the actions of their business associates, if it finds out about a material breach or violation of the contract by a business associate, it must take reasonable steps to remedy the situation, and, if unsuccessful, terminate the contract. If termination is not feasible, the covered entity must notify HHS.

House Bill

The House bill would apply the HIPAA Privacy Rule, the additional privacy requirements, and the civil and criminal penalties for violating those standards to business associates in the same manner as they apply to the providers and health plans for whom they are working.

Senate Bill

Same provision.

Conference Agreement

Same provision.

Restrictions on Certain Disclosures and Sales of Health Information; Accounting of Certain Protected Health Information Disclosures; Access to Certain Information in Electronic Format. (House bill Sec. 4405; Senate bill Sec. 13405; Conference agreement Sec. 13405)

Current Law

The privacy rule established several individual privacy rights. First, it established a new federal legal right for individuals to see and obtain a copy of their own PHI in the form or format requested by the individual, if it is readily producible in such form or format. If not, then the information must be provided in hard copy or such form or format as agreed to by the covered entity and the individual. The covered entity can impose reasonable, cost-based fees for providing the information. Second, the rule gives individuals the right to amend or supplement their own PHI. The covered entity must act on an individual's request for amendment within 60 days of receiving the request. That deadline may be extended up to 30 days. Third, individuals have the right to request that a covered entity restrict the use and disclosure of their PHI for the purposes of treatment, payment, or health care operations. However, the covered entity is not required to agree to such a restriction unless it has entered into an agreement to restrict, in which case it must abide by the agreement. Finally, individuals have the right to an accounting of disclosures of their PHI by a covered entity during the previous six years, with certain exceptions. For example, a covered entity is not required to provide an accounting of disclosures that have been made to carry out treatment, payment, and health care operations.

The privacy rule incorporates a minimum necessary standard. Whenever a covered entity uses or discloses PHI or requests such information from another covered entity, it must make reasonable efforts to limit the information to the minimum necessary to accomplish the intended purpose of the use or disclosure. There are a number of circumstances in which the minimum necessary standard does not apply; for example, disclosures to or requests by a health care provider for treatment purposes. The rule also permits the disclosure of a "limited data set" for certain specified purposes (e.g., research), pursuant to a data use agreement with the recipient. A limited data set, while not meeting the rule's definition of de-identified information (see below), has most direct identifiers removed and is considered by HHS to pose a low privacy risk.

House Bill

The House bill would give individuals the right to receive an electronic copy of their PHI, if it is maintained in an electronic health record. Any associated fee charged by the covered entity could only cover its labor costs for providing the electronic copy. The bill would require a health care provider to honor a patient's request that the PHI regarding a specific health care item or service not be disclosed to a health plan for purposes of payment or

health care operations, if the patient paid out-of-pocket in full for that item or service. The House bill also would give an individual the right to receive an accounting of PHI disclosures made by covered entities or their business associates for treatment, payment, and health care operations during the previous three years, if the disclosures were through an electronic health record. Within 18 months of adopting standards on accounting of disclosures (as required under PHSA Section 3002, as added by Section 4101 of this Act), the Secretary would be required to issue regulations on what information shall be collected about each disclosure. For current users of electronic health records, the accounting requirements would apply to disclosures made on or after January 1, 2014. For covered entities yet to acquire electronic health records, the accounting requirements would apply to disclosures on or after January 1, 2011, or the date of electronic health record acquisition, whichever is later.

The House bill would require covered entities to limit the use, disclosure, or request of PHI, to the extent practicable, to a limited data set or, if needed, to the minimum necessary to accomplish the intended purpose of such use, disclosure, or request. This requirement would sunset at such a time as the Secretary issues guidance on what constitutes minimum necessary. The Secretary would have 18 months to issue such guidance. In addition, the bill would clarify that the entity disclosing the PHI (as opposed to the requester) makes the minimum necessary determination. The HIPAA privacy rule's exceptions to the minimum necessary standard would continue to apply.

Within 18 months of enactment, the Secretary would be required to issue regulations to eliminate from the definition of health care operations those activities that can reasonably and efficiently be conducted with de-identified information or that should require authorization for the use or disclosure of PHI.

The House bill would prohibit the sale of PHI by a covered entity or business associate without patient authorization except in certain specified circumstances, such as to recoup the costs of preparing and transmitting data for public health or research activities (as defined in the HIPAA privacy rule), or to provide an individual with a copy of his or her PHI. Within 18 months of enactment, the Secretary would be required to issue regulations governing the sale of PHI.

Finally, the House bill specifies that none of its provisions would constitute a waiver of any health privacy privilege otherwise applicable to an individual.

Senate Bill

The Senate bill includes all the same provisions as the House bill, other than the final provision protecting an individual's health privacy privileges, but with the following additional language: (1) in developing guidance on what constitutes minimum necessary, the Secretary would be required to take into consideration the information necessary to improve patient outcomes and to manage chronic disease; (2) in developing regulations on the accounting of disclosures through an EHR, the Secretary would be required to take into account an individual's interest in learning when the PHI

was disclosed and to whom, as well as the cost of accounting for such disclosures; (3) regarding the definition of health care operations, the Secretary would be required to review and evaluate the definition and, to the extent necessary, eliminate those activities that could reasonably and efficiently be conducted using de-identified information or that should require authorization; (4) the Secretary could not require the use of de-identified information or require authorization for the use and disclosure of information for activities within a covered entity that are described in paragraph one of the definition of health care operations; and (6) in developing regulation governing the sale of PHI, the Secretary would be required to evaluate the impact of charging an amount to cover the costs of preparing and transmitting data for public health or research activities.

Conference Agreement

The conference agreement maintains most of these provisions but makes small modifications. The conference agreement takes the Senate changes on issuing guidance on what constitutes minimum necessary and what factors have to be considered. The conference agreement requires an accounting of disclosures but has a longer timeframe for allowing providers to come into compliance with this requirement than the House bill and shorter than the Senate bill. The requirement to account for disclosures under this section is prospective. For example, a covered entity that acquires an electronic health record as of June 30, 2012 would be required to account for disclosures made through that electronic health record as of June 30, 2012 and forward. The covered entity would be required to retain that accounting for a period of three years. Thus, if an individual requested an accounting for disclosures on June 30, 2015, the covered entity would be required to provide that accounting for the period of June 30, 2012 to June 30, 2015, with respect to such individual, consistent with the requirements of Section 13405. However, if an individual requested an accounting of disclosures on June 30, 2013, the covered entity would be required to provide such accounting only for the period of June 30, 2012 to June 30, 2013.

Section 13405(c)(4) of the Senate-passed bill included a provision allowing the imposition of a reasonable fee for the accounting for disclosures required under this Section. However, this statutory provision was duplicative of an existing provision under 45 CFR 164.528(c)(2) which already allows for the imposition of a reasonable fee for providing such accounting, so the provision from the Senate passed bill was struck.

The conference agreement strikes the provision requiring the Secretary to review the definition of health care operations. The conference agreement permits the sale of protected health information in cases of research but only limited to costs of preparing and transmitting data. It also permits the sale of protected health information for public health activities the Secretary is required to study and determine whether costs should be limited. The conference agreement allows an individual to request their health information in an electronic format if it is maintained in such a format for a reasonable cost based fee as it was in the House and Sen-

ate bills. The conference agreement permits the individual to designate that the information be sent to another entity or person. Finally, the conference agreement specifies that none of its provisions would constitute a waiver of any health privacy privilege otherwise applicable to an individual, but moves this provision to section 13421 Relationship to Other Laws.

Conditions of Certain Contacts as Part of Health Care Operations. (House bill Sec. 4406; Senate bill Sec. 13406; Conference agreement Sec. 13406)

Current Law

Generally, covered entities may use and disclose health information for the purpose of treatment, payment, and other health care operations without the individual's authorization and with few restrictions. Health care operations are broadly defined to include quality assessment and improvement activities, case management and care coordination, evaluation of health care professionals, underwriting, legal services, business planning, customer services, grievance resolution, and fundraising.

Under the Privacy Rule promulgated pursuant to HIPAA, a covered entity may not disclose health information to a third party (e.g., pharmaceutical company), in exchange for direct or indirect remuneration, for the marketing activities of the third party without first obtaining a patient's authorization. Similarly, a covered entity may not use or disclose health information for its own marketing activities without authorization. Marketing is defined as a communication about a product or service that encourages the recipient to purchase or use the product or service. However, communications made by a covered entity (or its business associate) to encourage a patient to purchase or use a health care-related product or service are excluded from this definition and, therefore, do not require the patient's authorization, even if the covered entity is paid by a third party to engage in such activities.

House Bill

The House bill would clarify that a marketing communication by a covered entity or business associate about a product or service that encourages the recipient to purchase or use the product or service may not be considered a health care operation, unless the communication relates to a health care-related product or service. Further, it would prohibit a covered entity or business associate from receiving direct or indirect payment for marketing a health care-related product or service without first obtaining the recipient's authorization. Business associates would be permitted to receive payment from a covered entity for making any such communication on behalf of the covered entity that is consistent with the contract. Fundraising using a patient's protected health information would not be permitted without a patient's authorization.

Senate Bill

Like the House bill, the Senate bill would clarify that a marketing communication by a covered entity or business associate about a product or service that encourages the recipient to pur-

chase or use the product or service may not be considered a health care operation, unless the communication relates to a health care-related product or service. Further, the Senate bill states that a communication about a health care-related product or service would be permitted as a healthcare operation including where the covered entity receives payment for making the communications where (1) the communication only describes a health care item or service previously prescribed for or administered to the recipient, or (2) the covered entity or business associate obtains authorization. Finally, the Senate bill does not include the House provision on fundraising.

Conference Agreement

The conference agreement retains the general rules about marketing in both the House and Senate bills. The conference report makes an exception and allows providers to be paid reasonable fees as determined by the Secretary to make a communication to their patients about a drug or biologic that the patient is currently prescribed. The conference agreement continues to permit fundraising activities by the provider using a patient's protected health information so long as any written fundraising provide an opportunity to opt out of future fundraising communications. If the recipient chooses to opt out of future fundraising communications, that choice is treated as a revocation of authorization under 45 CFR 164.508. All the protections that apply under 45 CFR 164.508 to an individual who has revoked an authorization would thus apply to a recipient of communications who chooses to opt out of receiving future fundraising communications, including the right not to be denied treatment as a result of making that choice.

Temporary Breach Notification Requirement for Vendors of Personal Health Records and Other Non-HIPAA Covered Entities. (House bill Sec. 4407; Senate bill Sec. 13407; Conference agreement Sec. 13407)

Current Law

There is no Federal law that requires entities to notify individual when their health information has been breached.

House Bill

The House bill would require personal health record (PHR) vendors and entities offering products and services through a PHR vendor's website, upon discovery of a breach of security of unsecured PHR health information, to notify the individuals impacted and the FTC. Further, third party service providers that provide services to PHR vendors and to other entities offering products and services through a PHR vendor's website and, as a result, that handle unsecured PHR health information would, following the discovery of a breach of security of such information, be required to notify the vendor or other entity. The requirements in Section 4402 for the content and timeliness of notifications also would apply to this section. Unsecured PHR health information means PHR health information that is not protected through the use of a technology

or methodology specified by the Secretary in guidance issued pursuant to Section 4402.

The FTC would be required to notify HHS of any breach notices it received and would given enforcement authority regarding such breaches of unsecured PHR health information. Within 180 days, the Secretary would be required to issue interim final regulations to implement this section. The provisions in the section would apply to breaches discovered no sooner than 30 days after the regulations are published. The provisions in this section would no longer apply to breaches occurring after HHS or FTC had adopted new privacy and security standards for non-HIPAA covered entities, including requirements relating to breach notification.

Senate Bill

The Senate bill includes the same provisions.

Conference Agreement

The conference agreement is the same as the House and Senate language with minor clarifications. The conference agreement requires the FTC issue regulations as opposed to the Secretary of HHS. The conference agreement applies the breach notification provision to entities that access and receive health information to and from a personal health record.

Business Associate Contracts Required for Certain Entities. (House bill Sec. 4408; Senate bill Sec. 13408; Conference agreement Sec. 13408)

Current Law

A covered entity (a provider, health plan, or clearinghouse) is permitted to disclose health information to a business associate or to allow a business associate to create or receive health information on its behalf, provided the covered entity receives satisfactory assurance in the form of a written contract that the business associate will appropriately safeguard the information. Current law does not explicitly include or exclude regional health information exchanges, regional health information organizations, and others offering personal health records for a covered entity from regulation under the Privacy Rule promulgated under HIPAA.

House Bill

The House bill requires organizations that contract with covered entities for the purpose of exchanging electronic health information, for example, Health Information Exchanges, Regional Health Information Organizations (RHIOs), and PHR vendors that offer their products through or for a provider or health plan, to have business associate contracts with those providers or health plans.

Senate Bill

Same provision.

Conference Agreement

Same provision.

Clarification of Application of Wrongful Disclosures Criminal Penalties. (House bill Sec. 4409; Senate bill Sec. 13409; Conference agreement Sec. 13409)

Current Law

The HIPAA criminal penalties include fines of up to $250,000 and up to 10 years in prison for disclosing or obtaining health information with the intent to sell, transfer or use it for commercial advantage, personal gain, or malicious harm. In July 2005, the Justice Department Office of Legal Counsel (OLC) addressed which persons may be prosecuted under HIPAA and concluded that only a covered entity could be criminally liable.

House Bill

The House bill clarifies that criminal penalties for wrongful disclosure of PHI apply to individuals who without authorization obtain or disclose such information maintained by a covered entity, whether they are employees or not.

Senate Bill

Same provision.

Conference Agreement

Same provision.

Improved Enforcement. (House bill Sec. 4410; Senate bill Sec. 13410; Conference agreement Sec. 13410)

Current Law

HIPAA authorized the Secretary to impose civil monetary penalties on any person failing to comply with the privacy and security standards. The maximum civil fine is $100 per violation and up to $25,000 for all violations of an identical requirement or prohibition during a calendar year. Civil monetary penalties may not be imposed if (1) the violation is a criminal offense under HIPAA's criminal penalty provisions (see below); (2) the person did not have actual or constructive knowledge of the violation; or (3) the failure to comply was due to reasonable cause and not to willful neglect, and the failure to comply was corrected during a 30-day period beginning on the first date the person liable for the penalty knew, or by exercising reasonable diligence would have known, that the failure to comply occurred. For certain wrongful disclosures of PHI, OCR may refer the case to the Department of Justice for criminal prosecution. HIPAA's criminal penalties include fines of up to $250,000 and up to 10 years in prison for disclosing or obtaining health information with the intent to sell, transfer or use it for commercial advantage, personal gain, or malicious harm.

House Bill

The House bill would amend HIPAA to permit OCR to pursue an investigation and the imposition of civil monetary penalties against any individual for an alleged criminal violation of the Privacy and Security Rule of HIPAA if the Justice Department had not prosecuted the individual. In addition, the bill would amend

HIPAA to require a formal investigation of complaints and the imposition of civil monetary penalties for violations due to willful neglect. The Secretary would be required to issue regulations within 18 months to implement those amendments. The bill also would require that any civil monetary penalties collected be transferred to OCR to be used for enforcing the HIPAA privacy and security standards. Within 18 months of enactment, GAO would be required to submit recommendations for giving a percentage of any civil monetary penalties collected to the individuals harmed. Based on those recommendations, the Secretary, within three years of enactment, would be required to establish by regulation a methodology to distribute a percentage of any collected penalties to harmed individuals.

The House bill would increase and tier the penalties for violations of HIPAA. It would preserve the current requirement that a civil fine not be imposed if the violation was due to reasonable cause and was corrected within 30 days.

Finally, the House bill would authorize State Attorneys General to bring a civil action in Federal district court against individuals who violate the HIPAA privacy and security standards, in order to enjoin further such violation and seek damages of up to $100 per violation, capped at $25,000 for all violations of an identical requirement or prohibition in any calendar year. State action against a person would not be permitted if a federal civil action against that same individual was pending. Nothing in this section would prevent OCR from continuing to use corrective action without a penalty in cases where the person did not know, and by exercising reasonable diligence would not have known, about the violation.

Senate Bill

Same provision.

Conference Agreement

Same provision.

Audits. (House bill Sec. 4411; Senate bill Sec. 13411; Conference agreement Sec. 13411)

Current Law

The Secretary is authorized to conduct compliance reviews to determine whether covered entities are complying with HIPAA standards.

House Bill

The House bill would require the Secretary to perform periodic audits to ensure compliance with the Privacy and Security Rule promulgated pursuant to HIPAA and the requirements of this subtitle.

Senate Bill

Same provision.

Conference Agreement

Same provision.

Special Rule for Information to Reduce Medication Errors and Improve Patient Safety. (House bill Sec. 4412)

Current Law

Under the privacy rule, communications made by a covered entity (or its business associate) to encourage a patient to purchase or use a health care-related product or service are excluded from the definition of marketing and, therefore, do not require the patient's authorization, even if the covered entity is paid by a third party to engage in such activities.

House Bill

The House bill states that none of the privacy provisions in the bill would prevent a pharmacist from communicating with patients to reduce medication errors and improve patient safety provided there is no remuneration other than for treatment of the individual and payment for such treatment. The Secretary would be permitted by regulation to allow pharmacists to receive reasonable, cost-based payment for such communications, if it is determined that this would improve patient care and protect PHI.

Senate Bill

The Senate bill does not include this same provision, but has corresponding limitation in section 13406 of the Senate bill.

Conference Agreement

The conference agreement does not include this same provision, but has corresponding limitations in section 13406.

PART II—RELATIONSHIP TO OTHER LAWS; REGULATORY REFERENCES; EFFECTIVE DATE; REPORTS

Relationship to Other Laws. (House bill Sec. 4421; Senate bill Sec. 13421; Conference agreement Sec. 13421)

Current Law

Under Section 1178 of the Social Security Act, as amended by HIPAA, the security standards preempt any contrary provision of state law, with certain specified exceptions (e.g., public health reporting). Pursuant to HIPAA Section 264, however, the privacy rule does not preempt a contrary provision of state law that is more protective of patient medical privacy. Psychotherapy notes (i.e., notes recorded by a mental health professional during counseling) are afforded special protection under the privacy rule. Almost all uses and disclosures of such information require patient authorization.

House Bill

The House bill would apply the preemption provisions in SSA Section 1178 to the requirements of this subtitle and preserve the HIPAA privacy and security standards to the extent that they are consistent with the subtitle. The Secretary would be required by

rulemaking to amend such standards as necessary to make them consistent with this subtitle.

Senate Bill

The Senate bill includes the same provisions, with the additional requirement that the Secretary revise the definition of psychotherapy notes to include test data that are part of a mental health evaluation.

Conference Agreement

The conference agreement takes language from the House bill. The provision related to psychotherapy notes is moved in the conference report.

Regulatory References. (House bill Sec. 4422; Senate bill Sec. 13422; Conference agreement Sec. 13422)

Current Law

No provision.

House Bill

The House bill states that each reference in this subtitle to a federal regulation refers to the most recent version of the regulation.

Senate Bill

Same provision.

Conference Agreement

Same provision.

Effective Date. (House bill Sec. 4423; Senate bill Sec. 13423; Conference agreement Sec. 13423)

Current Law

No provision.

House Bill

Except as otherwise specifically provided, the provisions in this subtitle would become effective 12 months after enactment.

Senate Bill

Same provision.

Conference Agreement

Same provision.

Studies, Reports, Guidance. (House bill Sec. 4424; Senate bill Sec. 13424; Conference agreement Sec. 13424)

Current Law

Any person who believes a covered entity is not complying with the privacy rule may file a complaint with HHS. The rule authorizes the Secretary to conduct investigations to determine whether

covered entities are in compliance. HIPAA does not require the Secretary to issue a compliance report.

The HIPAA Administrative Simplification standards apply to individual and group health plans that provide or pay for medical care; health care clearinghouses (i.e., entities that facilitate and process the flow of information between health care providers and payers); and health care providers. In addition, the privacy and security standards apply to business associates with whom covered entities share health information. They do not apply directly to other entities that collect and maintain health information, including Health Information Exchanges, RHIOs, and PHR vendors, unless they are acting as providers or plans.

The HIPAA standards are intended to protect individually identifiable health information; de-identified information is not subject to the regulations. Under the privacy rule, health information is de-identified if 18 specific identifiers (e.g., name, social security number, address) have been removed, or if a qualified statistician, using accepted principles, determines that the risk is very small that the individual could be identified.

Generally, plans and providers may use and disclose health information for the purpose of treatment, payment, and other health care operations without the individual's authorization and with few restrictions. Covered entities may, but are not required, to obtain an individual's general consent to use or disclose PHI for treatment, payment, or health care operations.

House Bill

The Secretary would be required annually to submit to specified Congressional Committees and post online a compliance report containing information on (1) the number and nature of complaints of alleged violations and how they were resolved, including the imposition of civil fines, (2) the number of covered entities receiving technical assistance in order to achieve compliance, as well as the types of assistance provided, (3) the number of audits performed and a summary of their findings, and (4) the Secretary's plan for the following year for improving compliance with and enforcement of the HIPAA standards and the provisions of this subtitle.

The House bill would require the Secretary, within one year and in consultation with the Federal Trade Commission (FTC), to study the application of health information privacy and security requirements (including breach notification) to non-HIPAA covered entities and report the findings to specified House (Ways and Means, Energy and Commerce) and Senate (Finance, HELP) Committees. The report should include an examination of PHR vendors and other entities that offer products and services through the websites of PHR vendors and covered entities, provide a determination of which federal agency is best equipped to enforce new requirements for non-HIPAA covered entities, and include a time frame for implementing regulations.

The House bill would require the Secretary, within one year of enactment and in consultation with stakeholders, to issue guidance on how best to implement the HIPAA privacy rule's requirements for de-identifying PHI.

The House bill would require GAO, within one year, to report to the House Ways and Means and Energy and Commerce Committees and the Senate Finance Committee on best practices related to the disclosure of PHI among health care providers for the purpose of treatment. The report must include an examination of practices implemented by states and other entities, such as health information exchanges, and how those practices improve the quality of care, as well as an examination of the use of electronic informed consent for disclosing PHI for treatment, payment, and health care operations.

Senate Bill

The Senate bill includes the same provisions, with the additional requirement that GAO, within one year, report to Congress and the Secretary on the impact of the bill's privacy provisions on health care costs.

Conference Agreement

The conference agreement maintains most all study language and adds a study to require the Secretary to review the definition of "psychotherapy notes" with regard to including test data that are part of a mental health evaluation. The Secretary may revise the definition by regulation based on the recommendations of the study. In addition, the conference agreement broadened the study added by the Senate on the impact of the bill's privacy provisions on health care costs. It requires the GAO to study all impact of all the provisions of the HITECH Act on health care costs, adoption of electronic health records by providers, and reductions in medical errors and other quality improvements.

TITLE XIV—STATE FISCAL STABILIZATION FUND

DEPARTMENT OF EDUCATION

STATE FISCAL STABILIZATION FUND

The conference agreement provides $53,600,000,000 for a State Fiscal Stabilization Fund, instead of $79,000,000,000 as provided by the House and $39,000,000,000 as provided by the Senate. The conference agreement makes the entire amount available upon enactment of the bill as proposed by the Senate. House bill designated half of these funds to become available on July 1, 2009, and half of the funds to become available on July 1, 2010. The economic recovery bill includes these funds in order to provide fiscal relief to the States to prevent tax increases and cutbacks in critical education and other services.

GENERAL PROVISIONS—THIS TITLE

ALLOCATIONS

The conference agreement provides that up to one-half of 1 percent of the State Fiscal Stabilization Fund is allocated to the outlying areas, based on their respective needs; an additional $14,000,000 is allocated to the Department of Education for administration, oversight, and evaluation; and $5,000,000,000 is reserved

for the Secretary of Education for State Incentive Grants and an Innovation Fund. The agreement provides that any remaining funds shall be allocated to States on the following basis: 61 percent based on population ages 5 through 24 and 39 percent based on total population. The House and Senate included similar provisions, except that the House bill provided $15,000,000,000 and the Senate bill provided $7,500,000,000 for State Incentive Grants and an Innovation Fund.

STATE USES OF FUNDS

The conference agreement requires Governors to use 81.8 percent of their State allocations to support elementary, secondary, and higher education. Funding received must first be used to restore State aid to school districts under the State's primary elementary and secondary education funding formulae to the greater of the fiscal year 2008 or 2009 level in each of fiscal years 2009, 2010, and 2011, and, where applicable, to allow existing formula increases for elementary and secondary education for fiscal years 2010 and 2011 to be implemented; and to restore State support to public institutions of higher education to the greater of the fiscal year 2008 or fiscal year 2009 level, to the extent feasible given available Stabilization funds. Any remaining education funds must be allocated to school districts based on the Federal Title I formula. The conference agreement also provides that Governors shall use 18.2 percent of State allocations for public safety and other government services, which may include education services. These funds may also be used for elementary, secondary, and higher education modernization, renovation and repair activities that are consistent with State laws. The agreement also provides that Governors shall consider for modernization funding any institution of higher education in the State that meets certain criteria.

The House and Senate bills contained similar provisions, except that the House bill did not provide for Stabilization funds to be used for existing formula increases for elementary and secondary education for fiscal years 2010 and 2011, while the Senate bill did not provide Stabilization funds for a Governor's discretionary fund for public safety and other government services. Neither House nor Senate bill provided for the use of these funds for facility modernization activities.

USES OF FUNDS BY LOCAL EDUCATIONAL AGENCIES

The conference agreement provides that school districts receiving Stabilization funds may only use the funds for activities authorized under the Elementary and Secondary Education Act (ESEA), the Individuals with Disabilities Act (IDEA), the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins), and for school modernization, renovation, and repair of public school facilities (including charter schools), which may include modernization, renovation, and repairs consistent with a recognized green building rating system. School district modernization activities must be consistent with State laws.

The House and Senate bills included similar provisions, except that neither bill permitted funds for capital projects unless authorized under ESEA, IDEA, or the Perkins Act.

USES OF FUNDS BY INSTITUTIONS OF HIGHER EDUCATION

The conference agreement provides that public institutions of higher education receiving Stabilization funds must use these funds for educational and general expenditures, and in such a way as to mitigate the need to raise tuition and fees, or for modernization, renovation, or repairs of facilities that are primarily used for instruction, research, or student housing. Use of funds for endowments and certain types of facilities such as athletic stadiums are prohibited. The House and Senate bills included similar provisions, except that neither bill permitted funds for higher education modernization, renovation, or repair projects.

STATE APPLICATIONS

The conference agreement requires that Governors shall submit applications in order to receive Stabilization funds, which shall include certain assurances, provide baseline data regarding each of the areas described in such assurances, and describe how States intend to use their allocations. Such assurances shall include that the State will: in each of fiscal years 2009, 2010, and 2011, maintain State support for elementary, secondary, and public postsecondary education at least at the levels in fiscal year 2006, and address 4 key areas: (1) achieve equity in teacher distribution, (2) establish a longitudinal data system that includes the elements described in the America COMPETES Act, (3) enhance the quality of academic assessments relating to English language learners and students with disabilities, and improve State academic content standards and student academic achievement standards, and (4) ensure compliance with corrective actions required for low-performing schools. The agreement further provides that, in order to receive an Incentive Grant, a Governor shall: submit an application that describes the State's progress in each of the assurances and how the State would use grant funding to continue making progress toward meeting the State's student academic achievement standards. The House and Senate bills contained similar provisions, except both bills included slightly difference requirements pertaining to assurances.

STATE INCENTIVE GRANTS

The conference agreement authorizes the Secretary of Education to award, in fiscal year 2010, Incentive Grants to States that have made significant progress in achieving equity in teacher distribution, establishing a longitudinal data system, and enhancing assessments for English language learners and students with disabilities. Each State receiving an Incentive Grant shall use at least 50 percent of its grant to provide school districts with subgrants based on their most recent relative Title I allocations. The House and Senate bills included similar provisions.

INNOVATION FUND

The conference agreement authorizes up to $650,000,000 for an Innovation Fund, awarded by the Secretary of Education, which shall consist of academic achievement awards to recognize school districts, or partnerships between nonprofit organizations and State educational agencies, school districts, or one or more schools that have made achievement gains. The House and Senate bills included similar provisions.

STATE REPORTS

The conference agreement requires that a State receiving Stabilization funds shall submit an annual report to the Secretary describing the uses of funds provided within the State; the distribution of funds received; the number of jobs saved or created; tax increases averted; the State's progress in reducing inequities in the distribution of highly-qualified teachers, developing a longitudinal data system, and implementing valid assessments; actions taken to limit tuition and fee increases at public institutions of higher education; and the extent to which public institutions of higher education maintained, increased, or decreased enrollments of in-State students. The House and Senate bills included similar provisions.

EVALUATION

The conference agreement requires the Government Accountability Office to conduct evaluations of the programs under this title, which shall include, but not be limited to, the impact of the funding provided on the progress made toward closing achievement gaps. The House and Senate bills included identical provisions.

SECRETARY'S REPORT TO CONGRESS

The conference agreement provides that the Secretary of Education shall submit a report to certain committees of the House of Representatives and the Senate that evaluates the information provided in the State reports submitted under section 14008. The House and Senate bills included identical provisions.

PROHIBITION ON PROVISION OF CERTAIN ASSISTANCE

The conference agreement provides that no recipient of funds under this title shall use such funds to provide financial assistance to students to attend private elementary or secondary schools, except provided in section 14003. The House and Senate bills included similar provisions, although the House bill did not include such exception.

FISCAL RELIEF

The conference agreement provides that the Secretary of Education may waive or modify any requirement of this title relating to maintenance of effort, for States and school districts that have experienced a precipitous decline in financial resources. In granting such a waiver, the Secretary shall determine that the State or school district will maintain the proportionate share of total reve-

nues for elementary and secondary education as in the preceding fiscal year. The House bill did not include a similar provision. The Senate bill included different provisions to waive maintenance of effort and the use of Federal funds to supplement, not supplant, non-Federal funds.

DEFINITIONS

The conference agreement defines certain terms used in this title. The House and Senate bills included nearly identical provisions.

TITLE XV—ACCOUNTABILITY AND TRANSPARENCY

Sec. 1501. Definitions.—The conference agreement includes a section providing various definitions for purposes of this title, as proposed by the Senate.

SUBTITLE A—TRANSPARENCY AND OVERSIGHT REQUIREMENTS

Sec. 1511. Certifications.—With respect to funds under this Act made available to state or local governments for infrastructure investments, the conference agreement requires a certification from the governor, mayor or other chief executive that the project in question has received the full review and vetting required by law and is an appropriate use of taxpayer dollars. This is a modification of provisions contained in both the House and Senate versions of this legislation.

Sec. 1512. Reports on Use of Funds.—The conference agreement requires reporting of various matters by governments and organizations receiving funds from the Federal government under this Act, including amounts received, projects or activities for which the funds are to be used, estimated numbers of jobs created or retained, and information regarding subcontracts and subgrants. This is a modification of provisions in the House and Senate bills.

Sec. 1513. Reports of the Council of Economic Advisors.—The conference report requires quarterly reports from the Council of Economic Advisors regarding the estimated impact of this Act on employment, economic growth, and other key economic indicators. Similar provisions were proposed by the House and the Senate.

Sec. 1514. Inspector General Reviews.—The conference report includes a modified version of a House provision requiring agency inspectors general to review any concerns raised by the public about specific investments using funds made available in this Act, and to relay findings of their reviews to the head of the agency concerned. Subsection (b) of the House provision, relating to inspector general access to records, has been deleted because the matter is addressed more comprehensively in section 1515 of the conference report.

Sec. 1515. Inspector General Access to Records.—The agreement includes a modification of a House provision authorizing agency inspectors general to examine records and interview employees of contractors and grantees receiving funds under this Act. The House provision related only to contractors but applied to the Government Accountability Office (GAO) as well as inspectors gen-

eral. GAO access is addressed in a separate provision in the Legislative Branch title of this conference report.

SUBTITLE B—RECOVERY ACCOUNTABILITY AND TRANSPARENCY BOARD

Sec. 1521. Establishment of Board.—The conference agreement, like the House and Senate bills, establishes a Recovery Accountability and Transparency Board to coordinate and conduct oversight of Federal spending under this Act to prevent fraud, waste, and abuse.

Sec. 1522. Composition of Board.—The conference agreement specifies that the Board shall be chaired by an individual to be designated by the President, and shall consist of inspectors general of certain specified agencies and such others as the President may designate. This is quite similar to the Senate provision. The House version called for a somewhat smaller Board chaired by the President's Chief Performance Officer and made up of a combination of inspectors general and agency deputy secretaries.

Secs. 1523 through 1525. Board Functions, Powers and Personnel.—These sections of the conference report, which generally follow the Senate provisions, set out the functions and powers of the Board and provide various authorities related to personnel, details, and information and assistance from other Federal agencies.

Sec. 1526. Board Website.—The conference report requires the Board to establish a web site to foster greater accountability and transparency in use of funds in this Act, and specifies a number of categories of information to be posted on that website. This is a modification of language from both the House and the Senate.

Sec. 1527. Independence of Inspectors General.—Like the House and Senate bills, the conference report specifies that it is not intended to affect the independent authority of inspectors general as to whether to conduct audits or investigations of funds under this Act, but requires an inspector general (IG) which rejects a Board recommendation regarding investigations to submit a report to the Board, the agency head, and congressional committees stating the reasons for that action. The conference report adds language clarifying that the decision of an IG is to be final.

Sec. 1529. Authorization of Appropriations.—The conference report, like the Senate bill, authorizes appropriations of such sums as may be necessary for the Board. The House version did not contain an explicit authorization, but did make an appropriation. In the conference report, an appropriation for the Board is contained in the Financial Services and General Government title.

The conferees note that funding appropriated to the Board will support activities related to accountability, transparency, and oversight of spending under the Act. Funds may be transferred to support the operations of the Recovery Independent Advisory Panel established under section 1541 of the Act and for technical and administrative services and support provided by the General Services Administration. Funds may also be transferred to the Office of Management and Budget for coordinating and overseeing the implementation of the reporting requirements established under section 1526 of the Act.

Sec. 1530. Termination of the Board.—The conference report terminates the Board on September 30, 2013—one year later than proposed by the Senate. The House proposed to terminate the Board 1 year after 90 percent of funds appropriated in this Act have been spent.

SUBTITLE C—RECOVERY INDEPENDENT ADVISORY PANEL

Secs. 1541 through 1546. Independent Advisory Panel.—Like both the House and Senate bills, the conference report establishes an Independent Advisory Panel to advise the Board. The conference report is very similar to the Senate version.

SUBTITLE D—ADDITIONAL ACCOUNTABILITY AND TRANSPARENCY REQUIREMENTS

Sec. 1551. Authority To Establish Separate Funding Accounts.—The conference agreement contains new language requiring funds appropriated in this Act to be made available in separate Treasury accounts to facilitate tracking of these funds, unless a waiver is granted by the Director of the Office of Management and Budget.

Sec. 1552. Set-Aside for State and Local Government Reporting and Recordkeeping.—The conference agreement includes new language allowing agencies, after notice and comment rulemaking, to reasonably adjust limits on administrative expenditures for Federal grants to help recipients defray costs of data collection requirements under this Act.

Sec. 1553. Protecting State and Local Government and Contractor Whistleblowers.—The conference agreement includes language providing new protections against reprisals for employees of State and local governments or private contractors who disclose to Federal officials information reasonably believed to be evidence of gross mismanagement, gross waste, or violations of law related to contracts or grants using funds in this Act. This is a modification of provisions appearing in both versions of the legislation. Among other things, the conference version modifies time limits on investigations of complaints and clarifies the burden of proof required to establish violations.

Sec. 1554. Special Contracting Provisions.—The conference report includes a modification of a provision proposed by the House specifying that, to the maximum extent feasible, contracts using funds in this Act shall be awarded as fixed-price contracts and through competitive procedures.

Protection for Federal Whistleblowers.—The conference report does not include language proposed by the House relating to protections for Federal employee whistleblowers.

TITLE—XVI GENERAL PROVISIONS—THIS ACT

Section 1601 provides that each amount appropriated or made available in this Act is in addition to amounts otherwise appropriated for the fiscal year involved. Further, enactment of this Act shall have no effect on the availability of amounts under the continuing resolution for fiscal year 2009.

Section 1602 provides for quick-start activities. For infrastructure investment funds, recipients of funds provided in this Act should give preference to activities that can be started and completed expeditiously, with a goal of using at least 50 percent for activities that can be initiated within 120 days of enactment. Also recipients should use grant funds in a manner that maximizes job creation and economic benefit.

Section 1603 provides that funds appropriated in this Act shall be available until September 30, 2010, unless expressly provided otherwise in this Act.

Section 1604 prohibits the use of funds for particular activities.

Section 1605 provides for the use of American iron, steel and manufactured goods, except in certain instances. Section 1605(d) is not intended to repeal by implication the President's authority under Title III of the Trade Agreements Act of 1979. The conferees anticipate that the Administration will rely on the authority under 19 U.S.C. 2511(b) to the extent necessary to comply with U.S. obligations under the WTO Agreement on Government Procurement and under U.S. free trade agreements and so that section 1605 will not apply to least developed countries to the same extent that it does not apply to the parties to those international agreements. The conferees also note that waiver authority under section 2511(b)(2) has not been used.

Section 1606 provides for specific wage rate requirements. All laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal government pursuant to this Act shall be paid not less than the wages prevailing in the locality for similar projects as determined by the Secretary of Labor in accordance with the Davis-Bacon Act.

Section 1607 provides additional funding distribution and assurance of the appropriate use of funds. Not later than 45 days after the enactment of this Act, the governor of each state shall certify that the state will request and use funds provided by this Act to the state and its agencies. If funds made available to a state in any division of this Act are not accepted for use by its governor, then acceptance by the state legislature, by adoption of a concurrent resolution, shall be sufficient to provide funding to the state. After adoption of a concurrent resolution, funding to the State will be for distribution to local governments, councils of governments, public entities, and public-private entities within the State, either by formula or at the State's discretion.

Section 1608 amends section 107(b) of the Emergency Economic Stabilization Act of 2008 (relating to contracting procedures) to include individuals with disabilities and businesses owned by such individuals.

Section 1609 makes various findings regarding the National Environmental Policy Act (NEPA). In addition, this section provides that adequate resources within this Act must be devoted to ensuring that NEPA reviews are completed expeditiously. The President shall report quarterly to the appropriate congressional committees regarding NEPA requirements and documentation for projects funded in this Act.

Section 1610 prohibits the use of funds for contracts and grants not awarded in accordance with the Federal Property and Administration Services Act, or chapter 137 of title 10, United States Code and Federal Acquisition Regulation, or as otherwise authorized by statute. The provision is not intended to override other specific statutory authorizations for procurements, including the Small Business Act and the Javits-Wagner-O'Day Act.

Section 1611 provides that it shall be unlawful for any recipient of funding of Title I of the Emergency Economic Stabilization Act of 2008 or section 13 of the Federal Reserve Act to hire any nonimmigrant described in section 101(a)(15)(h)(i)(b) of the Immigration and Nationality Act unless the recipient is in compliance with the requirements for an H–1B dependent employer as defined in that Act. This requirement is effective for a two-year period beginning on the date of enactment of this Act.

Section 1612 provides limited transfer authority. The conferees recognize the challenges that the Administration will face in determining how best to respond to the current economic crisis. Accordingly, the Senate and House passed bills each included permissive authority to reprogram or transfer funds within certain agencies and programs to mitigate these concerns.

It is clearly understood that as the Administration attempts to find the best means to respond to the crisis, the priority and utility of different programs could shift. As such, the conferees have agreed to provide authority during current fiscal year for Agency heads to transfer up to 1% of certain funds within their jurisdiction from the amounts provided in this Act. The conferees do not intend for this 1% transfer provision to either nullify or expand upon the transfer authorities provided for selected agencies and programs elsewhere in this Act. The Committees on Appropriations intend to carefully monitor the use of this authority and expect Agency heads to exercise its use in accordance with established reprogramming practices and only after consulting with the Committees on Appropriations before pursuing any transfer.

The conference agreement does not include the following provisions proposed by the House: requirements for timely award of grants; use it or lose it requirements for grantees; set-asides for management and oversight; as these issues have been addressed, in certain circumstances, within the appropriate appropriating paragraphs. In addition, the conference agreement does not include the following provisions proposed by the House: requirements regarding funding for the State of Illinois; and requirements for participation in E-Verify.

CONFERENCE TOTAL—WITH COMPARISONS

The total new budget (obligational) authority for the fiscal year 2009 recommended by the Committee of Conference, comparisons to the House and Senate bills for 2009 follow:

[In thousands of dollars]

House bill, fiscal year 2009	361,038,500
Senate bill, fiscal year 2009	289,794,425
Conference agreement, fiscal year 2009	311,197,500
Conference agreement compared with:.	
House bill, fiscal year 2009	−49,841,000
Senate bill, fiscal year 2009	+21,403,075

DIVISION B—TAX, UNEMPLOYMENT, HEALTH, STATE FISCAL RELIEF, AND OTHER PROVISIONS

TITLE I—TAX PROVISIONS

A. Tax Relief for Individuals and Families

1. Making Work Pay Credit (sec. 1001 of the House bill, sec. 1001 of the Senate amendment, sec. 1001 of the conference agreement, and new sec. 36A of the Code)

PRESENT LAW

Earned income tax credit

Low- and moderate-income workers may be eligible for the refundable earned income tax credit ("EITC"). Eligibility for the EITC is based on earned income, adjusted gross income, investment income, filing status, and immigration and work status in the United States. The amount of the EITC is based on the presence and number of qualifying children in the worker's family, as well as on adjusted gross income and earned income.

The EITC generally equals a specified percentage of earned income [1] up to a maximum dollar amount. The maximum amount applies over a certain income range and then diminishes to zero over a specified phaseout range. For taxpayers with earned income (or adjusted gross income ("AGI"), if greater) in excess of the beginning of the phaseout range, the maximum EITC amount is reduced by the phaseout rate multiplied by the amount of earned income (or AGI, if greater) in excess of the beginning of the phaseout range. For taxpayers with earned income (or AGI, if greater) in excess of the end of the phaseout range, no credit is allowed.

The EITC is a refundable credit, meaning that if the amount of the credit exceeds the taxpayer's Federal income tax liability, the excess is payable to the taxpayer as a direct transfer payment. Under an advance payment system, eligible taxpayers may elect to receive the credit in their paychecks, rather than waiting to claim a refund on their tax returns filed by April 15 of the following year.

Child credit

An individual may claim a tax credit for each qualifying child under the age of 17. The amount of the credit per child is $1,000 through 2010 and $500 thereafter. A child who is not a citizen, national, or resident of the United States cannot be a qualifying child.

The credit is phased out for individuals with income over certain threshold amounts. Specifically, the otherwise allowable child

[1] Earned income is defined as (1) wages, salaries, tips, and other employee compensation, but only if such amounts are includible in gross income, plus (2) the amount of the individual's net self-employment earnings.

tax credit is reduced by $50 for each $1,000 (or fraction thereof) of modified adjusted gross income over $75,000 for single individuals or heads of households, $110,000 for married individuals filing joint returns, and $55,000 for married individuals filing separate returns. For purposes of this limitation, modified adjusted gross income includes certain otherwise excludable income earned by U.S. citizens or residents living abroad or in certain U.S. territories.

The credit is allowable against the regular tax and the alternative minimum tax. To the extent the child credit exceeds the taxpayer's tax liability, the taxpayer is eligible for a refundable credit (the additional child tax credit) equal to 15 percent of earned income in excess of a threshold dollar amount (the "earned income" formula). The threshold dollar amount is $12,550 (for 2009), and is indexed for inflation.

Families with three or more children may determine the additional child tax credit using the "alternative formula," if this results in a larger credit than determined under the earned income formula. Under the alternative formula, the additional child tax credit equals the amount by which the taxpayer's social security taxes exceed the taxpayer's earned income tax credit.

Earned income is defined as the sum of wages, salaries, tips, and other taxable employee compensation plus net self-employment earnings. Unlike the EITC, which also includes the preceding items in its definition of earned income, the additional child tax credit is based only on earned income to the extent it is included in computing taxable income. For example, some ministers' parsonage allowances are considered self-employment income, and thus are considered earned income for purposes of computing the EITC, but the allowances are excluded from gross income for individual income tax purposes, and thus are not considered earned income for purposes of the additional child tax credit.

HOUSE BILL

In general

The provision provides eligible individuals a refundable income tax credit for two years (taxable years beginning in 2009 and 2010).

The credit is the lesser of (1) 6.2 percent of an individual's earned income or (2) $500 ($1,000 in the case of a joint return). For these purposes, the earned income definition is the same as for the earned income tax credit with two modifications. First, earned income for these purposes does not include net earnings from self-employment which are not taken into account in computing taxable income. Second, earned income for these purposes includes combat pay excluded from gross income under section 112.[2]

The credit is phased out at a rate of two percent of the eligible individual's modified adjusted gross income above $75,000 ($150,000 in the case of a joint return). For these purposes an eligible individual's modified adjusted gross income is the eligible individual's adjusted gross income increased by any amount excluded from gross income under sections 911, 931, or 933. An eligible individual means any individual other than: (1) a nonresident alien; (2)

[2] Unless otherwise stated, all section references are to the Internal Revenue Code of 1986, as amended (the "Code").

an individual with respect to whom another individual may claim a dependency deduction for a taxable year beginning in a calendar year in which the eligible individual's taxable year begins; and (3) an estate or trust. Each eligible individual must satisfy identical taxpayer identification number requirements to those applicable to the earned income tax credit.

Treatment of the U.S. possessions

Mirror code possessions[3]

The U.S. Treasury will make payments to each mirror code possession in an amount equal to the aggregate amount of the credits allowable by reason of the provision to that possession's residents against its income tax. This amount will be determined by the Treasury Secretary based on information provided by the government of the respective possession. For purposes of these payments, a possession is a mirror code possession if the income tax liability of residents of the possession under that possession's income tax system is determined by reference to the U.S. income tax laws as if the possession were the United States.

Non-mirror code possessions[4]

To each possession that does not have a mirror code tax system, the U.S. Treasury will make two payments (for 2009 and 2010, respectively) in an amount estimated by the Secretary as being equal to the aggregate credits that would have been allowed to residents of that possession if a mirror code tax system had been in effect in that possession. Accordingly, the amount of each payment to a non-mirror Code possession will be an estimate of the aggregate amount of the credits that would be allowed to the possession's residents if the credit provided by the provision to U.S. residents were provided by the possession to its residents. This payment will not be made to any U.S. possession unless that possession has a plan that has been approved by the Secretary under which the possession will promptly distribute the payment to its residents.

General rules

No credit against U.S. income tax is permitted under the provision for any person to whom a credit is allowed against possession income taxes as a result of the provision (for example, under that possession's mirror income tax). Similarly, no credit against U.S. income tax is permitted for any person who is eligible for a payment under a non-mirror code possession's plan for distributing to its residents the payment described above from the U.S. Treasury.

For purposes of the payments to the possessions, the Commonwealth of Puerto Rico and the Commonwealth of the Northern Mariana Islands are considered possessions of the United States.

For purposes of the rule permitting the Treasury Secretary to disburse appropriated amounts for refunds due from certain credit provisions of the Internal Revenue Code of 1986, the payments re-

[3] Possessions with mirror code tax systems are the United States Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands.

[4] Possessions that do not have mirror code tax systems are Puerto Rico and American Samoa.

quired to be made to possessions under the provision are treated in the same manner as a refund due from the credit allowed under the provision.

Federal programs or Federally-assisted programs

Any credit or refund allowed or made to an individual under this provision (including to any resident of a U.S. possession) is not taken into account as income and shall not be taken into account as resources for the month of receipt and the following two months for purposes of determining eligibility of such individual or any other individual for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program or under any State or local program financed in whole or in part with Federal funds.

Income tax withholding

Taxpayers' reduced tax liability under the provision shall be expeditiously implemented through revised income tax withholding schedules produced by the Internal Revenue Service. These revised income tax withholding schedules should be designed to reduce taxpayers' income tax withheld for each remaining pay period in the remainder of 2009 by an amount equal to the amount that withholding would have been reduced had the provision been reflected in the income tax withholding schedules for the entire taxable year.

Effective date

The provision applies to taxable years beginning after December 31, 2008.

SENATE AMENDMENT

In general

The Senate is the same as the House bill, except that the credit is phased out at a rate of four percent (rather than two percent) of the eligible individual's modified adjusted gross income above $70,000 ($140,000 in the case of a joint return).

Also, the Senate amendment provides that the otherwise allowable credit allowed under the provision is reduced by the amount of any payment received by the taxpayer pursuant to the provisions of the bill providing economic recovery payments under the Veterans Administration, Railroad Retirement Board, and the Social Security Administration. The provision treats the failure to reduce the credit by the amount of these payments, and the omission of the correct TIN, as clerical errors. This allows the IRS to assess any tax resulting from such failure or omission without the requirement to send the taxpayer a notice of deficiency allowing the taxpayer the right to file a petition with the Tax Court.

Income tax withholding

The Senate amendment also provides for a more accelerated delivery of the credit in 2009 through revised income tax withholding schedules produced by the Department of the Treasury. Under the Senate amendment, these revised income tax withholding schedules would be designed to reduce taxpayers' income

tax withheld for the remainder of 2009 in such a manner that the full annual benefit of the provision is reflected in income tax withheld during the remainder of 2009.

CONFERENCE AGREEMENT

In general

The provision provides eligible individuals a refundable income tax credit for two years (taxable years beginning in 2009 and 2010).

The credit is the lesser of (1) 6.2 percent of an individual's earned income or (2) $400 ($800 in the case of a joint return). For these purposes, the earned income definition is the same as for the earned income tax credit with two modifications. First, earned income for these purposes does not include net earnings from self-employment which are not taken into account in computing taxable income. Second, earned income for these purposes includes combat pay excluded from gross income under section 112.

The credit is phased out at a rate of two percent of the eligible individual's modified adjusted gross income above $75,000 ($150,000 in the case of a joint return). For these purposes an eligible individual's modified adjusted gross income is the eligible individual's adjusted gross income increased by any amount excluded from gross income under sections 911, 931, or 933. An eligible individual means any individual other than: (1) a nonresident alien; (2) an individual with respect to whom another individual may claim a dependency deduction for a taxable year beginning in a calendar year in which the eligible individual's taxable year begins; and (3) an estate or trust.

Also, the conference agreement provides that the otherwise allowable making work pay credit allowed under the provision is reduced by the amount of any payment received by the taxpayer pursuant to the provisions of the bill providing economic recovery payments under the Veterans Administration, Railroad Retirement Board, and the Social Security Administration and a temporary refundable tax credit for certain government retirees.[5] The conference agreement treats the failure to reduce the making work pay credit by the amount of such payments or credit, and the omission of the correct TIN, as clerical errors. This allows the IRS to assess any tax resulting from such failure or omission without the requirement to send the taxpayer a notice of deficiency allowing the taxpayer the right to file a petition with the Tax Court.

Each tax return on which this credit is claimed must include the social security number of the taxpayer (in the case of a joint return, the social security number of at least one spouse).

Treatment of the U.S. possessions

The conference agreement follows the House bill and the Senate amendment.

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[5] The credit for certain government employees is available for 2009. The credit is $250 ($500 for a joint return where both spouses are eligible individuals). An eligible individual for these purposes is an individual: (1) who receives an amount as a pension or annuity for service performed in the employ of the United States or any State or any instrumentality thereof, which is not considered employment for purposes of Social Security taxes; and (2) who does not receive an economic recovery payment under the Veterans Administration, Railroad Retirement Board, or the Social Security Administration.

Federal programs or Federally-assisted programs

The conference agreement follows the House bill and the Senate amendment.

Income tax withholding

The conference agreement follows the Senate amendment.

Effective date

The provision applies to taxable years beginning after December 31, 2008.

2. Increase in the earned income tax credit (sec. 1101 of the House bill, sec. 1002 of the Senate amendment, sec. 1002 of the conference agreement, and sec. 32 of the Code)

PRESENT LAW

Overview

Low- and moderate-income workers may be eligible for the refundable earned income tax credit ("EITC"). Eligibility for the EITC is based on earned income, adjusted gross income, investment income, filing status, and immigration and work status in the United States. The amount of the EITC is based on the presence and number of qualifying children in the worker's family, as well as on adjusted gross income and earned income.

The EITC generally equals a specified percentage of earned income [6] up to a maximum dollar amount. The maximum amount applies over a certain income range and then diminishes to zero over a specified phaseout range. For taxpayers with earned income (or adjusted gross income (AGI), if greater) in excess of the beginning of the phaseout range, the maximum EITC amount is reduced by the phaseout rate multiplied by the amount of earned income (or AGI, if greater) in excess of the beginning of the phaseout range. For taxpayers with earned income (or AGI, if greater) in excess of the end of the phaseout range, no credit is allowed.

An individual is not eligible for the EITC if the aggregate amount of disqualified income of the taxpayer for the taxable year exceeds $3,100 (for 2009). This threshold is indexed for inflation. Disqualified income is the sum of: (1) interest (taxable and tax exempt); (2) dividends; (3) net rent and royalty income (if greater than zero); (4) capital gains net income; and (5) net passive income (if greater than zero) that is not self-employment income.

The EITC is a refundable credit, meaning that if the amount of the credit exceeds the taxpayer's Federal income tax liability, the excess is payable to the taxpayer as a direct transfer payment. Under an advance payment system, eligible taxpayers may elect to receive the credit in their paychecks, rather than waiting to claim a refund on their tax returns filed by April 15 of the following year.

[6] Earned income is defined as (1) wages, salaries, tips, and other employee compensation, but only if such amounts are includible in gross income, plus (2) the amount of the individual's net self-employment earnings.

Filing status

An unmarried individual may claim the EITC if he or she files as a single filer or as a head of household. Married individuals generally may not claim the EITC unless they file jointly. An exception to the joint return filing requirement applies to certain spouses who are separated. Under this exception, a married taxpayer who is separated from his or her spouse for the last six months of the taxable year shall not be considered as married (and, accordingly, may file a return as head of household and claim the EITC), provided that the taxpayer maintains a household that constitutes the principal place of abode for a dependent child (including a son, stepson, daughter, stepdaughter, adopted child, or a foster child) for over half the taxable year,[7] and pays over half the cost of maintaining the household in which he or she resides with the child during the year.

Presence of qualifying children and amount of the earned income credit

Three separate credit schedules apply: one schedule for taxpayers with no qualifying children, one schedule for taxpayers with no qualifying child, and one schedule for taxpayers with more than one qualifying child.[8]

Taxpayers with no qualifying children may claim a credit if they are over age 24 and below age 65. The credit is 7.65 percent of earnings up to $5,970, resulting in a maximum credit of $457 for 2009. The maximum is available for those with incomes between $5,970 and $7,470 ($10,590 if married filing jointly). The credit begins to phase down at a rate of 7.65 percent of earnings above $7,470 ($10,590 if married filing jointly) resulting in a $0 credit at $13,440 of earnings ($16,560 if married filing jointly).

Taxpayers with one qualifying child may claim a credit in 2009 of 34 percent of their earnings up to $8,950, resulting in a maximum credit of $3,043. The maximum credit is available for those with earnings between $8,950 and $16,420 ($19,540 if married filing jointly). The credit begins to phase down at a rate of 15.98 percent of earnings above $16,420 ($19,540 if married filing jointly). The credit is phased down to $0 at $35,463 of earnings ($38,583 if married filing jointly).

Taxpayers with more than one qualifying child may claim a credit in 2009 of 40 percent of earnings up to $12,570, resulting in a maximum credit of $5,028. The maximum credit is available for those with earnings between $12,570 and $16,420 ($19,540 if married filing jointly). The credit begins to phase down at a rate of 21.06 percent of earnings above $16,420 ($19,540 if married filing jointly). The credit is phased down to $0 at $40,295 of earnings ($43,415 if married filing jointly).

If more than one taxpayer lives with a qualifying child, only one of these taxpayers may claim the child for purposes of the EITC. If multiple eligible taxpayers actually claim the same qualifying child, then a tiebreaker rule determines which taxpayer is entitled to the EITC with respect to the qualifying child. Any eligible

[7] A foster child must reside with the taxpayer for the entire taxable year.
[8] All income thresholds are indexed for inflation annually.

taxpayer with at least one qualifying child who does not claim the EITC with respect to qualifying children due to failure to meet certain identification requirements with respect to such children (i.e., providing the name, age and taxpayer identification number of each of such children) may not claim the EITC for taxpayers without qualifying children.

HOUSE BILL

Three or more qualifying children

The provision increases the EITC credit percentage for families with three or more qualifying children to 45 percent for 2009 and 2010. For example, in 2009 taxpayers with three or more qualifying children may claim a credit of 45 percent of earnings up to $12,570, resulting in a maximum credit of $5,656.50.

Provide additional marriage penalty relief through higher threshold phase-out amounts for married couples filing joint returns

The provision increases the threshold phase-out amounts for married couples filing joint returns to $5,000[9] above the threshold phase-out amounts for singles, surviving spouses, and heads of households for 2009 and 2010. For example, in 2009 the maximum credit of $3,043 for one qualifying child is available for those with earnings between $8,950 and $16,420 ($21,420 if married filing jointly). The credit begins to phase down at a rate of 15.98 percent of earnings above $16,420 ($21,420 if married filing jointly). The credit is phased down to $0 at $35,463 of earnings ($40,463 if married filing jointly).

Effective date

The provision is effective for taxable years beginning after December 31, 2008.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

3. Increase of refundable portion of the child credit (sec. 1102 of the House bill, sec. 1003 of the Senate amendment, sec. 1003 of the conference agreement and sec. 24 of the Code)

PRESENT LAW

An individual may claim a tax credit for each qualifying child under the age of 17. The amount of the credit per child is $1,000 through 2010, and $500 thereafter. A child who is not a citizen, national, or resident of the United States cannot be a qualifying child.

The credit is phased out for individuals with income over certain threshold amounts. Specifically, the otherwise allowable child tax credit is reduced by $50 for each $1,000 (or fraction thereof) of

[9] The $5,000 is indexed for inflation in the case of taxable years beginning in 2010.

modified adjusted gross income over $75,000 for single individuals or heads of households, $110,000 for married individuals filing joint returns, and $55,000 for married individuals filing separate returns. For purposes of this limitation, modified adjusted gross income includes certain otherwise excludable income earned by U.S. citizens or residents living abroad or in certain U.S. territories.

The credit is allowable against the regular tax and the alternative minimum tax. To the extent the child credit exceeds the taxpayer's tax liability, the taxpayer is eligible for a refundable credit (the additional child tax credit) equal to 15 percent of earned income in excess of a threshold dollar amount (the "earned income" formula). The threshold dollar amount is $12,550 (for 2009), and is indexed for inflation.

Families with three or more children may determine the additional child tax credit using the "alternative formula," if this results in a larger credit than determined under the earned income formula. Under the alternative formula, the additional child tax credit equals the amount by which the taxpayer's social security taxes exceed the taxpayer's earned income tax credit ("EITC").

Earned income is defined as the sum of wages, salaries, tips, and other taxable employee compensation plus net self-employment earnings. Unlike the EITC, which also includes the preceding items in its definition of earned income, the additional child tax credit is based only on earned income to the extent it is included in computing taxable income. For example, some ministers' parsonage allowances are considered self-employment income and thus, are considered earned income for purposes of computing the EITC, but the allowances are excluded from gross income for individual income tax purposes and thus, are not considered earned income for purposes of the additional child tax credit.

Any credit or refund allowed or made to an individual under this provision (including to any resident of a U.S. possession) is not taken into account as income and shall not be taken into account as resources for the month of receipt and the following two months for purposes of determining eligibility of such individual or any other individual for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program or under any State or local program financed in whole or in part with Federal funds.

HOUSE BILL

The provision modifies the earned income formula for the determination of the refundable child credit to apply to 15 percent of earned income in excess of $0 for taxable years beginning in 2009 and 2010.

Effective date.—The provision is effective for taxable years beginning after December 31, 2008.

SENATE AMENDMENT

The Senate amendment is the same as the House bill except that the refundable child credit is calculated to apply to 15 percent of earned income in excess of $8,100 for taxable years beginning in 2009 and 2010.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment except that the refundable child credit is calculated to apply to 15 percent of earned income in excess of $3,000 for taxable years beginning in 2009 and 2010.

4. American Opportunity Tax credit (sec. 1201 of the House bill, sec. 1004 of the Senate amendment, sec. 1004 of the conference agreement, and sec. 25A of the Code)

PRESENT LAW

Individual taxpayers are allowed to claim a nonrefundable credit, the Hope credit, against Federal income taxes of up to $1,800 (for 2009) per eligible student per year for qualified tuition and related expenses paid for the first two years of the student's post-secondary education in a degree or certificate program.[10] The Hope credit rate is 100 percent on the first $1,200 of qualified tuition and related expenses, and 50 percent on the next $1,200 of qualified tuition and related expenses; these dollar amounts are indexed for inflation, with the amount rounded down to the next lowest multiple of $100. Thus, for example, a taxpayer who incurs $1,200 of qualified tuition and related expenses for an eligible student is eligible (subject to the adjusted gross income phaseout described below) for a $1,200 Hope credit. If a taxpayer incurs $2,400 of qualified tuition and related expenses for an eligible student, then he or she is eligible for a $1,800 Hope credit.

The Hope credit that a taxpayer may otherwise claim is phased out ratably for taxpayers with modified adjusted gross income between $50,000 and $60,000 ($100,000 and $120,000 for married taxpayers filing a joint return) for 2009. The adjusted gross income phaseout ranges are indexed for inflation, with the amount rounded down to the next lowest multiple of $1,000.

The qualified tuition and related expenses must be incurred on behalf of the taxpayer, the taxpayer's spouse, or a dependent of the taxpayer. The Hope credit is available with respect to an individual student for two taxable years, provided that the student has not completed the first two years of post-secondary education before the beginning of the second taxable year.

The Hope credit is available in the taxable year the expenses are paid, subject to the requirement that the education is furnished to the student during that year or during an academic period beginning during the first three months of the next taxable year. Qualified tuition and related expenses paid with the proceeds of a loan generally are eligible for the Hope credit. The repayment of a loan itself is not a qualified tuition or related expense.

A taxpayer may claim the Hope credit with respect to an eligible student who is not the taxpayer or the taxpayer's spouse (e.g., in cases in which the student is the taxpayer's child) only if the taxpayer claims the student as a dependent for the taxable year for which the credit is claimed. If a student is claimed as a dependent,

[10] Sec. 25A. The Hope credit generally may not be claimed against a taxpayer's alternative minimum tax liability. However, the credit may be claimed against a taxpayer's alternative minimum tax liability for taxable years beginning prior to January 1, 2009.

the student is not entitled to claim a Hope credit for that taxable year on the student's own tax return. If a parent (or other taxpayer) claims a student as a dependent, any qualified tuition and related expenses paid by the student are treated as paid by the parent (or other taxpayer) for purposes of determining the amount of qualified tuition and related expenses paid by such parent (or other taxpayer) under the provision. In addition, for each taxable year, a taxpayer may elect either the Hope credit, the Lifetime Learning credit, or an above-the-line deduction for qualified tuition and related expenses with respect to an eligible student.

The Hope credit is available for "qualified tuition and related expenses," which include tuition and fees (excluding nonacademic fees) required to be paid to an eligible educational institution as a condition of enrollment or attendance of an eligible student at the institution. Charges and fees associated with meals, lodging, insurance, transportation, and similar personal, living, or family expenses are not eligible for the credit. The expenses of education involving sports, games, or hobbies are not qualified tuition and related expenses unless this education is part of the student's degree program.

Qualified tuition and related expenses generally include only out-of-pocket expenses. Qualified tuition and related expenses do not include expenses covered by employer-provided educational assistance and scholarships that are not required to be included in the gross income of either the student or the taxpayer claiming the credit. Thus, total qualified tuition and related expenses are reduced by any scholarship or fellowship grants excludable from gross income under section 117 and any other tax-free educational benefits received by the student (or the taxpayer claiming the credit) during the taxable year. The Hope credit is not allowed with respect to any education expense for which a deduction is claimed under section 162 or any other section of the Code.

An eligible student for purposes of the Hope credit is an individual who is enrolled in a degree, certificate, or other program (including a program of study abroad approved for credit by the institution at which such student is enrolled) leading to a recognized educational credential at an eligible educational institution. The student must pursue a course of study on at least a half-time basis. A student is considered to pursue a course of study on at least a half-time basis if the student carries at least one half the normal full-time work load for the course of study the student is pursuing for at least one academic period that begins during the taxable year. To be eligible for the Hope credit, a student must not have been convicted of a Federal or State felony consisting of the possession or distribution of a controlled substance.

Eligible educational institutions generally are accredited post-secondary educational institutions offering credit toward a bachelor's degree, an associate's degree, or another recognized post-secondary credential. Certain proprietary institutions and post-secondary vocational institutions also are eligible educational institutions. To qualify as an eligible educational institution, an institution must be eligible to participate in Department of Education student aid programs.

Effective for taxable years beginning after December 31, 2010, the changes to the Hope credit made by the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") no longer apply. The principal EGTRRA change scheduled to expire is the change that permitted a taxpayer to claim a Hope credit in the same year that he or she claims an exclusion from a Coverdell education savings account. Thus, after 2010, a taxpayer cannot claim a Hope credit in the same year he or she claims an exclusion from a Coverdell education savings account.

HOUSE BILL

The provision modifies the Hope credit for taxable years beginning in 2009 or 2010. The modified credit is referred to as the American Opportunity Tax credit. The allowable modified credit is up to $2,500 per eligible student per year for qualified tuition and related expenses paid for each of the first four years of the student's post-secondary education in a degree or certificate program. The modified credit rate is 100 percent on the first $2,000 of qualified tuition and related expenses, and 25 percent on the next $2,000 of qualified tuition and related expenses. For purposes of the modified credit, the definition of qualified tuition and related expenses is expanded to include course materials.

Under the provision, the modified credit is available with respect to an individual student for four years, provided that the student has not completed the first four years of post-secondary education before the beginning of the fourth taxable year. Thus, the modified credit, in addition to other modifications, extends the application of the Hope credit to two more years of post-secondary education.

The modified credit that a taxpayer may otherwise claim is phased out ratably for taxpayers with modified adjusted gross income between $80,000 and $90,000 ($160,000 and $180,000 for married taxpayers filing a joint return). The modified credit may be claimed against a taxpayer's alternative minimum tax liability.

Forty percent of a taxpayer's otherwise allowable modified credit is refundable. However, no portion of the modified credit is refundable if the taxpayer claiming the credit is a child to whom section 1(g) applies for such taxable year (generally, any child under age 18 or any child under age 24 who is a student providing less than one-half of his or her own support, who has at least one living parent and does not file a joint return).

In addition, the provision requires the Secretary of the Treasury to conduct two studies and submit a report to Congress on the results of those studies within one year after the date of enactment. The first study shall examine how to coordinate the Hope and Lifetime Learning credits with the Pell grant program. The second study shall examine requiring students to perform community service as a condition of taking their tuition and related expenses into account for purposes of the Hope and Lifetime Learning credits.

Effective date.—The provision is effective with respect to taxable years beginning after December 31, 2008.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that the Senate amendment provides that only 30 percent of a taxpayer's otherwise allowable modified credit is refundable.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, with the following modifications. Under the conference agreement, bona fide residents of the U.S. possessions (American Samoa, Commonwealth of the Northern Mariana Islands, Commonwealth of Puerto Rico, Guam, Virgin Islands) are not permitted to claim the refundable portion of the American opportunity credit in the United States. Rather, a bona fide resident of a mirror code possession (Commonwealth of the Northern Mariana Islands, Guam, Virgin Islands) may claim the refundable portion of the credit in the possession in which the individual is a resident. Similarly, a bona fide resident of a non-mirror code possession (Commonwealth of Puerto Rico, American Samoa) may claim the refundable portion of the credit in the possession in which the individual is a resident, but only if that possession establishes a plan for permitting the claim under its internal law.

The conference agreement provides that the U.S. Treasury will make payments to the possessions in respect of credits allowable to their residents under their internal laws. Specifically, the U.S. Treasury will make payments to each mirror code possession in an amount equal to the aggregate amount of the refundable portion of the credits allowable by reason of the provision to that possession's residents against its income tax. This amount will be determined by the Treasury Secretary based on information provided by the government of the respective possession. To each possession that does not have a mirror code tax system, the U.S. Treasury will make two payments (for 2009 and 2010, respectively) in an amount estimated by the Secretary as being equal to the aggregate amount of the refundable portion of the credits that would have been allowed to residents of that possession if a mirror code tax system had been in effect in that possession. Accordingly, the amount of each payment to a non-mirror code possession will be an estimate of the aggregate amount of the refundable portion of the credits that would be allowed to the possession's residents if the credit provided by the provision to U.S. residents were provided by the possession to its residents. This payment will not be made to any U.S. possession unless that possession has a plan that has been approved by the Secretary under which the possession will promptly distribute the payment to its residents.

5. Temporarily allow computer technology and equipment as a qualified higher education expense for qualified tuition programs (sec. 1005 of the Senate amendment, sec. 1005 of the conference agreement, and sec. 529 of the Code)

PRESENT LAW

Section 529 provides specified income tax and transfer tax rules for the treatment of accounts and contracts established under

qualified tuition programs.[11] A qualified tuition program is a program established and maintained by a State or agency or instrumentality thereof, or by one or more eligible educational institutions, which satisfies certain requirements and under which a person may purchase tuition credits or certificates on behalf of a designated beneficiary that entitle the beneficiary to the waiver or payment of qualified higher education expenses of the beneficiary (a "prepaid tuition program"). In the case of a program established and maintained by a State or agency or instrumentality thereof, a qualified tuition program also includes a program under which a person may make contributions to an account that is established for the purpose of satisfying the qualified higher education expenses of the designated beneficiary of the account, provided it satisfies certain specified requirements (a "savings account program"). Under both types of qualified tuition programs, a contributor establishes an account for the benefit of a particular designated beneficiary to provide for that beneficiary's higher education expenses.

For this purpose, qualified higher education expenses means tuition, fees, books, supplies, and equipment required for the enrollment or attendance of a designated beneficiary at an eligible educational institution, and expenses for special needs services in the case of a special needs beneficiary that are incurred in connection with such enrollment or attendance. Qualified higher education expenses generally also include room and board for students who are enrolled at least half-time.

Contributions to a qualified tuition program must be made in cash. Section 529 does not impose a specific dollar limit on the amount of contributions, account balances, or prepaid tuition benefits relating to a qualified tuition account; however, the program is required to have adequate safeguards to prevent contributions in excess of amounts necessary to provide for the beneficiary's qualified higher education expenses. Contributions generally are treated as a completed gift eligible for the gift tax annual exclusion. Contributions are not tax deductible for Federal income tax purposes, although they may be deductible for State income tax purposes. Amounts in the account accumulate on a tax-free basis (i.e., income on accounts in the plan is not subject to current income tax).

Distributions from a qualified tuition program are excludable from the distributee's gross income to the extent that the total distribution does not exceed the qualified higher education expenses incurred for the beneficiary. If a distribution from a qualified tuition program exceeds the qualified higher education expenses incurred for the beneficiary, the portion of the excess that is treated as earnings generally is subject to income tax and an additional 10-percent tax. Amounts in a qualified tuition program may be rolled over to another qualified tuition program for the same beneficiary or for a member of the family of that beneficiary without income tax consequences.

In general, prepaid tuition contracts and tuition savings accounts established under a qualified tuition program involve prepayments or contributions made by one or more individuals for the

[11] For purposes of this description, the term "account" is used interchangeably to refer to a prepaid tuition benefit contract or a tuition savings account established pursuant to a qualified tuition program.

benefit of a designated beneficiary, with decisions with respect to the contract or account to be made by an individual who is not the designated beneficiary. Qualified tuition accounts or contracts generally require the designation of a person (generally referred to as an "account owner") whom the program administrator (oftentimes a third party administrator retained by the State or by the educational institution that established the program) may look to for decisions, recordkeeping, and reporting with respect to the account established for a designated beneficiary. The person or persons who make the contributions to the account need not be the same person who is regarded as the account owner for purposes of administering the account. Under many qualified tuition programs, the account owner generally has control over the account or contract, including the ability to change designated beneficiaries and to withdraw funds at any time and for any purpose. Thus, in practice, qualified tuition accounts or contracts generally involve a contributor, a designated beneficiary, an account owner (who oftentimes is not the contributor or the designated beneficiary), and an administrator of the account or contract.[12]

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision expands the definition of qualified higher education expenses for expenses paid or incurred in 2009 and 2010 to include expenses for certain computer technology and equipment to be used by the designated beneficiary while enrolled at an eligible educational institution.

Effective date.—The provision is effective for expenses paid or incurred after December 31, 2008.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

6. Modifications to homebuyer credit (sec. 1301 of the House bill, sec. 1006 of the Senate amendment, sec. 1006 of the conference agreement, and sec. 36 of the Code)

PRESENT LAW

A taxpayer who is a first-time homebuyer is allowed a refundable tax credit equal to the lesser of $7,500 ($3,750 for a married individual filing separately) or 10 percent of the purchase price of a principal residence. The credit is allowed for the tax year in which the taxpayer purchases the home unless the taxpayer makes an election as described below. The credit is allowed for qualifying home purchases on or after April 9, 2008 and before July 1, 2009 (without regard to whether there was a binding contract to purchase prior to April 9, 2008).

[12] Section 529 refers to contributors and designated beneficiaries, but does not define or otherwise refer to the term account owner, which is a commonly used term among qualified tuition programs.

The credit phases out for individual taxpayers with modified adjusted gross income between $75,000 and $95,000 ($150,000 and $170,000 for joint filers) for the year of purchase.

A taxpayer is considered a first-time homebuyer if such individual had no ownership interest in a principal residence in the United States during the three-year period prior to the purchase of the home to which the credit applies.

No credit is allowed if the D.C. homebuyer credit is allowable for the taxable year the residence is purchased or a prior taxable year. A taxpayer is not permitted to claim the credit if the taxpayer's financing is from tax-exempt mortgage revenue bonds, if the taxpayer is a nonresident alien, or if the taxpayer disposes of the residence (or it ceases to be a principal residence) before the close of a taxable year for which a credit otherwise would be allowable.

The credit is recaptured ratably over fifteen years with no interest charge beginning in the second taxable year after the taxable year in which the home is purchased. For example, if the taxpayer purchases a home in 2008, the credit is allowed on the 2008 tax return, and repayments commence with the 2010 tax return. If the taxpayer sells the home (or the home ceases to be used as the principal residence of the taxpayer or the taxpayer's spouse) prior to complete repayment of the credit, any remaining credit repayment amount is due on the tax return for the year in which the home is sold (or ceases to be used as the principal residence). However, the credit repayment amount may not exceed the amount of gain from the sale of the residence to an unrelated person. For this purpose, gain is determined by reducing the basis of the residence by the amount of the credit to the extent not previously recaptured. No amount is recaptured after the death of a taxpayer. In the case of an involuntary conversion of the home, recapture is not accelerated if a new principal residence is acquired within a two-year period. In the case of a transfer of the residence to a spouse or to a former spouse incident to divorce, the transferee spouse (and not the transferor spouse) will be responsible for any future recapture.

An election is provided to treat a home purchased in the eligible period in 2009 as if purchased on December 31, 2008 for purposes of claiming the credit on the 2008 tax return and for establishing the beginning of the recapture period. Taxpayers may amend their returns for this purpose.

HOUSE BILL

The provision waives the recapture of the credit for qualifying home purchases after December 31, 2008 and before July 1, 2009. This waiver of recapture applies without regard to whether the taxpayer elects to treat the purchase in 2009 as occurring on December 31, 2008. If the taxpayer disposes of the home or the home otherwise ceases to be the principal residence of the taxpayer within 36 months from the date of purchase, the present law rules for recapture of the credit will still apply.

Effective date.—The provision applies to residences purchased after December 31, 2008.

SENATE AMENDMENT

The Senate amendment repeals the existing section 36 for purchases on or after the date of enactment of the American Recovery and Reinvestment Act of 2009.

A taxpayer is allowed a new nonrefundable tax credit equal to the lesser of $15,000 ($7,500 for a married individual filing separately) or 10 percent of the purchase price of a principal residence. The credit is allowed for the tax year in which the taxpayer purchases the home unless the taxpayer makes an election as described below. The credit is allowed for qualifying home purchases after the date of enactment of the American Recovery and Reinvestment Act and on or before the date that is one year after such date of enactment.

The credit is limited to the excess of regular tax liability plus alternative minimum tax liability over the sum of other nonrefundable personal credits.

No credit is allowed for any purchase for which the section 36 first-time homebuyer credit or the D.C. homebuyer credit is allowable. If a credit is allowed under this provision in the case of any individual (and such individual's spouse, if married) with respect to the purchase of any principal residence, no credit is allowed with respect to the purchase of any other principal residence by such individual or a spouse of such individual.

If the taxpayer disposes of the residence (or it ceases to be a principal residence) at any time within 24 months after the date on which the taxpayer purchased the residence, then the credit shall be subject to recapture for the taxable year in which such disposition occurred (or in which the taxpayer failed to occupy the residence as a principal residence). No amount is recaptured after the death of a taxpayer or in the case of a member of the Armed Forces of the United States on active duty who fails to meet the residency requirement pursuant to a military order and incident to a permanent change of station. In the case of an involuntary conversion of the home, recapture is not accelerated if a new principal residence is acquired within a two-year period. In the case of a transfer of the residence to a spouse or to a former spouse incident to divorce, the transferee spouse (and not the transferor spouse) will be responsible for any future recapture.

A further election is provided to treat a home purchased in the eligible period as if purchased on December 31, 2008 for purposes of claiming the credit on the 2008 tax return. Taxpayers may amend their returns for this purpose.

Effective date.—The provision applies to purchases after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement extends the existing homebuyer credit for qualifying home purchases before December 1, 2009. In addition, it increases the maximum credit amount to $8,000 ($4,000 for a married individual filing separately) and waives the recapture of the credit for qualifying home purchases after December 31, 2008 and before December 1, 2009. This waiver of recapture applies without regard to whether the taxpayer elects to treat the

purchase in 2009 as occurring on December 31, 2008. If the taxpayer disposes of the home or the home otherwise ceases to be the principal residence of the taxpayer within 36 months from the date of purchase, the present law rules for recapture of the credit will apply.

The conference agreement modifies the coordination with the first-time homebuyer credit for residents of the District of Columbia under section 1400C. No credit under section 1400C shall be allowed to any taxpayer with respect to the purchase of a residence during 2009 if a credit under section 36 is allowable to such taxpayer (or the taxpayer's spouse) with respect to such purchase. Taxpayers thus qualify for the more generous national first-time homebuyer credit rather than the D.C. homebuyer credit for qualifying purchases in 2009. No credit under section 36 is allowed for a taxpayer who claimed the D.C. homebuyer credit in any prior taxable year.

The conference agreement removes the prohibition on claiming the credit if the residence is financed by the proceeds of a mortgage revenue bond, a qualified mortgage issue the interest on which is exempt from tax under section 103.

Effective date.—The provision applies to residences purchased after December 31, 2008.

7. Election to substitute grants to States for low-income housing projects in lieu of low-income housing credit allocation for 2009 (secs. 1302 and 1711 of the House bill, secs. 1404 and 1602 of the conference agreement, and sec. 42 of the Code)

PRESENT LAW

In general

The low-income housing credit may be claimed over a 10-year period by owners of certain residential rental property for the cost of rental housing occupied by tenants having incomes below specified levels.[13] The amount of the credit for any taxable year in the credit period is the applicable percentage of the qualified basis of each qualified low-income building. The qualified basis of any qualified low-income building for any taxable year equals the applicable fraction of the eligible basis of the building.

Volume limits

A low-income housing credit is allowable only if the owner of a qualified building receives a housing credit allocation from the State or local housing credit agency. Generally, the aggregate credit authority provided annually to each State for calendar year 2009 is $2.30 per resident, with a minimum annual cap of $2,665,000 for certain small population States.[14] These amounts are indexed for inflation. Projects that also receive financing with proceeds of tax-exempt bonds issued subject to the private activity bond volume limit do not require an allocation of the low-income housing credit.

[13] Sec. 42.
[14] Rev. Proc. 2008–66.

Basic rule for Federal grants

The basis of a qualified building must be reduced by the amount of any federal grant with respect to such building.

HOUSE BILL

Low-income housing grant election amount

The Secretary of the Treasury shall make a grant to the State housing credit agency of each State in an amount equal to the low-income housing grant election amount.

The low-income housing grant election amount for a State is an amount elected by the State subject to certain limits. The maximum low-income housing grant election amount for a State may not exceed 85 percent of the product of ten and the sum of the State's: (1) unused housing credit ceiling for 2008; (2) any returns to the State during 2009 of credit allocations previously made by the State; (3) 40 percent of the State's 2009 credit allocation; and (4) 40 percent of the State's share of the national pool allocated in 2009, if any.

Grants under this provision are not taxable income to recipients.

Subawards to low-income housing credit buildings

A State receiving a grant under this provision is to use these monies to make subawards to finance the construction, or acquisition and rehabilitation of qualified low-income buildings as defined under the low-income housing credit. A subaward may be made to finance a qualified low-income building regardless of whether the building has an allocation of low-income housing credit. However, in the case of qualified low-income buildings without allocations of the low-income housing credit, the State housing credit agency must make a determination that the subaward with respect to such building will increase the total funds available to the State to build and rehabilitate affordable housing. In conjunction with this determination the State housing credit agency must establish a process in which applicants for the subawards must demonstrate good faith efforts to obtain investment commitments before the agency makes such subawards.

Any building receiving grant money from a subaward is required to satisfy the low-income housing credit rules. The State housing credit agency shall perform asset management functions to ensure compliance with the low-income housing credit rules and the long-term viability of buildings financed with these subawards.[15] Failure to satisfy the low-income housing credit rules will result in recapture enforced by means of liens or other methods that the Secretary of the Treasury (or delegate) deems appropriate. Any such recapture will be payable to the Secretary of the Treasury for deposit in the general fund of the Treasury.

Any grant funds not used to make subawards before January 1, 2011 and any grant monies from subawards returned on or after January 1, 2011 must be returned to the Secretary of the Treasury.

[15] The State housing credit agency may collect reasonable fees from subaward recipients to cover the expenses of the agency's asset management duties. Alternatively, the State housing credit agency may retain a third party to perform these asset management duties.

Basic rule for Federal grants

The grants received under this provision do not reduce tax basis of a qualified low-income building.

Reduction in low-income housing credit volume limit for 2009

The otherwise applicable low-income housing credit volume limit for any State for 2009 is reduced by the amount taken into account in determining the low-income housing grant election amount.

Appropriations

The provision appropriates to the Secretary of the Treasury such sums as may be necessary to carry out this provision.

Effective date

The provision is effective on the date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

8. Election to accelerate the low-income housing credit allocation (sec. 1903 of the Senate amendment)

PRESENT LAW

In general

The low-income housing credit may be claimed over a 10-year period by owners of certain residential rental property for the cost of rental housing occupied by tenants having incomes below specified levels.[16] The amount of the credit for any taxable year in the credit period is the applicable percentage of the qualified basis of each qualified low-income building. The qualified basis of any qualified low-income building for any taxable year equals the applicable fraction of the eligible basis of the building.

Volume limits

A low-income housing credit is allowable only if the owner of a qualified building receives a housing credit allocation from the State or local housing credit agency. Generally, the aggregate credit authority provided annually to each State for calendar year 2009 is $2.30 per resident, with a minimum annual cap of $2,665,000 for certain small population States.[17] These amounts are indexed for inflation. Projects that also receive financing with proceeds of tax-exempt bonds issued subject to the private activity bond volume limit do not require an allocation of the low-income housing credit.

HOUSE BILL

No provision.

[16] Sec. 42.
[17] Rev. Proc. 2008–66.

SENATE AMENDMENT

The provision allows a taxpayer election to double the amount of the otherwise allowable low-income housing tax credit with respect to a project for each of the taxpayer's first three taxable years beginning after December 31, 2008. The otherwise allowable low-income housing tax credit over the remaining credit period for the project with respect to a taxpayer making the election will be reduced on a pro rata basis by an amount equal to the acceleration in the first three years.

The election is only available for non-federally subsidized low-income housing projects placed in service after December 31, 2008 which are pursuant to a low-income housing credit allocation from a State housing credit ceiling before 2011 (e.g. an allocation of 2011 credit ceiling makes the project ineligible for the election). Further, the election is limited to low-income housing tax credit initial investments made pursuant to a binding agreement by the taxpayer after December 31, 2008 and before January 1, 2011. For example, a taxpayer could not make this election with respect to initial investments made pursuant to a binding agreement in existence on January 1, 2008 even though the building is not placed-in-service until after December 31, 2008.

The election shall be made in a time and manner prescribed by the Secretary of the Treasury (or his delegate). The election is irrevocable. In the case of a partnership the election can only be made at the partnership level, not by individual partners.

Effective date.—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not follow the Senate amendment.

9. Exclusion from gross income for unemployment compensation benefits (sec. 1007 of the Senate amendment, sec. 1007 of the conference agreement, and sec. 85 of the Code)

PRESENT LAW

An individual must include in gross income any unemployment compensation benefits received under the laws of the United States or any State.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that up to $2,400 of unemployment compensation benefits received in 2009 are excluded from gross income by the recipient.

Effective date.—The provision is effective for taxable years beginning after December 31, 2008.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

10. Deduction for interest on indebtedness for the purchase of qualified motor vehicles (sec. 1008 of the Senate amendment)

PRESENT LAW

In the case of a taxpayer other than a corporation, no deduction is allowed for personal interest paid or accrued during the taxable year. Personal interest is all interest other than (1) interest paid or accrued on indebtedness properly allocable to a trade or business; (2) investment interest; (3) interest which is taken into account in computing income or loss from a passive activity of the taxpayer; (4) qualified home mortgage interest; (5) certain estate tax related interest; and (6) certain interest on educational loans.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides an above-the-line deduction for qualified motor vehicle interest. Qualified motor vehicle interest means any interest paid or accrued during the taxable year on any indebtedness incurred after November 12, 2008 and before January 1, 2010 to acquire a qualified motor vehicle and secured by such vehicle. It also includes interest on any indebtedness secured by such qualified motor vehicle resulting from the refinancing of otherwise qualified motor vehicle interest. The amount of qualified indebtedness is limited to $49,500 ($24,750 in the case of a married individual filing separately). The deduction is phased out for taxpayers with modified adjusted gross income between $125,000 and $135,000 ($250,000 and $260,000 in the case of a joint return).

If the indebtedness includes the amounts of any State or local sales or excise taxes paid or accrued by the taxpayer in connection with the acquisition of a qualified motor vehicle for which a deduction is allowed under section 164(a)(6) (relating to the deduction of State and local sales or excise taxes on qualified motor vehicles), the aggregate amount of such indebtedness taken into account shall be reduced, but not below zero, by the amount of any such taxes for which such deduction is allowed.

A qualified motor vehicle means a passenger automobile or light truck acquired for use by the taxpayer and not for resale after November 12, 2008 and before January 1, 2010, the original use of which commences with the taxpayer and which has a gross vehicle weight rating of not more than 8,500 pounds.

Any person who is engaged in a trade or business and receives from any individual $600 or more of qualified motor vehicle interest for any calendar year is required to report certain information as the Secretary may prescribe and furnish information to such individual on or before January 31 of the year following the calendar year for which the interest is received.

Effective date.—The provision is effective for taxable years beginning after December 31, 2008.

CONFERENCE AGREEMENT

The conference agreement does not follow the Senate amendment.

11. Deduction for State sales tax and excise tax on the purchase of qualified motor vehicles (sec. 1009 of the Senate amendment, sec. 1008 of the conference agreement, and secs. 63 and 164 of the Code)

PRESENT LAW

In general, a deduction from gross income is allowed for certain taxes for the taxable year within which the taxes are paid or accrued. These include State and local, and foreign, real property taxes; State and local personal property taxes; State, local, and foreign income, war profits, and excess profit taxes; generation skipping transfer taxes; environmental taxes imposed by section 59A; and taxes paid or accrued within the taxable year in carrying on a trade or business or an activity described in section 212 (relating to the expenses for production of income). At the election of the taxpayer for the taxable year, a taxpayer may deduct State and local sales taxes in lieu of State and local income taxes. No deduction is allowed for any general sales tax imposed with respect to an item at a rate other than the general rate of tax, except in the case of a lower rate of tax applicable to items of food, clothing, medical supplies, and motor vehicles. In the case of motor vehicles, if the rate of tax exceeds the general rate, such excess shall be disregarded and the general rate shall be treated as the rate of tax.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides an above-the-line deduction for qualified motor vehicle taxes. Qualified motor vehicle taxes include any State or local sales or excise tax imposed on the purchase of a qualified motor vehicle. A qualified motor vehicle means a passenger automobile or light truck acquired for use by the taxpayer and not for resale after November 12, 2008 and before January 1, 2010, the original use of which commences with the taxpayer and which has a gross vehicle weight rating of not more than 8,500 pounds.

The deduction is limited to sales tax of up to $49,500.

The deduction is phased out for taxpayers with modified adjusted gross income between $125,000 and $135,000 ($250,000 and $260,000 in the case of a joint return).

Notwithstanding other provisions of present law, qualified motor vehicle taxes are not treated as part of the cost of acquired property or, in the case of a disposition, as a reduction in the amount realized on the disposition.

A taxpayer who makes an election to deduct State and local sales taxes for the taxable year shall not be allowed the above-the-line deduction for qualified motor vehicle taxes.

If the indebtedness described in section 163(h)(5)(A) includes the amounts of any State or local sales or excise taxes paid or accrued by the taxpayer in connection with the acquisition of a qualified motor vehicle, the aggregate amount of such indebtedness taken into account shall be reduced, but not below zero, by the amount of any such taxes for which a deduction is allowed.

Effective date.—The provision is effective for taxable years beginning after December 31, 2008.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill or the Senate amendment. The conference agreement provides a deduction for qualified motor vehicle taxes. It expands the definition of taxes allowed as a deduction to include qualified motor vehicle taxes paid or accrued within the taxable year. A taxpayer who itemizes and makes an election to deduct State and local sales taxes for qualified motor vehicles for the taxable year shall not be allowed the increased standard deduction for qualified motor vehicle taxes.

Qualified motor vehicle taxes include any State or local sales or excise tax imposed on the purchase of a qualified motor vehicle. A qualified motor vehicle means a passenger automobile, light truck, or motorcycle which has a gross vehicle weight rating of not more than 8,500 pounds, or a motor home acquired for use by the taxpayer after the date of enactment and before January 1, 2010, the original use of which commences with the taxpayer.

The deduction is limited to the tax on up to $49,500 of the purchase price of a qualified motor vehicle. The deduction is phased out for taxpayers with modified adjusted gross income between $125,000 and $135,000 ($250,000 and $260,000 in the case of a joint return).

Effective date.—The provision is effective for purchases on or after the date of enactment and before January 1, 2010.

12. Extend alternative minimum tax relief for individuals (secs. 1011 and 1012 of the Senate amendment, secs. 1011 and 1012 of the conference agreement, and secs. 26 and 55 of the Code)

PRESENT LAW

Present law imposes an alternative minimum tax ("AMT") on individuals. The AMT is the amount by which the tentative minimum tax exceeds the regular income tax. An individual's tentative minimum tax is the sum of (1) 26 percent of so much of the taxable excess as does not exceed $175,000 ($87,500 in the case of a married individual filing a separate return) and (2) 28 percent of the remaining taxable excess. The taxable excess is so much of the alternative minimum taxable income ("AMTI") as exceeds the exemption amount. The maximum tax rates on net capital gain and dividends used in computing the regular tax are used in computing the tentative minimum tax. AMTI is the individual's taxable income adjusted to take account of specified preferences and adjustments.

The exemption amounts are: (1) $69,950 for taxable years beginning in 2008 and $45,000 in taxable years beginning after 2008 in the case of married individuals filing a joint return and sur-

viving spouses; (2) $46,200 for taxable years beginning in 2008 and $33,750 in taxable years beginning after 2008 in the case of other unmarried individuals; (3) $34,975 for taxable years beginning in 2008 and $22,500 in taxable years beginning after 2008 in the case of married individuals filing separate returns; and (4) $22,500 in the case of an estate or trust. The exemption amount is phased out by an amount equal to 25 percent of the amount by which the individual's AMTI exceeds (1) $150,000 in the case of married individuals filing a joint return and surviving spouses, (2) $112,500 in the case of other unmarried individuals, and (3) $75,000 in the case of married individuals filing separate returns or an estate or a trust. These amounts are not indexed for inflation.

Present law provides for certain nonrefundable personal tax credits (i.e., the dependent care credit, the credit for the elderly and disabled, the adoption credit, the child credit, the credit for interest on certain home mortgages, the Hope Scholarship and Lifetime Learning credits, the credit for savers, the credit for certain nonbusiness energy property, the credit for residential energy efficient property, the credit for plug-in electric drive motor vehicles; and the D.C. first-time homebuyer credit).

For taxable years beginning before 2009, the nonrefundable personal credits are allowed to the extent of the full amount of the individual's regular tax and alternative minimum tax.

For taxable years beginning after 2008, the nonrefundable personal credits (other than the adoption credit, the child credit, the credit for savers, the credit for residential energy efficient property, and the credit for plug-in electric drive motor vehicles) are allowed only to the extent that the individual's regular income tax liability exceeds the individual's tentative minimum tax, determined without regard to the minimum tax foreign tax credit. The adoption credit, the child credit, the credit for savers, the credit for residential energy efficient property, and the credit for plug-in electric drive motor vehicles are allowed to the full extent of the individual's regular tax and alternative minimum tax.[18]

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that the individual AMT exemption amount for taxable years beginning in 2009 is $70,950, in the case of married individuals filing a joint return and surviving spouses; (2) $46,700 in the case of other unmarried individuals; and (3) $35,475 in the case of married individuals filing separate returns.

For taxable years beginning in 2009, the provision allows an individual to offset the entire regular tax liability and alternative minimum tax liability by the nonrefundable personal credits.

Effective date.—The provision is effective for taxable years beginning in 2009.

[18] The rule applicable to the adoption credit and child credit is subject to the EGTRRA sunset.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

B. TAX INCENTIVES FOR BUSINESS

1. Special allowance for certain property acquired during 2009 and extension of election to accelerate AMT and research credits in lieu of bonus depreciation (sec. 1401 of the House bill, sec. 1201 of the Senate amendment, sec. 1201 of the conference agreement, and sec. 168(k) of the Code)

PRESENT LAW

An additional first-year depreciation deduction is allowed equal to 50 percent of the adjusted basis of qualified property placed in service during 2008 (and 2009 for certain longer-lived and transportation property).[19] The additional first-year depreciation deduction is allowed for both regular tax and alternative minimum tax purposes for the taxable year in which the property is placed in service.[20] The basis of the property and the depreciation allowances in the year of purchase and later years are appropriately adjusted to reflect the additional first-year depreciation deduction. In addition, there are no adjustments to the allowable amount of depreciation for purposes of computing a taxpayer's alternative minimum taxable income with respect to property to which the provision applies. The amount of the additional first-year depreciation deduction is not affected by a short taxable year. The taxpayer may elect out of additional first-year depreciation for any class of property for any taxable year.

The interaction of the additional first-year depreciation allowance with the otherwise applicable depreciation allowance may be illustrated as follows. Assume that in 2008, a taxpayer purchases new depreciable property and places it in service.[21] The property's cost is $1,000, and it is five-year property subject to the half-year convention. The amount of additional first-year depreciation allowed is $500. The remaining $500 of the cost of the property is deductible under the rules applicable to 5-year property. Thus, 20 percent, or $100, is also allowed as a depreciation deduction in 2008. The total depreciation deduction with respect to the property for 2008 is $600. The remaining $400 cost of the property is recovered under otherwise applicable rules for computing depreciation.

In order for property to qualify for the additional first-year depreciation deduction it must meet all of the following requirements. First, the property must be (1) property to which MACRS applies with an applicable recovery period of 20 years or less, (2) water utility property (as defined in section 168(e)(5)), (3) computer software other than computer software covered by section 197, or (4)

[19] Sec. 168(k). The additional first-year depreciation deduction is subject to the general rules regarding whether an item is deductible under section 162 or instead is subject to capitalization under section 263 or section 263A.

[20] However, the additional first-year depreciation deduction is not allowed for purposes of computing earnings and profits.

[21] Assume that the cost of the property is not eligible for expensing under section 179.

qualified leasehold improvement property (as defined in section 168(k)(3)).[22]

Second, the original use[23] of the property must commence with the taxpayer after December 31, 2007.[24] Third, the taxpayer must purchase the property within the applicable time period. Finally, the property must be placed in service after December 31, 2007, and before January 1, 2009. An extension of the placed in service date of one year (i.e., to January 1, 2010) is provided for certain property with a recovery period of ten years or longer and certain transportation property.[25] Transportation property is defined as tangible personal property used in the trade or business of transporting persons or property.

The applicable time period for acquired property is (1) after December 31, 2007, and before January 1, 2009, but only if no binding written contract for the acquisition is in effect before January 1, 2008, or (2) pursuant to a binding written contract which was entered into after December 31, 2007, and before January 1, 2009.[26] With respect to property that is manufactured, constructed, or produced by the taxpayer for use by the taxpayer, the taxpayer must begin the manufacture, construction, or production of the property after December 31, 2007, and before January 1, 2009. Property that is manufactured, constructed, or produced for the taxpayer by another person under a contract that is entered into prior to the manufacture, construction, or production of the property is considered to be manufactured, constructed, or produced by the taxpayer. For property eligible for the extended placed in service date, a special rule limits the amount of costs eligible for the additional first-year depreciation. With respect to such property, only the portion of the basis that is properly attributable to the costs incurred before January 1, 2009 ("progress expenditures") is eligible for the additional first-year depreciation.[27]

Property does not qualify for the additional first-year depreciation deduction when the user of such property (or a related party) would not have been eligible for the additional first-year depreciation deduction if the user (or a related party) were treated as the

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[22] A special rule precludes the additional first-year depreciation deduction for any property that is required to be depreciated under the alternative depreciation system of MACRS.

[23] The term "original use" means the first use to which the property is put, whether or not such use corresponds to the use of such property by the taxpayer.

If in the normal course of its business a taxpayer sells fractional interests in property to unrelated third parties, then the original use of such property begins with the first user of each fractional interest (i.e., each fractional owner is considered the original user of its proportionate share of the property).

[24] A special rule applies in the case of certain leased property. In the case of any property that is originally placed in service by a person and that is sold to the taxpayer and leased back to such person by the taxpayer within three months after the date that the property was placed in service, the property would be treated as originally placed in service by the taxpayer not earlier than the date that the property is used under the leaseback.

If property is originally placed in service by a lessor (including by operation of section 168(k)(2)(D)(i)), such property is sold within three months after the date that the property was placed in service, and the user of such property does not change, then the property is treated as originally placed in service by the taxpayer not earlier than the date of such sale.

[25] In order for property to qualify for the extended placed in service date, the property is required to have an estimated production period exceeding one year and a cost exceeding $1 million.

[26] Property does not fail to qualify for the additional first-year depreciation merely because a binding written contract to acquire a component of the property is in effect prior to January 1, 2008.

[27] For purposes of determining the amount of eligible progress expenditures, it is intended that rules similar to sec. 46(d)(3) as in effect prior to the Tax Reform Act of 1986 shall apply.

owner. For example, if a taxpayer sells to a related party property that was under construction prior to January 1, 2008, the property does not qualify for the additional first-year depreciation deduction. Similarly, if a taxpayer sells to a related party property that was subject to a binding written contract prior to January 1, 2008, the property does not qualify for the additional first-year depreciation deduction. As a further example, if a taxpayer (the lessee) sells property in a sale-leaseback arrangement, and the property otherwise would not have qualified for the additional first-year depreciation deduction if it were owned by the taxpayer-lessee, then the lessor is not entitled to the additional first-year depreciation deduction.

The limitation on the amount of depreciation deductions allowed with respect to certain passenger automobiles (sec. 280F) is increased in the first year by $8,000 for automobiles that qualify (and do not elect out of the increased first year deduction). The $8,000 increase is not indexed for inflation.

Corporations otherwise eligible for additional first year depreciation under section 168(k) may elect to claim additional research or minimum tax credits in lieu of claiming depreciation under section 168(k) for "eligible qualified property" placed in service after March 31, 2008 and before December 31, 2008.[28] A corporation making the election forgoes the depreciation deductions allowable under section 168(k) and instead increases the limitation under section 38(c) on the use of research credits or section 53(c) on the use of minimum tax credits.[29] The increases in the allowable credits are treated as refundable for purposes of this provision. The depreciation for qualified property is calculated for both regular tax and AMT purposes using the straight-line method in place of the method that would otherwise be used absent the election under this provision.

The research credit or minimum tax credit limitation is increased by the bonus depreciation amount, which is equal to 20 percent of bonus depreciation[30] for certain eligible qualified property that could be claimed absent an election under this provision. Generally, eligible qualified property included in the calculation is bonus depreciation property that meets the following requirements: (1) the original use of the property must commence with the taxpayer after March 31, 2008; (2) the taxpayer must purchase the property either (a) after March 31, 2008, and before January 1, 2009, but only if no binding written contract for the acquisition is in effect before April 1, 2008,[31] or (b) pursuant to a binding written contract which was entered into after March 31, 2008, and before

[28] Sec. 168(k)(4). In the case of an electing corporation that is a partner in a partnership, the corporate partner's distributive share of partnership items is determined as if section 168(k) does not apply to any eligible qualified property and the straight line method is used to calculate depreciation of such property.

[29] Special rules apply to an applicable partnership.

[30] For this purpose, bonus depreciation is the difference between (i) the aggregate amount of depreciation for all eligible qualified property determined if section 168(k)(1) applied using the most accelerated depreciation method (determined without regard to this provision), and shortest life allowable for each property, and (ii) the amount of depreciation that would be determined if section 168(k)(1) did not apply using the same method and life for each property.

[31] In the case of passenger aircraft, the written binding contract limitation does not apply.

January 1, 2009;[32] and (3) the property must be placed in service after March 31, 2008, and before January 1, 2009 (January 1, 2010 for certain longer-lived and transportation property).

The bonus depreciation amount is limited to the lesser of: (1) $30 million, or (2) six percent of the sum of research credit carryforwards from taxable years beginning before January 1, 2006 and minimum tax credits allocable to the adjusted minimum tax imposed for taxable years beginning before January 1, 2006. All corporations treated as a single employer under section 52(a) are treated as one taxpayer for purposes of the limitation, as well as for electing the application of this provision.

HOUSE BILL

The provision extends the additional first-year depreciation deduction for one year, generally through 2009 (through 2010 for certain longer-lived and transportation property).[33]

Effective date.—The provision is effective for property placed in service after December 31, 2008.

SENATE AMENDMENT

The provision extends the additional first-year depreciation deduction for one year, generally through 2009 (through 2010 for certain longer-lived and transportation property).

The provision generally permits corporations to increase the research credit or minimum tax credit limitation by the bonus depreciation amount with respect to certain property placed in service in 2009 (2010 in the case of certain longer-lived and transportation property). The provision applies with respect to extension property, which is defined as property that is eligible qualified property solely because it meets the requirements under the extension of the special allowance for certain property acquired during 2009.

Under the provision, a taxpayer that has made an election to increase the research credit or minimum tax credit limitation for eligible qualified property for its first taxable year ending after March 31, 2008, may choose not to make this election for extension property. Further, the provision allows a taxpayer that has not made an election for eligible qualified property for its first taxable year ending after March 31, 2008, to make the election for extension property for its first taxable year ending after December 31, 2008, and for each subsequent year. In the case of a taxpayer electing to increase the research or minimum tax credit for both eligible qualified property and extension property, a separate bonus depreciation amount, maximum amount, and maximum increase amount is computed and applied to each group of property.[34]

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[32] Special rules apply to property manufactured, constructed, or produced by the taxpayer for use by the taxpayer.

[33] The provision does not modify the property eligible for the election to accelerate AMT and research credits in lieu of bonus depreciation under section 168(k)(4). However, the provision includes a technical amendment to section 168(k)(4)(D) providing that no written binding contract for the acquisition of eligible qualified property may be in effect before April 1, 2008 (effective for taxable years ending after March 31, 2008).

[34] In computing the maximum amount, the maximum increase amount for extension property is reduced by bonus depreciation amounts for preceding taxable years only with respect to extension property.

Effective date.—The extension of the additional first-year depreciation deduction is generally effective for property placed in service after December 31, 2008.

The extension of the election to accelerate AMT and research credits in lieu of bonus depreciation is effective for taxable years ending after December 31, 2008.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

2. Temporary increase in limitations on expensing of certain depreciable business assets (sec. 1402 of the House bill, sec. 1202 of the Senate amendment, sec. 1202 of the conference agreement, and sec. 179 of the Code)

PRESENT LAW

In lieu of depreciation, a taxpayer with a sufficiently small amount of annual investment may elect to deduct (or "expense") such costs under section 179. Present law provides that the maximum amount a taxpayer may expense for taxable years beginning in 2008 is $250,000 of the cost of qualifying property placed in service for the taxable year.[35] For taxable years beginning in 2009 and 2010, the limitation is $125,000. In general, qualifying property is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business. Off-the-shelf computer software placed in service in taxable years beginning before 2011 is treated as qualifying property. For taxable years beginning in 2008, the $250,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $800,000. For taxable years beginning in 2009 and 2010, the $125,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $500,000. The $125,000 and $500,000 amounts are indexed for inflation in taxable years beginning in 2009 and 2010.

The amount eligible to be expensed for a taxable year may not exceed the taxable income for a taxable year that is derived from the active conduct of a trade or business (determined without regard to this provision). Any amount that is not allowed as a deduction because of the taxable income limitation may be carried forward to succeeding taxable years (subject to similar limitations). No general business credit under section 38 is allowed with respect to any amount for which a deduction is allowed under section 179. An expensing election is made under rules prescribed by the Secretary.[36]

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[35] Additional section 179 incentives are provided with respect to qualified property meeting applicable requirements that is used by a business in an empowerment zone (sec. 1397A) or a renewal community (sec. 1400J), qualified section 179 Gulf Opportunity Zone property (sec. 1400N(e)), qualified Recovery Assistance property placed in service in the Kansas disaster area (Pub. L. No. 110–234, sec. 15345 (2008)), and qualified disaster assistance property (sec. 179(e)).

[36] Sec. 179(c)(1). Under Treas. Reg. sec. 1.179–5, applicable to property placed in service in taxable years beginning after 2002 and before 2008, a taxpayer is permitted to make or revoke an election under section 179 without the consent of the Commissioner on an amended Federal tax return for that taxable year. This amended return must be filed within the time prescribed by law for filing an amended return for the taxable year. T.D. 9209, July 12, 2005.

For taxable years beginning in 2011 and thereafter (or before 2003), the following rules apply. A taxpayer with a sufficiently small amount of annual investment may elect to deduct up to $25,000 of the cost of qualifying property placed in service for the taxable year. The $25,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $200,000. The $25,000 and $200,000 amounts are not indexed for inflation. In general, qualifying property is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business (not including off-the-shelf computer software). An expensing election may be revoked only with consent of the Commissioner.[37]

HOUSE BILL

The provision extends the $250,000 and $800,000 amounts to taxable years beginning in 2009.

Effective date.—The provision is effective for taxable years beginning after December 31, 2008.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

3. Five-year carryback of operating losses (secs. 1411 and 1412 of the House bill, secs. 1211 and 1212 of the Senate amendment, sec. 1211 of the conference agreement, and sec. 172 of the Code)

PRESENT LAW

Under present law, a net operating loss ("NOL") generally means the amount by which a taxpayer's business deductions exceed its gross income. In general, an NOL may be carried back two years and carried over 20 years to offset taxable income in such years.[38] NOLs offset taxable income in the order of the taxable years to which the NOL may be carried.[39]

The alternative minimum tax rules provide that a taxpayer's NOL deduction cannot reduce the taxpayer's alternative minimum taxable income ("AMTI") by more than 90 percent of the AMTI.

Different rules apply with respect to NOLs arising in certain circumstances. A three-year carryback applies with respect to NOLs (1) arising from casualty or theft losses of individuals, or (2) attributable to Presidentially declared disasters for taxpayers engaged in a farming business or a small business. A five-year carryback applies to NOLs (1) arising from a farming loss (regardless of whether the loss was incurred in a Presidentially declared disaster area), (2) certain amounts related to Hurricane Katrina, Gulf Opportunity Zone, and Midwestern Disaster Area, or (3) quali-

[37] Sec. 179(c)(2).
[38] Sec. 172(b)(1)(A).
[39] Sec. 172(b)(2).

fied disaster losses.[40] Special rules also apply to real estate investment trusts (no carryback), specified liability losses (10-year carryback), and excess interest losses (no carryback to any year preceding a corporate equity reduction transaction). Additionally, a special rule applies to certain electric utility companies.

In the case of a life insurance company, present law allows a deduction for the operations loss carryovers and carrybacks to the taxable year, in lieu of the deduction for net operation losses allowed to other corporations.[41] A life insurance company is permitted to treat a loss from operations (as defined under section 810(c)) for any taxable year as an operations loss carryback to each of the three taxable years preceding the loss year and an operations loss carryover to each of the 15 taxable years following the loss year.[42] Special rules apply to new life insurance companies.

HOUSE BILL

The House bill provides an election[43] to increase the present-law carryback period for an applicable 2008 or 2009 NOL from two years to any whole number of years elected by the taxpayer which is more than two and less than six. An applicable NOL is the taxpayer's NOL for any taxable year ending in 2008 or 2009, or if elected by the taxpayer, the NOL for any taxable year beginning in 2008 or 2009. If an election is made to increase the carryback period, the applicable NOL is permanently reduced by 10 percent.

These provisions may be illustrated by the following example. Taxpayer incurs a $100 NOL for its taxable year ended January 31, 2008 and elects to carryback the NOL five years to its taxable year ended January 31, 2003. Under the provision, Taxpayer must first permanently reduce the NOL by 10 percent, or $10, and then may carryback the $90 NOL to its taxable year ended January 31, 2003.

The provision also suspends the 90-percent limitation on the use of any alternative tax NOL deduction attributable to carrybacks of losses from taxable years ending during 2008 or 2009, and carryovers of losses to such taxable years (this rule applies to taxable years beginning in 2008 or 2009 if an election is in place to use such years as applicable NOLs).

For life insurance companies, the provision provides an election to increase the present-law carryback period for an applicable loss from operations from three years to four or five years. An applicable loss from operations is the taxpayer's loss from operations for any taxable year ending in 2008 or 2009, or if elected by the taxpayer, the loss from operations for any taxable year beginning in 2008 or 2009. If an election is made to increase the carryback period, the applicable loss from operations is permanently reduced by 10 percent.

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[40] Sec. 172(b)(1)(J).
[41] Secs. 810, 805(a)(5).
[42] Sec. 810(b)(1).
[43] For all elections under this provision, the common parent of a group of corporations filing a consolidated return makes the election, which is binding on all such corporations.

The provision does not apply to: (1) any taxpayer if (a) the Federal Government acquires, at any time,[44] an equity interest in the taxpayer pursuant to the Emergency Economic Stabilization Act of 2008, or (b) the Federal Government acquires, at any time, any warrant (or other right) to acquire any equity interest with respect to the taxpayer pursuant to such Act; (2) the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation; or (3) any taxpayer that in 2008 or 2009[45] is a member of the same affiliated group (as defined in section 1504 without regard to subsection (b) thereof) as a taxpayer to which the provision does not otherwise apply.

Effective date.—The provision is generally effective for net operating losses arising in taxable years ending after December 31, 2007. The modification to the alternative tax NOL deduction applies to taxable years ending after 1997.[46] The modification with respect to operating loss deductions of life insurance companies applies to losses from operations arising in taxable years ending after December 31, 2007.

For an NOL or loss from operations for a taxable year ending before the enactment of the provision, the provision includes the following transition rules: (1) any election to waive the carryback period under either sections 172(b)(3) or 810(b)(3) with respect to such loss may be revoked before the applicable date; (2) any election to increase the carryback period under this provision is treated as timely made if made before the applicable date; and (3) any application for a tentative carryback adjustment under section 6411(a) with respect to such loss is treated as timely filed if filed before the applicable date. For purposes of the transition rules, the applicable date is the date which is 60 days after the date of the enactment of the provision.

SENATE AMENDMENT

The Senate amendment is generally the same as the House bill, except that the Senate amendment does not include the permanent reduction of the NOL for taxpayers electing to increase the carryback period.

Effective date.—The effective date follows the House bill.

CONFERENCE AGREEMENT

The conference agreement provides an eligible small business with an election[47] to increase the present-law carryback period for an applicable 2008 NOL from two years to any whole number of years elected by the taxpayer that is more than two and less than

[44] For example, if the Federal government acquires an equity interest in the taxpayer during 2010, or in later years, the taxpayer is not entitled to the extended carryback rules under this provision. If the carryback has previously been claimed, amended filings may be necessary to reflect this disallowance.

[45] For example, a taxpayer with an NOL in 2008 that in 2010 joins an affiliated group with a member in which the Federal Government has an equity interest pursuant to the Emergency Economic Stabilization Act of 2008 may not utilize the extended carryback rules under this provision with regard to the 2008 NOL. The taxpayer is required to amend prior filings to reflect the permitted carryback period.

[46] NOL deductions from as early as taxable years ending after 1997 may be carried forward to 2008 and utilize the provision suspending the 90 percent limitation on alternative tax NOL deductions.

[47] For all elections under this provision, the common parent of a group of corporations filing a consolidated return makes the election, which is binding on all such corporations.

six. An eligible small business is a taxpayer meeting a $15,000,000 gross receipts test.[48] An applicable NOL is the taxpayer's NOL for any taxable year ending in 2008, or if elected by the taxpayer, the NOL for any taxable year beginning in 2008. However, any election under this provision may be made only with respect to one taxable year.

Effective date.—The conference agreement provision is effective for net operating losses arising in taxable years ending after December 31, 2007.

For an NOL for a taxable year ending before the enactment of the provision, the provision includes the following transition rules: (1) any election to waive the carryback period under either section 172(b)(3) with respect to such loss may be revoked before the applicable date; (2) any election to increase the carryback period under this provision is treated as timely made if made before the applicable date; and (3) any application for a tentative carryback adjustment under section 6411(a) with respect to such loss is treated as timely filed if filed before the applicable date. For purposes of the transition rules, the applicable date is the date which is 60 days after the date of the enactment of the provision.

4. Estimated tax payments (sec. 1212 of the conference agreement and sec. 6654 of the Code)

PRESENT LAW

Under present law, the income tax system is designed to ensure that taxpayers pay taxes throughout the year based on their income and deductions. To the extent that tax is not collected through withholding, taxpayers are required to make quarterly estimated payments of tax, the amount of which is determined by reference to the required annual payment. The required annual payment is the lesser of 90 percent of the tax shown on the return or 100 percent of the tax shown on the return for the prior taxable year (110 percent if the adjusted gross income for the preceding year exceeded $150,000). An underpayment results if the required payment exceeds the amount (if any) of the installment paid on or before the due date of the installment. The period of the underpayment runs from the due date of the installment to the earlier of (1) the 15th day of the fourth month following the close of the taxable year or (2) the date on which each portion of the underpayment is made. If a taxpayer fails to pay the required estimated tax payments under the rules, a penalty is imposed in an amount determined by applying the underpayment interest rate to the amount of the underpayment for the period of the underpayment. The penalty for failure to pay estimated tax is the equivalent of interest, which is based on the time value of money.

Taxpayers are not liable for a penalty for the failure to pay estimated tax in certain circumstances. The statute provides exceptions for U.S. persons who did not have a tax liability the preceding year, if the tax shown on the return for the taxable year (or, if no return is filed, the tax), reduced by withholding, is less than

[48] For this purpose, the gross receipt test of sec. 448(c) is applied by substituting $15,000,000 for $5,000,000 each place it appears.

$1,000, or the taxpayer is a recently retired or disabled person who satisfies the reasonable cause exception.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement provides that the required annual estimated tax payments of a qualified individual for taxable years beginning in 2009 is not greater than 90 percent of the tax liability shown on the tax return for the preceding taxable year. A qualified individual means any individual if the adjusted gross income shown on the tax return for the preceding taxable year is less than $500,000 ($250,000 if married filing separately) and the individual certifies that at least 50 percent of the gross income shown on the return for the preceding taxable year was income from a small trade or business. For purposes of this provision, a small trade or business means any trade or business that employed no more than 500 persons, on average, during the calendar year ending in or with the preceding taxable year.

Effective date.—The proposal is effective on the date of enactment.

5. Modification of work opportunity tax credit (sec. 1421 of the House bill, sec. 1221 of the Senate amendment, sec. 1221 of the conference agreement, and sec. 51 of the Code)

PRESENT LAW

In general

The work opportunity tax credit is available on an elective basis for employers hiring individuals from one or more of nine targeted groups. The amount of the credit available to an employer is determined by the amount of qualified wages paid by the employer. Generally, qualified wages consist of wages attributable to service rendered by a member of a targeted group during the one-year period beginning with the day the individual begins work for the employer (two years in the case of an individual in the long-term family assistance recipient category).

Targeted groups eligible for the credit

Generally an employer is eligible for the credit only for qualified wages paid to members of a targeted group.

(1) Families receiving TANF

An eligible recipient is an individual certified by a designated local employment agency (e.g., a State employment agency) as being a member of a family eligible to receive benefits under the Temporary Assistance for Needy Families Program ("TANF") for a period of at least nine months, part of which is during the 18-month period ending on the hiring date. For these purposes, mem-

bers of the family are defined to include only those individuals taken into account for purposes of determining eligibility for the TANF.

(2) Qualified veteran

There are two subcategories of qualified veterans related to eligibility for Food stamps and compensation for a service-connected disability.

Food stamps

A qualified veteran is a veteran who is certified by the designated local agency as a member of a family receiving assistance under a food stamp program under the Food Stamp Act of 1977 for a period of at least three months, part of which is during the 12-month period ending on the hiring date. For these purposes, members of a family are defined to include only those individuals taken into account for purposes of determining eligibility for a food stamp program under the Food Stamp Act of 1977.

Entitled to compensation for a service-connected disability

A qualified veteran also includes an individual who is certified as entitled to compensation for a service-connected disability and: (1) having a hiring date which is not more than one year after having been discharged or released from active duty in the Armed Forces of the United States; or (2) having been unemployed for six months or more (whether or not consecutive) during the one-year period ending on the date of hiring.

Definitions

For these purposes, being entitled to compensation for a service-connected disability is defined with reference to section 101 of Title 38, U.S. Code, which means having a disability rating of 10 percent or higher for service connected injuries.

For these purposes, a veteran is an individual who has served on active duty (other than for training) in the Armed Forces for more than 180 days or who has been discharged or released from active duty in the Armed Forces for a service-connected disability. However, any individual who has served for a period of more than 90 days during which the individual was on active duty (other than for training) is not a qualified veteran if any of this active duty occurred during the 60-day period ending on the date the individual was hired by the employer. This latter rule is intended to prevent employers who hire current members of the armed services (or those departed from service within the last 60 days) from receiving the credit.

(3) Qualified ex-felon

A qualified ex-felon is an individual certified as: (1) having been convicted of a felony under any State or Federal law; and (2) having a hiring date within one year of release from prison or the date of conviction.

(4) Designated community residents

A designated community resident is an individual certified as being at least age 18 but not yet age 40 on the hiring date and as having a principal place of abode within an empowerment zone, enterprise community, renewal community or a rural renewal community. For these purposes, a rural renewal county is a county outside a metropolitan statistical area (as defined by the Office of Management and Budget) which had a net population loss during the five-year periods 1990–1994 and 1995–1999. Qualified wages do not include wages paid or incurred for services performed after the individual moves outside an empowerment zone, enterprise community, renewal community or a rural renewal community.

(5) Vocational rehabilitation referral

A vocational rehabilitation referral is an individual who is certified by a designated local agency as an individual who has a physical or mental disability that constitutes a substantial handicap to employment and who has been referred to the employer while receiving, or after completing: (a) vocational rehabilitation services under an individualized, written plan for employment under a State plan approved under the Rehabilitation Act of 1973; (b) under a rehabilitation plan for veterans carried out under Chapter 31 of Title 38, U.S. Code; or (c) an individual work plan developed and implemented by an employment network pursuant to subsection (g) of section 1148 of the Social Security Act. Certification will be provided by the designated local employment agency upon assurances from the vocational rehabilitation agency that the employee has met the above conditions.

(6) Qualified summer youth employee

A qualified summer youth employee is an individual: (a) who performs services during any 90-day period between May 1 and September 15; (b) who is certified by the designated local agency as being 16 or 17 years of age on the hiring date; (c) who has not been an employee of that employer before; and (d) who is certified by the designated local agency as having a principal place of abode within an empowerment zone, enterprise community, or renewal community (as defined under Subchapter U of Subtitle A, Chapter 1 of the Internal Revenue Code). As with designated community residents, no credit is available on wages paid or incurred for service performed after the qualified summer youth moves outside of an empowerment zone, enterprise community, or renewal community. If, after the end of the 90-day period, the employer continues to employ a youth who was certified during the 90-day period as a member of another targeted group, the limit on qualified first year wages will take into account wages paid to the youth while a qualified summer youth employee.

(7) Qualified food stamp recipient

A qualified food stamp recipient is an individual at least age 18 but not yet age 40 certified by a designated local employment agency as being a member of a family receiving assistance under a food stamp program under the Food Stamp Act of 1977 for a period of at least six months ending on the hiring date. In the case

of families that cease to be eligible for food stamps under section 6(o) of the Food Stamp Act of 1977, the six-month requirement is replaced with a requirement that the family has been receiving food stamps for at least three of the five months ending on the date of hire. For these purposes, members of the family are defined to include only those individuals taken into account for purposes of determining eligibility for a food stamp program under the Food Stamp Act of 1977.

(8) Qualified SSI recipient

A qualified SSI recipient is an individual designated by a local agency as receiving supplemental security income ("SSI") benefits under Title XVI of the Social Security Act for any month ending within the 60-day period ending on the hiring date.

(9) Long-term family assistance recipients

A qualified long-term family assistance recipient is an individual certified by a designated local agency as being: (a) a member of a family that has received family assistance for at least 18 consecutive months ending on the hiring date; (b) a member of a family that has received such family assistance for a total of at least 18 months (whether or not consecutive) after August 5, 1997 (the date of enactment of the welfare-to-work tax credit[49] if the individual is hired within two years after the date that the 18-month total is reached; or (c) a member of a family who is no longer eligible for family assistance because of either Federal or State time limits, if the individual is hired within two years after the Federal or State time limits made the family ineligible for family assistance.

Qualified wages

Generally, qualified wages are defined as cash wages paid by the employer to a member of a targeted group. The employer's deduction for wages is reduced by the amount of the credit.

For purposes of the credit, generally, wages are defined by reference to the FUTA definition of wages contained in sec. 3306(b) (without regard to the dollar limitation therein contained). Special rules apply in the case of certain agricultural labor and certain railroad labor.

Calculation of the credit

The credit available to an employer for qualified wages paid to members of all targeted groups except for long-term family assistance recipients equals 40 percent (25 percent for employment of 400 hours or less) of qualified first-year wages. Generally, qualified first-year wages are qualified wages (not in excess of $6,000) attributable to service rendered by a member of a targeted group during the one-year period beginning with the day the individual began work for the employer. Therefore, the maximum credit per employee is $2,400 (40 percent of the first $6,000 of qualified first-year wages). With respect to qualified summer youth employees,

[49] The welfare-to-work tax credit was consolidated into the work opportunity tax credit in the Tax Relief and Health Care Act of 2006, for qualified individuals who begin to work for an employer after December 31, 2006.

the maximum credit is $1,200 (40 percent of the first $3,000 of qualified first-year wages). Except for long-term family assistance recipients, no credit is allowed for second-year wages.

In the case of long-term family assistance recipients, the credit equals 40 percent (25 percent for employment of 400 hours or less) of $10,000 for qualified first-year wages and 50 percent of the first $10,000 of qualified second-year wages. Generally, qualified second-year wages are qualified wages (not in excess of $10,000) attributable to service rendered by a member of the long-term family assistance category during the one-year period beginning on the day after the one-year period beginning with the day the individual began work for the employer. Therefore, the maximum credit per employee is $9,000 (40 percent of the first $10,000 of qualified first-year wages plus 50 percent of the first $10,000 of qualified second-year wages).

In the case of a qualified veteran who is entitled to compensation for a service connected disability, the credit equals 40 percent of $12,000 of qualified first-year wages. This expanded definition of qualified first-year wages does not apply to the veterans qualified with reference to a food stamp program, as defined under present law.

Certification rules

An individual is not treated as a member of a targeted group unless: (1) on or before the day on which an individual begins work for an employer, the employer has received a certification from a designated local agency that such individual is a member of a targeted group; or (2) on or before the day an individual is offered employment with the employer, a pre-screening notice is completed by the employer with respect to such individual, and not later than the 28th day after the individual begins work for the employer, the employer submits such notice, signed by the employer and the individual under penalties of perjury, to the designated local agency as part of a written request for certification. For these purposes, a pre-screening notice is a document (in such form as the Secretary may prescribe) which contains information provided by the individual on the basis of which the employer believes that the individual is a member of a targeted group.

Minimum employment period

No credit is allowed for qualified wages paid to employees who work less than 120 hours in the first year of employment.

Other rules

The work opportunity tax credit is not allowed for wages paid to a relative or dependent of the taxpayer. No credit is allowed for wages paid to an individual who is a more than fifty-percent owner of the entity. Similarly, wages paid to replacement workers during a strike or lockout are not eligible for the work opportunity tax credit. Wages paid to any employee during any period for which the employer received on-the-job training program payments with respect to that employee are not eligible for the work opportunity tax credit. The work opportunity tax credit generally is not allowed for

wages paid to individuals who had previously been employed by the employer. In addition, many other technical rules apply.

Expiration

The work opportunity tax credit is not available for individuals who begin work for an employer after August 31, 2011.

HOUSE BILL

In general

The provision creates a new targeted group for the work opportunity tax credit. That new category is unemployed veterans and disconnected youth who begin work for the employer in 2009 or 2010.

An unemployed veteran is defined as an individual certified by the designated local agency as someone who: (1) has served on active duty (other than for training) in the Armed Forces for more than 180 days or who has been discharged or released from active duty in the Armed Forces for a service-connected disability; (2) has been discharged or released from active duty in the Armed Forces during 2008, 2009, or 2010; and (3) has received unemployment compensation under State or Federal law for not less than four weeks during the one-year period ending on the hiring date.

A disconnected youth is defined as an individual certified by the designated local agency as someone: (1) at least age 16 but not yet age 25 on the hiring date; (2) not regularly attending any secondary, technical, or post-secondary school during the six-month period preceding the hiring date; (3) not regularly employed during the six-month period preceding the hiring date; and (4) not readily employable by reason of lacking a sufficient number of skills.

Effective date

The provisions are effective for individuals who begin work for an employer after December 31, 2008.

SENATE AMENDMENT

The Senate amendment is the same as the House bill except that the otherwise applicable definition of unemployed veterans is expanded to include individuals who were discharged or released from active duty in the Armed Forces during the period beginning on September 1, 2001 and ending on December 31, 2010.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment with one modification. Under this modification an unemployed veteran for purposes of this new targeted group is defined below:

An unemployed veteran is defined as an individual certified by the designated local agency as someone who: (1) has served on active duty (other than for training) in the Armed Forces for more than 180 days or who has been discharged or released from active duty in the Armed Forces for a service-connected disability; (2) has been discharged or released from active duty in the Armed Forces during the five-year period ending on the hiring date; and (3) has

received unemployment compensation under State or Federal law for not less than four weeks during the one-year period ending on the hiring date.

For purposes of the disconnected youths, it is intended that a low level of formal education may satisfy the requirement that an individual is not readily employable by reason of lacking a sufficient number of skills. Further, it is intended that the Internal Revenue Service, when providing general guidance regarding the various new criteria, shall take into account the administrability of the program by the State agencies.

6. Clarification of regulations related to limitations on certain built-in losses following an ownership change (sec. 1431 of the House bill, sec. 1281 of the Senate amendment, sec. 1261 of the conference agreement, and sec. 382 of the Code)

PRESENT LAW

Section 382 limits the extent to which a "loss corporation" that experiences an "ownership change" may offset taxable income in any post-change taxable year by pre-change net operating losses, certain built-in losses, and deductions attributable to the pre-change period.[50] In general, the amount of income in any post-change year that may be offset by such net operating losses, built-in losses and deductions is limited to an amount (referred to as the "section 382 limitation") determined by multiplying the value of the loss corporation immediately before the ownership change by the long-term tax-exempt interest rate.[51]

A "loss corporation" is defined as a corporation entitled to use a net operating loss carryover or having a net operating loss carryover for the taxable year in which the ownership change occurs. Except to the extent provided in regulations, such term includes any corporation with a "net unrealized built-in loss" (or NUBIL),[52] defined as the amount by which the fair market value of the assets of the corporation immediately before an ownership change is less than the aggregate adjusted basis of such assets at such time. However, if the amount of the NUBIL does not exceed the lesser of (i) 15 percent of the fair market value of the corporation's assets or (ii) $10,000,000, then the amount of the NUBIL is treated as zero.[53]

An ownership change is defined generally as an increase by more than 50-percentage points in the percentage of stock of a loss corporation that is owned by any one or more five-percent (or great-

[50] Sec. 383 imposes similar limitations, under regulations, on the use of carryforwards of general business credits, alternative minimum tax credits, foreign tax credits, and net capital loss carryforwards. Sec. 383 generally refers to sec. 382 for the meanings of its terms, but requires appropriate adjustments to take account of its application to credits and net capital losses.

[51] If the loss corporation had a "net unrealized built-in gain" (or NUBIG) at the time of the ownership change, then the sec. 382 limitation for any taxable year may be increased by the amount of the "recognized built-in gains" (discussed further below) for that year. A NUBIG is defined as the amount by which the fair market value of the assets of the corporation immediately before an ownership change exceeds the aggregate adjusted basis of such assets at such time. However, if the amount of the NUBIG does not exceed the lesser of (i) 15 percent of the fair market value of the corporation's assets or (ii) $10,000,000, then the amount of the NUBIG is treated as zero. Sec. 382(h)(1).

[52] Sec. 382(k)(1).

[53] Sec. 382(h)(3).

er) shareholders (as defined) within a three-year period.[54] Treasury regulations provide generally that this measurement is to be made as of any "testing date," which is any date on which the ownership of one or more persons who were or who become five-percent shareholders increases.[55]

Section 382(h) governs the treatment of certain built-in losses and built-in gains recognized with respect to assets held by the loss corporation at the time of the ownership change. In the case of a loss corporation that has a NUBIL (measured immediately before an ownership change), section 382(h)(1) provides that any "recognized built-in loss" (or RBIL) for any taxable year during a "recognition period" (consisting of the five years beginning on the ownership change date) is subject to the section 382 limitation in the same manner as if it were a pre-change net operating loss.[56] An RBIL is defined for this purpose as any loss recognized during the recognition period on the disposition of any asset held by the loss corporation immediately before the ownership change date, to the extent that such loss is attributable to an excess of the adjusted basis of the asset on the change date over its fair market value on

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[54] Determinations of the percentage of stock of any corporation held by any person are made on the basis of value. Sec. 382(k)(6)(C).

[55] See Treas. Reg. sec. 1.382–2(a)(4) (providing that "a loss corporation is required to determine whether an ownership change has occurred immediately after any owner shift, or issuance or transfer (including an issuance or transfer described in Treas. Reg. sec. 1.382–4(d)(8)(i) or (ii)) of an option with respect to stock of the loss corporation that is treated as exercised under Treas. Reg. sec. 1.382–4(d)(2)" and defining a "testing date" as "each date on which a loss corporation is required to make a determination of whether an ownership change has occurred") and Temp. Treas. Reg. sec. 1.382–2T(e)(1) (defining an "owner shift" as "any change in the ownership of the stock of a loss corporation that affects the percentage of such stock owned by any 5-percent shareholder"). Treasury regulations under section 382 provide that, in computing stock ownership on specified testing dates, certain unexercised options must be treated as exercised if certain ownership, control, or income tests are met. These tests are met only if "a principal purpose of the issuance, transfer, or structuring of the option (alone or in combination with other arrangements) is to avoid or ameliorate the impact of an ownership change of the loss corporation." Treas. Reg. sec. 1.382–4(d). Compare prior temporary regulations, Temp. Reg. sec. 1.382–2T(h)(4) ("Solely for the purpose of determining whether there is an ownership change on any testing date, stock of the loss corporation that is subject to an option shall be treated as acquired on any such date, pursuant to an exercise of the option by its owner on that date, if such deemed exercise would result in an ownership change."). Internal Revenue Service Notice 2008–76, I.R.B. 2008–39 (September 29, 2008), released September 7, 2008, provides that the Treasury Department intends to issue regulations modifying the term "testing date" under sec. 382 to exclude any date on or after which the United States acquires stock or options to acquire stock in certain corporations with respect to which there is a "Housing Act Acquisition" pursuant to the Housing and Economic Recovery Act of 2008 (P.L. 110–289). The Notice states that the regulations will apply on and after September 7, 2008, unless and until there is additional guidance. Internal Revenue Service Notice 2008–84, I.R.B. 2008–41 (October 14, 2008), provides that the Treasury Department intends to issue regulations modifying the term "testing date" under sec. 382 to exclude any date as of the close of which the United States owns, directly or indirectly, a more than 50 percent interest in a loss corporation, which regulations will apply unless and until there is additional guidance. Internal Revenue Service Notice 2008–100, 2008–14 I.R.B. 1081 (released October 15, 2008) provides that the Treasury Department intends to issue regulations providing, among other things, that certain instruments acquired by the Treasury Department under the Capital Purchase Program (CPP) pursuant to the Emergency Economic Stabilization Act of 2008 (P.L. 100–343) ("EESA") shall not be treated as stock for certain purposes. The Notice also provides that certain capital contributions made by Treasury pursuant to the CPP shall not be considered to have been made as part of a plan the principal purpose of which was to avoid or increase any sec. 382 limitation (for purposes of section 382(1)(1)). The Notice states that taxpayers may rely on the rules described unless and until there is further guidance; and that any contrary guidance will not apply to instruments (i) held by Treasury that were acquired pursuant to the CCP prior to publication of that guidance, or (ii) issued to Treasury pursuant to the CCP under written binding contracts entered into prior to the publication of that guidance. Internal Revenue Service Notice 2009–14, 2009–7 I.R.B. 1 (January 30, 2009) amplifies and supersedes Notice 2008–100, and provides additional guidance regarding the application of sec. 382 and other provisions of law to corporations whose instruments are acquired by the Treasury Department under certain programs pursuant to EESA.

[56] Sec. 382(h)(2). The total amount of the loss corporation's RBILs that are subject to the section 382 limitation cannot exceed the amount of the corporation's NUBIL.

that date.[57] An RBIL also includes any amount allowable as depreciation, amortization or depletion during the recognition period, to the extent that such amount is attributable to the excess of the adjusted basis of the asset over its fair market value on the ownership change date.[58] In addition, any amount that is allowable as a deduction during the recognition period (determined without regard to any carryover) but which is attributable to periods before the ownership change date is treated as an RBIL for the taxable year in which it is allowable as a deduction.[59]

As indicated above, section 382(h)(1) provides in the case of a loss corporation that has a NUBIG that the section 382 limitation may be increased for any taxable year during the recognition period by the amount of recognized built-in gains (or RBIGs) for such taxable year.[60] An RBIG is defined for this purpose as any gain recognized during the recognition period on the disposition of any asset held by the loss corporation immediately before the ownership change date, to the extent that such gain is attributable to an excess of the fair market value of the asset on the change date over its adjusted basis on that date.[61] In addition, any item of income that is properly taken into account during the recognition period but which is attributable to periods before the ownership change date is treated as an RBIG for the taxable year in which it is properly taken into account.[62]

Internal Revenue Service Notice 2003–65 [63] provides two alternative safe harbor approaches for the identification of built-in items for purposes of section 382(h): the "1374 approach" and the "338 approach."

Under the 1374 approach,[64] NUBIG or NUBIL is the net amount of gain or loss that would be recognized in a hypothetical sale of the assets of the loss corporation immediately before the ownership change.[65] The amount of gain or loss recognized during the recognition period on the sale or exchange of an asset held at the time of the ownership change is RBIG or RBIL, respectively, to the extent it is attributable to a difference between the adjusted basis and the fair market value of the asset on the change date, as described above. However, the 1374 approach generally relies on the accrual method of accounting to identify items of income or deduction as RBIG or RBIL, respectively. Generally, items of income or deduction properly included in income or allowed as a deduction during the recognition period are considered attributable to period

[57] Sec. 382(h)(2)(B).
[58] Id.
[59] Sec. 382(h)(6)(B).
[60] The total amount of such increases cannot exceed the amount of the corporation's NUBIG.
[61] Sec. 382(h)(2)(A).
[62] Sec. 382(h)(6)(A).
[63] 2003–2 C.B. 747.
[64] The 1374 approach generally incorporates rules similar to those of section 1374(d) and the Treasury regulations thereunder in calculating NUBIG and NUBIL and identifying RBIG and RBIL.
[65] More specifically, NUBIG or NUBIL is calculated by determining the amount that would be realized if immediately before the ownership change the loss corporation had sold all of its assets, including goodwill, at fair market value to a third party that assumed all of its liabilities, decreased by the sum of any deductible liabilities of the loss corporation that would be included in the amount realized on the hypothetical sale and the loss corporation's aggregate adjusted basis in all of its assets, increased or decreased by the corporation's section 481 adjustments that would be taken into account on a hypothetical sale, and increased by any RBIL that would not be allowed as a deduction under section 382, 383 or 384 on the hypothetical sale.

before the change date (and thus are treated as RBIG or RBIL, respectively), if a taxpayer using an accrual method of accounting would have included the item in income or been allowed a deduction for the item before the change date. However, the 1374 approach includes a number of exceptions to this general rule, including a special rule dealing with bad debt deductions under section 166. Under this special rule, any deduction item properly taken into account during the first 12 months of the recognition period as a bad debt deduction under section 166 is treated as RBIL if the item arises from a debt owed to the loss corporation at the beginning of the recognition period (and deductions for such items properly taken into account after the first 12 months of the recognition period are not RBILs).[66]

The 338 approach identifies items of RBIG and RBIL generally by comparing the loss corporation's actual items of income, gain, deduction and loss with those that would have resulted if a section 338 election had been made with respect to a hypothetical purchase of all of the outstanding stock of the loss corporation on the change date. Under the 338 approach, NUBIG or NUBIL is calculated in the same manner as it is under the 1374 approach.[67] The 338 approach identifies RBIG or RBIL by comparing the loss corporation's actual items of income, gain, deduction and loss with the items of income, gain, deduction and loss that would result if a section 338 election had been made for the hypothetical purchase. The loss corporation is treated for this purpose as using those accounting methods that the loss corporation actually uses. The 338 approach does not include any special rule with regard to bad debt deductions under section 166.

Section 166 generally allows a deduction in respect of any debt that becomes worthless, in whole or in part, during the taxable year.[68] The determination of whether a debt is worthless, in whole or in part, is a question of fact. However, in the case of a bank or other corporation that is subject to supervision by Federal authorities, or by State authorities maintaining substantially equivalent standards, the Treasury regulations under section 166 provide a presumption of worthlessness to the extent that a debt is charged off during the taxable year pursuant to a specific order of such an authority or in accordance with established policies of such an authority (and in the latter case, the authority confirms in writing upon the first subsequent audit of the bank or other corporation that the charge-off would have been required if the audit had been made at the time of the charge-off). The presumption does not apply if the taxpayer does not claim the amount so charged off as a deduction for the taxable year in which the charge-off takes place. In that case, the charge-off is treated as having been involuntary; however, in order to claim the section 166 deduction in a later taxable year, the taxpayer must produce sufficient evidence to

[66] Notice 2003–65, section III.B.2.b.

[67] Accordingly, unlike the case in which a section 338 election is actually made, contingent consideration (including a contingent liability) is taken into account in the initial calculation of NUBIG or NUBIL, and no further adjustments are made to reflect subsequent changes in deemed consideration.

[68] Section 166 does not apply, however, to a debt which is evidenced by a security, defined for this purpose (by cross-reference to section 165(g)(2)(C)) as a bond, debenture, note or certificate or other evidence of indebtedness issued by a corporation or by a government or political subdivision thereof, with interest coupons or in registered form. Sec. 166(e).

show that the debt became partially worthless in the later year or became recoverable only in part subsequent to the taxable year of the charge-off, as the case may be, and to the extent that the deduction claimed in the later year for a partially worthless debt was not involuntarily charged off in prior taxable years, it was charged off in the later taxable year.[69]

The Treasury regulations also permit a bank (generally as defined for purposes of section 581, with certain modifications) that is subject to supervision by Federal authorities, or State authorities maintaining substantially equivalent standards, to make a "conformity election" under which debts charged off for regulatory purposes during a taxable year are conclusively presumed to be worthless for tax purposes to the same extent, provided that the charge-off results from a specific order of the regulatory authority or corresponds to the institution's classification of the debt as a "loss asset" pursuant to loan loss classification standards that are consistent with those of certain specified bank regulatory authorities. The conformity election is treated as the adoption of a method of accounting.[70]

Internal Revenue Service Notice 2008–83,[71] released on October 1, 2008, provides that "[f]or purposes of section 382(h), any deduction properly allowed after an ownership change (as defined in section 382(g)) to a bank with respect to losses on loans or bad debts (including any deduction for a reasonable addition to a reserve for bad debts) shall not be treated as a built-in loss or a deduction that is attributable to periods before the change date."[72] The Notice further states that the Internal Revenue Service and the Treasury Department are studying the proper treatment under section 382(h) of certain items of deduction or loss allowed after an ownership change to a corporation that is a bank (as defined in section 581) both immediately before and after the change date, and that any such corporation may rely on the treatment set forth in Notice 2008–83 unless and until there is additional guidance.

HOUSE BILL

The provision states that Congress finds as follows: (1) The delegation of authority to the Secretary of the Treasury, or his delegate, under section 382(m) does not authorize the Secretary to provide exemptions or special rules that are restricted to particular industries or classes of taxpayers; (2) Internal Revenue Service Notice 2008–83 is inconsistent with the congressional intent in enacting such section 382(m); (3) the legal authority to prescribe Notice 2008–83 is doubtful; (4) however, as taxpayers should generally be able to rely on guidance issued by the Secretary of the Treasury, legislation is necessary to clarify the force and effect of Notice 2008–83 and restore the proper application under the Internal Revenue Code of the limitation on built-in losses following an ownership change of a bank.

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[69] See Treas. Reg. sec. 1.166–2(d)(1) and (2).
[70] See Treas. Reg. sec. 1.166–2(d)(3); cf. Priv. Let. Rul. 9248048 (July 7, 1992); Tech. Ad. Mem. 9122001 (Feb. 8, 1991).
[71] 2008–42 I.R.B. 2008–42 (Oct. 20, 2008).
[72] Notice 2008–83, section 2.

Under the provision, Treasury Notice 2008–83 shall be deemed to have the force and effect of law with respect to any ownership change (as defined in section 382(g)) occurring on or before January 16, 2009, and with respect to any ownership change (as so defined) which occurs after January 16, 2009, if such change (1) is pursuant to a written binding contract entered in to on or before such date or (2) is pursuant to a written agreement entered into on or before such date and such agreement was described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission required by reason of such ownership change, but shall otherwise have no force or effect with respect to any ownership change after such date.

Effective date.—The provision is effective on the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

7. Treatment of certain ownership changes for purposes of limitations on net operating loss carryforwards and certain built-in losses (sec. 1262 of the conference agreement and sec. 382 of the Code)

PRESENT LAW

Section 382 limits the extent to which a "loss corporation" that experiences an "ownership change" may offset taxable income in any post-change taxable year by pre-change net operating losses, certain built-in losses, and deductions attributable to the pre-change period.[73] In general, the amount of income in any post-change year that may be offset by such net operating losses, built-in losses and deductions is limited to an amount (referred to as the "section 382 limitation") determined by multiplying the value of the loss corporation immediately before the ownership change by the long-term tax-exempt interest rate.[74]

A "loss corporation" is defined as a corporation entitled to use a net operating loss carryover or having a net operating loss carryover for the taxable year in which the ownership change occurs. Except to the extent provided in regulations, such term includes

[73] Section 383 imposes similar limitations, under regulations, on the use of carryforwards of general business credits, alternative minimum tax credits, foreign tax credits, and net capital loss carryforwards. Section 383 generally refers to section 382 for the meanings of its terms, but requires appropriate adjustments to take account of its application to credits and net capital losses.

[74] If the loss corporation had a "net unrealized built in gain" (or NUBIG) at the time of the ownership change, then the section 382 limitation for any taxable year may be increased by the amount of the "recognized built-in gains" (discussed further below) for that year. A NUBIG is defined as the amount by which the fair market value of the assets of the corporation immediately before an ownership change exceeds the aggregate adjusted basis of such assets at such time. However, if the amount of the NUBIG does not exceed the lesser of (i) 15 percent of the fair market value of the corporation's assets or (ii) $10,000,000, then the amount of the NUBIG is treated as zero. Sec. 382(h)(1).

any corporation with a "net unrealized built-in loss" (or NUBIL),[75] defined as the amount by which the fair market value of the assets of the corporation immediately before an ownership change is less than the aggregate adjusted basis of such assets at such time. However, if the amount of the NUBIL does not exceed the lesser of (i) 15 percent of the fair market value of the corporation's assets or (ii) $10,000,000, then the amount of the NUBIL is treated as zero.[76]

An ownership change is defined generally as an increase by more than 50-percentage points in the percentage of stock of a loss corporation that is owned by any one or more five-percent (or greater) shareholders (as defined) within a three-year period.[77] Treasury regulations provide generally that this measurement is to be made as of any "testing date," which is any date on which the ownership of one or more persons who were or who become five-percent shareholders increases.[78]

HOUSE BILL

No provision.

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[75] Sec. 382(k)(1).

[76] Sec. 382(h)(3).

[77] Determinations of the percentage of stock of any corporation held by any person are made on the basis of value. Sec. 382(k)(6)(C).

[78] See Treas. Reg. sec. 1.382–2(a)(4) (providing that "a loss corporation is required to determine whether an ownership change has occurred immediately after any owner shift, or issuance or transfer (including an issuance or transfer described in Treas. Reg. sec. 1.382–4(d)(8)(i) or (ii)) of an option with respect to stock of the loss corporation that is treated as exercised under Treas. Reg. sec. 1.382–4(d)(2)" and defining a "testing date" as "each date on which a loss corporation is required to make a determination of whether an ownership change has occurred") and Temp. Treas. Reg. sec. 1.382–2T(e)(1) (defining an "owner shift" as "any change in the ownership of the stock of a loss corporation that affects the percentage of such stock owned by any 5-percent shareholder"). Treasury regulations under section 382 provide that, in computing stock ownership on specified testing dates, certain unexercised options must be treated as exercised if certain ownership, control, or income tests are met. These tests are met only if "a principal purpose of the issuance, transfer, or structuring of the option (alone or in combination with other arrangements) is to avoid or ameliorate the impact of an ownership change of the loss corporation." Treas. Reg. sec. 1.382–4(d). Compare prior temporary regulations, Temp. Reg. sec. 1.382–2T(h)(4) ("Solely for the purpose of determining whether there is an ownership change on any testing date, stock of the loss corporation that is subject to an option shall be treated as acquired on any such date, pursuant to an exercise of the option by its owner on that date, if such deemed exercise would result in an ownership change."). Internal Revenue Service Notice 2008–76, I.R.B. 2008–39 (September 29, 2008), released September 7, 2008, provides that the Treasury Department intends to issue regulations modifying the term "testing date" under section 382 to exclude any date on or after which the United States acquires stock or options to acquire stock in certain corporations with respect to which there is a "Housing Act Acquisition" pursuant to the Housing and Economic Recovery Act of 2008 (P.L. 110–289). The Notice states that the regulations will apply on and after September 7, 2008, unless and until there is additional guidance. Internal Revenue Service Notice 2008–84, I.R.B. 2008–41 (October 14, 2008), provides that the Treasury Department intends to issue regulations modifying the term "testing date" under section 382 to exclude any date as of the close of which the United States owns, directly or indirectly, a more than 50 percent interest in a loss corporation, which regulations will apply unless and until there is additional guidance. Internal Revenue Service Notice 2008–100, 2008–14 I.R.B. 1081 (released October 15, 2008) provides that the Treasury Department intends to issue regulations providing, among other things, that certain instruments acquired by the Treasury Department under the Capital Purchase Program (CPP) pursuant to the Emergency Economic Stabilization Act of 2008 (P.L. 100–343) ("EESA") shall not be treated as stock for certain purposes. The Notice also provides that certain capital contributions made by Treasury pursuant to the CPP shall not be considered to have been made as part of a plan the principal purpose of which was to avoid or increase any section 382 limitation (for purposes of section 382(l)(1)). The Notice states that taxpayers may rely on the rules described unless and until there is further guidance; and that any contrary guidance will not apply to instruments (i) held by Treasury that were acquired pursuant to the CCP prior to publication of that guidance, or (ii) issued to Treasury pursuant to the CCP under written binding contracts entered into prior to the publication of that guidance. Internal Revenue Service Notice 2009–14, 2009–7 I.R.B. 1 (January 30, 2009) amplifies and supersedes Notice 2008–100, and provides additional guidance regarding the application of section 382 and other provisions of law to corporations whose instruments are acquired by the Treasury Department under certain programs pursuant to EESA.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement amends section 382 of the Code to provide an exception from the application of the section 382 limitation. Under the provision, the section 382 limitation that would otherwise arise as a result of an ownership change shall not apply in the case of an ownership change that occurs pursuant to a restructuring plan of a taxpayer which is required under a loan agreement or commitment for a line of credit entered into with the Department of the Treasury under the Emergency Economic Stabilization Act of 2008, and is intended to result in a rationalization of the costs, capitalization, and capacity with respect to the manufacturing workforce of, and suppliers to, the taxpayer and its subsidiaries.[79]

However, an ownership change that would otherwise be excepted from the section 382 limitation under the provision will instead remain subject to the section 382 limitation if, immediately after such ownership change, any person (other than a voluntary employees' beneficiary association within the meaning of section 501(c)(9)) owns stock of the new loss corporation possessing 50 percent or more of the total combined voting power of all classes of stock entitled to vote or of the total value of the stock of such corporation. For purposes of this rule, persons who bear a relationship to one another described in section 267(b) or 707(b)(1), or who are members of a group of persons acting in concert, are treated as a single person.

The exception from the application of the section 382 limitation under the provision does not change the fact that an ownership change has occurred for other purposes of section 382.[80]

Effective date.—The conference agreement applies to ownership changes after the date of enactment.

8. Deferral of certain income from the discharge of indebtedness (sec. 1231 of the Senate amendment, sec. 1231 of the conference agreement, and sec. 108 of the Code)

PRESENT LAW

In general, gross income includes income that is realized by a debtor from the discharge of indebtedness, subject to certain exceptions for debtors in title 11 bankruptcy cases, insolvent debtors, certain student loans, certain farm indebtedness, certain real property business indebtedness, and certain qualified principal residence indebtedness.[81] In cases involving discharges of indebtedness that are excluded from gross income under the exceptions to the general rule, taxpayers generally are required to reduce certain tax attributes, including net operating losses, general business credits,

[79] This exception shall not apply in the case of any subsequent ownership change unless such subsequent ownership change also meets the requirements of the exception.

[80] For example, an ownership change has occurred for purposes of determining the testing period under section 382(i)(2).

[81] See sections 61(a)(12) and 108. But see sec. 102 (a debt cancellation which constitutes a gift or bequest is not treated as income to the donee debtor).

minimum tax credits, capital loss carryovers, and basis in property, by the amount of the discharge of indebtedness.[82]

The amount of discharge of indebtedness excluded from income by an insolvent debtor not in a title 11 bankruptcy case cannot exceed the amount by which the debtor is insolvent. In the case of a discharge in bankruptcy or where the debtor is insolvent, any reduction in basis may not exceed the excess of the aggregate bases of properties held by the taxpayer immediately after the discharge over the aggregate of the liabilities of the taxpayer immediately after the discharge.[83]

For all taxpayers, the amount of discharge of indebtedness generally is equal to the excess of the adjusted issue price of the indebtedness being satisfied over the amount paid (or deemed paid) to satisfy such indebtedness.[84] This rule generally applies to (1) the acquisition by the debtor of its debt instrument in exchange for cash, (2) the issuance of a debt instrument by the debtor in satisfaction of its indebtedness, including a modification of indebtedness that is treated as an exchange (a debt-for-debt exchange), (3) the transfer by a debtor corporation of stock, or a debtor partnership of a capital or profits interest in such partnership, in satisfaction of its indebtedness (an equity-for-debt exchange), and (4) the acquisition by a debtor corporation of its indebtedness from a shareholder as a contribution to capital.

Debt-for-debt exchanges

If a debtor issues a debt instrument in satisfaction of its indebtedness, the debtor is treated as having satisfied the indebtedness with an amount of money equal to the issue price of the newly issued debt instrument.[85] The issue price of such newly issued debt instrument generally is determined under sections 1273 and 1274.[86] Similarly, a "significant modification" of a debt instrument, within the meaning of Treas. Reg. sec. 1.1001–3, results in an exchange of the original debt instrument for a modified instrument. In such cases, where the issue price of the modified debt instrument is less than the adjusted issue price of the original debt instrument, the debtor will have income from the cancellation of indebtedness.

If any new debt instrument is issued (including as a result of a significant modification to a debt instrument), such debt instrument will have original issue discount equal to the excess (if any) of such debt instrument's stated redemption price at maturity over its issue price.[87] In general, an issuer of a debt instrument with original issue discount may deduct for any taxable year, with respect to such debt instrument, an amount of original issue discount equal to the aggregate daily portions of the original issue discount for days during such taxable year.[88]

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[82] Sec. 108(b).
[83] Sec. 1017.
[84] Treas. Reg. sec. 1.61–12(c)(2)(ii). Treas. Reg. sec. 1.1275–1(b) defines "adjusted issue price."
[85] Sec. 108(e)(10)(A).
[86] Sec. 108(e)(10)(B).
[87] Sec. 1273.
[88] Sec. 163(e).

Equity-for-debt exchanges

If a corporation transfers stock, or a partnership transfers a capital or profits interest in such partnership, to a creditor in satisfaction of its indebtedness, then such corporation or partnership is treated as having satisfied its indebtedness with an amount of money equal to the fair market value of the stock or interest.[89]

Related party acquisitions

Indebtedness directly or indirectly acquired by a person who bears a relationship to the debtor described in section 267(b) or section 707(b) is treated as if it were acquired by the debtor.[90] Thus, where a debtor's indebtedness is acquired for less than its adjusted issue price by a person related to the debtor (within the meaning of section 267(b) or 707(b)), the debtor recognizes income from the cancellation of indebtedness. Regulations under section 108 provide that the indebtedness acquired by the related party is treated as new indebtedness issued by the debtor to the related holder on the acquisition date (the deemed issuance).[91] The new indebtedness is deemed issued with an issue price equal to the amount used under regulations to compute the amount of cancellation of indebtedness income realized by the debtor (i.e., either the holder's adjusted basis or the fair market value of the indebtedness, as the case may be).[92] The indebtedness deemed issued pursuant to the regulations has original issue discount to the extent its stated redemption price at maturity exceeds its issue price.

In the case of a deemed issuance under Treas. Reg. sec. 1.108–2(g), the related holder does not recognize any gain or loss, and the related holder's adjusted basis in the indebtedness remains the same as it was immediately before the deemed issuance.[93] The deemed issuance is treated as a purchase of the indebtedness by the related holder for purposes of section 1272(a)(7) (pertaining to reduction of original issue discount where a subsequent holder pays acquisition premium) and section 1276 (pertaining to acquisitions of debt at a market discount).[94]

Contribution of a debt instrument to capital of a corporation

Where a debtor corporation acquires its indebtedness from a shareholder as a contribution to capital, section 118[95] does not apply, but the corporation is treated as satisfying such indebtedness with an amount of money equal to the shareholder's adjusted basis in the indebtedness.

HOUSE BILL

No provision.

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[89] Sec. 108(e)(8).
[90] Sec. 108(e)(4).
[91] Treas. Reg. sec. 1.108–2(g).
[92] Id.
[93] Treas. Reg. sec. 1.108–2(g)(2).
[94] Id.
[95] Section 118 provides, in general, that in the case of a corporation, gross income does not include any contribution to the capital of the taxpayer.

SENATE AMENDMENT

The provision permits a taxpayer to elect to defer income from cancellation of indebtedness recognized by the taxpayer as a result of a repurchase by (1) the taxpayer or (2) a person who bears a relationship to the taxpayer described in section 267(b) or section 707(b), of a "debt instrument" that was issued by the taxpayer. The provision applies only to repurchases of debt that (1) occur after December 31, 2008, and prior to January 1, 2011, and (2) are repurchases for cash. Thus, for example, the provision does not apply to a debt-for-debt exchange or to any exchange of the taxpayer's equity for a debt instrument of the taxpayer. For purposes of the provision, a "debt instrument" is broadly defined to include any bond, debenture, note, certificate or any other instrument or contractual arrangement constituting indebtedness.

Income from the discharge of indebtedness in connection with the repurchase of a debt instrument in 2009 or 2010 must be included in the gross income of the taxpayer ratably in the eight taxable years beginning with (1) for repurchases in 2009, the second taxable year following the taxable year in which the repurchase occurs or (2) for repurchases in 2010, the taxable year following the taxable year in which the repurchase occurs. The provision authorizes the Secretary of the Treasury to prescribe such regulations as may be necessary or appropriate for purposes of applying the provision.

Effective date.—The provision applies to discharges in taxable years ending after December 31, 2008.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment with modifications. The provision permits a taxpayer to elect to defer cancellation of indebtedness income arising from a "reacquisition" of "an applicable debt instrument" after December 31, 2008, and before January 1, 2011. Income deferred pursuant to the election must be included in the gross income of the taxpayer ratably in the five taxable years beginning with (1) for repurchases in 2009, the fifth taxable year following the taxable year in which the repurchase occurs or (2) for repurchases in 2010, the fourth taxable year following the taxable year in which the repurchase occurs.

An "applicable debt instrument" is any debt instrument issued by (1) a C corporation or (2) any other person in connection with the conduct of a trade or business by such person. For purposes of the provision, a "debt instrument" is broadly defined to include any bond, debenture, note, certificate or any other instrument or contractual arrangement constituting indebtedness (within the meaning of section 1275(a)(1)).

A "reacquisition" is any "acquisition" of an applicable debt instrument by (1) the debtor that issued (or is otherwise the obligor under) such debt instrument or (2) any person related to the debtor within the meaning of section 108(e)(4). For purposes of the provision, an "acquisition" includes, without limitation, (1) an acquisition of a debt instrument for cash, (2) the exchange of a debt instrument for another debt instrument (including an exchange resulting from a modification of a debt instrument), (3) the exchange

of corporate stock or a partnership interest for a debt instrument, (4) the contribution of a debt instrument to the capital of the issuer, and (5) the complete forgiveness of a debt instrument by a holder of such instrument.

Special rules for debt-for-debt exchanges

If a taxpayer makes the election provided by the provision for a debt-for-debt exchange in which the newly issued debt instrument issued (or deemed issued, including by operation of the rules in Treas. Reg. sec. 1.108–2(g)) in satisfaction of an outstanding debt instrument of the debtor has original issue discount, then any otherwise allowable deduction for original issue discount with respect to such newly issued debt instrument that (1) accrues before the first year of the five-taxable-year period in which the related, deferred discharge of indebtedness income is included in the gross income of the taxpayer and (2) does not exceed such related, deferred discharge of indebtedness income, is deferred and allowed as a deduction ratably over the same five-taxable-year period in which the deferred discharge of indebtedness income is included in gross income.

This rule can apply also in certain cases when a debtor reacquires its debt for cash. If the taxpayer issues a debt instrument and the proceeds of such issuance are used directly or indirectly to reacquire a debt instrument of the taxpayer, the provision treats the newly issued debt instrument as if it were issued in satisfaction of the retired debt instrument. If the newly issued debt instrument has original issue discount, the rule described above applies. Thus, all or a portion of the interest deductions with respect to original issue discount on the newly issued debt instrument are deferred into the five-taxable-year period in which the discharge of indebtedness income is recognized. Where only a portion of the proceeds of a new issuance are used by a taxpayer to satisfy outstanding debt, then the deferral rule applies to the portion of the original issue discount on the newly issued debt instrument that is equal to the portion of the proceeds of such newly issued instrument used to retire outstanding debt of the taxpayer.

Acceleration of deferred items

Cancellation of indebtedness income and any related deduction for original issue discount that is deferred by an electing taxpayer (and has not previously been taken into account) generally is accelerated and taken into income in the taxable year in which the taxpayer: (1) dies, (2) liquidates or sells substantially all of its assets (including in a title 11 or similar case), (3) ceases to do business, or (4) or is in similar circumstances. In a case under title 11 or a similar case, any deferred items are taken into income as of the day before the petition is filed. Deferred items are accelerated in a case under title 11 where the taxpayer liquidates, sells substantially all of its assets, or ceases to do business, but not where a taxpayer reorganizes and emerges from the title 11 case. In the case of a pass thru entity, this acceleration rule also applies to the sale, exchange, or redemption of an interest in the entity by a holder of such interest.

Special rule for partnerships

In the case of a partnership, any income deferred under the provision is allocated to the partners in the partnership immediately before the discharge of indebtedness in the manner such amounts would have been included in the distributive shares of such partners under section 704 if such income were recognized at the time of the discharge. Any decrease in a partner's share of liabilities as a result of such discharge is not taken into account for purposes of section 752 at the time of the discharge to the extent the deemed distribution under section 752 would cause the partner to recognize gain under section 731. Thus, the deemed distribution under section 752 is deferred with respect to a partner to the extent it exceeds such partner's basis. Amounts so deferred are taken into account at the same time, and to the extent remaining in the same amount, as income deferred under the provision is recognized by the partner.

Coordination with section 108(a) and procedures for election

Where a taxpayer makes the election provided by the provision, the exclusions provided by section 108(a)(1)(A), (B), (C), and (D) shall not apply to the income from the discharge of indebtedness for the year in which the taxpayer makes the election or any subsequent year. Thus, for example, an insolvent taxpayer may elect under the provision to defer income from the discharge of indebtedness rather than excluding such income and reducing tax attributes by a corresponding amount. The election is to be made on an instrument by instrument basis; once made, the election is irrevocable. A taxpayer makes an election with respect to a debt instrument by including with its return for the taxable year in which the reacquisition of the debt instrument occurs a statement that (1) clearly identifies the debt instrument and (2) includes the amount of deferred income to which the provision applies and such other information as may be prescribed by the Secretary. The Secretary is authorized to require reporting of the election (and other information with respect to the reacquisition) for years subsequent to the year of the reacquisition.

Regulatory authority

The provision authorizes the Secretary of the Treasury to prescribe such regulations as may be necessary or appropriate for purposes of applying the provision, including rules extending the acceleration provisions to other circumstances where appropriate, rules requiring reporting of the election and such other information as the Secretary may require on returns of tax for subsequent taxable years, rules for the application of the provision to partnerships, S corporations, and other pass thru entities, including for the allocation of deferred deductions.

Effective date.—The provision is effective for discharges in taxable years ending after December 31, 2008.

9. Modifications of rules for original issue discount on certain high yield obligations (sec. 1232 of the conference agreement and sec. 163 of the Code)

PRESENT LAW

In general, the issuer of a debt instrument with original issue discount may deduct the portion of such original issue discount equal to the aggregate daily portions of the original issue discount for days during the taxable year.[96] However, in the case of an applicable high-yield discount obligation (an "AHYDO") issued by a corporate issuer: (1) no deduction is allowed for the "disqualified portion" of the original issue discount on such obligation, and (2) the remainder of the original issue discount on any such obligation is not allowable as a deduction until paid by the issuer.[97]

An AHYDO is any debt instrument if (1) the maturity date on such instrument is more than five years from the date of issue; (2) the yield to maturity on such instrument exceeds the sum of (a) the applicable Federal rate in effect under section 1274(d) for the calendar month in which the obligation is issued and (b) five percentage points, and (3) such instrument has "significant original issue discount."[98] An instrument is treated as having "significant original issue discount" if the aggregate amount of interest that would be includible in the gross income of the holder with respect to such instrument for periods before the close of any accrual period (as defined in section 1272(a)(5)) ending after the date five years after the date of issue, exceeds the sum of (1) the aggregate amount of interest to be paid under the instrument before the close of such accrual period, and (2) the product of the issue price of such instrument (as defined in sections 1273(b) and 1274(a)) and its yield to maturity.[99]

The disqualified portion of the original issue discount on an AHYDO is the lesser of (1) the amount of original issue discount with respect to such obligation or (2) the portion of the "total return" on such obligation which bears the same ratio to such total return as the "disqualified yield" (i.e., the excess of the yield to maturity on the obligation over the applicable Federal rate plus six percentage points) on such obligation bears to the yield to maturity on such obligation.[100] The term "total return" means the amount which would have been the original issue discount of the obligation if interest described in section 1273(a)(2) were included in the 101 stated redemption to maturity.[101] A corporate holder treats the disqualified portion of original issue discount as a stock distribution for purposes of the dividend received deduction.[102]

HOUSE BILL

No provision.

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[96] Sec. 163(e)(1). For purposes of section 163(e)(1), the daily portion of the original issue discount for any day is determined under section 1272(a) (without regard to paragraph (7) thereof and without regard to section 1273(a)(3)).
[97] Sec. 163(e)(5).
[98] Sec. 163(i)(1).
[99] Sec. 163(i)(2).
[100] Sec. 163(e)(5)(C).
[101] Sec. 163(e)(5)(C)(ii).
[102] Sec. 163(e)(5)(B).

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement adds a provision that suspends the rules in section 163(e)(5) for certain obligations issued in a debt-for-debt exchange, including an exchange resulting from a significant modification of a debt instrument, after August 31, 2008, and before January 1, 2010.

In general, the suspension does not apply to any newly issued debt instrument (including any debt instrument issued as a result of a significant modification of a debt instrument) that is issued for an AHYDO. However, any newly issued debt instrument (including any debt instrument issued as a result of a significant modification of a debt instrument) for which the AHYDO rules are suspended under the provision is not treated as an AHYDO for purposes of a subsequent application of the suspension rule. Thus, for example, if a new debt instrument that would be an AHYDO under present law is issued in exchange for a debt instrument that is not an AHYDO, and the provision suspends application of section 163(e)(5), another new debt instrument, issued during the suspension period in exchange for the instrument with respect to which the rule in section 163(e)(5) was suspended, would be eligible for the relief provided by the provision despite the fact that it is issued for an instrument that is an AHYDO under present law.

In addition, the suspension does not apply to any newly issued debt instrument (including any debt instrument issued as a result of a significant modification of a debt instrument) that is (1) described in section 871(h)(4) (without regard to subparagraph (D) thereof) (i.e., certain contingent debt) or (2) issued to a person related to the issuer (within the meaning of section 108(e)(4)).

The provision provides authority to the Secretary to apply the suspension rule to periods after December 31, 2009, where the Secretary determines that such application is appropriate in light of distressed conditions in the debt capital markets. In addition, the provision grants authority to the Secretary to use a rate that is higher than the applicable Federal rate for purposes of applying section 163(e)(5) for obligations issued after December 31, 2009, in taxable years ending after such date if the Secretary determines that such higher rate is appropriate in light of distressed conditions in the debt capital markets.

Effective date.—The temporary suspension of section 163(e)(5) applies to obligations issued after August 31, 2008, in taxable years ending after such date. The additional authority granted to the Secretary to use a rate higher than the applicable Federal rate for purposes of applying section 163(e)(5) applies to obligations issued after December 31, 2009, in taxable years ending after such date.

10. Special rules applicable to qualified small business stock for 2009 and 2010 (sec. 1241 of the Senate amendment, sec. 1241 of the conference agreement, and sec. 1202 of the Code)

PRESENT LAW

Under present law, individuals may exclude 50 percent (60 percent for certain empowerment zone businesses) of the gain from the sale of certain small business stock acquired at original issue and held for at least five years.[103] The portion of the gain includible in taxable income is taxed at a maximum rate of 28 percent under the regular tax.[104] A percentage of the excluded gain is an alternative minimum tax preference,[105] the portion of the gain includible in alternative minimum taxable income is taxed at a maximum rate of 28 percent under the alternative minimum tax.

Thus, under present law, gain from the sale of qualified small business stock is taxed at effective rates of 14 percent under the regular tax[106] and (i) 14.98 percent under the alternative minimum tax for dispositions before January 1, 2011; (ii) 19.98 percent under the alternative minimum tax for dispositions after December 31, 2010, in the case of stock acquired before January 1, 2001; and (iii) 17.92 percent under the alternative minimum tax for dispositions after December 31, 2010, in the case of stock acquired after December 31, 2000.[107]

The amount of gain eligible for the exclusion by an individual with respect to any corporation is the greater of (1) ten times the taxpayer's basis in the stock or (2) $10 million. In order to qualify as a small business, when the stock is issued, the gross assets of the corporation may not exceed $50 million. The corporation also must meet certain active trade or business requirements.

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the Senate amendment, the percentage exclusion for qualified small business stock sold by an individual is increased from 50 percent (60 percent for certain empowerment zone businesses) to 75 percent.

As a result of the increased exclusion, gain from the sale of qualified small business stock to which the provision applies is

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[103] Sec. 1202.

[104] Sec. 1(h).

[105] Sec. 57(a)(7). In the case of qualified small business stock, the percentage of gain excluded from gross income which is an alternative minimum tax preference is (i) seven percent in the case of stock disposed of in a taxable year beginning before 2011; (ii) 42 percent in the case of stock acquired before January 1, 2001, and disposed of in a taxable year beginning after 2010; and (iii) 28 percent in the case of stock acquired after December 31, 2000, and disposed of in a taxable year beginning after 2010.

[106] The 50 percent of gain included in taxable income is taxed at a maximum rate of 28 percent.

[107] The amount of gain included in alternative minimum tax is taxed at a maximum rate of 28 percent. The amount so included is the sum of (i) 50 percent (the percentage included in taxable income) of the total gain and (ii) the applicable preference percentage of the one-half gain that is excluded from taxable income.

taxed at effective rates of seven percent under the regular tax[108] and 12.88 percent under the alternative minimum tax.[109]

Effective date.—The provision is effective for stock issued after the date of enactment and before January 1, 2011.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

11. Temporary reduction in recognition period for S corporation built-in gains tax (sec. 1261 of the Senate amendment, sec. 1251 of the conference agreement, and sec. 1374 of the Code)

PRESENT LAW

A "small business corporation" (as defined in section 1361(b)) may elect to be treated as an S corporation. Unlike C corporations, S corporations generally pay no corporate-level tax. Instead, items of income and loss of an S corporation pass though to its shareholders. Each shareholder takes into account separately its share of these items on its individual income tax return.[110]

A corporate level tax, at the highest marginal rate applicable to corporations (currently 35 percent) is imposed on an S corporation's gain that arose prior to the conversion of the C corporation to an S corporation and is recognized by the S corporation during the recognition period, i.e., the first 10 taxable years that the S election is in effect.[111]

Gains recognized in the recognition period are not built-in gains to the extent they are shown to have arisen while the S election was in effect or are offset by recognized built-in losses. The built-in gains tax also applies to gains with respect to net recognized built-in gain attributable to property received by an S corporation from a C corporation in a carryover basis transaction.[112] The amount of the built-in gains tax is treated as a loss taken into account by the shareholders in computing their individual income tax.[113]

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that, for any taxable year beginning in 2009 and 2010, no tax is imposed on an S corporation under section 1374 if the seventh taxable year in the corporation's recognition period preceded such taxable year. Thus, with respect to gain that arose prior to the conversion of a C corporation to an

[108] The 25 percent of gain included in taxable income is taxed at a maximum rate of 28 percent.

[109] The 46 percent of gain included in alternative minimum tax is taxed at a maximum rate of 28 percent. Forty-six percent is the sum of 25 percent (the percentage of total gain included in taxable income) plus 21 percent (the percentage of total gain which is an alternative minimum tax preference).

[110] Sec. 1366.

[111] Sec. 1374.

[112] Sec. 1374(d)(8). With respect to such assets, the recognition period runs from the day on which such assets were acquired (in lieu of the beginning of the first taxable year for which the corporation was an S corporation). Sec. 1374(d)(8)(B).

[113] Sec. 1366(f)(2).

S corporation, no tax will be imposed under section 1374 after the seventh taxable year the S corporation election is in effect. In the case of built-in gain attributable to an asset received by an S corporation from a C corporation in a carryover basis transaction, no tax will be imposed under section 1374 if such gain is recognized after the date that is seven years following the date on which such asset was acquired.[114]

Effective date.—The provision applies to taxable years beginning after December 31, 2008.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

12. Broadband internet access tax credit (sec. 1271 of the Senate amendment)

PRESENT LAW

A taxpayer is allowed to recover, through annual depreciation deductions, the cost of certain property used in a trade or business or for the production of income. The amount of the depreciation deduction allowed with respect to tangible property for a taxable year is determined under the modified accelerated cost recovery system ("MACRS").[115] Under MACRS, different types of property generally are assigned applicable recovery periods and depreciation methods. The recovery periods applicable to most tangible personal property (generally tangible property other than residential rental property and nonresidential real property) range from three to 25 years. The depreciation methods generally applicable to tangible personal property are the 200-percent and 150-percent declining balance methods, switching to the straight-line method for the taxable year in which the depreciation deduction would be maximized.

No credit is specifically designed under present law to encourage the development of qualified broadband expenditures.

HOUSE BILL

No provision.

SENATE AMENDMENT

The amendment provides an investment tax credit for "qualified broadband expenditures." Qualified broadband expenditures comprise both "current-generation" and "next-generation" broadband. The provision establishes a 10 percent credit for investment in current-generation broadband in rural and underserved areas. The provision establishes a 20 percent credit for investment in current-generation broadband in unserved areas. The provision establishes a 20 percent credit for investment in next-generation broadband in rural, underserved, unserved, and residential areas. The basis of qualified property must be reduced by the amount of credit received. To qualify for the credit, the qualified broadband

[114] Shareholders will continue to take into account all items of gain and loss under section 1366.

[115] Sec. 168.

equipment must be placed in service after December 31, 2008, and before January 1, 2011.

"Current-generation" broadband services are defined as the transmission of signals at a rate of at least 5 million bits per second to the subscriber and at a rate of at least 1 million bits per second from the subscriber or wireless technology transmission of signals at a rate of at least 3 million bits per second to the subscriber and at a rate of at least 768 kilobits per second from the subscriber. "Next-generation" broadband services are defined as the transmission of signals at a rate of at least 100 million bits per second to the subscriber and at a rate of at least 20 million bits per second from the subscriber.

Qualified broadband expenditures means the direct or indirect costs properly taken into account for the taxable year for the purchase or installation of qualified equipment (including upgrades) and the connection of the equipment to a qualified subscriber.

Qualified broadband expenditures include only the portion of the purchase price paid by the lessor, in the case of leased equipment, that is attributable to otherwise qualified broadband expenditures by the lessee. In the case of property that is originally placed in service by a person and that is sold to the taxpayer and leased back to such person by the taxpayer within three months after the date that the property was originally placed in service, the property is treated as originally placed in service by the taxpayer not earlier than the date that the property is used under the leaseback.

A qualified subscriber, with respect to current-generation broadband services, means any nonresidential subscriber maintaining a permanent place of business in a rural, underserved, or unserved area, or any residential subscriber residing in a rural, underserved, or unserved area that is not a saturated market. A qualified subscriber, with respect to next generation broadband services, means any nonresidential subscriber maintaining a permanent place of business in a rural, underserved, or unserved area, or any residential subscriber.

For this purpose, a rural area is a low-income community designated under section 45D which is defined as a population census tract located in either (1) a poverty rate of at least 20 percent or (2) median family income which does not exceed 80 percent of the greater of metropolitan area median family income or statewide median family income (for a non-metropolitan census tract, does not exceed 80 percent of statewide median family income).

An underserved area means a census tract located in an empowerment zone or enterprise community designated under section 1391, or the District of Columbia Enterprise Zone established under section 1400, or a renewal community designated under section 1400E, or a low-income community designated under section 45D.

An unserved area is an area without current-generation broadband service.

A saturated market, for this purpose, means any census tract in which, as of the date of enactment, current generation broadband services have been provided by a single provider to 85 percent or more of the total potential residential subscribers. The services must be usable at least a majority of the time during peri-

ods of maximum demand, and usable in a manner substantially the same as services provided through equipment not eligible for the deduction under this provision.

If current- or next-generation broadband services can be provided through qualified equipment to both qualified subscribers and to other subscribers, the provision provides that the expenditures with respect to the equipment are allocated among subscribers to determine the amount of qualified broad broadband expenditures that may be deducted under the provision.

Qualified equipment means equipment that provides current- or next-generation broadband services at least a majority of the time during periods of maximum demand to each subscriber, and in a manner substantially the same as such services are provided by the provider to subscribers through equipment with respect to which no deduction is allowed under the provision. Limitations are imposed under the provision on equipment depending on where it extends, and on certain packet switching equipment, and on certain multiplexing and demultiplexing equipment.

Expenditures generally are not taken into account for purposes of the credit under the provision with respect to property used predominantly outside the United States, used predominantly to furnish lodging, used by a tax-exempt organization (other than in a business whose income is subject to unrelated business income tax), or used by the United States or a political subdivision or by a possession, agency or instrumentality thereof or by a foreign person or entity. The basis of property is reduced by the cost of the property that is taken into account as a deduction under the provision. Recapture rules are provided. The credit is part of the general business credit.

Effective date.—The provision is effective for property placed in service after December 31, 2008.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

C. Fiscal Relief for State and Local Governments

1. De minimis safe harbor exception for tax-exempt interest expense of financial institutions and modification of small issuer exception to tax-exempt interest expense allocation rules for financial institutions (secs. 1501 and 1502 of the House bill, secs. 1501 and 1502 of the Senate amendment, secs. 1501 and 1502 of the conference agreement, and sec. 265 of the Code)

PRESENT LAW

Present law disallows a deduction for interest on indebtedness incurred or continued to purchase or carry obligations the interest on which is exempt from tax.[116] In general, an interest deduction is disallowed only if the taxpayer has a purpose of using borrowed funds to purchase or carry tax-exempt obligations; a determination

[116] Sec. 265(a).

of the taxpayer's purpose in borrowing funds is made based on all of the facts and circumstances. [117]

Two-percent rule for individuals and certain nonfinancial corporations

In the absence of direct evidence linking an individual taxpayer's indebtedness with the purchase or carrying of tax-exempt obligations, the Internal Revenue Service takes the position that it ordinarily will not infer that a taxpayer's purpose in borrowing money was to purchase or carry tax-exempt obligations if the taxpayer's investment in tax-exempt obligations is "insubstantial." [118] An individual's holdings of tax-exempt obligations are presumed to be insubstantial if during the taxable year the average adjusted basis of the individual's tax-exempt obligations is two percent or less of the average adjusted basis of the individual's portfolio investments and assets held by the individual in the active conduct of a trade or business.

Similarly, in the case of a corporation that is not a financial institution or a dealer in tax-exempt obligations, where there is no direct evidence of a purpose to purchase or carry tax-exempt obligations, the corporation's holdings of tax-exempt obligations are presumed to be insubstantial if the average adjusted basis of the corporation's tax-exempt obligations is two percent or less of the average adjusted basis of all assets held by the corporation in the active conduct of its trade or business.

Financial institutions

In the case of a financial institution, the Code generally disallows that portion of the taxpayer's interest expense that is allocable to tax-exempt interest. [119] The amount of interest that is disallowed is an amount which bears the same ratio to such interest expense as the taxpayer's average adjusted bases of tax-exempt obligations acquired after August 7, 1986, bears to the average adjusted bases for all assets of the taxpayer.

Exception for certain obligations of qualified small issuers

The general rule in section 265(b), denying financial institutions' interest expense deductions allocable to tax-exempt obligations, does not apply to "qualified tax-exempt obligations." [120] Instead, as discussed in the next section, only 20 percent of the interest expense allocable to "qualified tax-exempt obligations" is disallowed. [121] A "qualified tax-exempt obligation" is a tax-exempt obligation that (1) is issued after August 7, 1986, by a qualified small issuer, (2) is not a private activity bond, and (3) is designated by the issuer as qualifying for the exception from the general rule of section 265(b).

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[117] See Rev. Proc. 72–18, 1972–1 C.B. 740.

[118] Id.

[119] Sec. 265(b)(1). A "financial institution" is any person that (1) accepts deposits from the public in the ordinary course of such person's trade or business and is subject to Federal or State supervision as a financial institution or (2) is a corporation described in section 585(a)(2). Sec. 265(b)(5).

[120] Sec. 265(b)(3).

[121] Secs. 265(b)(3)(A), 291(a)(3) and 291(e)(1).

A "qualified small issuer" is an issuer that reasonably anticipates that the amount of tax-exempt obligations that it will issue during the calendar year will be $10 million or less.[122] The Code specifies the circumstances under which an issuer and all subordinate entities are aggregated.[123] For purposes of the $10 million limitation, an issuer and all entities that issue obligations on behalf of such issuer are treated as one issuer. All obligations issued by a subordinate entity are treated as being issued by the entity to which it is subordinate. An entity formed (or availed of) to avoid the $10 million limitation and all entities benefiting from the device are treated as one issuer.

Composite issues (i.e., combined issues of bonds for different entities) qualify for the "qualified tax-exempt obligation" exception only if the requirements of the exception are met with respect to (1) the composite issue as a whole (determined by treating the composite issue as a single issue) and (2) each separate lot of obligations that is part of the issue (determined by treating each separate lot of obligations as a separate issue).[124] Thus a composite issue may qualify for the exception only if the composite issue itself does not exceed $10 million, and if each issuer benefitting from the composite issue reasonably anticipates that it will not issue more than $10 million of tax-exempt obligations during the calendar year, including through the composite arrangement.

Treatment of financial institution preference items

Section 291(a)(3) reduces by 20 percent the amount allowable as a deduction with respect to any financial institution preference item. Financial institution preference items include interest on debt to tax-exempt obligations acquired after December 31, 1982, and before August 8, 1986.[125] Section 265(b)(3) treats qualified tax-exempt obligations as if they were acquired on August 7, 1986. As a result, the amount allowable as a deduction by a financial institution with respect to interest incurred to carry a qualified tax-exempt obligation is reduced by 20 percent.

HOUSE BILL

Two-percent safe harbor for financial institutions

The provision provides that tax-exempt obligations issued during 2009 or 2010 and held by a financial institution, in an amount not to exceed two percent of the adjusted basis of the financial institution's assets, are not taken into account for the purpose of determining the portion of the financial institution's interest expense subject to the pro rata interest disallowance rule of section 265(b). For purposes of this rule, a refunding bond (whether a current or advance refunding) is treated as issued on the date of the issuance of the refunded bond (or in the case of a series of refundings, the original bond).

The provision also amends section 291(e) to provide that tax-exempt obligations issued during 2009 and 2010, and not taken

[122] Sec. 265(b)(3)(C).
[123] Sec. 265(b)(3)(E).
[124] Sec. 265(b)(3)(F).
[125] Sec. 291(e)(1).

into account for purposes of the calculation of a financial institution's interest expense subject to the pro rata interest disallowance rule, are treated as having been acquired on August 7, 1986. As a result, such obligations are financial institution preference items, and the amount allowable as a deduction by a financial institution with respect to interest incurred to carry such obligations is reduced by 20 percent.

Modifications to qualified small issuer exception

With respect to tax-exempt obligations issued during 2009 and 2010, the provision increases from $10 million to $30 million the annual limit for qualified small issuers.

In addition, in the case of "qualified financing issue" issued in 2009 or 2010, the provision applies the $30 million annual volume limitation at the borrower level (rather than at the level of the pooled financing issuer). Thus, for the purpose of applying the requirements of the section 265(b)(3) qualified small issuer exception, the portion of the proceeds of a qualified financing issue that are loaned to a "qualified borrower" that participates in the issue are treated as a separate issue with respect to which the qualified borrower is deemed to be the issuer.

A "qualified financing issue" is any composite, pooled or other conduit financing issue the proceeds of which are used directly or indirectly to make or finance loans to one or more ultimate borrowers all of whom are qualified borrowers. A "qualified borrower" means (1) a State or political subdivision of a State or (2) an organization described in section 501(c)(3) and exempt from tax under section 501(a). Thus, for example, a $100 million pooled financing issue that was issued in 2009 could qualify for the section 265(b)(3) exception if the proceeds of such issue were used to make four equal loans of $25 million to four qualified borrowers. However, if (1) more than $30 million were loaned to any qualified borrower, (2) any borrower were not a qualified borrower, or (3) any borrower would, if it were the issuer of a separate issue in an amount equal to the amount loaned to such borrower, fail to meet any of the other requirements of section 265(b)(3), the entire $100 million pooled financing issue would fail to qualify for the exception.

For purposes of determining whether an issuer meets the requirements of the small issuer exception, qualified 501(c)(3) bonds issued in 2009 or 2010 are treated as if they were issued by the 501(c)(3) organization for whose benefit they were issued (and not by the actual issuer of such bonds). In addition, in the case of an organization described in section 501(c)(3) and exempt from taxation under section 501(a), requirements for "qualified financing issues" shall be applied as if the section 501(c)(3) organization were the issuer. Thus, in any event, an organization described in section 501(c)(3) and exempt from taxation under section 501(a) shall be limited to the $30 million per issuer cap for qualified tax exempt obligations described in section 265(b)(3).

Effective date.—The provisions are effective for obligations issued after December 31, 2008.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

2. Temporary modification of alternative minimum tax limitations on tax-exempt bonds (sec. 1503 of the House bill, sec. 1503 of the Senate amendment, sec. 1503 of the conference agreement, and secs. 56 and 57 of the Code)

PRESENT LAW

Present law imposes an alternative minimum tax ("AMT") on individuals and corporations. AMT is the amount by which the tentative minimum tax exceeds the regular income tax. The tentative minimum tax is computed based upon a taxpayer's alternative minimum taxable income ("AMTI"). AMTI is the taxpayer's taxable income modified to take into account certain preferences and adjustments. One of the preference items is tax-exempt interest on certain tax-exempt bonds issued for private activities (sec. 57(a)(5)). Also, in the case of a corporation, an adjustment based on current earnings is determined, in part, by taking into account 75 percent of items, including tax-exempt interest, that are excluded from taxable income but included in the corporation's earnings and profits (sec. 56(g)(4)(B)).

HOUSE BILL

The House bill provides that tax-exempt interest on private activity bonds issued in 2009 and 2010 is not an item of tax preference for purposes of the alternative minimum tax and interest on tax exempt bonds issued in 2009 and 2010 is not included in the corporate adjustment based on current earnings. For these purposes, a refunding bond is treated as issued on the date of the issuance of the refunded bond (or in the case of a series of refundings, the original bond).

Effective date.—The provision applies to interest on bonds issued after December 31, 2008.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement provides that tax-exempt interest on private activity bonds issued in 2009 and 2010 is not an item of tax preference for purposes of the alternative minimum tax and interest on tax exempt bonds issued in 2009 and 2010 is not included in the corporate adjustment based on current earnings. For these purposes, a refunding bond is treated as issued on the date of the issuance of the refunded bond (or in the case of a series of refundings, the original bond).

The conference agreement also provides that tax-exempt interest on private activity bonds issued in 2009 and 2010 to currently refund a private activity bond issued after December 31, 2003, and before January 1, 2009, is not an item of tax preference for purposes of the alternative minimum tax. Also tax-exempt interest on

bonds issued in 2009 and 2010 to currently refund a bond issued after December 31, 2003, and before January 1, 2009, is not included in the corporate adjustment based on current earnings.

Effective date.—The provision applies to interest on bonds issued after December 31, 2008.

3. Temporary expansion of availability of industrial development bonds to facilities creating intangible property and other modifications (sec. 1301 of the Senate amendment, sec. 1301 of the conference agreement, and sec. 144(a) of the Code)

PRESENT LAW

Qualified small issue bonds (commonly referred to as "industrial development bonds" or "small issue IDBs") are tax-exempt bonds issued by State and local governments to finance private business manufacturing facilities (including certain directly related and ancillary facilities) or the acquisition of land and equipment by certain farmers. In both instances, these bonds are subject to limits on the amount of financing that may be provided, both for a single borrowing and in the aggregate. In general, no more than $1 million of small-issue bond financing may be outstanding at any time for property of a business (including related parties) located in the same municipality or county. Generally, this $1 million limit may be increased to $10 million if, in addition to outstanding bonds, all other capital expenditures of the business (including related parties) in the same municipality or county are counted toward the limit over a six-year period that begins three years before the issue date of the bonds and ends three years after such date. Outstanding aggregate borrowing is limited to $40 million per borrower (including related parties) regardless of where the property is located.

The Code permits up to $10 million of capital expenditures to be disregarded, in effect increasing from $10 million to $20 million the maximum allowable amount of total capital expenditures by an eligible business in the same municipality or county. However, no more than $10 million of bond financing may be outstanding at any time for property of an eligible business (including related parties) located in the same municipality or county. Other limits (e.g., the $40 million per borrower limit) also continue to apply.

A manufacturing facility is any facility which is used in the manufacturing or production of tangible personal property (including the processing resulting in a change in the condition of such property). Manufacturing facilities include facilities that are directly related and ancillary to a manufacturing facility (as described in the previous sentence) if (1) such facilities are located on the same site as the manufacturing facility and (2) not more than 25 percent of the net proceeds of the issue are used to provide such facilities.[126]

[126] The 25 percent restriction was enacted by the Technical and Miscellaneous Tax Act of 1988 because of concern over the scope of the definition of manufacturing facility. See H.R. Rpt. No. 100–795 (1988). The amendment was intended to clarify that while the manufacturing facility definition does not preclude the financing of ancillary activities, the 25 percent restriction was intended to limit the use of bond proceeds to finance facilities other than for "core manufacturing." The conference agreement followed the House bill, which the conference report described as follows: "The House bill clarifies that up to 25 percent of the proceeds of a qualified

HOUSE BILL

No provision.

SENATE AMENDMENT

In general

For bonds issued after the date of enactment and before January 1, 2011, the provision expands the definition of manufacturing facilities to mean any facility that is used in the manufacturing, creation, or production of tangible property or intangible property (within the meaning of section 197(d)(1)(C)(iii)). For this purpose, intangible property means any patent, copyright, formula, process, design, knowhow, format, or other similar item. It is intended to include among other items, the creation of computer software, and intellectual property associated bio-tech and pharmaceuticals.

In lieu of the directly related and ancillary test of present law, the provision provides a special rule for bonds issued after the date of enactment and before January 1, 2011. For these bonds, the provision provides that facilities that are functionally related and subordinate to the manufacturing facility are treated as a manufacturing facility and the 25 percent of net proceeds restriction does not apply to such facilities.[127] Functionally related and subordinate facilities must be located on the same site as the manufacturing facility.

Effective date

The provision is effective for bonds issued after the date of enactment and before January 1, 2011.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

4. Qualified school construction bonds (sec. 1511 of the House bill, sec. 1521 of the Senate amendment, sec. 1521 of the conference agreement, and new sec. 54F of the Code)

PRESENT LAW

Tax-exempt bonds

Interest on State and local governmental bonds generally is excluded from gross income for Federal income tax purposes if the proceeds of the bonds are used to finance direct activities of these governmental units or if the bonds are repaid with revenues of the governmental units. These can include tax-exempt bonds which finance public schools.[128] An issuer must file with the Internal Revenue Service certain information about the bonds issued in order

small issue may be used to finance ancillary activities which are carried out at the manufacturing site. All such ancillary activities must be subordinate and integral to the manufacturing process."

[127] The provision is based in part on a similar rule applicable to exempt facility bonds. Treas. Reg. sec. 1.103–8(a)(3) provides: "(3) Functionally related and subordinate. An exempt facility includes any land, building, or other property functionally related and subordinate to such facility. Property is not functionally related and subordinate to a facility if it is not of a character and size commensurate with the character and size of such facility."

[128] Sec. 103.

for that bond issue to be tax-exempt.[129] Generally, this information return is required to be filed no later than the 15th day of the second month after the close of the calendar quarter in which the bonds were issued.

The tax exemption for State and local bonds does not apply to any arbitrage bond.[130] An arbitrage bond is defined as any bond that is part of an issue if any proceeds of the issue are reasonably expected to be used (or intentionally are used) to acquire higher yielding investments or to replace funds that are used to acquire higher yielding investments.[131] In general, arbitrage profits may be earned only during specified periods (e.g., defined "temporary periods") before funds are needed for the purpose of the borrowing or on specified types of investments (e.g., "reasonably required reserve or replacement funds"). Subject to limited exceptions, investment profits that are earned during these periods or on such investments must be rebated to the Federal Government.

Qualified zone academy bonds

As an alternative to traditional tax-exempt bonds, States and local governments were given the authority to issue "qualified zone academy bonds."[132] A total of $400 million of qualified zone academy bonds is authorized to be issued annually in calendar years 1998 through 2009. The $400 million aggregate bond cap is allocated each year to the States according to their respective populations of individuals below the poverty line. Each State, in turn, allocates the credit authority to qualified zone academies within such State.

A taxpayer holding a qualified zone academy bond on the credit allowance date is entitled to a credit. The credit is includible in gross income (as if it were a taxable interest payment on the bond), and may be claimed against regular income tax and alternative minimum tax liability.

The Treasury Department sets the credit rate at a rate estimated to allow issuance of qualified zone academy bonds without discount and without interest cost to the issuer.[133] The Secretary determines credit rates for tax credit bonds based on general assumptions about credit quality of the class of potential eligible issuers and such other factors as the Secretary deems appropriate. The Secretary may determine credit rates based on general credit market yield indexes and credit ratings. The maximum term of the bond is determined by the Treasury Department, so that the present value of the obligation to repay the principal on the bond is 50 percent of the face value of the bond.

"Qualified zone academy bonds" are defined as any bond issued by a State or local government, provided that (1) at least 95 percent of the proceeds are used for the purpose of renovating, providing equipment to, developing course materials for use at, or training teachers and other school personnel in a "qualified zone

[129] Sec. 149(e).
[130] Sec. 103(a) and (b)(2).
[131] Sec. 148.
[132] Sec. 1397E.
[133] Given the differences in credit quality and other characteristics of individual issuers, the Secretary cannot set credit rates in a manner that will allow each issuer to issue tax credit bonds at par.

academy" and (2) private entities have promised to contribute to the qualified zone academy certain equipment, technical assistance or training, employee services, or other property or services with a value equal to at least 10 percent of the bond proceeds.

A school is a "qualified zone academy" if (1) the school is a public school that provides education and training below the college level, (2) the school operates a special academic program in cooperation with businesses to enhance the academic curriculum and increase graduation and employment rates, and (3) either (a) the school is located in an empowerment zone or enterprise community designated under the Code, or (b) it is reasonably expected that at least 35 percent of the students at the school will be eligible for free or reduced-cost lunches under the school lunch program established under the National School Lunch Act.

The arbitrage requirements which generally apply to interest-bearing tax-exempt bonds also generally apply to qualified zone academy bonds. In addition, an issuer of qualified zone academy bonds must reasonably expect to and actually spend 100 percent of the proceeds of such bonds on qualified zone academy property within the three years period that begins on the date of issuance. To the extent less than 100 percent of the proceeds are used to finance qualified zone academy property during the three years spending period, bonds will continue to qualify as qualified zone academy bonds if unspent proceeds are used within 90 days from the end of such three years period to redeem any nonqualified bonds. The three years spending period may be extended by the Secretary if the issuer establishes that the failure to meet the spending requirement is due to reasonable cause and the related purposes for issuing the bonds will continue to proceed with due diligence.

Two special arbitrage rules apply to qualified zone academy bonds. First, available project proceeds invested during the three-year period beginning on the date of issue are not subject to the arbitrage restrictions (i.e., yield restriction and rebate requirements). Available project proceeds are proceeds from the sale of an issue of qualified zone academy bonds, less issuance costs (not to exceed two percent) and any investment earnings on such proceeds. Thus, available project proceeds invested during the three-year spending period may be invested at unrestricted yields, but the earnings on such investments must be spent on qualified zone academy property. Second, amounts invested in a reserve fund are not subject to the arbitrage restrictions to the extent: (1) such fund is funded at a rate not more rapid than equal annual installments; (2) such fund is funded in a manner reasonably expected to result in an amount not greater than an amount necessary to repay the issue; and (3) the yield on such fund is not greater than the average annual interest rate of tax-exempt obligations having a term of 10 years or more that are issued during the month the qualified zone academy bonds are issued.

Issuers of qualified zone academy bonds are required to report issuance to the Internal Revenue Service in a manner similar to the information returns required for tax-exempt bonds.

In general

The provision creates a new category of tax-credit bonds: qualified school construction bonds. Qualified school construction bonds must meet three requirements: (1) 100 percent of the available project proceeds of the bond issue is used for the construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which such a bond-financed facility is to be constructed; (2) the bond is issued by a State or local government within which such school is located; and (3) the issuer designates such bonds as a qualified school construction bond.

National limitation

There is a national limitation on qualified school construction bonds of $11 billion for calendar years 2009 and 2010, respectively. Allocations of the national limitation of qualified school construction bonds are divided between the States and certain large school districts. The States receive 60 percent of the national limitation for a calendar year and the remaining 40 percent of the national limitation for a calendar year is allocated to certain of the largest school districts.

Allocation to the States

Generally allocations are made to the States under the 60 percent allocation according to their respective populations of children aged five through seventeen. However, the Secretary of the Treasury shall adjust the annual allocations among the States to ensure that for each State the sum of its allocations under the 60 percent allocation plus any allocations to large educational agencies within the States is not less than a minimum percentage. A State's minimum percentage for a calendar year is a product of 1.68 and the minimum percentage described in section 1124(d) of the Elementary and Secondary Education Act of 1965 for such State for the most recent fiscal year ending before such calendar year.

For allocation purposes, a State includes the District of Columbia and any possession of the United States. The provision provides a special allocation for possessions of the United States other than Puerto Rico under the 60 percent share of the national limitation for States. Under this special rule an allocation to a possession other than Puerto Rico is made on the basis of the respective populations of individuals below the poverty line (as defined by the Office of Management and Budget) rather than respective populations of children aged five through seventeen. This special allocation reduces the State allocation share of the national limitation otherwise available for allocation among the States. Under another special rule the Secretary of the Interior may allocate $200 million of school construction bonds for 2009 and 2010, respectively, to Indian schools. This special allocation for Indian schools is to be used for purposes of the construction, rehabilitation, and repair of schools funded by the Bureau of Indian Affairs. For purposes of such allocations Indian tribal governments are qualified issuers. The special allocation for Indian schools does not reduce the State allocation

share of the national limitation otherwise available for allocation among the States.

If an amount allocated under this allocation to the States is unused for a calendar year it may be carried forward by the State to the next calendar year.

Allocation to large school districts

The remaining 40 percent of the national limitation for a calendar year is allocated by the Secretary of the Treasury among local educational agencies which are large local educational agencies for such year. This allocation is made in proportion to the respective amounts each agency received for Basic Grants under subpart 2 of Part A of Title I of the Elementary and Secondary Education Act of 1965 for the most recent fiscal year ending before such calendar year. Any unused allocation of any agency within a State may be allocated by the agency to such State. With respect to a calendar year, the term large local educational agency means any local educational agency if such agency is: (1) among the 100 local educational agencies with the largest numbers of children aged 5 through 17 from families living below the poverty level, or (2) one of not more than 25 local educational agencies (other than in 1, immediately above) that the Secretary of Education determines are in particular need of assistance, based on a low level of resources for school construction, a high level of enrollment growth, or other such factors as the Secretary of Education deems appropriate. If any amount allocated to large local educational agency is unused for a calendar year the agency may reallocate such amount to the State in which the agency is located.

The provision makes qualified school construction bonds a type of qualified tax credit bond for purposes of section 54A. In addition, qualified school construction bonds may be issued by Indian tribal governments only to the extent such bonds are issued for purposes that satisfy the present law requirements for tax-exempt bonds issued by Indian tribal governments (i.e., essential governmental functions and certain manufacturing purposes).

The provision requires 100 percent of the available project proceeds of qualified school construction bonds to be used within the three-year period that begins on the date of issuance. Available project proceeds are proceeds from the sale of the issue less issuance costs (not to exceed two percent) and any investment earnings on such sale proceeds. To the extent less than 100 percent of the available project proceeds are used to finance qualified purposes during the three-year spending period, bonds will continue to qualify as qualified school construction bonds if unspent proceeds are used within 90 days from the end of such three-year period to redeem bonds. The three-year spending period may be extended by the Secretary upon the issuer's request demonstrating that the failure to satisfy the three-year requirement is due to reasonable cause and the projects will continue to proceed with due diligence.

Qualified school construction bonds generally are subject to the arbitrage requirements of section 148. However, available project proceeds invested during the three-year spending period are not subject to the arbitrage restrictions (i.e., yield restriction and rebate requirements). In addition, amounts invested in a reserve

fund are not subject to the arbitrage restrictions to the extent: (1) such fund is funded at a rate not more rapid than equal annual installments; (2) such fund is funded in a manner reasonably expected to result in an amount not greater than an amount necessary to repay the issue; and (3) the yield on such fund is not greater than the average annual interest rate of tax-exempt obligations having a term of 10 years or more that are issued during the month the qualified school construction bonds are issued.

The maturity of qualified school construction bonds is the term that the Secretary estimates will result in the present value of the obligation to repay the principal on such bonds being equal to 50 percent of the face amount of such bonds, using as a discount rate the average annual interest rate of tax-exempt obligations having a term of 10 years or more that are issued during the month the qualified school construction bonds are issued.

As with present-law tax credit bonds, the taxpayer holding qualified school construction bonds on a credit allowance date is entitled to a tax credit. The credit rate on the bonds is set by the Secretary at a rate that is 100 percent of the rate that would permit issuance of such bonds without discount and interest cost to the issuer. The amount of the tax credit is determined by multiplying the bond's credit rate by the face amount on the holder's bond. The credit accrues quarterly, is includible in gross income (as if it were an interest payment on the bond), and can be claimed against regular income tax liability and alternative minimum tax liability. Unused credits may be carried forward to succeeding taxable years. In addition, credits may be separated from the ownership of the underlying bond in a manner similar to the manner in which interest coupons can be stripped from interest-bearing bonds.

Issuers of qualified school construction bonds are required to certify that the financial disclosure requirements and applicable State and local law requirements governing conflicts of interest are satisfied with respect to such issue, as well as any other additional conflict of interest rules prescribed by the Secretary with respect to any Federal, State, or local government official directly involved with the issuance of qualified school construction bonds.

Effective date

The provision is effective for bonds issued after December 31, 2008.

SENATE AMENDMENT

In general

The Senate amendment is the same as the House bill.

National limitation

There is a national limitation on qualified school construction bonds of $5 billion for Calendar years 2009 and 2010, respectively. Also, allocations of the national limitation of qualified school construction bonds are divided between the States with no special allocations to certain large school districts.

Allocation to the States

The allocations are made to the States according to their respective populations of children aged five through seventeen. However, the Secretary of the Treasury shall adjust the annual allocations among the States to ensure that for each State is not less than a minimum percentage. A State's minimum percentage for a calendar year is calculated by dividing (1) the amount the State is eligible to receive under section 1124(d) of the Elementary and Secondary Education Act of 1965 for such State for the most recent fiscal year ending before such calendar year by (2) the amount all States are eligible to received under section 1124(d) of the Elementary and Secondary Education Act of 1965 for such fiscal year, and then multiplying the result by 100.

Allocation to large school districts

No portion of the national limitation for a calendar year is allocated by the Secretary of the Treasury among local educational agencies which are large local educational agencies for such year.

Effective date

The provision is effective for obligations issued after the date of enactment.

CONFERENCE AGREEMENT

In general

The provision creates a new category of tax-credit bonds: qualified school construction bonds. Qualified school construction bonds must meet three requirements: (1) 100 percent of the available project proceeds of the bond issue is used for the construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which such a bond-financed facility is to be constructed; (2) the bond is issued by a State or local government within which such school is located; and (3) the issuer designates such bonds as a qualified school construction bond.

National limitation

There is a national limitation on qualified school construction bonds of $11 billion for calendar years 2009 and 2010, respectively.

Allocation to the States

The national limitation is tentatively allocated among the States in proportion to respective amounts each such State is eligible to receive under section 1124 of the Elementary and Secondary Education Act of 1965 for the most recent fiscal year ending before such calendar year. The amount each State is allocated under the above formula is then reduced by the amount received by any local large educational agency within the State.

For allocation purposes, a State includes the District of Columbia and any possession of the United States. The provision provides a special allocation for possessions of the United States other than Puerto Rico under the national limitation for States. Under this special rule an allocation to a possession other than Puerto Rico is made on the basis of the respective populations of individuals

below the poverty line (as defined by the Office of Management and Budget) rather than respective populations of children aged five through seventeen. This special allocation reduces the State allocation share of the national limitation otherwise available for allocation among the States. Under another special rule the Secretary of the Interior may allocate $200 million of school construction bonds for 2009 and 2010, respectively, to Indian schools. This special allocation for Indian schools is to be used for purposes of the construction, rehabilitation, and repair of schools funded by the Bureau of Indian Affairs. For purposes of such allocations Indian tribal governments are qualified issuers. The special allocation for Indian schools does not reduce the State allocation share of the national limitation otherwise available for allocation among the States.

If an amount allocated under this allocation to the States is unused for a calendar year it may be carried forward by the State to the next calendar year.

Allocation to large school districts

Forty percent of the national limitation is allocated among large local educational agencies in proportion to the respective amounts each agency received under section 1124 of the Elementary and Secondary Education Act of 1965 for the most recent fiscal year ending before such calendar year. Any unused allocation of any agency within a State may be allocated by the agency to such State. With respect to a calendar year, the term large local educational agency means any local educational agency if such agency is: (1) among the 100 local educational agencies with the largest numbers of children aged 5 through 17 from families living below the poverty level, or (2) one of not more than 25 local educational agencies (other than in 1, immediately above) that the Secretary of Education determines are in particular need of assistance, based on a low level of resources for school construction, a high level of enrollment growth, or other such factors as the Secretary of Education deems appropriate. If any amount allocated to large local educational agency is unused for a calendar year the agency may reallocate such amount to the State in which the agency is located.

Application of qualified tax credit bond rules

The provision makes qualified school construction bonds a type of qualified tax credit bond for purposes of section 54A. In addition, qualified school construction bonds may be issued by Indian tribal governments only to the extent such bonds are issued for purposes that satisfy the present law requirements for tax-exempt bonds issued by Indian tribal governments (i.e., essential governmental functions and certain manufacturing purposes).

The provision requires 100 percent of the available project proceeds of qualified school construction bonds to be used within the three-year period that begins on the date of issuance. Available project proceeds are proceeds from the sale of the issue less issuance costs (not to exceed two percent) and any investment earnings on such sale proceeds. To the extent less than 100 percent of the available project proceeds are used to finance qualified purposes during the three-year spending period, bonds will continue to qualify as qualified school construction bonds if unspent proceeds

are used within 90 days from the end of such three-year period to redeem bonds. The three-year spending period may be extended by the Secretary upon the issuer's request demonstrating that the failure to satisfy the three-year requirement is due to reasonable cause and the projects will continue to proceed with due diligence.

Qualified school construction bonds generally are subject to the arbitrage requirements of section 148. However, available project proceeds invested during the three-year spending period are not subject to the arbitrage restrictions (i.e., yield restriction and rebate requirements). In addition, amounts invested in a reserve fund are not subject to the arbitrage restrictions to the extent: (1) such fund is funded at a rate not more rapid than equal annual installments; (2) such fund is funded in a manner reasonably expected to result in an amount not greater than an amount necessary to repay the issue; and (3) the yield on such fund is not greater than the average annual interest rate of tax-exempt obligations having a term of 10 years or more that are issued during the month the qualified school construction bonds are issued.

The maturity of qualified school construction bonds is the term that the Secretary estimates will result in the present value of the obligation to repay the principal on such bonds being equal to 50 percent of the face amount of such bonds, using as a discount rate the average annual interest rate of tax-exempt obligations having a term of 10 years or more that are issued during the month the qualified school construction bonds are issued.

As with present-law tax credit bonds, the taxpayer holding qualified school construction bonds on a credit allowance date is entitled to a tax credit. The credit rate on the bonds is set by the Secretary at a rate that is 100 percent of the rate that would permit issuance of such bonds without discount and interest cost to the issuer. The amount of the tax credit is determined by multiplying the bond's credit rate by the face amount on the holder's bond. The credit accrues quarterly, is includible in gross income (as if it were an interest payment on the bond), and can be claimed against regular income tax liability and alternative minimum tax liability. Unused credits may be carried forward to succeeding taxable years. In addition, credits may be separated from the ownership of the underlying bond in a manner similar to the manner in which interest coupons can be stripped from interest-bearing bonds.

Issuers of qualified school construction bonds are required to certify that the financial disclosure requirements and applicable State and local law requirements governing conflicts of interest are satisfied with respect to such issue, as well as any other additional conflict of interest rules prescribed by the Secretary with respect to any Federal, State, or local government official directly involved with the issuance of qualified school construction bonds.

Effective date

The provision is effective for obligations issued after the date of enactment.

5. Extend and expand qualified zone academy bonds (sec. 1512 of the House bill, sec. 1522 of the Senate amendment, sec. 1522 of the conference agreement, and sec. 54E of the Code)

PRESENT LAW

Tax-exempt bonds

Interest on State and local governmental bonds generally is excluded from gross income for Federal income tax purposes if the proceeds of the bonds are used to finance direct activities of these governmental units or if the bonds are repaid with revenues of the governmental units. These can include tax-exempt bonds which finance public schools.[134] An issuer must file with the Internal Revenue Service certain information about the bonds issued in order for that bond issue to be tax-exempt.[135] Generally, this information return is required to be filed no later the 15th day of the second month after the close of the calendar quarter in which the bonds were issued.

The tax exemption for State and local bonds does not apply to any arbitrage bond.[136] An arbitrage bond is defined as any bond that is part of an issue if any proceeds of the issue are reasonably expected to be used (or intentionally are used) to acquire high fielding investments or to replace funds that are used to acquire higher yielding investments.[137] In general, arbitrage profits may be earned only during specified periods (e.g., defined "temporary periods") before funds are needed for the purpose of the borrowing or on specified types of investments (e.g., "reasonably required reserve or replacement funds"). Subject to limited exceptions, investment profits that are earned during these periods or on such investments must be rebated to the Federal Government.

Qualified zone academy bonds

As an alternative to traditional tax-exempt bonds, States and local governments were given the authority to issue "qualified zone academy bonds."[138] A total of $400 million of qualified zone academy bonds is authorized to be issued annually in calendar years 1998 through 2009. The $400 million aggregate bond cap is allocated each year to the States according to their respective populations of individuals below the poverty line. Each State, in turn, allocates the credit authority to qualified zone academies within such State.

A taxpayer holding a qualified zone academy bond on the credit allowance date is entitled to a credit. The credit is includible in gross income (as if it were a taxable interest payment on the bond), and may be claimed against regular income tax and alternative minimum tax liability.

The Treasury Department sets the credit rate at a rate estimated to allow issuance qualified zone academy bonds without dis-

[134] Sec. 103.
[135] Sec. 149(e).
[136] Sec. 103(a) and (b)(2).
[137] Sec. 148.
[138] See secs. 54E and 1397E.

count and without interest cost to the issuer.[139] The Secretary determines credit rates for tax credit bonds based on general assumptions about credit quality of the class of potential eligible issuers and such other factors as the Secretary deems appropriate. The Secretary may determine credit rates based on general credit market yield indexes and credit ratings. The maximum term of the bond is determined by the Treasury Department, so that the present value of the obligation to repay the principal on the bond is 50 percent of the face value of the bond.

"Qualified zone academy bonds" are defined as any bond issued by a State or local government, provided that (1) at least 95 percent of the proceeds are used for the purpose of renovating, providing equipment to, developing course materials for use at, or training teachers and other school personnel in a "qualified zone academy" and (2) private entities have promised to contribute to the qualified zone academy certain equipment, technical assistance or training, employee services, or other property or services with a value equal to at least 10 percent of the bond proceeds.

A school is a "qualified zone academy" if (1) the school is a public school that provides education and training below the college level, (2) the school operates a special academic program in cooperation with businesses to enhance the academic curriculum and increase graduation and employment rates, and (3) either (a) the school is located in an empowerment zone or enterprise community designated under the Code, or (b) it is reasonably expected that at least 35 percent of the students at the school will be eligible for free or reduced-cost lunches under the school lunch program established under the National School Lunch Act.

The arbitrage requirements which generally apply to interest-bearing tax-exempt bonds also generally apply to qualified zone academy bonds. In addition, an issuer of qualified zone academy bonds must reasonably expect to and actually spend 100 percent or more of the proceeds of such bonds on qualified zone academy property within the three-year period that begins on the date of issuance. To the extent less than 100 percent of the proceeds are used to finance qualified zone academy property during the three-year spending period, bonds will continue to qualify as qualified zone academy bonds if unspent proceeds are used within 90 days from the end of such three-year period to redeem any nonqualified bonds. The three-year spending period may be extended by the Secretary if the issuer establishes that the failure to meet the spending requirement is due to reasonable cause and the related purposes for issuing the bonds will continue to proceed with due diligence.

Two special arbitrage rules apply to qualified zone academy bonds. First, available project proceeds invested during the three-year period beginning on the date of issue are not subject to the arbitrage restrictions (i.e., yield restriction and rebate requirements). Available project proceeds are proceeds from the sale of an issue of qualified zone academy bonds, less issuance costs (not to exceed two percent) and any investment earnings on such proceeds.

[139] Given the differences in credit quality and other characteristics of individual issuers, the Secretary cannot set credit rates in a manner that will allow each issuer to issue tax credit bonds at par.

Thus, available project proceeds invested during the three-year spending period may be invested at unrestricted yields, but the earnings on such investments must be spent on qualified zone academy property. Second, amounts invested in a reserve fund are not subject to the arbitrage restrictions to the extent: (1) such fund is funded at a rate not more rapid than equal annual installments; (2) such fund is funded in a manner reasonably expected to result in an amount not greater than an amount necessary to repay the issue; and (3) the yield on such fund is not greater than the average annual interest rate of tax-exempt obligations having a term of 10 years or more that are issued during the month the qualified zone academy bonds are issued.

Issuers of qualified zone academy bonds are required to report issuance to the Internal Revenue Service in a manner similar to the information returns required for tax-exempt bonds.

HOUSE BILL

In general

The provision extends and expands the present-law qualified zone academy bond program. The provision authorizes issuance of up to $1.4 billion of qualified zone academy bonds annually for 2009 and 2010, respectively.

Effective date

The provision applies to obligations issued after December 31, 2008.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

6. Build America bonds (sec. 1521 of the House bill, sec. 1531 of the Senate amendment, sec. 1531 of the conference agreement, and new secs. 54AA and 6431 of the Code)

PRESENT LAW

In general

Under present law, gross income does not include interest on State or local bonds. State and local bonds are classified generally as either governmental bonds or private activity bonds. Governmental bonds are bonds the proceeds of which are primarily used to finance governmental functions or which are repaid with governmental funds. Private activity bonds are bonds in which the State or local government serves as a conduit providing financing to nongovernmental persons (e.g., private businesses or individuals). The exclusion from income for State and local bonds does not apply to private activity bonds, unless the bonds are issued for certain permitted purposes ("qualified private activity bonds") and other Code requirements are met.

Private activity bonds

The Code defines a private activity bond as any bond that satisfies (1) the private business use test and the private security or payment test ("the private business test"); or (2) "the private loan financing test."[140]

Private business test

Under the private business test, a bond is a private activity bond if it is part of an issue in which:

1. More than 10 percent of the proceeds of the issue (including use of the bond-financed property) are to be used in the trade or business of any person other than a governmental unit ("private business use"); and

2. More than 10 percent of the payment of principal or interest on the issue is, directly or indirectly, secured by (a) property used or to be used for a private business use or (b) to be derived from payments in respect of property, or borrowed money, used or to be used for a private business use ("private payment test").[141]

A bond is not a private activity bond unless both parts of the private business test (i.e., the private business use test and the private payment test) are met. Thus, a facility that is 100 percent privately used does not cause the bonds financing such facility to be private activity bonds if the bonds are not secured by or paid with private payments. For example, land improvements that benefit a privately-owned factory may be financed with governmental bonds if the debt service on such bonds is not paid by the factory owner or other private parties.

Private loan financing test

A bond issue satisfies the private loan financing test if proceeds exceeding the lesser of $5 million or five percent of such proceeds are used directly or indirectly to finance loans to one or more nongovernmental persons. Private loans include both business and other (e.g., personal) uses and payments by private persons; however, in the case of business uses and payments, all private loans also constitute private business uses and payments subject to the private business test.

Arbitrage restrictions

The exclusion from income for interest on State and local bonds does not apply to any arbitrage bond.[142] An arbitrage bond is defined as any bond that is part of an issue if any proceeds of the issue are reasonably expected to be used (or intentionally are used) to acquire higher yielding investments or to replace funds that are used to acquire higher yielding investments.[143] In general, arbitrage profits may be earned only during specified periods (e.g., defined "temporary periods") before funds are needed for the pur-

[140] Sec. 141.

[141] The 10 percent private business test is reduced to five percent in the case of private business uses (and payments with respect to such uses) that are unrelated to any governmental use being financed by the issue.

[142] Sec. 103(a) and (b)(2).

[143] Sec. 148.

pose of the borrowing or on specified types of investments (e.g., "reasonably required reserve or replacement funds"). Subject to limited exceptions, investment profits that are earned during these periods or on such investments must be rebated to the Federal Government.

Qualified tax credit bonds

In lieu of interest, holders of qualified tax credit bonds receive a tax credit that accrues quarterly. The following bonds are qualified tax credit bonds: qualified forestry conservation bonds, new clean renewable energy bonds, qualified energy conservation bonds, and qualified zone academy bonds.[144]

Section 54A of the Code sets forth general rules applicable to qualified tax credit bonds. These rules include requirements regarding credit allowance dates, the expenditure of available project proceeds, reporting, arbitrage, maturity limitations, and financial conflicts of interest, among other special rules.

A taxpayer who holds a qualified tax credit bond on one or more credit allowance dates of the bond during the taxable year shall be allowed a credit against the taxpayer's income tax for the taxable year. In general, the credit amount for any credit allowance date is 25 percent of the annual credit determined with respect to the bond. The annual credit is determined by multiplying the applicable credit rate by the outstanding face amount of the bond. The applicable credit rate for the bond is the rate that the Secretary estimates will permit the issuance of the qualified tax credit bond with a specified maturiy or redemption date without discount and without interest cost to the qualified issuer.[145] The Secretary determines credit rates for tax credit bonds based on general assumptions about credit quality of the class of potential eligible issuers and such other factors as the Secretary deems appropriate. The Secretary may determine credit rates based on general credit market yield indexes and credit ratings.

The credit is included in gross income and, under regulations prescribed by the Secretary, may be stripped (a separation (including at issuance) of the ownership of a qualified tax credit bond and the entitlement to the credit with respect to such bond).

Section 54A of the Code requires that 100 percent of the available project proceeds of qualified tax credit bonds must be used within the three-year period that begins on the date of issuance. Available project proceeds are proceeds from the sale of the bond issue less issuance costs (not to exceed two percent) and any investment earnings on such sale proceeds. To the extent less than 100 percent of the available project proceeds are used to finance qualified projects during the three-year spending period, bonds will continue to qualify as qualified tax credit bonds if unspent proceeds are used within 90 days from the end of such three-year period to redeem bonds. The three-year spending period may be extended by the Secretary upon the issuer's request demonstrating that the fail-

[144] See secs. 54B, 54C, 54D, and 54E.

[145] Given the differences in credit quality and other characteristics of individual issuers, the Secretary cannot set credit rates in a manner that will allow each issuer to issue tax credit bonds at par.

ure to satisfy the three-year requirement is due to reasonable cause and the projects will continue to proceed with due diligence.

Qualified tax credit bonds generally are subject to the arbitrage requirements of section 148. However, available project proceeds invested during the three-year spending period are not subject to the arbitrage restrictions (i.e., yield restriction and rebate requirements). In addition, amounts invested in a reserve fund are not subject to the arbitrage restrictions to the extent: (1) Such fund is funded at a rate not more rapid than equal annual installments; (2) such fund is funded in a manner reasonably expected to result in an amount not greater than an amount necessary to repay the issue; and (3) the yield on such fund is not greater than the average annual interest rate of tax-exempt obligations having a term of 10 years or more that are issued during the month the qualified tax credit bonds are issued.

The maturity of qualified tax credit bonds is the term that the Secretary estimates will result in the present value of the obligation to repay the principal on such bonds being equal to 50 percent of the face amount of such bonds, using as a discount rate the average annual interest rate of tax-exempt obligations having a term of 10 years or more that are issued during the month the qualified tax credit bonds are issued.

HOUSE BILL

In general

The provision permits an issuer to elect to have an otherwise tax-exempt bond treated as a "taxable governmental bond." A "taxable governmental bond" is any obligation (other than a private activity bond) if the interest on such obligation would be (but for this provision) excludable from gross income under section 103 and the issuer makes an irrevocable election to have the provision apply. In determining if an obligation would be tax-exempt under section 103, the credit (or the payment discussed below for qualified bonds) is not treated as a Federal guarantee. Further, the yield on a taxable governmental bond is determined without regard to the credit. A taxable governmental bond does not include any bond if the issue price has more than a de minimis amount of premium over the stated principal amount of the bond.

The holder of a taxable governmental bond will accrue a tax credit in the amount of 35 percent of the interest paid on the interest payment dates of the bond during the calendar year.[146] The interest payment date is any date on which the holder of record of the taxable governmental bond is entitled to a payment of interest under such bond. The sum of the accrued credits is allowed against regular and alternative minimum tax. Unused credit may be carried forward to succeeding taxable years. The credit, as well as the interest paid by the issuer, is included in gross income and the credit may be stripped under rules similar to those provided in section 54A regarding qualified tax credit bonds. Rules similar to those that apply for S corporations, partnerships and regulated in-

[146] Original issue discount (OID) is not treated as a payment of interest for purposes of determining the credit under the provision. OID is the excess of an obligation's stated redemption price at maturity over the obligation's issue price (sec. 1273(a)).

vestment companies with respect to qualified tax credit bonds also apply to the credit.

Unlike the tax credit for bonds issued under section 54A, the credit rate would not be calculated by the Secretary, but rather would be set by law at 35 percent. The actual credit that a taxpayer may claim is determined by multiplying the interest payment that the taxpayer receives from the issuer (i.e., the bond coupon payment) by 35 percent. Because the credit that the taxpayer claims is also included in income, the Committee anticipates that State and local issuers will issue bonds paying interest at rates approximately equal to 74.1 percent of comparable taxable bonds. The Committee anticipates that if an issuer issues a taxable governmental bond with coupons at 74.1 percent of a comparable taxable bond's coupon that the issuer's bond should sell at par. For example, if a taxable bond of comparable risk pays a $1,000 coupon and sells at par, then if a State or local issuer issues an equal-sized bond with coupon of $741.00, such a bond should also sell at par. The taxpayer who acquires the latter bond will receive an interest payment of $741 and may claim a credit of $259 (35 percent of $741). The credit and the interest payment are both included in the taxpayer's income. Thus, the taxpayer's taxable income from this instrument would be $1,000. This is the same taxable income that the taxpayer would recognize from holding the comparable taxable bond. Consequently the issuer's bond should sell at the same price as would the taxable bond.

Special rule for qualified bonds issued during 2009 and 2010

A "qualified bond" is any taxable governmental bond issued as part of an issue if 100 percent of the available project proceeds of such issue are to be used for capital expenditures.[147] The bond must be issued after the date of enactment of the provision and before January 1, 2011. The issuer must make an irrevocable election to have the special rule for qualified bonds apply.

Under the special rule for qualified bonds, in lieu of the tax credit to the holder, the issuer is allowed a credit equal to 35 percent of each interest payment made under such bond.[148] If in 2009 or 2010, the issuer elects to receive the credit, in the example above, for the State or local issuer's bond to sell at par, the issuer would have to issue the bond with a $1,000 interest coupon. The taxpayer who holds such a bond would include $1,000 on interest in his or her income. From the taxpayer's perspective the bond is the same as the taxable bond in the example above and the taxpayer would be willing to pay par for the bond. However, under the provision the State or local issuer would receive a payment of $350

[147] Under Treas. Reg. sec. 150–1(b), capital expenditure means any cost of a type that is properly chargeable to capital account (or would be so chargeable with a proper election or with the application of the definition of placed in service under Treas. Reg. sec. 1.150–2(c)) under general Federal income tax principles. For purposes of applying the "general Federal income tax principles" standard, an issuer should generally be treated as if it were a corporation subject to taxation under subchapter C of chapter 1 of the Code. An example of a capital expenditure would include expenditures made for the purchase of fiber-optic cable to provide municipal broadband service.

[148] Original issue discount (OID) is not treated as a payment of interest for purposes of calculating the refundable credit under the provision.

for each $1,000 coupon paid to bondholders. (The net interest cost to the issuer would be $650.)

The payment by the Secretary is to be made contemporaneously with the interest payment made by the issuer, and may be made either in advance or as reimbursement. In lieu of payment to the issuer, the payment may be made to a person making interest payments on behalf of the issuer. For purposes of the arbitrage rules, the yield on a qualified bond is reduced by the amount of the credit/payment.

Transitional coordination with State law

As noted above, interest on a taxable governmental bond and the related credit are includible in gross income to the holder for Federal tax purposes. The provision provides that until a State provides otherwise, the interest on any taxable governmental bond and the amount of any credit, determined with respect to such bond shall be treated as being exempt from Federal income tax for purposes of State income tax laws.

Effective date

The provision is effective for obligations issued after the date of enactment.

SENATE AMENDMENT

In general

The Senate amendment is the same as the House bill except that it renames these bonds "Build America Bonds."

The Senate amendment also restricts these bonds to obligations issued before January 1, 2011.

For bonds issued by small issuers,[149] the credit rate is 40 percent instead of 35 percent.

Special rule for qualified bonds issued during 2009 and 2010

The Senate amendment is the same as the House bill, except for bonds issued by small issuers, the credit rate is 40 percent instead of 35 percent.

Transitional coordination with State law

The Senate amendment is the same as the House bill.

Effective date

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

In general

The conference agreement follows the House bill except that it renames these bonds "Build America Bonds."

The conference agreement restricts these bonds to obligations issued before January 1, 2011.

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[149] Small issuer status is determined generally by reference to the rules of (sec. 148(f)(4)(D)) and increasing the aggregate face amount of all tax-exempt governmental bonds reasonably expected to be issued during the calendar year from $5 million to $30 million.

Special rule for qualified bonds issued during 2009 and 2010

The conference agreement follows the House bill, except that it allows for a reasonably required reserve fund to be funded from bond proceeds.[150]

Transitional coordination with State law

The conference agreement follows the House bill and the Senate amendment.

Effective date

The conference agreement follows the House bill and the Senate amendment.

7. Recovery zone bonds (sec. 1531 of the House bill, sec. 1401 of the Senate amendment, sec. 1401 of the conference agreement, and new secs. 1400U–1, 1400U–2, and 1400U–3 of the Code)

PRESENT LAW

In general

Under present law, gross income does not include interest on State or local bonds. State and local bonds are classified generally as either governmental bonds or private activity bonds. Governmental bonds are bonds the proceeds of which are primarily used to finance governmental functions or which are repaid with governmental funds. Private activity bonds are bonds in which the State or local government serves as a conduit providing financing to nongovernmental persons (e.g., private businesses or individuals). The exclusion from income for State and local bonds does not apply to private activity bonds unless the bonds are issued for certain permitted purposes ("qualified private activity bonds") and other Code requirements are met.

Private activity bonds

The Code defines a private activity bond as any bond that satisfies (1) the private business use test and the private security or payment test ("the private business test"); or (2) "the private loan financing test."[151]

Private business test

Under the private business test, a bond is a private activity bond if it is part of an issue in which:

1. More than 10 percent of the proceeds of the issue (including use of the bond-financed property) are to be used in the trade or business of any person other than a governmental unit ("private business use"); and

2. More than 10 percent of the payment of principal or interest on the issue is, directly or indirectly, secured by (a) property used or to be used for a private business use or (b) to be derived from payments in respect of property, or borrowed

[150] Under section 148(d)(2), a bond is an arbitrage bond if the amount of the proceeds from the sale of such issue that is part or any reserve or replacement fund exceeds 10 percent of the proceeds. As such the interest on such bond would not be tax-exempt under section 103 and thus would not be a qualified bond for purposes of the provision.

[151] Sec. 141.

money, used or to be used for a private business use ("private payment test").[152]

A bond is not a private activity bond unless both parts of the private business test (i.e., the private business use test and the private payment test) are met. Thus, a facility that is 100 percent privately used does not cause the bonds financing such facility to be private activity bonds if the bonds are not secured by or paid with private payments. For example, land improvements that benefit a privately-owned factory may be financed with governmental bonds if the debt service on such bonds is not paid by the factory owner or other private parties and such bonds are not secured by the property.

Private loan financing test

A bond issue satisfies the private loan financing test if proceeds exceeding the lesser of $5 million or five percent of such proceeds are used directly or indirectly to finance loans to one or more nongovernmental persons. Private loans include both business and other (e.g., personal) uses and payments to private persons; however, in the case of business uses and payments, all private loans also constitute private business uses and payments subject to the private business test.

Arbitrage restrictions

The exclusion from income for interest on State and local bonds does not apply to any arbitrage bond.[153] An arbitrage bond is defined as any bond that is part of an issue if any proceeds of the issue are reasonably expected to be used (or intentionally are used) to acquire higher yielding investments or to replace funds that are used to acquire higher yielding investments.[154] In general, arbitrage profits may be earned only during specified periods (e.g., defined "temporary periods") before funds are needed for the purpose of the borrowing or on specified types of investments (e.g., "reasonably required reserve or replacement funds"). Subject to limited exceptions, investment profits that are earned during these periods or on such investments must be rebated to the Federal Government.

Qualified private activity bonds

Qualified private activity bonds permit States or local governments to act as conduits providing tax-exempt financing for certain private activities. The definition of qualified private activity bonds includes an exempt facility bond, or qualified mortgage, veterans' mortgage, small issue, redevelopment, 501(c)(3), or student loan bond (sec. 141(e)).

The definition of an exempt facility bond includes bonds issued to finance certain transportation facilities (airports, ports, mass commuting, and high-speed intercity rail facilities); qualified residential rental projects; privately owned and/or operated utility fa-

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[152] The 10 percent private business test is reduced to five percent in the case of private business uses (and payments with respect to such uses) that are unrelated to any governmental use being financed by the issue.

[153] Sec. 103(a) and (b)(2).

[154] Sec. 148.

cilities (sewage, water, solid waste disposal, and local district heating and cooling facilities, certain private electric and gas facilities, and hydroelectric dam enhancements); public/private educational facilities; qualified green building and sustainable design projects; and qualified highway or surface freight transfer facilities (sec. 142(a)).

In most cases, the aggregate volume of qualified private activity bonds is restricted by annual aggregate volume limits imposed on bonds issued by issuers within each State ("State volume cap"). For calendar year 2007, the State volume cap, which is indexed for inflation, equals $85 per resident of the State, or $256.24 million, if greater. Exceptions to the State volume cap are provided for bonds for certain governmentally owned facilities (e.g., airports, ports, high-speed intercity rail, and solid waste disposal) and bonds which are subject to separate local, State, or national volume limits (e.g., public/private educational facility bonds, enterprise zone facility bonds, qualified green building bonds, and qualified highway or surface freight transfer facility bonds).

Qualified private activity bonds generally are subject to restrictions on the use of proceeds for the acquisition of land and existing property. In addition, qualified private activity bonds generally are subject to restrictions on the use of proceeds to finance certain specified facilities (e.g., airplanes, skyboxes, other luxury boxes, health club facilities, gambling facilities, and liquor stores), and use of proceeds to pay costs of issuance (e.g., bond counsel and underwriter fees). Small issue and redevelopment bonds also are subject to additional restrictions on the use of proceeds for certain facilities (e.g., golf courses and massage parlors).

Moreover, the term of qualified private activity bonds generally may not exceed 120 percent of the economic life of the property being financed and certain public approval requirements (similar to requirements that typically apply under State law to issuance of governmental debt) apply under Federal law to issuance of private activity bonds.

Qualified tax credit bonds

In lieu of interest, holders of qualified tax credit bonds receive a tax credit that accrues quarterly. The following bonds are qualified tax credit bonds: qualified forestry conservation bonds, new clean renewable energy bonds, qualified energy conservation bonds, and qualified zone academy bonds.[155]

Section 54A of the Code sets forth general rules applicable to qualified tax credit bonds. These rules include requirements regarding the expenditure of available project proceeds, reporting, arbitrage, maturity limitations, and financial conflicts of interest, among other special rules.

A taxpayer who holds a qualified tax credit bond on one or more credit allowance dates of the bond during the taxable year shall be allowed a credit against the taxpayer's income tax for the taxable year. In general, the credit amount for any credit allowance date is 25 percent of the annual credit determined with respect to the bond. The annual credit is determined by multiplying the appli-

[155] See secs. 54B, 54C, 54D, and 54E.

cable credit rate by the outstanding face amount of the bond. The applicable credit rate for the bond is the rate that the Secretary estimates will permit the issuance of the qualified tax credit bond with a specified maturity or redemption date without discount and without interest cost to the qualified issuer.[156] The Secretary determines credit rates for tax credit bonds based on general assumptions about credit quality of the class of potential eligible issuers and such other factors as the Secretary deems appropriate. The Secretary may determine credit rates based on general credit market yield indexes and credit ratings. The credit is included in gross income and, under regulations prescribed by the Secretary, may be stripped.

Section 54A of the Code requires that 100 percent of the available project proceeds of qualified tax credit bonds must be used within the three-year period that begins on the date of issuance. Available project proceeds are proceeds from the sale of the bond issue less issuance costs (not to exceed two percent) and any investment earnings on such sale proceeds. To the extent less than 100 percent of the available project proceeds are used to finance qualified projects during the three-year spending period, bonds will continue to qualify as qualified tax credit bonds if unspent proceeds are used within 90 days from the end of such three-year period to redeem bonds. The three-year spending period may be extended by the Secretary upon the issuer's request demonstrating that the failure to satisfy the three-year requirement is due to reasonable cause and the projects will continue to proceed with due diligence.

Qualified tax credit bonds generally are subject to the arbitrage requirements of section 148. However, available project proceeds invested during the three-year spending period are not subject to the arbitrage restrictions (i.e., yield restriction and rebate requirements). In addition, amounts invested in a reserve fund are not subject to the arbitrage restrictions to the extent: (1) such fund is funded at a rate not more rapid than equal annual installments; (2) such fund is funded in a manner reasonably expected to result in an amount not greater than an amount necessary to repay the issue; and (3) the yield on such fund is not greater than the average annual interest rate of tax-exempt obligations having a term of 10 years or more that are issued during the month the qualified tax credit bonds are issued.

The maturity of qualified tax credit bonds is the term that the Secretary estimates will result in the present value of the obligation to repay the principal on such bonds being equal to 50 percent of the face amount of such bonds, using as a discount rate the average annual interest rate of tax-exempt obligations having a term of 10 years or more that are issued during the month the qualified tax credit bonds are issued.

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[156] Given the differences in credit quality and other characteristics of individual issuers, the Secretary cannot set credit rates in a manner that will allow each issuer to issue tax credit bonds at par.

In general

The provision permits an issuer to designate one or more areas as recovery zones. The area must have significant poverty, unemployment, general distress, or home foreclosures, or be any area for which a designation as an empowerment zone or renewal community is in effect. Issuers may issue recovery zone economic development bonds and recovery zone facility bonds with respect to these zones.

There is a national recovery zone economic development bond limitation of $10 billion. In addition, there is a separate national recovery zone facility bond limitation of $15 billion. The Secretary is to separately allocate the bond limitations among the States in the proportion that each State's employment decline bears to the national decline in employment (the aggregate 2008 State employment declines for all States). In turn each State is to reallocate its allocation among the counties (parishes) and large municipalities in such State in the proportion that each such county or municipality's 2008 employment decline bears to the aggregate employment declines for all counties and municipalities in such State. In calculating the local employment decline with respect to a county, the portion of such decline attributable to a large municipality is disregarded for purposes of determining the county's portion of the State employment decline and is attributable to the large municipality only.

For purposes of the provision "2008 State employment decline" means, with respect to any State, the excess (if any) of (i) the number of individuals employed in such State as determined for December 2007, over (ii) the number of individuals employed in such State as determined for December 2008. The term "large municipality" means a municipality with a population of more than 100,000.

Recovery Zone Economic Development Bonds

New section 54AA(h) of the House bill creates a special rule for qualified bonds (a type of taxable governmental bond) issued before January 1, 2011, that entitles the issuer of such bonds to receive an advance tax credit equal to 35 percent of the interest payable on an interest payment date. For taxable governmental bonds that are designated recovery zone economic development bonds, the applicable percentage is 55 percent.

A recovery zone economic development bond is a taxable governmental bond issued as part of an issue if 100 percent of the available project proceeds of such issue are to be used for one or more qualified economic development purposes and the issuer designates such bond for purposes of this section. A qualified economic development purpose means expenditures for purposes of promoting development or other economic activity in a recovery zone, including (1) capital expenditures paid or incurred with respect to property located in such zone, (2) expenditures for public infrastructure and construction of public facilities located in a recovery zone.

The aggregate face amount of bonds which may be designated by any issuer cannot exceed the amount of the recovery zone economic development bond limitation allocated to such issuer.

Recovery Zone Facility Bonds

The provision creates a new category of exempt facility bonds, "recovery zone facility bonds." A recovery zone facility bond means any bond issued as part of an issue if: (1) 95 percent or more of the net proceeds of such issue are to be used for recovery zone property and (2) such bond is issued before January 1, 2011, and (3) the issuer designates such bond as a recovery zone facility bond. The aggregate face amount of bonds which may be designated by any issuer cannot exceed the amount of the recovery zone facility bond limitation allocated to such issuer.

Under the provision, the term "recovery zone property" means any property subject to depreciation to which section 168 applies (or would apply but for section 179) if (1) such property was acquired by the taxpayer by purchase after the date on which the designation of the recovery zone took effect; (2) the original use of such property in the recovery zone commences with the taxpayer; and (3) substantially all of the use of such property is in the recovery zone and is in the active conduct of a qualified business by the taxpayer in such zone. The term "qualified business" means any trade or business except that the rental to others of real property located in a recovery zone shall be treated as a qualified business only if the property is not residential rental property (as defined in section 168(e)(2)) and does not include any trade or business consisting of the operation of any facility described in section 144(c)(6)(B) (i.e., any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal purpose of which is the sale of alcoholic beverages for consumption off premises).

Subject to the following exceptions and modifications, issuance of recovery zone facility bonds is subject to the general rules applicable to issuance of qualified private activity bonds:

1. Issuance of the bonds is not subject to the aggregate annual State private activity bond volume limits (sec. 146);

2. The restriction on acquisition of existing property does not apply (sec. 147(d));

Effective date

The provision is effective for obligations issued after the date of enactment.

SENATE AMENDMENT

In general

The Senate amendment is the same as the House bill with a modification for allocating the bonds between the States. Under the Senate amendment each State receives a minimum allocation of one percent of the national recovery zone economic development bond limitation and one percent of the national recovery zone facility bond limitation. The remainder of each bond limitation is sepa-

rately allocated among the States in the proportion that each State's employment decline bears to the national decline in employment (the aggregate 2008 State employment declines for all States).

Recovery Zone Economic Development Bonds

New section 54AA(g) of the Senate amendment creates a special rule for qualified bonds (a type of Build America Bond) issued before January 1, 2011, that entitles the issuer of such bonds to receive an advance tax credit equal to 35 percent of the interest payable on an interest payment date. For Build America Bonds that are designated recovery zone economic development bonds, the applicable percentage is 40 percent. In other respects the Senate amendment is the same as the House bill.

Recovery Zone Facility Bonds

The Senate amendment is the same as the House bill.

Effective date

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

In general

The conference agreement follows the House bill, with a modification for allocating the bond limitations among the States. Under the conference agreement the national recovery zone economic development bond limitation and national recovery zone facility bond limitation are allocated among the States in the proportion that each State's employment decline bears to the national decline in employment (the aggregate 2008 State employment declines for all States).[157] The Secretary is to adjust each State's allocation for a calendar year such that no State receives less than 0.9 percent of the national recovery zone economic development bond limitation and no less than 0.9 percent of the national recovery zone facility bond limitation. The conference agreement also permits a county or large municipality to waive all or part of its allocation of the State bond limitations to allow further allocation within that State. With respect to all other aspects of the allocation of the bond limitations, the conference agreement follows the House bill.

The conference agreement also provides that a "recovery zone" includes any area designated by the issuer as economically distressed by reason of the closure or realignment of a military installation pursuant to the Defense Base Closure and Realignment Act of 1990.

Recovery Zone Economic Development Bonds

The conference agreement follows the House bill, except the issuer of recovery zone economic development bonds is entitled to receive an advance tax credit equal to 45 percent of the interest

[157] The Bureau of Labor Statistics prepares data on regional and State employment and unemployment. See e.g., Bureau of Labor Statistics, USDL 09–0093, Regional and State Employment and Unemployment: December 2008 (January 27, 2009) <http://www.bls.gov/news.release/laus.nr0.htm>.

payable on an interest payment date and the conference agreement allows for a reasonably required reserve fund to be funded from the proceeds of a recovery zone economic development bond.

Recovery Zone Facility Bonds

The conference agreement follows the House bill, except "recovery zone property" is defined as any property subject to depreciation to which section 168 applies (or would apply but for section 179) if (1) such property was constructed, reconstructed, renovated, or acquired by purchase by the taxpayer after the date on which the designation of the recovery zone took effect; (2) the original use of such property in the recovery zone commences with the taxpayer; and (3) substantially all of the use of such property is in the recovery zone and is in the active conduct of a qualified business by the taxpayer in such zone.

Effective date

The conference agreement follows the House bill and the Senate amendment.

8. Tribal economic development bonds (sec. 1532 of the House bill, sec. 1402 of the Senate amendment, sec. 1402 of the conference agreement, and new sec. 7871(f) of the Code)

PRESENT LAW

Under present law, gross income does not include interest on State or local bonds.[158] State and local bonds are classified generally as either governmental bonds or private activity bonds. Governmental bonds are bonds the proceeds of which are primarily used to finance governmental facilities or the debt is repaid with governmental funds. Private activity bonds are bonds in which the State or local government serves as a conduit providing financing to nongovernmental persons. For these purposes, the term "nongovernmental person" includes the Federal government and all other individuals and entities other than States or local governments.[159] Interest on private activity bonds is taxable, unless the bonds are issued for certain purposes permitted by the Code and other requirements are met.[160]

Although not States or subdivisions of States, Indian tribal governments are provided with a tax status similar to State and local governments for specified purposes under the Code.[161] Among the purposes for which a tribal government is treated as a State is the issuance of tax-exempt bonds. Under section 7871(c), tribal governments are authorized to issue tax-exempt bonds only if substantially all of the proceeds are used for essential governmental functions.[162]

The term essential governmental function does not include any function that is not customarily performed by State and local governments with general taxing powers. Section 7871(c) further prohibits Indian tribal governments from issuing tax-exempt private

[158] Sec. 103.
[159] Sec. 141(b)(6); Treas. Reg. sec. 1.141–1(b).
[160] Secs. 103(b)(1) and 141.
[161] Sec. 7871.
[162] Sec. 7871(c).

activity bonds (as defined in section 141(a) of the Code) with the exception of certain bonds for manufacturing facilities.

HOUSE BILL

Tribal Economic Development Bonds

The provision allows Indian tribal governments to issue "tribal economic development bonds." There is a national bond limitation of $2 billion, to be allocated as the Secretary determines appropriate, in consultation with the Secretary of the Interior. Tribal economic development bonds issued by an Indian tribal government are treated as if such bond were issued by a State except that section 146 (relating to State volume limitations) does not apply.

A tribal economic development bond is any bond issued by an Indian tribal government (I) the interest on which would be tax-exempt if issued by a State or local government but would be taxable under section 7871(c), and (2) that is designated by the Indian tribal government as a tribal economic development bond. The aggregate face amount of bonds that may be designated by any Indian tribal government cannot exceed the amount of national tribal economic development bond limitation allocated to such government.

Tribal economic development bonds cannot be used to finance any portion of a building in which class II or class III gaming (as defined in section 4 of the Indian Gaming Regulatory Act) is conducted, or housed, or any other property used in the conduct of such gaming. Nor can tribal economic development bonds be used to finance any facility located outside of the Indian reservation.

Treasury study

The provision requires that the Treasury Department study the effects of tribal economic development bonds. One year after the date of enactment, a report is to be submitted to Congress providing the results of such study along with any recommendations, including whether the restrictions of section 7871(c) should be eliminated or otherwise modified.

Effective date

The provision applies to obligations issued after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill except the Senate amendment defines a tribal economic development bond as any bond issued by an Indian tribal government (1) the interest on which would be tax-exempt if issued by a State or local government, and (2) that is designated by the Indian tribal government as a tribal economic development bond.

The Senate amendment also clarifies that for purposes of section 141 of the Code, use of bond proceeds by an Indian tribe, or instrumentality thereof, is treated as use by a State.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

9. Pass-through of credits on tax credit bonds held by regulated investment companies (sec. 1541 of the conference agreement and new section 853A of the Code)

PRESENT LAW

In lieu of interest, holders of qualified tax credit bonds receive a tax credit that accrues quarterly. The credit is treated as interest that is includible in gross income. The following bonds are qualified tax credit bonds: qualified forestry conservation bonds, new clean renewable energy bonds, qualified energy conservation bonds, and qualified zone academy bonds.[163] The Code provides that in the case of a qualified tax credit bond held by a regulated investment company, the credit is allowed to shareholders of such company (and any gross income included with respect to such credit shall be treated as distributed to such shareholders) under procedures prescribed by the Secretary.[164] The Secretary has not prescribed procedures for the pass through of the credit to regulated investment company shareholders.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement provides procedures for passing through credits on "tax credit bonds" to the shareholders of an electing regulated investment company. In general, an electing regulated investment company is not allowed any credits with respect to any tax credit bonds it holds during any year for which an election is in effect. The company is treated as having an amount of interest included in its gross income in an amount equal that which would have been included if no election were in effect, and a dividends paid deduction in the same amount is allowed to the company. Each shareholder of the electing regulated investment company is (1) required to include in gross income an amount equal to the shareholder's proportional share of the interest attributable to its credits and (2) allowed such proportional share as a credit against such shareholder's Federal income tax. In order to pass through tax credits to a shareholder, a regulated investment company is required to mail a written notice to such shareholder not later than 60 days after the close of the regulated investment company's taxable year, designating the shareholder's proportionate share of passed-through credits and the shareholder's gross income in respect of such credits.

A tax credit bond means a qualified tax credit bond as defined in section 54A(d), a build America bond (as defined in section 54AA(d)), and any other bond for which a credit is allowable under subpart H of part IV of subchapter A of the Code.

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[163] See secs. 54B, 54C, 54D, and 54E.

[164] See sec. 54A(h), which also covers real estate investment trusts.

The provision gives the Secretary authority to prescribe the time and manner in which a regulated investment company makes the election to pass through credits on tax credit bonds. In addition, the provision requires the Secretary to prescribe such guidance as may be necessary to carry out the provision, including prescribing methods for determining a shareholder's proportionate share of tax credits.

Effective date.—The provision is applicable to taxable years ending after the date of enactment.

10. Delay in implementation of withholding tax on government contractors (sec. 1541 of the House bill, sec. 1511 of the Senate amendment, sec. 1511 of the conference agreement, and sec. 3402(t) of the Code)

PRESENT LAW

For payments made after December 31, 2010, the Code imposes a withholding requirement at a three-percent rate on certain payments to persons providing property or services made by the Government of the United States, every State, every political subdivision thereof, and every instrumentality of the foregoing (including multi-State agencies). The withholding requirement applies regardless of whether the government entity making such payment is the recipient of the property or services. Political subdivisions of States (or any instrumentality thereof) with less than $100 million of annual expenditures for property or services that would otherwise be subject to withholding are exempt from the withholding requirement.

Payments subject to the three-percent withholding requirement include any payment made in connection with a government voucher or certificate program which functions as a payment for property or services. For example, payments to a commodity producer under a government commodity support program are subject to the withholding requirement. Present law also imposes information reporting requirements on the payments that are subject to withholding requirement.

The three-percent withholding requirement does not apply to any payments made through a Federal, State, or local government public assistance or public welfare program for which eligibility is determined by a needs or income test. The three-percent withholding requirement also does not apply to payments of wages or to any other payment with respect to which mandatory (e.g., U.S.-source income of foreign taxpayers) or voluntary (e.g., unemployment benefits) withholding applies under present law. Although the withholding requirement applies to payments that are potentially subject to backup withholding under section 3406, it does not apply to those payments from which amounts are actually being withheld under backup withholding rules.

The three-percent withholding requirement also does not apply to the following: payments of interest; payments for real property; payments to tax-exempt entities or foreign governments; intra-governmental payments; payments made pursuant to a classified or confidential contract (as defined in section 6050M(e)(3)), and payments to government employees that are not otherwise excludable

from the new withholding proposal with respect to the employees' services as employees.

HOUSE BILL

The provision repeals the three-percent withholding requirement on government payments.

Effective date.—The provision is effective on the date of enactment.

SENATE AMENDMENT

The provision delays the implementation of the three percent withholding requirement by one year to apply to payments after December 31, 2011.

Effective date.—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

11. Extend and modify the new markets tax credit (sec. 1403 of the Senate amendment, sec. 1403 of the conference agreement, and sec. 45D of the Code)

PRESENT LAW

Section 45D provides a new markets tax credit for qualified equity investments made to acquire stock in a corporation, or a capital interest in a partnership, that is a qualified community development entity ("CDE").[165] The amount of the credit allowable to the investor (either the original purchaser or a subsequent holder) is (1) a five-percent credit for the year in which the equity interest is purchased from the CDE and for each of the following two years, and (2) a six-percent credit for each of the following four years. The credit is determined by applying the applicable percentage (five or six percent) to the amount paid to the CDE for the investment at its original issue, and is available for a taxable year to the taxpayer who holds the qualified equity investment on the date of the initial investment or on the respective anniversary date that occurs during the taxable year. The credit is recaptured if, at any time during the seven-year period that begins on the date of the original issue of the qualified equity investment, the issuing entity ceases to be a qualified CDE, the proceeds of the investment cease to be used as required, or the equity investment is redeemed.

A qualified CDE is any domestic corporation or partnership: (1) whose primary mission is serving or providing investment capital for low-income communities or low-income persons; (2) that maintains accountability to residents of low-income communities by providing them with representation on any governing board of or any advisory board to the CDE; and (3) that is certified by the Secretary as being a qualified CDE. A qualified equity investment means stock (other than nonqualified preferred stock) in a corporation or a capital interest in a partnership that is acquired directly

[165] Section 45D was added by section 121(a) of the Community Renewal Tax Relief Act of 2000, Pub. L. No. 106–554 (2000).

from a CDE for cash, and includes an investment of a subsequent purchaser if such investment was a qualified equity investment in the hands of the prior holder. Substantially all of the investment proceeds must be used by the CDE to make qualified low-income community investments. For this purpose, qualified low-income community investments include: (1) capital or equity investments in, or loans to, qualified active low-income community businesses; (2) certain financial counseling and other services to businesses and residents in low-income communities; (3) the purchase from another CDE of any loan made by such entity that is a qualified low-income community investment; or (4) an equity investment in, or loan to, another CDE.

A "low-income community" is a population census tract with either (1) a poverty rate of at least 20 percent or (2) median family income which does not exceed 80 percent of the greater of metropolitan area median family income or statewide median family income (for a non-metropolitan census tract, does not exceed 80 percent of statewide median family income). In the case of a population census tract located within a high migration rural county, low-income is defined by reference to 85 percent (rather than 80 percent) of statewide median family income. For this purpose, a high migration rural county is any county that, during the 20-year period ending with the year in which the most recent census was conducted, has a net out-migration of inhabitants from the county of at least 10 percent of the population of the county at the beginning of such period.

The Secretary has the authority to designate "targeted populations" as low-income communities for purposes of the new markets tax credit. For this purpose, a "targeted population" is defined by reference to section 103(20) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702(20)) to mean individuals, or an identifiable group of individuals, including an Indian tribe, who (A) are low-income persons; or (B) otherwise lack adequate access to loans or equity investments. Under such Act, "low-income" means (1) for a targeted population within a metropolitan area, less than 80 percent of the area median family income; and (2) for a targeted population within a non-metropolitan area, less than the greater of 80 percent of the area median family income or 80 percent of the statewide non-metropolitan area median family income.[166] Under such Act, a targeted population is not required to be within any census tract. In addition, a population census tract with a population of less than 2,000 is treated as a low-income community for purposes of the credit if such tract is within an empowerment zone, the designation of which is in effect under section 1391, and is contiguous to one or more low-income communities.

A qualified active low-income community business is defined as a business that satisfies, with respect to a taxable year, the following requirements: (1) at least 50 percent of the total gross income of the business is derived from the active conduct of trade or business activities in any low-income community; (2) a substantial portion of the tangible property of such business is used in a low-

[166] 12 U.S.C. sec. 4702(17) (defines "low-income" for purposes of 12 U.S.C. sec. 4702(20)).

income community; (3) a substantial portion of the services performed for such business by its employees is performed in a low-income community; and (4) less than five percent of the average of the aggregate unadjusted bases of the property of such business is attributable to certain financial property or to certain collectibles.

The maximum annual amount of qualified equity investments is capped at $3.5 billion per year for calendar years 2006 through 2009. Lower caps applied for calendar years 2001 through 2005.

HOUSE BILL

No provision.

SENATE AMENDMENT

For calendar years 2008 and 2009, the Senate amendment increases the maximum amount of qualified equity investments by $1.5 billion (to $5 billion for each year). The Senate amendment requires that the additional amount for 2008 be allocated to qualified CDEs that submitted an allocation application with respect to calendar year 2008 and either (1) did not receive an allocation for such calendar year, or (2) received an allocation for such calendar year in an amount less than the amount requested in the allocation application. The Senate amendment also provides alternative minimum tax relief for equity investment allocations subject to the 2009 annual limitation.

Effective date.—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement generally follows the Senate amendment but does not provide for any alternative minimum tax relief.

D. Energy Incentives

1. Extension of the renewable electricity production credit (sec. 1601 of the House bill, sec. 1101 of the Senate amendment, sec. 1101 of the conference agreement, and sec. 45 of the Code)

PRESENT LAW

In general

An income tax credit is allowed for the production of electricity from qualified energy resources at qualified facilities (the "renewable electricity production credit").[167] Qualified energy resources comprise wind, closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, and marine and hydrokinetic renewable energy. Qualified facilities are, generally, facilities that generate electricity using qualified energy resources. To be eligible for the credit, electricity produced from qualified energy resources at qualified facilities must be sold by the taxpayer to an unrelated person.

[167] Sec. 45. In addition to the renewable electricity production credit, section 45 also provides income tax credits for the production of Indian coal and refined coal at qualified facilities.

Credit amounts and credit period

In general

The base amount of the electricity production credit is 1.5 cents per kilowatt-hour (indexed annually for inflation) of electricity produced. The amount of the credit was 2.1 cents per kilowatt-hour for 2008. A taxpayer may generally claim a credit during the 10-year period commencing with the date the qualified facility is placed in service. The credit is reduced for grants, tax-exempt bonds, subsidized energy financing, and other credits.

Credit phaseout

The amount of credit a taxpayer may claim is phased out as the market price of electricity exceeds certain threshold levels. The electricity production credit is reduced over a 3-cent phaseout range to the extent the annual average contract price per kilowatt-hour of electricity sold in the prior year from the same qualified energy resource exceeds 8 cents (adjusted for inflation; 11.8 cents for 2008).

Reduced credit periods and credit amounts

Generally, in the case of open-loop biomass facilities (including agricultural livestock waste nutrient facilities), geothermal energy facilities, solar energy facilities, small irrigation power facilities, landfill gas facilities, and trash combustion facilities placed in service before August 8, 2005, the 10-year credit period is reduced to five years, commencing on the date the facility was originally placed in service. However, for qualified open-loop biomass facilities (other than a facility described in section 45(d)(3)(A)(i) that uses agricultural livestock waste nutrients) placed in service before October 22, 2004, the five-year period commences on January 1, 2005. In the case of a closed-loop biomass facility modified to co-fire with coal, to co-fire with other biomass, or to co-fire with coal and other biomass, the credit period begins no earlier than October 22, 2004.

In the case of open-loop biomass facilities (including agricultural livestock waste nutrient facilities), small irrigation power facilities, landfill gas facilities, trash combustion facilities, and qualified hydropower facilities the otherwise allowable credit amount is 0.75 cent per kilowatt-hour, indexed for inflation measured after 1992 (1 cent per kilowatt-hour for 2008).

Other limitations on credit claimants and credit amounts

In general, in order to claim the credit, a taxpayer must own the qualified facility and sell the electricity produced by the facility to an unrelated party. A lessee or operator may claim the credit in lieu of the owner of the qualifying facility in the case of qualifying open-loop biomass facilities and in the case of closed-loop biomass facilities modified to co-fire with coal, to co-fire with other biomass, or to co-fire with coal and other biomass. In the case of a poultry waste facility, the taxpayer may claim the credit as a lessee or operator of a facility owned by a governmental unit.

For all qualifying facilities, other than closed-loop biomass facilities modified to co-fire with coal, to co-fire with other biomass,

or to co-fire with coal and other biomass, the amount of credit a taxpayer may claim is reduced by reason of grants, tax-exempt bonds, subsidized energy financing, and other credits, but the reduction cannot exceed 50 percent of the otherwise allowable credit. In the case of closed-loop biomass facilities modified to co-fire with coal, to co-fire with other biomass, or to co-fire with coal and other biomass, there is no reduction in credit by reason of grants, tax-exempt bonds, subsidized energy financing, and other credits.

The credit for electricity produced from renewable resources is a component of the general business credit.[168] Generally, the general business credit for any taxable year may not exceed the amount by which the taxpayer's net income tax exceeds the greater of the tentative minimum tax or 25 percent of so much of the net regular tax liability as exceeds $25,000. However, this limitation does not apply to section 45 credits for electricity or refined coal produced from a facility (placed in service after October 22, 2004) during the first four years of production beginning on the date the facility is placed in service.[169] Excess credits may be carried back one year and forward up to 20 years.

Qualified facilities

Wind energy facility

A wind energy facility is a facility that uses wind to produce electricity. To be a qualified facility, a wind energy facility must be placed in service after December 31, 1993, and before January 1, 2010.

Closed-loop biomass facility

A closed-loop biomass facility is a facility that uses any organic material from a plant which is planted exclusively for the purpose of being used at a qualifying facility to produce electricity. In addition, a facility can be a closed-loop biomass facility if it is a facility that is modified to use closed-loop biomass to co-fire with coal, with other biomass, or with both coal and other biomass, but only if the modification is approved under the Biomass Power for Rural Development Programs or is part of a pilot project of the Commodity Credit Corporation.

To be a qualified facility, a closed-loop biomass facility must be placed in service after December 31, 1992, and before January 1, 2011. In the case of a facility using closed-loop biomass but also co-firing the closed-loop biomass with coal, other biomass, or coal and other biomass, a qualified facility must be originally placed in service and modified to co-fire the closed-loop biomass at any time before January 1, 2011.

A qualified facility includes a new power generation unit placed in service after October 3, 2008, at an existing closed-loop biomass facility, but only to the extent of the increased amount of electricity produced at the existing facility by reason of such new unit.

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[168] Sec. 38(b)(8).
[169] Sec. 38(c)(4)(B)(ii).

Open-loop biomass (including agricultural livestock waste nutrients) facility

An open-loop biomass facility is a facility that uses open-loop biomass to produce electricity. For purposes of the credit, open-loop biomass is defined as (1) any agricultural livestock waste nutrients or (2) any solid, nonhazardous, cellulosic waste material or any lignin material that is segregated from other waste materials and which is derived from:

- forest-related resources, including mill and harvesting residues, precommercial thinnings, slash, and brush;
- solid wood waste materials, including waste pallets, crates, dunnage, manufacturing and construction wood wastes, and landscape or right-of-way tree trimmings; or
- agricultural sources, including orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues.

Agricultural livestock waste nutrients are defined as agricultural livestock manure and litter, including bedding material for the disposition of manure. Wood waste materials do not qualify as open-loop biomass to the extent they are pressure treated, chemically treated, or painted. In addition, municipal solid waste, gas derived from the biodegradation of solid waste, and paper which is commonly recycled do not qualify as open-loop biomass. Open-loop biomass does not include closed-loop biomass or any biomass burned in conjunction with fossil fuel (co-firing) beyond such fossil fuel required for start up and flame stabilization.

In the case of an open-loop biomass facility that uses agricultural livestock waste nutrients, a qualified facility is one that was originally placed in service after October 22, 2004, and before January 1, 2009, and has a nameplate capacity rating which is not less than 150 kilowatts. In the case of any other open-loop biomass facility, a qualified facility is one that was originally placed in service before January 1, 2011. A qualified facility includes a new power generation unit placed in service after October 3, 2008, at an existing open-loop biomass facility, but only to the extent of the increased amount of electricity produced at the existing facility by reason of such new unit.

Geothermal facility

A geothermal facility is a facility that uses geothermal energy to produce electricity. Geothermal energy is energy derived from a geothermal deposit that is a geothermal reservoir consisting of natural heat that is stored in rocks or in an aqueous liquid or vapor (whether or not under pressure). To be a qualified facility, a geothermal facility must be placed in service after October 22, 2004, and before January 1, 2011.

Solar facility

A solar facility is a facility that uses solar energy to produce electricity. To be a qualified facility, a solar facility must be placed in service after October 22, 2004, and before January 1, 2006.

Small irrigation facility

A small irrigation power facility is a facility that generates electric power through an irrigation system canal or ditch without any dam or impoundment of water. The installed capacity of a qualified facility must be at least 150 kilowatts but less than five megawatts. To be a qualified facility, a small irrigation facility must be originally placed in service after October 22, 2004, and before October 3, 2008. Marine and hydrokinetic renewable energy facilities, described below, subsume small irrigation power facilities after October 2, 2008.

Landfill gas facility

A landfill gas facility is a facility that uses landfill gas to produce electricity. Landfill gas is defined as methane gas derived from the biodegradation of municipal solid waste. To be a qualified facility, a landfill gas facility must be placed in service after October 22, 2004, and before January 1, 2011.

Trash combustion facility

Trash combustion facilities are facilities that use municipal solid waste (garbage) to produce steam to drive a turbine for the production of electricity. To be a qualified facility, a trash combustion facility must be placed in service after October 22, 2004, and before January 1, 2011. A qualified trash combustion facility includes a new unit, placed in service after October 22, 2004, that increases electricity production capacity at an existing trash combustion facility. A new unit generally would include a new burner/boiler and turbine. The new unit may share certain common equipment, such as trash handling equipment, with other pre-existing units at the same facility. Electricity produced at a new unit of an existing facility qualifies for the production credit only to the extent of the increased amount of electricity produced at the entire facility.

Hydropower facility

A qualifying hydropower facility is (1) a facility that produced hydroelectric power (a hydroelectric dam) prior to August 8, 2005, at which efficiency improvements or additions to capacity have been made after such date and before January 1, 2011, that enable the taxpayer to produce incremental hydropower or (2) a facility placed in service before August 8, 2005, that did not produce hydroelectric power (a nonhydroelectric dam) on such date, and to which turbines or other electricity generating equipment have been added after such date and before January 1, 2011.

At an existing hydroelectric facility, the taxpayer may claim credit only for the production of incremental hydroelectric power. Incremental hydroelectric power for any taxable year is equal to the percentage of average annual hydroelectric power produced at the facility attributable to the efficiency improvement or additions of capacity determined by using the same water flow information used to determine an historic average annual hydroelectric power production baseline for that facility. The Federal Energy Regulatory Commission will certify the baseline power production of the

facility and the percentage increase due to the efficiency and capacity improvements.

Nonhydroelectric dams converted to produce electricity must be licensed by the Federal Energy Regulatory Commission and meet all other applicable environmental, licensing, and regulatory requirements.

For a nonhydroelectric dam converted to produce electric power before January 1, 2009, there must not be any enlargement of the diversion structure, construction or enlargement of a bypass channel, or the impoundment or any withholding of additional water from the natural stream channel.

For a nonhydroelectric dam converted to produce electric power after December 31, 2008, the nonhydroelectric dam must have been (1) placed in service before October 3, 2008, (2) operated for flood control, navigation, or water supply purposes and (3) did not produce hydroelectric power on October 3, 2008. In addition, the hydroelectric project must be operated so that the water surface elevation at any given location and time that would have occurred in the absence of the hydroelectric project is maintained, subject to any license requirements imposed under applicable law that change the water surface elevation for the purpose of improving environmental quality of the affected waterway. The Secretary, in consultation with the Federal Energy Regulatory Commission, shall certify if a hydroelectric project licensed at a nonhydroelectric dam meets this criteria.

Marine and hydrokinetic renewable energy facility

A qualified marine and hydrokinetic renewable energy facility is any facility that produces electric power from marine and hydrokinetic renewable energy, has a nameplate capacity rating of at least 150 kilowatts, and is placed in service after October 2, 2008, and before January 1, 2012. Marine and hydrokinetic renewable energy is defined as energy derived from (1) waves, tides, and currents in oceans, estuaries, and tidal areas; (2) free flowing water in rivers, lakes, and streams; (3) free flowing water in an irrigation system, canal, or other manmade channel, including projects that utilize nonmechanical structures to accelerate the flow of water for electric power production purposes; or (4) differentials in ocean temperature (ocean thermal energy conversion). The term does not include energy derived from any source that uses a dam, diversionary structure (except for irrigation systems, canals, and other man-made channels), or impoundment for electric power production.

Summary of credit rate and credit period by facility type

TABLE 1.—SUMMARY OF SECTION 45 CREDIT FOR ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES

Eligible electricity production activity	Credit amount for 2008 (cents per kilowatt-hour)	Credit period for facilities placed in service on or before August 8, 2005 (years from placed-in-service date)	Credit period for facilities placed in service after August 8, 2005 (years from placed-in-service date)
Wind	2.1	10	10
Closed-loop biomass	2.1	[1] 10	10

TABLE 1.—SUMMARY OF SECTION 45 CREDIT FOR ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES—Continued

Eligible electricity production activity	Credit amount for 2008 (cents per kilowatt-hour)	Credit period for facilities placed in service on or before August 8, 2005 (years from placed-in-service date)	Credit period for facilities placed in service after August 8, 2005 (years from placed-in-service date)
Open-loop biomass (including agricultural livestock waste nutrient facilities)	1.0	[2] 5	10
Geothermal	2.1	5	10
Solar (pre-2006 facilities only)	2.1	5	10
Small irrigation power	1.0	5	10
Municipal solid waste (including landfill gas facilities and trash combustion facilities)	1.0	5	10
Qualified hydropower	1.0	N/A	10
Marine and hydrokinetic	1.0	N/A	10

[1] In the case of certain co-firing closed-loop facilities, the credit period begins no earlier than October 22, 2004.
[2] For certain facilities placed in service before October 22, 2004, the five-year credit period commences on January 1, 2005.

Taxation of cooperatives and their patrons

For Federal income tax purposes, a cooperative generally computes its income as if it were a taxable corporation, with one exception: the cooperative may exclude from its taxable income distributions of patronage dividends. Generally, a cooperative that is subject to the cooperative tax rules of subchapter T of the Code [170] is permitted a deduction for patronage dividends paid only to the extent of net income that is derived from transactions with patrons who are members of the cooperative.[171] The availability of such deductions from taxable income has the effect of allowing the cooperative to be treated like a conduit with respect to profits derived from transactions with patrons who are members of the cooperative.

Eligible cooperatives may elect to pass any portion of the credit through to their patrons. An eligible cooperative is defined as a cooperative organization that is owned more than 50 percent by agricultural producers or entities owned by agricultural producers. The credit may be apportioned among patrons eligible to share in patronage dividends on the basis of the quantity or value of business done with or for such patrons for the taxable year. The election must be made on a timely filed return for the taxable year and, once made, is irrevocable for such taxable year.

HOUSE BILL

The provision extends for three years (generally, through 2013; through 2012 for wind facilities) the period during which qualified facilities producing electricity from wind, closed-loop biomass, open-loop biomass, geothermal energy, municipal solid waste, and qualified hydropower may be placed in service for purposes of the electricity production credit. The provision extends for two years (through 2013) the placed-in-service period for marine and hydrokinetic renewable energy resources.

The provision also makes a technical amendment to the definition of small irrigation power facility to clarify its integration into the definition of marine and hydrokinetic renewable energy facility.

[170] Secs. 1381–1383.
[171] Sec. 1382.

Effective date.—The extension of the electricity production credit is effective for property placed in service after the date of enactment. The technical amendment is effective as if included in section 102 of the Energy Improvement and Extension Act of 2008.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

2. Election of investment credit in lieu of production tax credits (sec. 1602 of the House bill, sec. 1102 of the Senate amendment, sec. 1102 of the conference agreement, and secs. 45 and 48 of the Code)

PRESENT LAW

Renewable electricity credit

An income tax credit is allowed for the production of electricity from qualified energy resources at qualified facilities.[172] Qualified energy resources comprise wind, closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, and marine and hydrokinetic renewable energy. Qualified facilities are, generally, facilities that generate electricity using qualified energy resources. To be eligible for the credit, electricity produced from qualified energy resources at qualified facilities must be sold by the taxpayer to an unrelated person. The credit amounts, credit periods, definitions of qualified facilities, and other rules governing this credit are described more fully in section D.1 of this document.

Energy credit

An income tax credit is also allowed for certain energy property placed in service. Qualifying property includes certain fuel cell property, solar property, geothermal power production property, small wind energy property, combined heat and power system property, and geothermal heat pump property.[173] The amounts of credit, definitions of qualifying property, and other rules governing this credit are described more fully in section D.3 of this document.

HOUSE BILL

The House bill allows the taxpayer to make an irrevocable election to have certain qualified facilities placed in service in 2009 and 2010 be treated as energy property eligible for a 30-percent investment credit under section 48. For this purpose, qualified facilities are facilities otherwise eligible for the section 45 production tax credit (other than refined coal, Indian coal, and solar facilities) with respect to which no credit under section 45 has been allowed.

[172] Sec. 45. In addition to the electricity production credit, section 45 also provides income tax credits for the production of Indian coal and refined coal at qualified facilities.
[173] Sec. 48.

A taxpayer electing to treat a facility as energy property may not claim the production credit under section 45.

Effective date.—The provision applies to facilities placed in service after December 31, 2008.

SENATE AMENDMENT

The Senate amendment is similar to the House bill, but with a modification with respect to the placed in service period that determines eligibility for the election. Under the Senate amendment, facilities are eligible if placed in service during the extension period of section 45 as provided in the Senate amendment (generally, through 2013; through 2012 for wind facilities), and with respect to which no credit under section 45 has been allowed.

CONFERENCE AGREEMENT

The conference agreement generally follows the Senate amendment. Property eligible for the credit is tangible personal or other tangible property (not including a building or its structural components), and with respect to which depreciation or amortization is allowable but only if such property is used as an integral part of the qualified facility. For example, in the case of a wind facility, the conferees intend that only property eligible for five-year depreciation under section 168(e)(3)(b)(vi) is treated as credit-eligible energy property under the election.

3. Modification of energy credit[174] (sec. 1603 of the House bill, sec. 1103 of the Senate amendment, sec. 1103 of the conference agreement, and sec. 48 of the Code)

PRESENT LAW

In general

A nonrefundable, 10-percent business energy credit[175] is allowed for the cost of new property that is equipment that either (1) uses solar energy to generate electricity, to heat or cool a structure, or to provide solar process heat, or (2) is used to produce, distribute, or use energy derived from a geothermal deposit, but only, in the case of electricity generated by geothermal power, up to the electric transmission stage. Property used to generate energy for the purposes of heating a swimming pool is not eligible solar energy property.

The energy credit is a component of the general business credit.[176] An unused general business credit generally may be carried back one year and carried forward 20 years.[177] The taxpayer's basis in the property is reduced by one-half of the amount of the credit claimed. For projects whose construction time is expected to equal or exceed two years, the credit may be claimed as progress expenditures are made on the project, rather than during the year

[174] Additional provisions that (1) allow section 45 facilities to elect to be treated as section 48 energy property, and (2) allow section 45 and 48 facilities to elect to receive a grant from the Department of the Treasury rather than the section 45 production credit or the section 48 energy credit, are described in sections D.2 and D.4 of this document.

[175] Sec. 48.

[176] Sec. 38(b)(1).

[177] Sec. 39.

the property is placed in service. The credit is allowed against the alternative minimum tax for credits determined in taxable years beginning after October 3, 2008.

Property financed by subsidized energy financing or with proceeds from private activity bonds is subject to a reduction in basis for purposes of claiming the credit. The basis reduction is proportional to the share of the basis of the property that is financed by the subsidized financing or proceeds. The term "subsidized energy financing" means financing provided under a Federal, State, or local program a principal purpose of which is to provide subsidized financing for projects designed to conserve or produce energy.

Special rules for solar energy property

The credit for solar energy property is increased to 30 percent in the case of periods prior to January 1, 2017. Additionally, equipment that uses fiber-optic distributed sunlight to illuminate the inside of a structure is solar energy property eligible for the 30-percent credit.

Fuel cells and microturbines

The energy credit applies to qualified fuel cell power plants, but only for periods prior to January 1, 2017. The credit rate is 30 percent.

A qualified fuel cell power plant is an integrated system composed of a fuel cell stack assembly and associated balance of plant components that (1) converts a fuel into electricity using electrochemical means, and (2) has an electricity-only generation efficiency of greater than 30 percent and a capacity of at least one-half kilowatt. The credit may not exceed $1,500 for each 0.5 kilowatt of capacity.

The energy credit applies to qualifying stationary microturbine power plants for periods prior to January 1, 2017. The credit is limited to the lesser of 10 percent of the basis of the property or $200 for each kilowatt of capacity.

A qualified stationary microturbine power plant is an integrated system comprised of a gas turbine engine, a combustor, a recuperator or regenerator, a generator or alternator, and associated balance of plant components that converts a fuel into electricity and thermal energy. Such system also includes all secondary components located between the existing infrastructure for fuel delivery and the existing infrastructure for power distribution, including equipment and controls for meeting relevant power standards, such as voltage, frequency and power factors. Such system must have an electricity-only generation efficiency of not less than 26 percent at International Standard Organization conditions and a capacity of less than 2,000 kilowatts.

Geothermal heat pump property

The energy credit applies to qualified geothermal heat pump property placed in service prior to January 1, 2017. The credit rate is 10 percent. Qualified geothermal heat pump property is equipment that uses the ground or ground water as a thermal energy source to heat a structure or as a thermal energy sink to cool a structure.

Small wind property

The energy credit applies to qualified small wind energy property placed in service prior to January 1, 2017. The credit rate is 30 percent. The credit is limited to $4,000 per year with respect to all wind energy property of any taxpayer. Qualified small wind energy property is property that uses a qualified wind turbine to generate electricity. A qualifying wind turbine means a wind turbine of 100 kilowatts of rated capacity or less.

Combined heat and power property

The energy credit applies to combined heat and power ("CHP") property placed in service prior to January 1, 2017. The credit rate is 10 percent.

CHP property is property: (1) that uses the same energy source for the simultaneous or sequential generation of electrical power, mechanical shaft power, or both, in combination with the generation of steam or other forms of useful thermal energy (including heating and cooling applications); (2) that has an electrical capacity of not more than 50 megawatts or a mechanical energy capacity of no more than 67,000 horsepower or an equivalent combination of electrical and mechanical energy capacities; (3) that produces at least 20 percent of its total useful energy in the form of thermal energy that is not used to produce electrical or mechanical power, and produces at least 20 percent of its total useful energy in the form of electrical or mechanical power (or a combination thereof); and (4) the energy efficiency percentage of which exceeds 60 percent. CHP property does not include property used to transport the energy source to the generating facility or to distribute energy produced by the facility.

The otherwise allowable credit with respect to CHP property is reduced to the extent the property has an electrical capacity or mechanical capacity in excess of any applicable limits. Property in excess of the applicable limit (15 megawatts or a mechanical energy capacity of more than 20,000 horsepower or an equivalent combination of electrical and mechanical energy capacities) is permitted to claim a fraction of the otherwise allowable credit. The fraction is equal to the applicable limit divided by the capacity of the property. For example, a 45 megawatt property would be eligible to claim 15/45ths, or one-third, of the otherwise allowable credit. Again, no credit is allowed if the property exceeds the 50 megawatt or 67,000 horsepower limitations described above.

Additionally, the provision provides that systems whose fuel source is at least 90 percent open-loop biomass and that would qualify for the credit but for the failure to meet the efficiency standard are eligible for a credit that is reduced in proportion to the degree to which the system fails to meet the efficiency standard. For example, a system that would otherwise be required to meet the 60-percent efficiency standard, but which only achieves 30-percent efficiency, would be permitted a credit equal to one-half of the otherwise allowable credit (i.e., a 5-percent credit).

HOUSE BILL

The House bill eliminates the credit cap applicable to qualified small wind energy property. The House bill also removes the rule that reduces the basis of the property for purposes of claiming the credit if the property is financed in whole or in part by subsidized energy financing or with proceeds from private activity bonds.

Effective date.—The provision applies to periods after December 31, 2008, under rules similar to the rules of section 48(m) of the Code (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990).

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

4. Grants for specified energy property in lieu of tax credits (secs. 1604 and 1721 of the House bill, secs. 1104 and 1603 of the conference agreement, and secs. 45 and 48 of the Code)

PRESENT LAW

Renewable electricity production credit

An income tax credit is allowed for the production of electricity from qualified energy resources at qualified facilities (the "renewable electricity production credit").[178] Qualified energy resources comprise wind, closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, and marine and hydrokinetic renewable energy. Qualified facilities are, generally, facilities that generate electricity using qualified energy resources. To be eligible for the credit, electricity produced from qualified energy resources at qualified facilities must be sold by the taxpayer to an unrelated person. The credit amounts, credit periods, definitions of qualified facilities, and other rules governing this credit are described more fully in section D.1 of this document.

Energy credit

An income tax credit is also allowed for certain energy property placed in service. Qualifying property includes certain fuel cell property, solar property, geothermal power production property, small wind energy property, combined heat and power system property, and geothermal heat pump property.[179] The amounts of credit, definitions of qualifying property, and other rules governing this credit are described more fully in section D.3 of this document.

HOUSE BILL

The provision authorizes the Secretary of Energy to provide a grant to each person who places in service during 2009 or 2010 en-

[178] Sec. 45. In addition to the renewable electricity production credit, section 45 also provides income tax credits for the production of Indian coal and refined coal at qualified facilities.

[179] Sec. 48.

ergy property that is either (1) an electricity production facility otherwise eligible for the renewable electricity production credit or (2) qualifying property otherwise eligible for the energy credit. In general, the grant amount is 30 percent of the basis of the property that would (1) be eligible for credit under section 48 or (2) comprise a section 45 credit-eligible facility. For qualified microturbine, combined heat and power system, and geothermal heat pump property, the amount is 10 percent of the basis of the property.

It is intended that the grant provision mimic the operation of the credit under section 48. For example, the amount of the grant is not includable in gross income. However, the basis of the property is reduced by fifty percent of the amount of the grant. In addition, some or all of each grant is subject to recapture if the grant eligible property is disposed of by the grant recipient within five years of being placed in service.[180]

Nonbusiness property and property that would not otherwise be eligible for credit under section 48 or part of a facility that would be eligible for credit under section 45 is not eligible for a grant under the provision. The grant may be paid to whichever party would have been entitled to a credit under section 48 or section 45, as the case may be.

Under the provision, if a grant is paid, no renewable electricity credit or energy credit may be claimed with respect to the grant eligible property. In addition, no grant may be awarded to any Federal, State, or local government (or any political subdivision, agency, or instrumentality thereof) or any section 501(c) tax-exempt entity.

The provision appropriates to the Secretary of Energy the funds necessary to make the grants. No grant may be made unless the application for the grant has been received before October 1, 2011.

Effective date.—The provision is effective on date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement generally follows the House bill with the following modifications. The conference agreement clarifies that qualifying property must be depreciable or amortizable to be eligible for a grant. The conference agreement also permits taxpayers to claim the credit with respect to otherwise eligible property that is not placed in service in 2009 and 2010 so long as construction begins in either of those years and is completed prior to 2013 (in the case of wind facility property), 2014 (in the case of other renewable power facility property eligible for credit under section 45), or 2017 (in the case of any specified energy property described in section 48). The conference agreement also provides that the grant program be administered by the Secretary of the Treasury.

[180] Section 1604 of the House bill.

5. Expand new clean renewable energy bonds (sec. 1611 of the House bill, sec. 1111 of the Senate amendment, sec. 1111 of the conference agreement, and sec. 54C of the Code)

PRESENT LAW

New Clean Renewable Energy Bonds

New clean renewable energy bonds ("New CREBs") may be issued by qualified issuers to finance qualified renewable energy facilities.[181] Qualified renewable energy facilities are facilities that: (1) qualify for the tax credit under section 45 (other than Indian coal and refined coal production facilities), without regard to the placed-in-service date requirements of that section; and (2) are owned by a public power provider, governmental body, or cooperative electric company.

The term "qualified issuers" includes: (1) public power providers; (2) a governmental body; (3) cooperative electric companies; (4) a not-for-profit electric utility that has received a loan or guarantee under the Rural Electrification Act; and (5) clean renewable energy bond lenders. The term "public power provider" means a State utility with a service obligation, as such terms are defined in section 217 of the Federal Power Act (as in effect on the date of the enactment of this paragraph). A "governmental body" means any State or Indian tribal government, or any political subdivision thereof. The term "cooperative electric company" means a mutual or cooperative electric company (described in section 501(c)(12) or section 1381(a)(2)(C)). A clean renewable energy bond lender means a cooperative that is owned by, or has outstanding loans to, 100 or more cooperative electric companies and is in existence on February 1, 2002 (including any affiliated entity which is controlled by such lender).

There is a national limitation for New CREBs of $800 million. No more than one third of the national limit may be allocated to projects of public power providers, governmental bodies, or cooperative electric companies. Allocations to governmental bodies and cooperative electric companies may be made in the manner the Secretary determines appropriate. Allocations to projects of public power providers shall be made, to the extent practicable, in such manner that the amount allocated to each such project bears the same ratio to the cost of such project as the maximum allocation limitation to projects of public power providers bears to the cost of all such projects.

New CREBs are a type of qualified tax credit bond for purposes of section 54A of the Code. As such, 100 percent of the available project proceeds of New CREBs must be used within the three-year period that begins on the date of issuance. Available project proceeds are proceeds from the sale of the bond issue less issuance costs (not to exceed two percent) and any investment earnings on such sale proceeds. To the extent less than 100 percent of the available project proceeds are used to finance qualified projects during the three-year spending period, bonds will continue to qualify as New CREBs if unspent proceeds are used within 90 days from the end of such three-year period to redeem bonds. The

[181] Sec. 54C.

three-year spending period may be extended by the Secretary upon the qualified issuer's request demonstrating that the failure to satisfy the three-year requirement is due to reasonable cause and the projects will continue to proceed with due diligence.

New CREBs generally are subject to the arbitrage requirements of section 148. However, available project proceeds invested during the three-year spending period are not subject to the arbitrage restrictions (i.e., yield restriction and rebate requirements). In addition, amounts invested in a reserve fund are not subject to the arbitrage restrictions to the extent: (1) such fund is funded at a rate not more rapid than equal annual installments; (2) such fund is funded in a manner reasonably expected to result in an amount not greater than an amount necessary to repay the issue; and (3) the yield on such fund is not greater than the average annual interest rate of tax-exempt obligations having a term of 10 years or more that are issued during the month the New CREBs are issued.

As with other tax credit bonds, a taxpayer holding New CREBs on a credit allowance date is entitled to a tax credit. However, the credit rate on New CREBs is set by the Secretary at a rate that is 70 percent of the rate that would permit issuance of such bonds without discount and interest cost to the issuer.[182] The Secretary determines credit rates for tax credit bonds based on general assumptions about credit quality of the class of potential eligible issuers and such other factors as the Secretary deems appropriate. The Secretary may determine credit rates based on general credit market yield indexes and credit ratings.[183]

The amount of the tax credit is determined by multiplying the bond's credit rate by the face amount of the holder's bond. The credit accrues quarterly, is includible in gross income (as if it were an interest payment on the bond), and can be claimed against regular income tax liability and alternative minimum tax liability. Unused credits may be carried forward to succeeding taxable years. In addition, credits may be separated from the ownership of the underlying bond similar to how interest coupons can be stripped for interest-bearing bonds.

An issuer of New CREBs is treated as meeting the "prohibition on financial conflicts of interest" requirement in section 54A(d)(6) if it certifies that it satisfies (i) applicable State and local law requirements governing conflicts of interest and (ii) any additional conflict of interest rules prescribed by the Secretary with respect to any Federal, State, or local government official directly involved with the issuance of New CREBs.

HOUSE BILL

In general

The provision expands the New CREBs program. The provision authorizes issuance of up to an additional $1.6 billion of New CREBs.

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[182] Given the differences in credit quality and other characteristics of individual issuers, the Secretary cannot set credit rates in a manner that will allow each issuer to issue tax credit bonds at par.

[183] See Internal Revenue Service, Notice 2009–15, Credit Rates on Tax Credit Bonds, 2009–6 I.R.B. 1 (January 22, 2009).

Effective date

The provision applies to obligations issued after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

6. Expand qualified energy conservation bonds (sec. 1612 of the House bill, sec. 1112 of the Senate amendment, sec. 1112 of the conference agreement, and sec. 54D of the Code)

PRESENT LAW

Qualified energy conservation bonds may be used to finance qualified conservation purposes.

The term "qualified conservation purpose" means:

1. Capital expenditures incurred for purposes of reducing energy consumption in publicly owned buildings by at least 20 percent; implementing green community programs; rural development involving the production of electricity from renewable energy resources; or any facility eligible for the production tax credit under section 45 (other than Indian coal and refined coal production facilities);

2. Expenditures with respect to facilities or grants that support research in: (a) development of cellulosic ethanol or other nonfossil fuels; (b) technologies for the capture and sequestration of carbon dioxide produced through the use of fossil fuels; (c) increasing the efficiency of existing technologies for producing nonfossil fuels; (d) automobile battery technologies and other technologies to reduce fossil fuel consumption in transportation; and (E) technologies to reduce energy use in buildings;

3. Mass commuting facilities and related facilities that reduce the consumption of energy, including expenditures to reduce pollution from vehicles used for mass commuting;

4. Demonstration projects designed to promote the commercialization of: (a) green building technology; (b) conversion of agricultural waste for use in the production of fuel or otherwise; (c) advanced battery manufacturing technologies; (D) technologies to reduce peak-use of electricity; and (d) technologies for the capture and sequestration of carbon dioxide emitted from combusting fossil fuels in order to produce electricity; and

5. Public education campaigns to promote energy efficiency (other than movies, concerts, and other events held primarily for entertainment purposes).

There is a national limitation on qualified energy conservation bonds of $800 million. Allocations of qualified energy conservation bonds are made to the States with sub-allocations to large local governments. Allocations are made to the States according to their

respective populations, reduced by any sub-allocations to large local governments (defined below) within the States. Sub-allocations to large local governments shall be an amount of the national qualified energy conservation bond limitation that bears the same ratio to the amount of such limitation that otherwise would be allocated to the State in which such large local government is located as the population of such large local government bears to the population of such State. The term "large local government" means: any municipality or county if such municipality or county has a population of 100,000 or more. Indian tribal governments also are treated as large local governments for these purposes (without regard to population).

Each State or large local government receiving an allocation of qualified energy conservation bonds may further allocate issuance authority to issuers within such State or large local government. However, any allocations to issuers within the State or large local government shall be made in a manner that results in not less than 70 percent of the allocation of qualified energy conservation bonds to such State or large local government being used to designate bonds that are not private activity bonds (i.e., the bond cannot meet the private business tests or the private loan test of section 141).

Qualified energy conservation bonds are a type of qualified tax credit bond for purposes of section 54A of the Code. As a result, 100 percent of the available project proceeds of qualified energy conservation bonds must be used for qualified conservation purposes. In the case of qualified conservation bonds issued as private activity bonds, 100 percent of the available project proceeds must be used for capital expenditures. In addition, qualified energy conservation bonds only may be issued by Indian tribal governments to the extent such bonds are issued for purposes that satisfy the present law requirements for tax-exempt bonds issued by Indian tribal governments (i.e., essential governmental functions and certain manufacturing purposes).

Under present law, 100 percent of the available project proceeds of qualified energy conservation bonds to be used within the three-year period that begins on the date of issuance. Available project proceeds are proceeds from the sale of the issue less issuance costs (not to exceed two percent) and any investment earnings on such sale proceeds. To the extent less than 100 percent of the available project proceeds are used to finance qualified conservation purposes during the three-year spending period, bonds will continue to qualify as qualified energy conservation bonds if unspent proceeds are used within 90 days from the end of such three-year period to redeem bonds. The three-year spending period may be extended by the Secretary upon the issuer's request demonstrating that the failure to satisfy the three-year requirement is due to reasonable cause and the projects will continue to proceed with due diligence.

Qualified energy conservation bonds generally are subject to the arbitrage requirements of section 148. However, available project proceeds invested during the three-year spending period are not subject to the arbitrage restrictions (i.e., yield restriction and rebate requirements). In addition, amounts invested in a reserve

fund are not subject to the arbitrage restrictions to the extent: (1) such fund is funded at a rate not more rapid than equal annual installments; (2) such fund is funded in a manner reasonably expected to result in an amount not greater than an amount necessary to repay the issue; and (3) the yield on such fund is not greater than the average annual interest rate of tax-exempt obligations having a term of 10 years or more that are issued during the month the qualified energy conservation bonds are issued.

The maturity of qualified energy conservation bonds is the term that the Secretary estimates will result in the present value of the obligation to repay the principal on such bonds being equal to 50 percent of the face amount of such bonds, using as a discount rate the average annual interest rate of tax-exempt obligations having a term of 10 years or more that are issued during the month the qualified energy conservation bonds are issued.

As with other tax credit bonds, the taxpayer holding qualified energy conservation bonds on a credit allowance date is entitled to a tax credit. The credit rate on the bonds is set by the Secretary at a rate that is 70 percent of the rate that would permit issuance of such bonds without discount and interest cost to the issuer.[184] The Secretary determines credit rates for tax credit bonds based on general assumptions about credit quality of the class of potential eligible issuers and such other factors as the Secretary deems appropriate. The Secretary may determine credit rates based on general credit market yield indexes and credit ratings.[185] The amount of the tax credit is determined by multiplying the bond's credit rate by the face amount on the holder's bond. The credit accrues quarterly, is includible in gross income (as if it were an interest payment on the bond), and can be claimed against regular income tax liability and alternative minimum tax liability. Unused credits may be carried forward to succeeding taxable years. In addition, credits may be separated from the ownership of the underlying bond similar to how interest coupons can be stripped for interest-bearing bonds.

Issuers of qualified energy conservation bonds are required to certify that the financial disclosure requirements that applicable State and local law requirements governing conflicts of interest are satisfied with respect to such issue, as well as any other additional conflict of interest rules prescribed by the Secretary with respect to any Federal, State, or local government official directly involved with the issuance of qualified energy conservation bonds.

HOUSE BILL

In general

The provision expands the present-law qualified energy conservation bond program. The provision authorizes issuance of an additional $2.4 billion of qualified energy conservation bonds. The provision expands eligibility for these tax credit bonds to include loans and grants for capital expenditures as part of green commu-

[184] Given the difference in credit quality and other characteristics of individual issuers, the Secretary cannot set credit rates in a manner that will allow each issuer to issue tax credit bonds at par.

[185] See Internal Revenue Services, Notice 2009–15, Credit Rates on Tax Credit Bonds, 2009–6 I.R.B. 1 (January 22, 2009).

nity programs. For example, this expansion will enable States to issue these tax credit bonds to finance loans and/or grants to individual homeowners to retrofit existing housing. The use of bond proceeds for such loans and grants will not cause such bond to be treated as a private activity bond for purposes of the private activity bond restrictions contained in the qualified energy conservation bond provisions.

Effective date

The provision is effective for bonds issued after the date of enactment.

SENATE AMENDMENT

In general

The provision expands the present-law qualified energy conservation bond program. The provision authorizes issuance of an additional $2.4 billion of qualified energy conservation bonds. The provision clarifies that capital expenditures to implement green community programs, includes grants, loans and other repayment mechanisms for capital expenditures to implement such programs.

Effective date

The provision is effective for bonds issued after the date of enactment.

CONFERENCE AGREEMENT

In general

The provision expands the present-law qualified energy conservation bond program. The provision authorizes issuance of an additional $2.4 billion of qualified energy conservation bonds. Also, the provision clarifies that capital expenditures to implement green community programs includes grants, loans and other repayment mechanisms to implement such programs. For example, this expansion will enable States to issue these tax credit bonds to finance retrofits of existing private buildings through loans and/or grants to individual homeowners or businesses, or through other repayment mechanisms. Other repayment mechanisms can include periodic fees assessed on a government bill or utility bill that approximates the energy savings of energy efficiency or conservation retrofits. Retrofits can include heating, cooling, lighting, water-saving, storm water-reducing, or other efficiency measures.

Finally, the provision clarifies that any bond used for the purpose of providing grants, loans or other repayment mechanisms for capital expenditures to implement green community programs is not treated as a private activity bond for purposes of determining whether the requirement that not less than 70 percent of allocations within a State or large local government be used to designate bonds that are not private activity bonds (sec. 54D(e)(3)) has been satisfied.

Effective date

The conference agreement follows the House bill and the Senate amendment.

7. Modification to high-speed intercity rail facility bonds (sec. 1504 of the Senate amendment, sec. 1504 of the conference agreement, and sec. 142(i) of the Code)

PRESENT LAW

In general

Under present law, gross income does not include interest on State or local bonds. State and local bonds are classified generally as either governmental bonds or private activity bonds. Governmental bonds are bonds the proceeds of which are primarily used to finance governmental functions or which are repaid with governmental funds. Private activity bonds are bonds in which the State or local government serves as a conduit providing financing to nongovernmental persons (e.g., private businesses or individuals). The exclusion from income for State and local bonds does not apply to private activity bonds unless the bonds are issued for certain permitted purposes ("qualified private activity bonds") and other Code requirements are met.

High-speed rail

An exempt facility bond is a type of qualified private activity bond. Exempt facility bonds can be issued for high-speed intercity rail facilities. A facility qualifies as a high-speed intercity rail facility if it is a facility (other than rolling stock) for fixed guideway rail transportation of passengers and their baggage between metropolitan statistical areas. The facilities must use vehicles that are reasonably expected to operate at speeds in excess of 150 miles per hour between scheduled stops and the facilities must be made available to members of the general public as passengers. If the bonds are to be issued for a nongovernmental owner of the facility, such owner must irrevocably elect not to claim depreciation or credits with respect to the property financed by the net proceeds of the issue.

The Code imposes a special redemption requirement for these types of bonds. Any proceeds not used within three years of the date of issuance of the bonds must be used within the following six months to redeem such bonds.

Seventy-five percent of the principal amount of the bonds issued for high-speed rail facilities is exempt from the volume limit. If all the property to be financed by the net proceeds of the issue is to be owned by a governmental unit, then such bonds are completely exempt from the volume limit.

HOUSE BILL

No provision.

SENATE AMENDMENT

In general

The provision modifies the requirement that high-speed intercity rail transportation facilities use vehicles that are reasonably expected to operate at speeds in excess of 150 miles per hour. Instead, under the provision such facilities must use vehicles capable of attaining a maximum speed in excess of 150 miles per hour.

Effective date

The provision is effective for obligations issued after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

8. Extension and modification of credit for nonbusiness energy property (sec. 1621 of the House bill, sec. 1121 of the Senate amendment, sec. 1121 of the conference agreement, and sec. 25C of the Code)

PRESENT LAW

Section 25C provides a 10-percent credit for the purchase of qualified energy efficiency improvements to existing homes. A qualified energy efficiency improvement is any energy efficiency building envelope component (1) that meets or exceeds the prescriptive criteria for such a component established by the 2000 International Energy Conservation Code as supplemented and as in effect on August 8, 2005 (or, in the case of metal roofs with appropriate pigmented coatings, meets the Energy Star program requirements); (2) that is installed in or on a dwelling located in the United States and owned and used by the taxpayer as the taxpayer's principal residence; (3) the original use of which commences with the taxpayer; and (4) that reasonably can be expected to remain in use for at least five years. The credit is nonrefundable.

Building envelope components are: (1) insulation materials or systems which are specifically and primarily designed to reduce the heat loss or gain for a dwelling; (2) exterior windows (including skylights) and doors; and (3) metal or asphalt roofs with appropriate pigmented coatings or cooling granules that are specifically and primarily designed to reduce the heat gain for a dwelling.

Additionally, section 25C provides specified credits for the purchase of specific energy efficient property. The allowable credit for the purchase of certain property is (1) $50 for each advanced main air circulating fan, (2) $150 for each qualified natural gas, propane, or oil furnace or hot water boiler, and (3) $300 for each item of qualified energy efficient property.

An advanced main air circulating fan is a fan used in a natural gas, propane, or oil furnace originally placed in service by the taxpayer during the taxable year, and which has an annual electricity use of no more than two percent of the total annual energy use of the furnace (as determined in the standard Department of Energy test procedures).

A qualified natural gas, propane, or oil furnace or hot water boiler is a natural gas, propane, or oil furnace or hot water boiler with an annual fuel utilization efficiency rate of at least 95.

Qualified energy-efficient property is: (1) an electric heat pump water heater which yields energy factor of at least 2.0 in the standard Department of Energy test procedure, (2) an electric heat pump which has a heating seasonal performance factor (HSPF) of at least 9, a seasonal energy efficiency ratio (SEER) of at least 15, and an energy efficiency ratio (EER) of at least 13, (3) a central air conditioner with energy efficiency of at least the highest efficiency tier

established by the Consortium for Energy Efficiency as in effect on Jan. 1, 2006,[186] (4) a natural gas, propane, or oil water heater which has an energy factor of at least 0.80 or thermal efficiency of at least 90 percent, and (5) biomass fuel property.

Biomass fuel property is a stove that burns biomass fuel to heat a dwelling unit located in the United States and used as a principal residence by the taxpayer, or to heat water for such dwelling unit, and that has a thermal efficiency rating of at least 75 percent. Biomass fuel is any plant-derived fuel available on a renewable or recurring basis, including agricultural crops and trees, wood and wood waste and residues (including wood pellets), plants (including aquatic plants, grasses, residues, and fibers).

Under section 25C, the maximum credit for a taxpayer with respect to the same dwelling for all taxable years is $500, and no more than $200 of such credit may be attributable to expenditures on windows.

The taxpayer's basis in the property is reduced by the amount of the credit. Special proration rules apply in the case of jointly owned property, condominiums, and tenant-stockholders in cooperative housing corporations. If less than 80 percent of the property is used for nonbusiness purposes, only that portion of expenditures that is used for nonbusiness purposes is taken into account.

For purposes of determining the amount of expenditures made by any individual with respect to any dwelling unit, there shall not be taken into account expenditures which are made from subsidized energy financing. The term "subsidized energy financing" means financing provided under a Federal, State, or local program a principal purpose of which is to provide subsidized financing for projects designed to conserve or produce energy.

The credit applies to expenditures made after December 31, 2008 for property placed in service after December 31, 2008, and prior to January 1, 2010.

HOUSE BILL

The House bill raises the 10 percent credit rate to 30 percent. Additionally, all energy property otherwise eligible for the $50, $100, or $150 credits is instead eligible for a 30 percent credit on expenditures for such property.

The House bill additionally extends the provision for one year, through December 31, 2010. Finally, the $500 lifetime cap (and the $200 lifetime cap with respect to windows) is eliminated and replaced with an aggregate cap of $1,500 in the case of property placed in service after December 31, 2008 and prior to January 1, 2011.

The present law rule related to subsidized energy financing is eliminated.

Effective date.—The provision is effective for taxable years beginning after December 31, 2008.

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[186] The highest tier in effect at this time was tier 2, requiring SEER of at least 15 and EER of at least 12.5 for split central air conditioning systems and SEER of at least 14 and EER of at least 12 for packaged central air conditioning systems.

SENATE AMENDMENT

The Senate amendment is similar to the House bill, but modifies the efficiency standards for qualifying property.

Specifically, the Senate amendment updates the building insulation requirements to follow the prescriptive criteria of the 2009 International Energy Conservation Code. Additionally, qualifying exterior windows, doors, and skylights must have a U-factor at or below 0.30 and a seasonal heat gain coefficient ("SHGC") at or below 0.30.

Electric heat pumps must achieve the highest efficiency tier of Consortium for Energy Efficiency, as in effect on January 1, 2009. These standards are a SEER greater than or equal to 15, EER greater than or equal to 12.5, and HSPF greater than or equal to 8.5 for split heat pumps, and SEER greater than or equal to 14, EER greater than or equal to 12, and HSPF greater than or equal to 8.0 for packaged heat pumps.

Central air conditioners must achieve the highest efficiency tier of Consortium for Energy Efficiency, as in effect on January 1, 2009. These standards are a SEER greater than or equal to 16 and EER greater than or equal to 13 for split systems, and SEER greater than or equal to 14 and EER greater than or equal to 12 for packaged systems.

Natural gas, propane, or oil water heaters must have an energy factor greater than or equal to 0.82 or a thermal efficiency of greater than or equal to 90 percent. Natural gas, propane, or oil water boilers must achieve an annual fuel utilization efficiency rate of at least 90. Qualified oil furnaces must achieve an annual fuel utilization efficiency rate of at least 90.

Lastly, the requirement that biomass fuel property have a thermal efficiency rating of at least 75 percent is modified to be a thermal efficiency rating of at least 75 percent as measured using a lower heating value.

Effective date.—The provision is generally effective for taxable years beginning after December 31, 2008. The provisions that alter the efficiency standards of qualifying property, other than biomass fuel property, apply to property placed in service after December 31, 2009. The modification with respect to biomass fuel property is effective for taxable years beginning after December 31, 2008.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, with the exception that the new efficiency standards for qualifying property, other than those for biomass fuel property, apply to property placed in service after the date of enactment.

9. Credit for residential energy efficient property (sec. 1622 of the House bill, sec. 1122 of the Senate amendment, sec. 1122 of the conference agreement, and sec. 25D of the Code)

PRESENT LAW

Section 25D provides a personal tax credit for the purchase of qualified solar electric property and qualified solar water heating property that is used exclusively for purposes other than heating

swimming pools and hot tubs. The credit is equal to 30 percent of qualifying expenditures, with a maximum credit of $2,000 with respect to qualified solar water heating property. There is no cap with respect to qualified solar electric property.

Section 25D also provides a 30 percent credit for the purchase of qualified geothermal heat pump property, qualified small wind energy property, and qualified fuel cell power plants. The credit for geothermal heat pump property is capped at $2,000, the credit for qualified small wind energy property is limited to $500 with respect to each half kilowatt of capacity, not to exceed $4,000, and the credit for any fuel cell may not exceed $500 for each 0.5 kilowatt of capacity.

The credit with respect to all qualifying property may be claimed against the alternative minimum tax.

Qualified solar electric property is property that uses solar energy to generate electricity for use in a dwelling unit. Qualifying solar water heating property is property used to heat water for use in a dwelling unit located in the United States and used as a residence if at least half of the energy used by such property for such purpose is derived from the sun.

A qualified fuel cell power plant is an integrated system comprised of a fuel cell stack assembly and associated balance of plant components that (1) converts a fuel into electricity using electrochemical means, (2) has an electricity-only generation efficiency of greater than 30 percent. The qualified fuel cell power plant must be installed on or in connection with a dwelling unit located in the United States and used by the taxpayer as a principal residence.

Qualified small wind energy property is property that uses a wind turbine to generate electricity for use in a dwelling unit located in the U.S. and used as a residence by the taxpayer.

Qualified geothermal heat pump property means any equipment which (1) uses the ground or ground water as a thermal energy source to heat the dwelling unit or as a thermal energy sink to cool such dwelling unit, (2) meets the requirements of the Energy Star program which are in effect at the time that the expenditure for such equipment is made, and (3) is installed on or in connection with a dwelling unit located in the United States and used as a residence by the taxpayer.

The credit is nonrefundable, and the depreciable basis of the property is reduced by the amount of the credit. Expenditures for labor costs allocable to onsite preparation, assembly, or original installation of property eligible for the credit are eligible expenditures.

Special proration rules apply in the case of jointly owned property, condominiums, and tenant-stockholders in cooperative housing corporations. If less than 80 percent of the property is used for nonbusiness purposes, only that portion of expenditures that is used for nonbusiness purposes is taken into account.

For purposes of determining the amount of expenditures made by any individual with respect to any dwelling unit, there shall not be taken into account expenditures which are made from subsidized energy financing. The term "subsidized energy financing" means financing provided under a Federal, State, or local program

a principal purpose of which is to provide subsidized financing for projects designed to conserve or produce energy.

The credit applies to property placed in service prior to January 1, 2017.

HOUSE BILL

The House bill eliminates the credit caps for solar hot water, geothermal, and wind property and eliminates the reduction in credits for property using subsidized energy financing.

Effective date.—The provision applies to taxable years beginning after December 31, 2008.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

10. Temporary increase in credit for alternative fuel vehicle refueling property (sec. 1623 of the House bill, sec. 1123 of the Senate amendment, sec. 1123 of the conference agreement, and sec. 30C of the Code)

PRESENT LAW

Taxpayers may claim a 30-percent credit for the cost of installing qualified clean-fuel vehicle refueling property to be used in a trade or business of the taxpayer or installed at the principal residence of the taxpayer.[187] The credit may not exceed $30,000 per taxable year per location, in the case of qualified refueling property used in a trade or business and $1,000 per taxable year per location, in the case of qualified refueling property installed on property which is used as a principal residence.

Qualified refueling property is property (not including a building or its structural components) for the storage or dispensing of a clean-burning fuel or electricity into the fuel tank or battery of a motor vehicle propelled by such fuel or electricity, but only if the storage or dispensing of the fuel or electricity is at the point of delivery into the fuel tank or battery of the motor vehicle. The use of such property must begin with the taxpayer.

Clean-burning fuels are any fuel at least 85 percent of the volume of which consists of ethanol, natural gas, compressed natural gas, liquefied natural gas, liquefied petroleum gas, or hydrogen. In addition, any mixture of biodiesel and diesel fuel, determined without regard to any use of kerosene and containing at least 20 percent biodiesel, qualifies as a clean fuel.

Credits for qualified refueling property used in a trade or business are part of the general business credit and may be carried back for one year and forward for 20 years. Credits for residential qualified refueling property cannot exceed for any taxable year the difference between the taxpayer's regular tax (reduced by certain other credits) and the taxpayer's tentative minimum tax. Gen-

[187] Sec. 30C.

erally, in the case of qualified refueling property sold to a tax-exempt entity, the taxpayer selling the property may claim the credit.

A taxpayer's basis in qualified refueling property is reduced by the amount of the credit. In addition, no credit is available for property used outside the United States or for which an election to expense has been made under section 179.

The credit is available for property placed in service after December 31, 2005, and (except in the case of hydrogen refueling property) before January 1, 2011. In the case of hydrogen refueling property, the property must be placed in service before January 1, 2015.

HOUSE BILL

For property placed in service in 2009 or 2010, the provision increases the maximum credit available for business property to $200,000 for qualified hydrogen refueling property and to $50,000 for other qualified refueling property. For nonbusiness property, the maximum credit is increased to $2,000. In addition, the credit rate is increased from 30 percent to 50 percent, except in the case of hydrogen refueling property.

Effective date.—The provision is effective for taxable years beginning after December 31, 2008.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that it adds interoperability, public access, and other standards to qualified refueling property that is used for recharging electric or hybrid-electric motor vehicles.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

11. Recovery period for depreciation of smart meters (sec. 1124 of the Senate amendment)

PRESENT LAW

A taxpayer generally must capitalize the cost of property used in a trade or business and recover such cost over time through annual deductions for depreciation or amortization. Tangible property generally is depreciated under the modified accelerated cost recovery system ("MACRS"), which determines depreciation by applying specific recovery periods, placed-in-service conventions, and depreciation methods to the cost of various types of depreciable property.[188] The class lives of assets placed in service after 1986 are generally set forth in Revenue Procedure 87–56.[189] Present law provides a 10-year recovery period [190] and the 150-percent declining balance method [191] be used for smart meters.

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[188] Sec. 168.

[189] 1987–2 C.B. 674 (as clarified and modified by Rev. Proc. 88–22, 1988–1 C.B. 785). Assets included in class 49.14, describing assets used in the transmission and distribution of electricity for sale and related land improvements, are assigned a class life of 30 years and a recovery period of 20 years.

[190] Sec. 168(e)(3)(D)(iii).

[191] Sec. 168(b)(2)(C).

A qualified smart electric meter means any time-based meter and related communication equipment which is placed in service by a taxpayer who is a supplier of electric energy or a provider of electric energy services and which is capable of being used by the taxpayer as part of a system that (1) measures and records electricity usage data on a time-differentiated basis in at least 24 separate time segments per day; (2) provides for the exchange of information between the supplier or provider and the customer's smart electric meter in support of time-based rates or other forms of demand response; and (3) provides data to such supplier or provider so that the supplier or provider can provide energy usage information to customers electronically; and (4) provides all commercial and residential customers of such supplier or provider with net metering.[192] The term "net metering" means allowing a customer a credit, if any, as complies with applicable Federal and State laws and regulations, for providing electricity to the supplier or provider.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision provides a 5-year recovery period and 200 percent declining balance method for any qualified smart electric meter placed in service before January 1, 2011.

Effective date.—The provision is effective for property placed in service after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

12. Energy research credit (sec. 1631 of the House bill and sec. 1131 of the Senate amendment)

PRESENT LAW

General rule

A taxpayer may claim a research credit equal to 20 percent of the amount by which the taxpayer's qualified research expenses for a taxable year exceed its base amount for that year.[193] Thus, the research credit is generally available with respect to incremental increases in qualified research.

A 20-percent research tax credit is also available with respect to the excess of (1) 100 percent of corporate cash expenses (including grants or contributions) paid for basic research conducted by universities (and certain nonprofit scientific research organizations) over (2) the sum of (a) the greater of two minimum basic research floors plus (b) an amount reflecting any decrease in nonresearch giving to universities by the corporation as compared to such giving during a fixed-base period, as adjusted for inflation. This separate

[192] Sec. 168(i)(18).
[193] Sec. 41.

credit computation is commonly referred to as the university basic research credit.[194]

Finally, a research credit is available for a taxpayer's expenditures on research undertaken by an energy research consortium. This separate credit computation is commonly referred to as the energy research credit. Unlike the other research credits, the energy research credit applies to all qualified expenditures, not just those in excess of a base amount.

The research credit, including the university basic research credit and the energy research credit, expires for amounts paid or incurred after December 31, 2009.[195]

Computation of allowable credit

Except for energy research payments and certain university basic research payments made by corporations, the research tax credit applies only to the extent that the taxpayer's qualified research expenses for the current taxable year exceed its base amount. The base amount for the current year generally is computed by multiplying the taxpayer's fixed-base percentage by the average amount of the taxpayer's gross receipts for the four preceding years. If a taxpayer both incurred qualified research expenses and had gross receipts during each of at least three years from 1984 through 1988, then its fixed-base percentage is the ratio that its total qualified research expenses for the 1984–1988 period bears to its total gross receipts for that period (subject to a maximum fixed-base percentage of 16 percent). All other taxpayers (so-called start-up firms) are assigned a fixed-base percentage of three percent.[196]

In computing the credit, a taxpayer's base amount cannot be less than 50 percent of its current-year qualified research expenses.

To prevent artificial increases in research expenditures by shifting expenditures among commonly controlled or otherwise related entities, a special aggregation rule provides that all members of the same controlled group of corporations are treated as a single taxpayer.[197] Under regulations prescribed by the Secretary, special rules apply for computing the credit when a major portion of a trade or business (or unit thereof) changes hands, under which qualified research expenses and gross receipts for periods prior to the change of ownership of a trade or business are treated as transferred with the trade or business that gave rise to those expenses and receipts for purposes of recomputing a taxpayer's fixed-based percentage.[198]

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[194] Sec. 41(e).

[195] Sec. 41(h).

[196] The Small Business Job Protection Act of 1996 expanded the definition of start-up firms under section 41(c)(3)(B)(i) to include any firm if the first taxable year in which such firm had both gross receipts and qualified research expenses began after 1983. A special rule (enacted in 1993) is designed to gradually recompute a start-up firm's fixed-base percentage based on its actual research experience. Under this special rule, a start-up firm is assigned a fixed-base percentage of three percent for each of its first five taxable years after 1993 in which it incurs qualified research expenses. A start-up firm's fixed-base percentage for its sixth through tenth taxable years after 1993 in which it incurs qualified research expenses is a phased-in ratio based on the firm's actual research experience. For all subsequent taxable years, the taxpayer's fixed-base percentage is its actual ratio of qualified research expenses to gross receipts for any five years selected by the taxpayer from its fifth through tenth taxable years after 1993. Sec. 41(c)(3)(B).

[197] Sec. 41(f)(1).

[198] Sec. 41(f)(3).

Alternative incremental research credit regime

Taxpayers are allowed to elect an alternative incremental research credit regime.[199] If a taxpayer elects to be subject to this alternative regime, the taxpayer is assigned a three-tiered fixed-base percentage (that is lower than the fixed-base percentage otherwise applicable under present law) and the credit rate likewise is reduced.

Generally, for amounts paid or incurred prior to 2007, under the alternative incremental credit regime, a credit rate of 2.65 percent applies to the extent that a taxpayer's current-year research expenses exceed a base amount computed by using a fixed-base percentage of one percent (i.e., the base amount equals one percent of the taxpayer's average gross receipts for the four preceding years) but do not exceed a base amount computed by using a fixed-base percentage of 1.5 percent. A credit rate of 3.2 percent applies to the extent that a taxpayer's current-year research expenses exceed a base amount computed by using a fixed-base percentage of 1.5 percent but do not exceed a base amount computed by using a fixed-base percentage of two percent. A credit rate of 3.75 percent applies to the extent that a taxpayer's current-year research expenses exceed a base amount computed by using a fixed-base percentage of two percent. Generally, for amounts paid or incurred after 2006, the credit rates listed above are increased to three percent, four percent, and five percent, respectively.[200]

An election to be subject to this alternative incremental credit regime can be made for any taxable year beginning after June 30, 1996, and such an election applies to that taxable year and all subsequent years unless revoked with the consent of the Secretary of the Treasury. The alternative incremental credit regime terminates for taxable years beginning after December 31, 2008.

Alternative simplified credit

Generally, for amounts paid or incurred after 2006, taxpayers may elect to claim an alternative simplified credit for qualified research expenses.[201] The alternative simplified research credit is equal to 12 percent (14 percent for taxable years beginning after December 31, 2008) of qualified research expenses that exceed 50 percent of the average qualified research expenses for the three preceding taxable years. The rate is reduced to six percent if a taxpayer has no qualified research expenses in any one of the three preceding taxable years.

An election to use the alternative simplified credit applies to all succeeding taxable years unless revoked with the consent of the Secretary. An election to use the alternative simplified credit may not be made for any taxable year for which an election to use the alternative incremental credit is in effect. A transition rule applies which permits a taxpayer to elect to use the alternative simplified credit in lieu of the alternative incremental credit if such election is made during the taxable year which includes January 1, 2007.

[199] Sec. 41(c)(4).
[200] A special transition rule applies for fiscal year 2006–2007 taxpayers.
[201] A special transition rule applies for fiscal year 2006–2007 taxpayers.

The transition rule applies only to the taxable year which includes that date.

Eligible expenses

Qualified research expenses eligible for the research tax credit consist of: (1) in-house expenses of the taxpayer for wages and supplies attributable to qualified research; (2) certain time-sharing costs for computer use in qualified research; and (3) 65 percent of amounts paid or incurred by the taxpayer to certain other persons for qualified research conducted on the taxpayer's behalf (so-called contract research expenses).[202] Notwithstanding the limitation for contract research expenses, qualified research expenses include 100 percent of amounts paid or incurred by the taxpayer to an eligible small business, university, or Federal laboratory for qualified energy research.

To be eligible for the credit, the research not only has to satisfy the requirements of present-law section 174 (described below) but also must be undertaken for the purpose of discovering information that is technological in nature, the application of which is intended to be useful in the development of a new or improved business component of the taxpayer, and substantially all of the activities of which constitute elements of a process of experimentation for functional aspects, performance, reliability, or quality of a business component. Research does not qualify for the credit if substantially all of the activities relate to style, taste, cosmetic, or seasonal design factors.[203] In addition, research does not qualify for the credit: (1) if conducted after the beginning of commercial production of the business component; (2) if related to the adaptation of an existing business component to a particular customer's requirements; (3) if related to the duplication of an existing business component from a physical examination of the component itself or certain other information; or (4) if related to certain efficiency surveys, management function or technique, market research, market testing, or market development, routine data collection or routine quality control.[204] Research does not qualify for the credit if it is conducted outside the United States, Puerto Rico, or any U.S. possession.

Relation to deduction

Under section 174, taxpayers may elect to deduct currently the amount of certain research or experimental expenditures paid or incurred in connection with a trade or business, notwithstanding the general rule that business expenses to develop or create an asset that has a useful life extending beyond the current year must be capitalized.[205] However, deductions allowed to a taxpayer under section 174 (or any other section) are reduced by an amount equal

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[202] Under a special rule, 75 percent of amounts paid to a research consortium for qualified research are treated as qualified research expenses eligible for the research credit (rather than 65 percent under the general rule under section 41(b)(3) governing contract research expenses) if (1) such research consortium is a tax-exempt organization that is described in section 501(c)(3) (other than a private foundation) or section 501(c)(6) and is organized and operated primarily to conduct scientific research, and (2) such qualified research is conducted by the consortium on behalf of the taxpayer and one or more persons not related to the taxpayer. Sec. 41(b)(3)(C).

[203] Sec. 41(d)(3).

[204] Sec. 41(d)(4).

[205] Taxpayers may elect 10-year amortization of certain research expenditures allowable as a deduction under section 174(a). Secs. 174(f)(2) and 59(e).

to 100 percent of the taxpayer's research tax credit determined for the taxable year.[206] Taxpayers may alternatively elect to claim a reduced research tax credit amount under section 41 in lieu of reducing deductions otherwise allowed.[207]

HOUSE BILL

The House bill creates a new 20 percent credit for all qualified energy research expenses paid or incurred in 2009 or 2010. Qualified energy research expenses are qualified research expenses related to the fields of fuel cells and battery technology, renewable energy, energy conservation technology, efficient transmission and distribution of electricity, and carbon capture and sequestration.

Effective date.—The provision is effective for taxable years beginning after December 31, 2008.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that it adds expenses related to renewable fuels research to the list of qualified energy research expenses.

CONFERENCE AGREEMENT

The conference agreement does not include either the House bill or the Senate amendment provision.

13. Modification of credit for carbon dioxide sequestration (sec. 1141 of the Senate amendment, sec. 1131 of the conference agreement, and sec. 45Q of the Code)

PRESENT LAW

A credit of $20 per metric ton is available for qualified carbon dioxide captured by a taxpayer at a qualified facility and disposed of by such taxpayer in secure geological storage (including storage at deep saline formations and unminable coal seams under such conditions as the Secretary may determine).[208] In addition, a credit of $10 per metric ton is available for qualified carbon dioxide that is captured by the taxpayer at a qualified facility and used by such taxpayer as a tertiary injectant (including carbon dioxide augmented waterflooding and immiscible carbon dioxide displacement) in a qualified enhanced oil or natural gas recovery project. Both credit amounts are adjusted for inflation after 2009.

Qualified carbon dioxide is defined as carbon dioxide captured from an industrial source that (1) would otherwise be released into the atmosphere as an industrial emission of greenhouse gas, and (2) is measured at the source of capture and verified at the point or points of injection. Qualified carbon dioxide includes the initial deposit of captured carbon dioxide used as a tertiary injectant but does not include carbon dioxide that is recaptured, recycled, and reinjected as part of an enhanced oil or natural gas recovery project process. A qualified enhanced oil or natural gas recovery project is a project that would otherwise meet the definition of an enhanced

[206] Sec. 280C(c).
[207] Sec. 280C(c)(3).
[208] Sec. 45Q.

oil recovery project under section 43, if natural gas projects were included within that definition.

A qualified facility means any industrial facility (1) which is owned by the taxpayer, (2) at which carbon capture equipment is placed in service, and (3) which captures not less than 500,000 metric tons of carbon dioxide during the taxable year. The credit applies only with respect to qualified carbon dioxide captured and sequestered or injected in the United States [209] or one of its possessions.[210]

Except as provided in regulations, credits are attributable to the person that captures and physically or contractually ensures the disposal, or use as a tertiary injectant, of the qualified carbon dioxide. Credits are subject to recapture, as provided by regulation, with respect to any qualified carbon dioxide that ceases to be recaptured, disposed of, or used as a tertiary injectant in a manner consistent with the rules of the provision.

The credit is part of the general business credit. The credit sunsets at the end of the calendar year in which the Secretary, in consultation with the Administrator of the Environmental Protection Agency, certifies that 75 million metric tons of qualified carbon dioxide have been captured and disposed of or used as a tertiary injectant.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision requires that carbon dioxide used as a tertiary injectant and otherwise eligible for a $10 per metric ton credit must be sequestered by the taxpayer in permanent geological storage in order to qualify for such credit. The Senate amendment also clarifies that the term permanent geological storage includes oil and gas reservoirs in addition to unminable coal seams and deep saline formations. In addition, the Senate amendment requires that the Secretary of the Treasury consult with the Secretary of Energy and the Secretary of the Interior, in addition to the Administrator of the Environmental Protection Agency, in promulgating regulations relating to the permanent geological storage of carbon dioxide.

Effective date.—The provision is effective for carbon dioxide captured after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

[209] Sec. 638(1).
[210] Sec. 638(2).

14. Modification of the plug-in electric drive motor vehicle credit (secs. 1151 and 1152 of the Senate amendment, secs. 1141 through 1144 of the conference agreement, and secs. 30B and 30D of the Code)

PRESENT LAW

Alternative motor vehicle credit

A credit is available for each new qualified fuel cell vehicle, hybrid vehicle, advanced lean burn technology vehicle, and alternative fuel vehicle placed in service by the taxpayer during the taxable year.[211] In general, the credit amount varies depending upon the type of technology used, the weight class of the vehicle, the amount by which the vehicle exceeds certain fuel economy standards, and, for some vehicles, the estimated lifetime fuel savings. The credit generally is available for vehicles purchased after 2005. The credit terminates after 2009, 2010, or 2014, depending on the type of vehicle. The alternative motor vehicle credit is not allowed against the alternative minimum tax.

Plug-in electric drive motor vehicle credit

A credit is available for each qualified plug-in electric drive motor vehicle placed in service. A qualified plug-in electric drive motor vehicle is a motor vehicle that has at least four wheels, is manufactured for use on public roads, meets certain emissions standards (except for certain heavy vehicles), draws propulsion using a traction battery with at least four kilowatt-hours of capacity, and is capable of being recharged from an external source of electricity.

The base amount of the plug-in electric drive motor vehicle credit is $2,500, plus another $417 for each kilowatt-hour of battery capacity in excess of four kilowatt-hours. The maximum credit for qualified vehicles weighing 10,000 pounds or less is $7,500. This maximum amount increases to $10,000 for vehicles weighing more than 10,000 pounds but not more than 14,000 pounds, to $12,500 for vehicles weighing more than 14,000 pounds but not more than 26,000 pounds, and to $15,000 for vehicles weighing more than 26,000 pounds.

In general, the credit is available to the vehicle owner, including the lessor of a vehicle subject to lease. If the qualified vehicle is used by certain tax-exempt organizations, governments, or foreign persons and is not subject to a lease, the seller of the vehicle may claim the credit so long as the seller clearly discloses to the user in a document the amount that is allowable as a credit. A vehicle must be used predominantly in the United States to qualify for the credit.

Once a total of 250,000 credit-eligible vehicles have been sold for use in the United States, the credit phases out over four calendar quarters. The phaseout period begins in the second calendar quarter following the quarter during which the vehicle cap has been reached. Taxpayers may claim one-half of the otherwise allowable credit during the first two calendar quarters of the phaseout period and twenty-five percent of the otherwise allowable credit

[211] Sec. 30B.

during the next two quarters. After this, no credit is available. Regardless of the phase-out limitation, no credit is available for vehicles purchased after 2014.

The basis of any qualified vehicle is reduced by the amount of the credit. To the extent a vehicle is eligible for credit as a qualified plug-in electric drive motor vehicle, it is not eligible for credit as a qualified hybrid vehicle under section 30B. The portion of the credit attributable to vehicles of a character subject to an allowance for depreciation is treated as part of the general business credit; the nonbusiness portion of the credit is allowable to the extent of the excess of the regular tax over the alternative minimum tax (reduced by certain other credits) for the taxable year.

HOUSE BILL

No provision.

SENATE AMENDMENT

Credit for electric drive low-speed vehicles, motorcycles, and three-wheeled vehicles

The Senate amendment creates a new 10-percent credit for low-speed vehicles, motorcycles, and three-wheeled vehicles that would otherwise meet the criteria of a qualified plug-in electric drive motor vehicle but for the fact that they are low-speed vehicles or do not have at least four wheels. The maximum credit for such vehicles is $4,000. Basis reduction and other rules similar to those found in section 30 apply under the provision. The new credit is part of the general business credit. The new credit is not available for vehicles sold after December 31, 2011.

Credit for converting a vehicle into a plug-in electric drive motor vehicle

The Senate amendment also creates a new 10-percent credit, up to $4,000, for the cost of converting any motor vehicle into a qualified plug-in electric drive motor vehicle. To be eligible for the credit, a qualified plug-in traction battery module must have a capacity of at least 2.5 kilowatt-hours. In the case of a leased traction battery module, the credit may be claimed by the lessor but not the lessee. The credit is not available for conversions made after December 31, 2012.

Modification of plug-in electric drive motor vehicle credit

The Senate amendment modifies the plug-in electric drive motor vehicle credit by increasing the 250,000 vehicle limitation to 500,000. It also modifies the definition of qualified plug-in electric drive motor vehicle to exclude low-speed vehicles.

Effective date.—The Senate amendment is generally effective for vehicles sold after December 31, 2009. The credit for plug-in vehicle conversion is effective for property placed in service after December 31, 2008, in taxable years beginning after such date.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment with substantial modifications.

Credit for electric drive low-speed vehicles, motorcycles, and three-wheeled vehicles

With respect to electric drive low-speed vehicles, motorcycles, and three-wheeled vehicles, the conference agreement follows the Senate amendment with the following modifications. Under the conference agreement, the maximum credit available is $2,500. The conference agreement also makes other technical changes.

Credit for converting a vehicle into a plug-in electric drive motor vehicle

With respect to plug-in vehicle conversions, the conference agreement follows the Senate amendment but increases the minimum capacity of a qualified battery module to four kilowatt-hours, changes the effective date to property placed in service after the date of enactment, and eliminates the credit for plug-in conversions made after December 31, 2011. The conference agreement also removes the rule permitting lessors of battery modules to claim the plug-in conversion credit.

Modification of the plug-in electric drive motor vehicle credit

The conference agreement modifies the plug-in electric drive motor vehicle credit by limiting the maximum credit to $7,500 regardless of vehicle weight. The conference agreement also eliminates the credit for low speed plug-in vehicles and for plug-in vehicles weighing 14,000 pounds or more.

The conference agreement replaces the 250,000 total plug-in vehicle limitation with a 200,000 plug-in vehicles per manufacturer limitation. The credit phases out over four calendar quarters beginning in the second calendar quarter following the quarter in which the manufacturer limit is reached. The conference agreement also makes other technical changes.

The changes to the plug-in electric drive motor vehicle credit are effective for vehicles acquired after December 31, 2009.

Treatment of alternative motor vehicle credit as a personal credit allowed against the alternative minimum tax

The conference agreement provides that the alternative motor vehicle credit is a personal credit allowed against the alternative minimum tax. The provision is effective for taxable years beginning after December 31, 2008.

15. Parity for qualified transportation fringe benefits (sec. 1251 of the Senate amendment, sec. 1151 of the conference agreement, and sec. 132 of the Code)

PRESENT LAW

Qualified transportation fringe benefits provided by an employer are excluded from an employee's gross income for income tax purposes and from an employee's wages for payroll tax purposes.[212] Qualified transportation fringe benefits include parking, transit passes, vanpool benefits, and qualified bicycle commuting reimbursements. Up to $230 (for 2009) per month of employer-provided

[212] Code secs. 132(f), 3121(b)(2), 3306(b)(16), and 3401(a)(19).

parking is excludable from income. Up to $120 (for 2009) per month of employer-provided transit and vanpool benefits are excludable from gross income. These amounts are indexed annually for inflation, rounded to the nearest multiple of $5. No amount is includible in the income of an employee merely because the employer offers the employee a choice between cash and qualified transportation fringe benefits. Qualified transportation fringe benefits also include a cash reimbursement by an employer to an employee. However, in the case of transit passes, a cash reimbursement is considered a qualified transportation fringe benefit only if a voucher or similar item which may be exchanged only for a transit pass is not readily available for direct distribution by the employer to the employee.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision increases the monthly exclusion for employer-provided transit and vanpool benefits to the same level as the exclusion for employer-provided parking.

Effective date.—The provision is effective for months beginning on or after date of enactment. The proposal does not apply to tax years beginning after December 31, 2010.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

16. Credit for investment in advanced energy property (sec. 1302 of the Senate amendment, sec. 1302 of the conference agreement, and new sec. 48C of the Code)

PRESENT LAW

An income tax credit is allowed for the production of electricity from qualified energy resources at qualified facilities.[213] Qualified energy resources comprise wind, closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, and marine and hydrokinetic renewable energy. Qualified facilities are, generally, facilities that generate electricity using qualified energy resources.

An income tax credit is also allowed for certain energy property placed in service. Qualifying property includes certain fuel cell property, solar property, geothermal power production property, small wind energy property, combined heat and power system property, and geothermal heat pump property.[214]

In addition to these, numerous other credits are available to taxpayers to encourage renewable energy production and energy conservation, including, among others, credits for certain biofuels,

[213] Sec. 45. In addition to the electricity production credit, section 45 also provides income tax credits for the production of Indian coal and refined coal at qualified facilities.

[214] Sec. 48.

plug-in electric vehicles, and energy efficient appliances, and for improvements to heating, air conditioning, and insulation.

No credit is specifically designed under present law to encourage the development of a domestic manufacturing base to support the industries described above.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment establishes a 30 percent credit for investment in qualified property used in a qualified advanced energy manufacturing project. A qualified advanced energy project is a project that re-equips, expands, or establishes a manufacturing facility for the production: (1) property designed to be used to produce energy from the sun, wind, or geothermal deposits (within the meaning of section 613(e)(2)), or other renewable resources; (2) fuel cells, microturbines, or an energy storage system for use with electric or hybrid-electric motor vehicles; (3) electric grids to support the transmission of intermittent sources of renewable energy, including storage of such energy; (4) property designed to capture and sequester carbon dioxide; (5) property designed to refine or blend renewable fuels (but not fossil fuels) or to produce energy conservation technologies (including energy-conserving lighting technologies and smart grid technologies; or (6) other advanced energy property designed to reduce greenhouse gas emissions as may be determined by the Secretary.

Qualified property must be depreciable (or amortizable) property used in a qualified advanced energy project. Qualified property does not include property designed to manufacture equipment for use in the refining or blending of any transportation fuel other than renewable fuels. The basis of qualified property must be reduced by the amount of credit received.

Credits are available only for projects certified by the Secretary of Treasury, in consultation with the Secretary of Energy. The Secretary of Treasury must establish a certification program no later than 180 days after date of enactment, and may allocate up to $2 billion in credits.

In selecting projects, the Secretary may consider only those projects where there is a reasonable expectation of commercial viability. In addition, the Secretary must consider other selection criteria, including which projects (1) will provide the greatest domestic job creation; (2) will provide the greatest net impact in avoiding or reducing air pollutants or anthropogenic emissions of greenhouse gases; (3) have the greatest readiness for commercial employment, replication, and further commercial use in the United States; (4) will provide the greatest benefit in terms of newness in the commercial market; (5) have the lowest levelized cost of generated or stored energy, or of measured reduction in energy consumption or greenhouse gas emission; and (6) have the shortest project time from certification to completion.

Each project application must be submitted during the three-year period beginning on the date such certification program is established. An applicant for certification has two years from the

date the Secretary accepts the application to provide the Secretary with evidence that the requirements for certification have been met. Upon certification, the applicant has five years from the date of issuance of the certification to place the project in service. Not later than six years after the date of enactment of the credit, the Secretary is required to review the credit allocations and redistribute any credits that were not used either because of a revoked certification or because of an insufficient quantity of credit applications.

Effective date.—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment with the following modifications. The conference agreement increases by $300 million (to $2.3 billion) the amount of credits that may be allocated by the Secretary. The conference agreement expands the list of qualifying advance energy projects to include projects designed to manufacture any new qualified plug-in electric drive motor vehicle (as defined by section 30D(c)), any specified vehicle (as defined by section 30D(f)(2)), or any component which is designed specifically for use with such vehicles, including any electric motor, generator, or power control unit. The conference agreement also replaces the third and fourth project selection criteria with a requirement that the Secretary, in addition to the remaining criteria, consider projects that have the greatest potential for technological innovation and commercial deployment.

In addition, the conference agreement shortens to two years the period during which project applications may be submitted, shortens to one year the period during which the project applicants must provide evidence that the certification requirements have been met, and shortens to three years the period during which certified projects must be placed in service. The conference agreement also shortens the period after which the Secretary must review the credit allocations from six to four years. Finally, the conference agreement clarifies that only tangible personal property and other tangible property (not including a building or its structural components) is credit-eligible.

17. Incentives for manufacturing facilities producing plug-in electric drive motor vehicles and components (sec. 1303 of the Senate amendment)

PRESENT LAW

Depreciation rules

A taxpayer is allowed to recover through annual depreciation deductions the cost of certain property used in a trade or business or for the production of income. The amount of the depreciation deduction allowed with respect to tangible property for a taxable year is determined under the modified accelerated cost recovery system ("MACRS"). Under MACRS, different types of property generally are assigned applicable recovery periods and depreciation methods. The recovery periods applicable to most tangible personal property range from 3 to 25 years. The depreciation methods generally ap-

plicable to tangible personal property are the 200-percent and 150-percent declining balance methods, switching to the straight-line method for the taxable year in which the taxpayer's depreciation deduction would be maximized.

Bonus depreciation

For property placed in service in calendar year 2009, an additional first-year depreciation deduction is available equal to 50 percent of the adjusted basis of qualified property.[215] The additional first-year depreciation deduction is allowed for both regular tax and alternative minimum tax ("AMT") purposes.[216] Certain other rules and limitations apply.

Election to claim additional research or minimum tax credits in lieu of claiming bonus depreciation

Corporations otherwise eligible for bonus depreciation under section 168(k) may elect to claim additional research or minimum tax credits in lieu of claiming depreciation under section 168(k) for "eligible qualified property" placed in service after March 31, 2008.[217] A corporation making the election forgoes the depreciation deductions allowable under section 168(k) and instead increases the limitation under section 38(c) on the use of research credits or section 53(c) on the use of minimum tax credits.[218] The increases in the allowable credits are treated as refundable for purposes of this provision. The depreciation for qualified property is calculated for both regular tax and AMT purposes using the straight-line method in place of the method that would otherwise be used absent the election under this provision.

The research credit or minimum tax credit limitation is increased by the bonus depreciation amount, which is equal to 20 percent of bonus depreciation[219] for certain eligible qualified property that could be claimed absent an election under this provision. Generally, eligible qualified property included in the calculation is bonus depreciation property that meets the following requirements: (1) the original use of the property must commence with the taxpayer after March 31, 2008; (2) the taxpayer must purchase the property either (a) after March 31, 2008, and before January 1, 2009, but only if no binding written contract for the acquisition is in effect before April 1, 2008,[220] or (b) pursuant to a binding written contract which was entered into after March 31, 2008, and be-

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[215] Sec. 168(k). The additional first-year depreciation deduction is subject to the general rules regarding whether an item is deductible under section 162 or instead is subject to capitalization under section 263 or section 263A.

[216] However, the additional first-year depreciation deduction is not allowed for purposes of computing earnings and profits.

[217] Sec. 168(k)(4). In the case of an electing corporation that is a partner in a partnership, the corporate partner's distributive share of partnership items is determined as if section 168(k) does not apply to any eligible qualified property and the straight line method is used to calculate depreciation of such property.

[218] Special rules apply to an applicable partnership.

[219] For this purpose, bonus depreciation is the difference between (i) the aggregate amount of depreciation for all eligible qualified property determined if section 168(k)(1) applied using the most accelerated depreciation method (determined without regard to this provision), and shortest life allowable for each property, and (ii) the amount of depreciation that would be determined if section 168(k)(1) did not apply using the same method and life for each property.

[220] In the case of passenger aircraft, the written binding contract limitation does not apply.

fore January 1, 2009;[221] and (3) the property must be placed in service after March 31, 2008, and before January 1, 2009 (January 1, 2010 for certain longer-lived and transportation property).

The bonus depreciation amount is limited to the lesser of: (1) $30 million, or (2) six percent of the sum of research credit carryforwards from taxable years beginning before January 1, 2006 and minimum tax credits allocable to the adjusted minimum tax imposed for taxable years beginning before January 1, 2006. All corporations treated as a single employer under section 52(a) are treated as one taxpayer for purposes of the limitation, as well as for electing the application of this provision.

Credit for plug-in vehicles

A credit is available for each qualified plug-in electric drive motor vehicle placed in service. A qualified plug-in electric drive motor vehicle is a motor vehicle that has at least four wheels, is manufactured for use on public roads, meets certain emissions standards (except for certain heavy vehicles), draws propulsion using a traction battery with at least four kilowatt-hours of capacity, and is capable of being recharged from an external source of electricity.

The base amount of the plug-in electric drive motor vehicle credit is $2,500, plus another $417 for each kilowatt-hour of battery capacity in excess of four kilowatt-hours. The maximum credit for qualified vehicles weighing 10,000 pounds or less is $7,500. This maximum amount increases to $10,000 for vehicles weighing more than 10,000 pounds but not more than 14,000 pounds, to $12,500 for vehicles weighing more than 14,000 pounds but not more than 26,000 pounds, and to $15,000 for vehicle weighing more than 26,000 pounds.

In general, the credit is available to the vehicle owner, including the lessor of a vehicle subject to lease. If the qualified vehicle is used by certain tax-exempt organizations, governments, or foreign persons and is not subject to a lease, the seller of the vehicle may claim the credit so long as the seller clearly discloses to the user in a document the amount that is allowable as a credit. A vehicle must be used predominantly in the United States to qualify for the credit.

Once a total of 250,000 credit-eligible vehicles have been sold for use in the United States, the credit phases out over four calendar quarters. The phaseout period begins in the second calendar quarter following the quarter during which the vehicle cap has been reached. Taxpayers may claim one-half of the otherwise allowable credit during the first two calendar quarters of the phaseout period and twenty-five percent of the otherwise allowable credit during the next two quarters. After this, no credit is available. Regardless of the phase-out limitation, no credit is available for vehicles purchased after 2014.

The basis of any qualified vehicle is reduced by the amount of the credit. To the extent a vehicle is eligible for credit as a qualified plug-in electric drive motor vehicle, it is not eligible for credit

[221] Special rules apply to property manufactured, constructed, or produced by the taxpayer for use by the taxpayer.

as a qualified hybrid vehicle under section 30B. The portion of the credit attributable to vehicles of a character subject to an allowance for depreciation is treated as part of the general business credit; the nonbusiness portion of the credit is allowable to the extent of the excess of the regular tax over the AMT (reduced by certain other credits) for the taxable year.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment permits taxpayers to elect to expense one hundred percent of the cost of any electric drive motor vehicle manufacturing facility property placed in service before 2012 and fifty percent of the cost of such property placed in service after 2011 and before 2015. For purposes of this election, qualified property is property which is a facility or a portion of a facility used for the production of any new qualified plug-in electric drive motor vehicle [222] or any eligible component. Eligible components are any battery, any electric motor or generator, or any power control unit which is designed specifically for use with a new qualified plug-in electric drive motor vehicle.

The original use of any qualified property must begin with the taxpayer. In the case of dual use property, the amount of cost eligible to be expensed is reduced by the total cost of the facility multiplied by the percentage of property expected to be produced that is not qualified property.

The Senate amendment permits taxpayers to waive this election in favor of a loan equal to thirty-five percent of the amount eligible to be expensed under the general provision. The loan is in the form of a senior note, with a 20-year term and an interest rate payable at the applicable Federal rate, issued by the taxpayer to the Secretary of Treasury and secured by the qualified manufacturing property. Upon repayment of the loan, the taxpayer's tax liability limitations are increased for the research credit [223] and the alternative minimum tax credit [224] by the amount of the loan.

Effective date.—The provision is effective for taxable years beginning after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

[222] As defined by section 30D(c).
[223] Sec. 38(c).
[224] Sec. 53(c).

E. Other Provisions

1. Application of certain labor standards to projects financed with certain tax-favored bonds (sec. 1701 of the House bill, sec. 1901 of the Senate amendment, and sec. 1601 of the conference agreement)

PRESENT LAW

The United States Code (Subchapter IV of Chapter 31 of Title 40) applies a prevailing wage requirement to certain contracts to which the Federal Government is a party.

HOUSE BILL

The provision provides that Subchapter IV of Chapter 31 of Title 40 of the U.S. Code shall apply to projects financed with the proceeds of:

1. any qualified clean renewable energy bond (as defined in sec. 54C of the Code) issued after the date of enactment;
2. any qualified energy conservation bond (as defined in sec. 54D of the Code) issued after the date of enactment;
3. any qualified zone academy bond (as defined in sec. 54E of the Code) issued after the date of enactment;
4. any qualified school construction bond (as defined in sec. 54F of the Code); and
5. any recovery zone economic development bond (as defined in sec. 1400U–2 of the Code).

Effective date.—The provision is effective on the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill except it makes a technical correction to change "qualified clean renewable energy bond" to "new clean renewable energy bond."

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

2. Increase in the public debt limit (sec. 1902 of the Senate amendment and sec. 1604 of the conference agreement)

PRESENT LAW

The statutory limit on the public debt is $11,315,000,000,000.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment increases the statutory limit on the public debt by $825,000,000,000 to $12,140,000,000,000.

Effective date.—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement increases the statutory limit on the public debt by $789,000,000,000 to $12,104,000,000,000.

Effective date. The provision is effective on the date of enactment.

3. Failure to redeem certain securities from the United States (sec. 6021 of the Senate amendment)

PRESENT LAW

An employer generally may deduct reasonable compensation for personal services as an ordinary and necessary business expense. Section 162(m) (relating to remuneration expenses for certain executives that are in excess of $1 million) and section 280G (relating to excess parachute payments) provide explicit limitations on the deductibility of certain compensation expenses in the case of corporate employers, and section 4999 imposes an additional tax of 20 percent on the recipient of an excess parachute payment. The Emergency Economic Stabilization Act of 2008 ("EESA") limits the amount of payments that may be deducted as reasonable compensation by certain financial institutions that receive financial assistance from the United States pursuant to the troubled asset relief program ("TARP") established under EESA by modifying the section 162(m) and section 280G limits. EESA also provided nontax rules relating to the compensation that is payable by such a financial institution (the "TARP executive compensation rules").

HOUSE BILL

No provision.

SENATE AMENDMENT

In general

The provision amends the TARP executive compensation rules to limit payment of "excessive bonuses" to "covered individuals" by financial institutions whose preferred stock was purchased by the United States using funds provided under TARP. Excessive bonuses are defined as the portion of an "applicable bonus payment" made to a covered individual in excess of $100,000.

An applicable bonus payment is any bonus payment that is (1) paid, or payable, for services performed by a covered individual in a tax year of the financial institution ending in 2008, and (2) the amount of which was communicated to the covered individual at some time between January 1, 2008, and January 31, 2009, or was based on a resolution of the financial institution's board of directors and adopted before the end of the financial institution's 2008 taxable year. For purposes of determining an applicable bonus, any bonus payments that relate to a taxable year prior to 2008, but which are wholly or partially contingent on the performance of services in the 2008 taxable year, are disregarded. In addition, any conditions on 2008 bonuses that require the covered individual to perform services in a subsequent taxable year are also disregarded (e.g., if a 2008 bonus is dependent on the performance of services

in 2009, the bonus is still considered to be an applicable bonus if it meets all of the other requirements for such status).

The definition of bonus includes discretionary payments for services provided that are in addition to amounts payable for regular services performed and is payable in cash or property other than (1) the stock of the financial institution or (2) an interest in a troubled asset (within the meaning of EESA) held directly or indirectly by the financial institution. Bonuses do not include commissions, welfare and fringe benefits, or expense reimbursements.

A covered individual is any director, officer, or other employee of a financial institution or its controlled group of corporations.[225]

Stock redemption

If a financial institution pays one or more excessive bonuses to one or more covered individuals, the financial institution must redeem from the government an amount of preferred stock equal to the aggregate amount of all excessive bonuses paid or payable to such covered individual or individuals. The redemption obligation exists notwithstanding any otherwise applicable restrictions on the redeemability of the preferred stock. The preferred stock must be redeemed by the later of: 120 days after date of enactment (for excessive bonuses that had already been paid) or the day before the excessive bonus (or a portion thereof) is paid.

Excise tax

An excise tax is imposed on any financial institution that pays one or more excessive bonuses but does not redeem its preferred stock from the government in a timely manner. The tax is equal to 35 percent of the amount of preferred stock that the financial institution should have redeemed from the government (i.e., the amount of the excessive bonus). For example, if a financial institution granted a 2008 bonus of $1 million to its chief executive officer, and the financial institution did not redeem $900,000 worth of preferred stock from the United States, it must pay a tax of $315,000 ($1 million minus $100,000 times 35 percent). Once a financial institution pays the 35 percent tax, the institution is no longer required to redeem from the government an amount of preferred stock equal to the amount of the excessive bonus. That is, a financial institution that pays an excessive bonus must either redeem stock or pay an excise tax on that bonus but it will not be required to do both for any single bonus.

Payment of the excise tax does not have any effect on otherwise applicable agreements to redeem preferred stock purchased by the Federal Government using funds provided by TARP.

Effective Date

The provision applies to a failure to redeem preferred stock that occurs after the date of enactment.

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[225] Members of a controlled group of corporations are determined as provided under section 52(a).

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

F. TRADE RELATED PROVISIONS

1. TRADE ADJUSTMENT ASSISTANCE [226]

I. OVERVIEW

The conference report amends the Trade Act of 1974 ("the Trade Act") to reauthorize trade adjustment assistance ("TAA"), to extend trade adjustment assistance to service workers, communities, firms, and farmers, and for other purposes.

II. HOUSE BILL

No provision.

III. SENATE BILL

First, the Senate bill amends section 245(a) of the Trade Act of 1974 to extend the authorization for the TAA for Workers program until December 31, 2010. Second, the proposal amends section 246(b)(1) of the Trade Act of 1974 to extend the authorization for Alternative Trade Adjustment Assistance program by two years. Third, the proposal amends section 256(b) of the Trade Act of 1974 to extend the authorization for the TAA for Firms program until December 31, 2010. Fourth, the proposal amends section 298(a) of the Trade Act of 1974 to extend the TAA for Farmers program until December 31, 2010. Fifth, the proposal amends section 285 of the Trade Act of 1974 to extend the overall termination date of the TAA programs until December 31, 2010. Sixth, the proposal provides that these amendments shall have an effective date of January 1, 2008. Seventh, the proposal includes a Sense of the Senate that a TAA for Communities program should be revived.

IV. CONFERENCE REPORT

A. PART I—TRADE ADJUSTMENT ASSISTANCE FOR WORKERS

1. SUBPART A—TRADE ADJUSTMENT ASSISTANCE FOR SERVICE SECTOR WORKERS

Extension of Trade Adjustment Assistance to Service Sector and Public Agency Workers; Shifts in Production (Section 1701 (amending Sections 221, 222, 231, 244, and 247 of the Trade Act of 1974))

Present Law

Section 222 of the Trade Act provides trade adjustment assistance to workers in a firm or an appropriate subdivision of a firm if (1) a significant number or proportion of the workers in the firm or subdivision have become (or are threatened to become) totally or

[226] Descriptions prepared by the majority staffs of the House Committee on Ways and Means and the Senate Committee on Finance.

partially separated; (2) the firm produces an article; and (3) the separation or threat of same is due to trade with foreign countries.

There are three ways to demonstrate the connection between job separation and trade. The Secretary of Labor ("the Secretary") must determine either (1) that increased imports of articles "like or directly competitive" with articles produced by the firm have contributed importantly to the separation and to an absolute decrease in the firm's sales or production, or both; (2) that the workers' firm has shifted its production of articles "like or directly competitive" with articles produced by the firm to a trade agreement partner of the United States or a beneficiary country under the Andean Trade Preference Act, the African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or (3) that the firm has shifted production of such articles to another country and there has been or is likely to be an increase in imports of like or directly competitive articles.

Section 222 of the Trade Act also provides TAA to adversely affected secondary workers. Eligible secondary workers include (1) secondary workers that supply directly to another firm component parts for articles that were the basis for a certification of eligibility for TAA benefits; and (2) downstream workers that were affected by trade with Mexico or Canada.

When the Department investigates workers' petitions, it requires firms and customers to certify the questionnaires that the workers' firm and the firm's customers submit. Present law also authorizes the Secretary to use subpoenas to obtain information in the course of its investigation of a petition. The law provides for the imposition of criminal and civil penalties for providing false information and failing to disclose material information, but the penalties apply only to petitioners.

Explanation of Provision

The provision would amend section 222 of the Trade Act to expand the availability of TAA to include workers in firms in the services sector. Like workers in firms that produce articles, workers in firms that supply services would be eligible for TAA if a significant number or proportion of the workers have become (or are threatened to become) totally or partially separated, and if increased imports of services "contributed importantly" to the workers' separation or threat of separation.

As with articles, there would be three ways for service sector workers to demonstrate that they are eligible for TAA. First, TAA would be available if increased imports of services like or directly competitive with services supplied by the firm have contributed importantly to the separation and to an absolute decrease in the firm's sales or production, or both. Second, TAA would be available in "shift in supply" ("service relocation") scenarios, if the workers' firm or subdivision established a facility in a foreign country to supply services like or directly competitive with the services supplied by the trade-impacted workers. Third, TAA would be available in "foreign contracting" scenarios, if the workers' firm or subdivision acquired from a service supplier in a foreign country services like or directly competitive with the services that the trade-impacted workers had supplied. In each scenario, the relevant activity

would need to have contributed importantly to the workers' separation or threat of separation.

The provision also expands the "shift in production" prong of present law by eliminating the requirement in section 222 that the shift be to a trade agreement partner of the United States or a country that benefits from a unilateral preference program. Under the modified provision, if workers are separated because their firm shifts production from a domestic facility to any foreign country, the separated workers would potentially be eligible for TAA. Additionally, there would be no requirement to demonstrate separately that the shift was accompanied by an increase of imports of products like or directly competitive with those produced by the workers' firm or subdivision.

The provision also amends section 222 to make workers at public agencies eligible for TAA. Under the modified provision, if a public agency acquires services from a foreign country that are like or directly competitive with the services that the public agency supplies, and if the acquisition contributed importantly to the workers' separation or threat thereof, the workers would be able to seek TAA benefits.

The provision also amends section 222 to expand the universe of adversely affected secondary workers that could be eligible for TAA. First, the provision adds firms that supply testing, packaging, maintenance, and transportation services to the list of downstream producers whose workers potentially are eligible for TAA. Second, workers at firms that supply services used in the production of articles or in the supply of services would also become potentially eligible for benefits. Third, the provision permits downstream producers to be eligible for TAA if the primary firm's certification is linked to trade with any country, not just Canada or Mexico. The provision requires the Secretary to obtain information that the Secretary determines necessary to make certifications from workers' firms or customers of workers' firms through questionnaires and in such other manner as the Secretary considers appropriate. The provision also permits the Secretary to seek additional information from other sources, including (1) officials or employees of the workers' firm; (2) officials of customers of the firm; (3) officials of unions or other duly recognized representatives of the petitioning workers; and (4) one-stop operators. The provision states that the Secretary shall require a firm or customer to certify all information obtained through questionnaires, as well as other information that the Secretary relies upon in making a determination under section 223, unless the Secretary has a reasonable basis for determining that the information is accurate and complete.

The provision states that the Secretary shall require a worker's firm or a customer of a worker's firm to provide information by subpoena if the firm or customer fails to provide the information within 20 days after the date of the Secretary's request, unless the firm or customer demonstrates to the Secretary's satisfaction that the firm or customer will provide the information in a reasonable period of time. The Secretary retains the discretion to issue a subpoena sooner than 20 days if necessary. The provision also establishes standards for the protection of confidential business information submitted in response to a request made by the Secretary.

The provision amends the penalties provision in section 244 of the Trade Act to cover persons, including persons who are employed by firms and customers, who provide information during an investigation of a worker's petition.

Finally, the provision amends section 247 of the Trade Act to add definitions for certain key terms and makes various conforming changes to sections 221 and 222.

Reasons for Change

Most service sector workers presently are ineligible for TAA benefits because of a statutory requirement that the workers must have been employed by a firm that produces an "article." Of the 800 TAA petitions denied in FY2006, almost half were denied for this reason. Most of the denied service-related petitions came from two service industries: business services (primarily computer-related) and airport-related services (e.g., aircraft maintenance). In April 2006, the Department of Labor issued a regulation expanding TAA eligibility to software workers that partially, but not fully, addresses the service worker coverage issue. See GAO Report 07–702. The provision fully addresses the issue by making service sector workers eligible for TAA on equivalent terms to workers at firms that produce articles.

The provision expands the "shift in production" prong of present law for similar reasons. Under present law, a worker whose firm relocates to China is not necessarily eligible for TAA; such worker must also show that the relocation to China will result in increased imports into the United States. In contrast, a worker whose firm relocates to a country with which the United States has a trade agreement (e.g., Mexico, Israel, Chile) does not need to show increased imports. The provision eliminates this disparate treatment by making TAA benefits available in both scenarios on the same terms.

Present law also fails to cover foreign contracting scenarios, where a company closes a domestic operation and contracts with a company in a foreign country for the goods or services that had been produced in the United States. For example, if a U.S. airline lays off a number of its U.S.-based maintenance personnel and contracts with an independent aircraft maintenance company in a foreign country, the laid off personnel are not covered under present law, even if they lost their jobs because of foreign competition. The Conferees believe such workers should be potentially eligible for TAA benefits.

Similarly, the Conferees believe that workers who supply services at public agencies should be treated the same as their private-sector counterparts: if such workers are laid off because their employer contracts with a supplier in a foreign country for the services that the workers had supplied, the workers should be able to seek TAA benefits.

The provision provides that in cases involving production or service relocation or foreign contracting, a group of workers (including workers in a public agency) may be certified as eligible for adjustment assistance if the shift "contributed importantly" to such workers' separation or threat of separation. This requirement is identical to the existing causal link requirement in section

222(a)(2)(A)(iii), which establishes the criteria for certifying workers on the basis of "increased imports."

The Conferees understand that the Department of Labor has interpreted the "contributed importantly" requirement in section 222(a)(2)(A)(iii) to mean that imports must have been a factor in the layoffs or threat thereof. Or, in other words, under present law the Secretary of Labor will certify a group of workers as eligible for assistance if the facts demonstrate a causal nexus between increased imports and the workers' separation or threat thereof. The Conferees approve of the Department's interpretation of the "contributed importantly" requirement and expect that the Department will continue to apply it in future cases involving increased imports. Similarly, the Conferees also understand that the existing language in section 222(a)(2)(B) addressing production relocation contains an implicit causation requirement. Thus, the Department has required production relocation under section 222(a)(2)(B) to be a factor in the workers' separation or threat thereof. The provision makes the requirement explicit. The Conferees emphasize that by making the "contributed importantly" requirement in section 222(a)(2)(B) explicit, no change in the Department's administration of cases involving production relocation is intended. The Conferees expect that this change in section 222 would not affect the outcomes that the Department has been reaching under present law in such cases, and will not alter outcomes in future cases. Thus, as has been the case, if the Department finds that production relocation was a factor in the layoff (or threat thereof) of a group of workers in the United States, the Conferees expect that the Secretary will certify such workers as eligible for adjustment assistance.

Finally, with respect to certifications involving production or service relocations or foreign contracting, the Conferees recognize that there may be delays in time between when the domestic layoffs (or threat of layoffs) occur, and when the production or service relocation or foreign contracting occurs. The Conferees intend that the Department of Labor certify petitions where there is credible evidence that production or service relocation or foreign contracting will occur, and when the other requirements of the statute are met. Such evidence could include the conclusion of a contract relating to foreign production of the article, supply of services, or acquisition of the article or service at issue; the construction, purchase, or renting of foreign facilities for the production of the article, supply of the service, or acquisition of the article or service at issue; or certified statements by a duly authorized representative at the workers' firm that the firm intends to engage in production or service relocation or foreign contracting. The Conferees are aware of concerns that the Secretary may rely on inaccurate information in making its determinations, including when denying certification of petitions. The provision addresses these concerns by requiring the Secretary to obtain certifications of all information obtained from a firm or customer through questionnaires as well as other information from a firm or customer that the Secretary relies upon in making a determination under section 223, unless the Secretary has a reasonable basis for determining that the information is accurate and complete.

The Conferees are also aware of concerns that some firms and customers fail to respond to the Secretary's requests for information or provide inaccurate or incomplete information. The subpoena, confidentiality of information, and penalty language included in this provision are designed to address these problems.

The provision would also apply if the Secretary needs to obtain information from a customer's customer, such as in an investigation involving component part suppliers.

Effective Date

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

Group Eligibility—Component Parts (Section 1701 (amending Section 222 of the Trade Act of 1974))

Present Law

Under present law, U.S. suppliers of inputs (i.e., component parts) may be certified for TAA benefits only pursuant to the secondary workers provision of section 222(b), which requires that the downstream producer have employed a group of workers that received TAA certification. Thus, for example, domestic producers of taconite have been unable to obtain certification for TAA benefits when downstream producers of steel slab have not obtained certification. Additionally, U.S. suppliers of inputs have been unable to obtain certification for TAA benefits in situations in which there is a shift in imports from articles incorporating their inputs to articles incorporating inputs produced outside the United States.

Explanation of Provision

The provision allows for the certification of workers in a firm when imports of the finished article incorporating inputs produced outside the United States that are like or directly competitive with imports of the finished article produced using U.S. inputs have increased and the firm has met the other criteria for certification, including a significant number of workers being totally or partially separated, a decrease in sales or production, and the increase in imports has contributed importantly to the workers' separation.

For example, under the new provision, workers in a U.S. fabric plant may be certified if the U.S. firm sold fabric to a Honduran apparel manufacturer for production of apparel subsequently imported into the United States and (1) the Honduran apparel manufacturer ceased purchasing, or decreased its purchasing, of fabric from the U.S. producer and, instead, used fabric from another country; or (2) imports of apparel from another country using non-U.S. fabric that are like or directly competitive with imports of Honduran apparel using U.S. fabric have increased.

Prior to certification, the Department of Labor would also have to determine that the firm met the other statutory requirements for certification, including that a significant number of workers had been totally or partially separated, or are threatened to become totally or partially separated, the sales or production of the petitioning fabric firm had decreased, and the increased imports of ap-

parel using non-U.S. fabric had contributed importantly to that decrease and to the workers' separation or threat thereof.

Likewise, workers in a U.S. picture tube manufacturing plant that sells picture tubes to a Mexican television manufacturer for production of televisions subsequently imported into the United States would be certified under section 222 if the U.S. manufacturer's sales or production of picture tubes decreased and (1) the manufacturer of televisions located in Mexico switched to picture tubes produced in another country; or (2) imports of televisions from another country using non-U.S. picture tubes that are like or directly competitive with imports of Mexican televisions using U.S. picture tubes have increased.

As in the apparel example above, prior to certification, the Department of Labor would also have to determine that the picture tube firm met the other statutory requirements for certification, including that a significant number of workers had been totally or partially separated, or are threatened to become totally or partially separated, the sales or production of the petitioning picture tube firm had decreased, and the increased imports of televisions using non-U.S. picture tubes had contributed importantly to that decrease and to the workers' separation or threat thereof.

Reasons for Change

Section 222(a) is being amended to provide improved TAA coverage for U.S. suppliers of inputs, and to address situations where suppliers of component parts have been unable to obtain certification for TAA benefits because of gaps in coverage under present law.

The amended language is broad enough to encompass both the situation in which the input producer's customer switches to inputs produced outside the United States, and the situation in which the input producer's customer is displaced by a third country producer, because both situations may equally impact the sales or production of the domestic input producer.

Additionally, for purposes of section 222(a)(2)(A)(ii)(III), as in other instances, when company-specific data is unavailable, the Secretary may reasonably rely on such aggregate data or such other information as the Secretary deems appropriate.

As reflected in the examples above, the Conferees intend that the Secretary of Labor should interpret the term component parts, as used in section 222(a)(2)(A)(ii)(III), flexibly. For example, the Conferees intend that uncut fabric would be considered to be a component part of apparel for purposes of this provision, even though, for purposes of other trade laws, U.S. Customs and Border Protection might not consider such fabric to be a component part.

Effective Date

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

Separate Basis for Certification (Section 1702 (amending Section 222 of the Trade Act of 1974))

Present Law

There is no provision in present law.

Explanation of Provision

The provision amends section 222(c) of the Trade Act by providing that a petition filed under section 221 of the Trade Act on behalf of a group of workers in a firm, or appropriate subdivision of a firm, meets the requirements of subsection 222(a) of the Trade Act if the firm is publicly identified by name by the U.S. International Trade Commission ("ITC") as a member of a domestic industry in (1) an affirmative determination of serious injury or threat thereof in a global safeguard investigation under section 202(b)(1) of the Trade Act; (2) an affirmative determination of market disruption or threat thereof in a China safeguard investigation under section 421(b)(1) of the Trade Act; or (3) an affirmative final determination of material injury or threat thereof in an antidumping or countervailing duty investigation under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A)), but only if the petition is filed within 1 year of the date that notice of the affirmative ITC determination is published in the Federal Register (or, in the case of a global safeguard investigation under section 202(b)(1), a summary of the report submitted to the President by the ITC under section 202(f)(1) is published in the Federal Register under section 202(f)(3)) and the workers on whose behalf such petition was filed have become totally or partially separated from such workers' firm within either that 1-year period or the 1-year period preceding the date of such publication.

Reasons for Change

The Conferees note that the provision allows workers in firms publicly identified by name in certain ITC investigations to be eligible for adjustment assistance on the basis of an affirmative injury determination by the ITC under certain circumstances, and without an additional determination by the Secretary of Labor that either increased imports of a like or directly competitive article contributed importantly to such workers' separation or threat of separation (and to an absolute decline in the sales or production, or both, of such workers' firm or subdivision), or that a shift in production of articles contributed importantly to such workers' separation or threat of separation.

In order for workers to avail themselves of this provision, the petition must be filed with the Secretary (and with the Governor of the State in which such workers' firm or subdivision is located) within 1 year of the date of publication in the Federal Register of the applicable notice from the ITC and the workers on whose behalf such petition was filed must have become totally or partially separated from such workers' firm within either that 1-year period or the 1-year period preceding such date of publication.

If a petition is filed on behalf of such workers more than 1 year after the date that the applicable notice from the ITC is published

in the Federal Register, it will remain necessary for the Secretary of Labor to investigate the petition and determine that the statutory criteria for certifying such workers in section 222 are satisfied.

Effective Date

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

Determinations by the Secretary of Labor (Section 1703 (amending Section 223 of the Trade Act of 1974))

Present Law

The Secretary is required to investigate petitions filed by workers and determine whether such workers are eligible for TAA benefits. A summary of such group eligibility determination, together with the Secretary's reasons for making the determination, must be promptly published in the Federal Register. Similarly, a termination of a certification, together with the Secretary's reasons for the termination, must be promptly published in the Federal Register.

Explanation of Provision

This section requires the Secretary to publish (1) a summary of a group eligibility determination, together with the Secretary's reasons for the determination; and (2) a certification termination, together with the Secretary's reasons for the termination, promptly on the Department's website (as well as in the Federal Register). The section also requires the Secretary to establish standards for investigating petitions, and criteria for making determinations. Moreover, the Secretary is required to consult with the Senate Committee on Finance ("Senate Finance Committee") and the Committee on Ways and Means of the House of Representatives ("House Committee on Ways and Means") 90 days prior to issuing a final rule on the standards.

Reasons for Change

To improve accountability, transparency, and public access to this information, the Secretary should be required to post (1) a summary of a group eligibility determination, together with the Secretary's reasons for the determination; and (2) a certification termination, together with the Secretary's reasons for the termination, promptly on the Department's website (as well as in the Federal Register). The Secretary also should have objective and transparent standards for investigating petitions, and criteria for the basis on which an eligibility determination is made. The Secretary should consult with Senate Finance and House Ways and Means to ensure the intent of Congress is accurately reflected in such standards.

Effective Date

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

Monitoring and Reporting Relating to Service Sector (Section 1704 (amending Section 282 of the Trade Act of 1974))

Present Law

Present law requires the Secretaries of Commerce and Labor to establish and maintain a program to monitor imports of articles into the United States, including (1) information concerning changes in import volume; (2) impacts on domestic production; and (3) impacts on domestic employment in industries producing like or competitive products. Summaries must be provided to the Adjustment Assistance Coordinating Committee, the ITC, and Congress.

Explanation of Provision

The provision is renamed "Trade Monitoring and Data Collection." The provision requires the Secretaries of Commerce and Labor to monitor imports of services (in addition to articles). To address data limitations, the provision requires the Secretary of Labor, not later than 90 days after enactment, to collect data on impacted service workers (by State, industry, and cause).

Finally, it requires the Secretary of Commerce, in consultation with the Secretary of Labor, to report to Congress, not later than one year after enactment, on ways to improve the timeliness and coverage of data regarding trade in services.

Reasons for Change

Existing data on trade in services are sparse. Because of the increases in trade in services, the Conferees believe that it is critical that the government collect data on imports of services and the impact of these imports on U.S. workers. Such information will be useful when considering any further refinement of TAA that Congress may contemplate. More generally, the additional data will give U.S. businesses and workers insight into trade in services, helping them better compete in the global marketplace.

Effective Date

The provision goes into effect on the date of enactment of this Act.

2. SUBPART B—INDUSTRY NOTIFICATIONS FOLLOWING CERTAIN AFFIRMATIVE DETERMINATIONS

Notifications following certain affirmative determinations (Section 1711 (amending Section 224 of the Trade Act of 1974))

Present Law

Present law includes a provision requiring the ITC to notify the Secretary of Labor when it begins a section 201 global safeguard investigation. The Secretary must then begin an investigation of (1) the number of workers in the relevant domestic industry; and (2) whether TAA will help such workers adjust to import competition. The Secretary of Labor must submit a report to the President within 15 days of the ITC's section 201 determination. The Secretary's report must be made public and a summary printed in the Federal Register.

Explanation of Provision

The provision expands the notification requirement to instruct the ITC to notify the Secretary of Labor and the Secretary of Commerce, or the Secretary of Agriculture when dealing with agricultural commodities, when it issues an affirmative determination of injury or threat thereof under sections 202 or 421 of the Trade Act, an affirmative safeguard determination under a U.S. trade agreement, or an affirmative determination in a countervailing duty or dumping investigation under sections 705 or 735 of the Tariff Act of 1930. Additionally, the provision requires the President to notify the Secretaries of Labor and Commerce upon making an affirmative determination in a safeguard investigation relating to textile and apparel articles. Whenever an injury determination is made, the Secretary of Labor must notify employers, workers, and unions of firms covered by the determination of the workers' potential eligibility for TAA benefits and provide them with assistance in filing petitions. Similarly, the Secretary of Commerce must notify firms covered by the determination of their potential eligibility for TAA for Firms and provide them with assistance in filing petitions, and the Secretary of Agriculture must do the same for investigations involving agricultural commodities.

Reasons for Change

A significant hurdle to ensuring that workers and firms avail themselves of TAA benefits is the lack of awareness about the program. In situations like these, where the ITC has made a determination that a domestic industry has been injured as a result of trade, giving notice to the workers and firms in that industry of TAA's potential benefits is warranted.

Effective Date

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

Notification to Secretary of Commerce (Section 1712 (amending Section 225 of the Trade Act of 1974))

Present Law

Under present law, the Secretary of Labor must provide workers with information about TAA and provide whatever assistance is necessary to help petitioners apply for TAA. The Secretary must also reach out to State Vocational Education Boards and their equivalent agencies, as well as other public and private institutions, about affirmative group certification determinations and projections of training needs.

The Secretary must also notify each worker who the State has reason to believe is covered by a group certification in writing via U.S. Mail of the benefits available under TAA. If the worker lost his job before group certification, then the notice occurs at the time of certification. If the worker lost her job after group certification, then the notice occurs at the time the worker loses her job. The Secretary must also publish notice in the newspapers circulating in the area where the workers reside.

Explanation of Provision

The provision requires the Secretary of Labor, upon issuing a certification, to notify the Secretary of Commerce of the identity of the firms covered by a certification.

Reasons for Change

Firms employing workers certified as eligible for TAA benefits may not be aware that they may be eligible for assistance under the TAA for Firms program. Requiring the Secretary of Labor to notify the Secretary of Commerce when workers at a firm are certified as TAA eligible will help put these firms on notice of their potential TAA for Firms eligibility.

Effective Date

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

3. SUBPART C—PROGRAM BENEFITS

Qualifying requirements for workers (Section 1721 (amending Section 231 of the Trade Act of 1974))

Present Law

Present law authorizes a worker to receive TAA income support (known as "Trade Readjustment Allowance" or "TRA") for weeks of unemployment that begin 60 days after the date of filing the petition on which certification was granted.

To qualify for TAA benefits, a worker must have (1) lost his job on or after the trade impact date identified in the certification, and within two years of the date of the certification determination; (2) been employed by the TAA certified firm for at least 26 of the 52 weeks preceding the layoff; and (3) earned at least $30 or more a week in that employment. A worker must qualify for, and exhaust, his State unemployment compensation ("UC") benefits before receiving a weekly TRA.

Further, to receive TRA, a worker must be enrolled in an approved training program by the later of 8 weeks after the TAA petition was certified, or 16 weeks after job loss (the "8/16" deadline). The 8/16 deadline can be extended in certain limited circumstances. Workers may also receive limited waivers of the 8/16 training enrollment deadline.

Present law provides for waivers in the following circumstances: (1) the worker has been or will be recalled by the firm; (2) the worker possesses marketable skills; (3) the worker is within 2 years of retirement; (4) the worker cannot participate in training because of health reasons; (5) training enrollment is unavailable; or (6) training is not reasonably available to the worker (nothing suitable, no reasonable cost, no training funds).

Waivers last 6 months, unless the Secretary determines otherwise, and will be revoked if the basis for the waiver no longer exists. States have the authority to issue waivers. By regulation, State and local agencies must "review" the waivers every thirty days.

If a worker fails to begin training or has stopped participating in training without justifiable cause or if the worker's waiver is revoked, the worker will receive no income support until the worker begins or resumes training.

Explanation of Provision

The provision amends existing law to change the date on which a worker can receive TAA income support from 60 days from the date of the petition to the date of certification. The provision strikes the 8/16 rule and extends the deadline for trade-impacted workers. If a worker lost his job before the certification, then the worker has 26 weeks from the date of certification to enroll in training. If the worker lost his job after certification, he has 26 weeks from the date he lost his job to enroll in training.

The provision also gives the Secretary the authority to waive the new 26-week training enrollment deadline if a worker was not given timely notice of the deadline.

The provision clarifies that the "marketable skills" training waiver may apply to workers who have post-graduate degrees from accredited institutions of higher education. The provision requires the State to review training waivers 3 months after such waiver is issued, and every month thereafter.

Reasons for Change

The Conferees believe that the 60-day rule makes little sense and leads to the following scenario: a worker laid off well before certification could exhaust his unemployment insurance and yet have to wait to receive the trade readjustment assistance to which the worker was otherwise entitled.

The Government Accountability Office, the Department of Labor, the states, and workers' advocacy groups have criticized the 8/16 deadline as being too short. First, these deadlines often occur while the worker is still on traditional UI (most workers receive up to 26 weeks of State UI compensation). During those 26 weeks, most workers are actively engaged in a job search and are not focused on retraining. Forcing workers to enroll in training at such an early stage can discourage active job search. Second, typically, a worker decides to consider training only after an extended period of unsuccessful job searching. Under present law, workers are only beginning to consider training options close to the 8/16 deadline, and often make hurried decisions about training merely to preserve their TAA eligibility. Third, when large numbers of certified workers are laid off all at once, it can be difficult for TAA administrators to perform adequate training assessments and meet the 8/16 deadline. See GAO Report 04–1012. Therefore, extending the enrollment deadlines to the later of 26 weeks after layoff or certification would provide a reasonable period for a worker to search for employment and consider training options, as well as for the State to assess workers and meet the enrollment deadlines.

While recognizing the necessity of waivers in certain circumstances, states have identified the monthly review of waivers to be burdensome. Many states have complained that processing the sheer volume of waivers requires significant administrative time and cost. For example, according to GAO, 59,375 waivers were

issued in 2005 (and 60,948 in 2004). The new requirement that waivers be reviewed initially three months rather than one month after they are issued reduces the administrative burden while continuing to provide for appropriate review, thus allowing the State to ensure the worker continues to qualify for the waiver. The provision does not require a review of waivers issued on the basis that an adversely affected worker is within two years of being eligible for Social Security benefits or a private pension. The status of such workers is unlikely to change and thus, automatic review of their waivers is a waste of resources. States still retain the discretion to review such waivers if circumstances warrant. When a worker has failed to meet the training enrollment deadline through no fault of his own, the Conferees believe that there should be redress. Under present law, there is none. The Department of Labor has acknowledged that this is a problem.

Effective Date

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

Weekly amounts (Section 1722 (amending Section 232 of the Trade Act of 1974))

Present Law

TRA is the income support that workers receive weekly. It is equal to the worker's weekly UI benefit. TRA is divided into two main periods: "Basic TRA" and "Additional TRA." Under present law, because of the operation of State UI laws, workers who are in training and working part-time run the risk of resetting their UI benefits (and their TRA benefit) at the lower part-time level which would leave them with insufficient income support to continue with training.

Explanation of Provision

The provision amends existing law to (1) disregard, for purposes of determining a worker's weekly TRA amount, earnings from a week of work equal to or less than the worker's most recent unemployment insurance benefits where the worker is working part-time and participating in full-time training; and (2) ensure that workers will retain the amount of income support provided initially under TRA even if a new UI benefit period (with a lower weekly amount) is established due to the worker obtaining part-time or short-term full-time employment.

Reasons for Change

The Conferees believe that the disincentive to combining full-time training and part-time work needs to be removed so that workers who might not otherwise be in training, but for the additional income they earn working part-time, are not excluded from the program.

Effective Date

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

Limitations on Trade Readjustment Allowances; Allowances for Extended Training and Breaks in Training (Section 1723 (amending Section 233(a) of the Trade Act of 1974))

Present Law

Basic TRA is available for 52 weeks minus the number of weeks of unemployment insurance for which the worker was eligible (usually 26 weeks). Basic TRA must be used within 104 weeks after the worker lost his job (130 weeks for workers requiring remedial training). Any Basic TRA not used in that period is foregone.

Additional TRA is available for up to 52 more weeks if the worker is enrolled in and participating in training. The worker receives Additional TRA only for weeks in training. A worker on an approved break in training of 30 days or less is considered to be participating in training and therefore eligible for TRA during that period. Additional TRA must otherwise be used over a consecutive period (e.g., 52 consecutive weeks).

Participation in remedial training makes a worker eligible for up to 26 more weeks of TRA.

Explanation of Provision

The provision increases the number of weeks for which a worker can receive Additional TRA from 52 to 78 and expands the time within which a worker can receive such Additional TRA from 52 weeks to 91 weeks.

Reasons for Change

The Conferees believe that the program must provide incentives for eligible workers to participate in long term training, such as a two-year Associate's degree, a nursing certification, or completion of a four-year degree (if that four-year degree was previously initiated or if the worker will complete it using non-TAA funds).

Typically, workers cannot participate in a training program without TAA income support. Thus, because many workers exhaust at least some of their basic TRA while they seek another job instead of beginning training, they are limited to shorter-term training options, both practically and because training approvals are usually tied to the period of TRA eligibility. The purpose of the additional 26 weeks of income support, for a total of 78 weeks of additional TRA, is to provide an opportunity for workers to engage in long term training that might not have otherwise been a viable option.

The Conferees note that the Department of Labor's practice is to approve, before training begins, a training program consisting of a course or related group of courses designed for an individual to meet a specific occupational goal. 20 CFR 617.22(f)(3)(i). Nothing in this section is intended to change current Department of Labor practice. The additional 26 weeks of income support are intended

to provide more options for long term training at the time when this individual training program is designed and approved.

In short, the new, additional income support is available only for workers in long term training.

The Conferees note that, at the same time, it is not their intent to limit the Secretary's ability, in certain, limited circumstances, to modify a worker's training program where the Secretary determines that the current training program is no longer appropriate for the individual.

Effective Date

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

Special Rules for Calculation of Eligibility Period (Section 1724 (amending Section 233 of the Trade Act of 1974))

Present Law

There is no provision in present law.

Explanation of Provision

The provision states that periods during which an administrative or judicial appeal of a negative determination is pending will not be counted when calculating a worker's eligibility for TRA. Moreover, the provision also grants justifiable cause authority to the Secretary to extend certain applicable deadlines concerning receipt of Basic and Additional TRA. Further, the provision allows workers called up for active duty military or full-time National Guard service to restart the TAA enrollment process after completion of such service.

The provision also strikes the 210-day rule, which mandates that a worker is not eligible for additional TRA payments if the worker has not applied for training 210 days from certification or job loss, whichever is later.

Reasons for Change

The Conferees believe that tolling of deadlines is necessary; otherwise judicial relief obtained from a successful court challenge would be meaningless, as the decision of the court will inevitably take place after the TAA program eligibility deadlines have passed. The Department of Labor provides for similar tolling in its present and proposed regulations.

Similarly, the Conferees believe that affording the Secretary flexibility in instances where a worker is ineligible through no fault of her own is consistent with the spirit of the program and will help ensure that workers get the retraining they need. The amendment permits the Secretary to extend the periods during which trade readjustment allowances may be paid to an individual if there is justifiable cause. The provision does not increase the amount of such allowances that are payable. The Conferees intend that the justifiable cause extension should allow the Secretary equitable authority to address unforeseen circumstances, such as a health emergency. The 210-day deadline is superseded by the 8/16

deadline in current law, the new 26/26 enrollment deadlines under these amendments, and the requirement that a worker be in training to receive additional TRA.

Effective Date

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

Application of State Laws and Regulations on Good Cause for Waiver of Time Limits or Late Filing of Claims (Section 1725 (amending Section 234 of the Trade Act of 1974))

Present Law

A State's unemployment insurance laws apply to a worker's claims for TRA.

Explanation of Provision

The provision makes a State's "good cause" law, regulations, policies, and practices applicable when the State is making determinations concerning a worker's claim for TRA or other adjustment assistance.

Reasons for Change

Most States have "good cause" laws allowing the waiver of a statutory deadline when the deadline was missed because of agency error or for other reasons where the claimant was not at fault. These good cause laws apply to administration of State UI laws. The Department of Labor, by regulation, has precluded application of State good cause laws to TAA. This prohibition unjustifiably penalizes workers who miss a deadline through no fault of their own.

Effective Date

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

Employment and Case Management Services; Administrative Expenses and Employment and Case Management Services (Sections 1726 and 1727 (amending Section 235 of the Trade Act of 1974))

Present Law

Present law requires the Secretary of Labor to make "every reasonable effort" to secure services for affected workers covered by a certification including "counseling, testing, and placement services" and "[s]upportive and other services provided for under any other Federal law," including WIA one-stop services. Typically, the Secretary provides these services through agreements with the States.

Explanation of Provision

The provisions require the Secretary and the States to, among other things (1) perform comprehensive and specialized assessments of enrollees' skill levels and needs; (2) develop individual em-

ployment plans for each impacted worker; and (3) provide enrollees with (a) information on available training and how to apply for such training, (b) information on how to apply for financial aid, (c) information on how to apply for such training, (d) short-term prevocational services, (e) individual career counseling, (f) employment statistics information, and (g) information on the availability of supportive services.

The provision requires the Secretary, either directly or through the States (through cooperating agreements), to make the employment and case management services described in section 235 available to TAA eligible workers. TAA eligible workers are not required to accept or participate in such services, however, if they choose not to do so.

These provisions provide for each State to receive funds equal to 15 percent of its training funding allocation on top of its training fund allocation. Not more than two-thirds of these additional funds may be used to cover administrative expenses, and not less than one-third of such funds may be used for the purpose of providing employment and case management services, as defined under section 235. Finally, the section provides for an additional $350,000 to be provided to each State annually for the purpose of providing employment and case management services. With respect to these latter funds, States may decline or otherwise return such funds to the Secretary.

Reasons for Change

States incur costs to administer the TAA program, including for processing applications and providing employment and case management services. While appropriators customarily provide the Department of Labor with administrative funds equal to 15 percent of the total training funds for disbursement to the States, the Conferees believe that this practice should be codified, with the changes discussed above.

The Conferees believe that the employment services and case management funding provided for in this section should be in addition to, and not offset, any funds that the State would otherwise receive under WIA or any other program.

Effective Date

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

Training Funding (Section 1728 (amending Section 236 of the Trade Act of 1974))

Present Law

The total amount of annual training funding provided for under present law is $220,000,000. During the year, if the Secretary determines that there is inadequate funding to meet the demand for training, the Secretary has the authority to decide how to apportion the remaining funds to the States.

Based on internal department policy, at the beginning of each fiscal year, the Department of Labor allocates 75 percent of the

training funds to States based on each State's training expenditures and the average number of training participants over the previous 2½ years. The previous year's allocation serves as a floor. The Department of Labor also has a "hold harmless" policy that ensures that each State's initial allocation can be no less than 85 percent of its initial allocation in the previous year. The Department of Labor holds the remaining 25 percent in reserve to distribute to States throughout the year according to need; most of the remaining funds are disbursed at the end of the fiscal year. States have 3 years to spend their federal funds. If the funds are not spent, the money reverts back to the General Treasury.

Under present law, the Secretary shall approve training if (1) there is no suitable employment; (2) the worker would benefit from appropriate training; (3) there is a reasonable expectation of employment following training (although not necessarily immediately available employment); (4) the approved training is reasonably available to the worker; (5) the worker is qualified for the training; and (6) training is suitable and available at a reasonable cost. "Insofar as possible," the Secretary is supposed to ensure the provision of training on the job. Training will be paid for directly by the Secretary or using vouchers.

One of the statutory criteria for approval of training is that the worker be qualified to undertake and complete such training. The statute doesn't specifically address how the income support available to a worker is to be considered in determining the length of training the worker is qualified to undertake. Another of the statutory training approval criteria is that the training is available at a reasonable cost. The statute doesn't specifically address if funds other than those available under TAA may be considered in making this determination.

Explanation of Provision

The provision strikes the obsolete requirement that the Secretary of Labor shall "assure the provision" of training on the job.

This provision increases the training cap from $220,000,000 to $575,000,000 in FY2009 and FY2010, prorated for the period beginning October 1, 2010 and ending December 31, 2010. The provision requires the Secretary to make an initial distribution of training funds to the States as soon as practicable after the beginning of the fiscal year based on the following criteria: (1) the trend in numbers of certified workers; (2) the trend in numbers of workers participating in training; (3) the number of workers enrolled in training; (4) the estimated amount of funding needed to provide approved training; and (5) other factors the Secretary determines are appropriate. The provision specifies that initial distribution of training funds to a State may not be less than 25 percent of the initial distribution to that State in the previous fiscal year.

The provision requires the Secretary to establish procedures for the distribution of the funds held in reserve, which may include the distribution of such funds in response to requests made by States in need of additional training funds. The provision also requires the Secretary to distribute 65 percent of the training funds in the initial distribution, and to distribute at least 90 percent of

training funds for a particular fiscal year by July 15 of that fiscal year.

The provision directs the Secretary to decide how to distribute funds if training costs will exceed available funds.

The provision would specify that in determining if a worker is qualified to undertake and complete training, the training may be approved for a period that is longer than the period for which TRA is available if the worker demonstrates the financial ability to complete the training after TRA is exhausted. It is intended that financial ability means the ability to pay living expenses while in TAA-funded training after the period of TRA eligibility.

The provision would specify that in determining whether the costs of training are reasonable, the Secretary may consider whether other public or private funds are available to the worker, but may not require the worker to obtain such funds as a condition for approval of training. This means, for example, that if a training program would be determined not to have a reasonable cost if only the use of TAA training funds were considered, the Secretary may consider the availability of other public and private funds to the worker. If the worker voluntarily commits to using such funds to supplement the TAA training funds to pay for the training program, the training program may be approved. However, the Secretary may not require the worker to use the other public or private funds where the costs of the training program would be reasonable using only TAA training funds.

Finally, the provision requires the Secretary to issue regulations in consultation with the Senate Finance Committee and the House Committee on Ways and Means.

Reasons for Change

The Conferees believe that the training cap needs to be increased for two reasons. First, more funding is needed to cover the expanded group of TAA eligible workers because of changes made elsewhere in the bill (e.g., coverage of service workers, expanded coverage of manufacturing workers). Second, during high periods of TAA usage, the existing training funding has proved to be insufficient. Some states have run out of training funds, resulting in some States freezing enrollment of eligible workers in training. See GAO–04–1012.

As the GAO has documented, there are significant problems with the Department's method of allocating training funds. The primary problem is that the Department of Labor's method of allocation appears to result in insufficient funds for some States. This appears to be occurring because of the Department's reliance on historical usage and a "hold harmless" policy. In particular, States that were experiencing heavy layoffs at the time the initial allocation formula was implemented may no longer be experiencing layoffs at the same rate, but still receive significant allocations from the Department. In contrast, a State experiencing relatively few layoffs several years ago may now have far greater numbers of layoffs, but still receive a limited amount in its distribution. In short, the allocation that States receive at the beginning of the fiscal year may not reflect their present demand for training services. The provision addresses these problems by lowering the "hold harmless"

provision to 25 percent, requiring initial and subsequent distributions to be based on need, and by requiring that 90 percent of the funds be allocated by July 15 of each fiscal year. Additionally, the Conferees expect the Secretary to distribute the remaining funds as soon as possible after that date.

In order to facilitate the approval of longer-term training, the Conferees intend to ensure that the period of approved training is not necessarily limited to the duration of TRA. Where the worker demonstrates the ability to pay living expenses while in TAA funded training after TRA is exhausted, such training should be approved if the other training approval criteria are also met.

The Conferees intend to ensure that training programs that would otherwise not be approved under TAA due to costs may be approved if a worker voluntarily commits to using supplemental public or private funds to pay a portion of the costs.

It is also the intent that, together, these amendments to the training approval criteria allow training to be approved for a period that is longer than the period for which TRA and TAA-funded training is available if the worker demonstrates the financial ability to pay living expenses and pay for the additional training costs using other funds after TRA and the TAA-funded training are exhausted.

Effective Date

The provision increasing the training cap goes into effect upon the date of enactment of this Act. The provisions relating to training fund distribution procedures go into effect October 1, 2009. The other provisions in this section go into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and apply to petitions filed on or after that date.

Prerequisite Education, Approved Training Programs (Section 1729 (amending Section 236 of the Trade Act of 1974))

Present Law

Under present law, approvable training includes employer-based training (on-the-job training/customized training), training approved under the Workforce Investment Act of 1998, training approved by a private industry council, any remedial education program, any training program whose costs are paid by another federal or State program, and any other program approved by the Secretary. Additionally, remedial training is approvable and participation in such training makes a worker eligible for up to 26 more weeks of TAA-related income support.

Explanation of Provision

The provision clarifies that existing law allows training funds to be used to pay for apprenticeship programs, any prerequisite education required to enroll in training, and training at an accredited institution of higher education (such as those covered by 102 of the Higher Education Act), including training to obtain or complete a degree or certification program (where completion of the degree or certification can be reasonably expected to result in employment). The provision also prohibits the Secretary from limiting

training approval to programs provided pursuant to the Workforce Investment Act of 1998.

The provision offers up to an additional 26 weeks of income support while workers take prerequisite training or remedial training necessary to enter a training program. A worker may enroll in remedial training or prerequisite training, or both, but may not receive more than 26 weeks of additional income support.

Reasons for Change

Present law does not explicitly state whether TAA training funds may be used to obtain a college or advanced degree. Some States have interpreted this silence to preclude enrollment in a two-year community college or four-year college or university as a training option, even where a TAA participant was working towards completion of a degree prior to being laid off. The Conferees believe that States should be encouraged to approve the use of training funds by TAA enrollees to obtain training or a college or advanced degree, including degrees offered at two-year community colleges and four-year colleges or universities.

While a worker can obtain additional income support while participating in remedial training, there is no corollary support for workers participating in prerequisite training (e.g., individuals enrolling in nursing usually need basic science prerequisites, which are not considered qualifying remedial training). States have requested additional income support for workers who participate in prerequisite training.

The Conferees believe that while WIA-approved training is an approvable TAA training option, it should not be the only one that TAA enrollees are authorized to pursue. The Conferees are concerned that some States have restricted training opportunities to those approved under WIA. According to the Congressional Research Service, many community colleges, for instance, do not get WIA certification because of its costly reporting requirements. To limit TAA training opportunities in this way unacceptably curbs the scope of training that TAA enrollees might elect to participate in and potentially impairs their ability to get retrained and reemployed.

Effective Date

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

Pre-Layoff and Part-Time Training (Section 1730 (amending Section 236 of the Trade Act of 1974))

Present Law

Present law does not permit pre-layoff or part-time training.

Explanation of Provision

This provision specifies that the Secretary may approve training for a worker who (1) is a member of a group of workers that has been certified as eligible to apply for TAA benefits; (2) has not been totally or partially separated from employment; and (3) is de-

termined to be individually threatened with total or partial separation. Such training may not include on-the-job training, or customized training unless such customized training is for a position other than the worker's current position.

Additionally, the provision permits the Secretary to approve part-time training, but clarifies that a worker enrolled in part-time training is not eligible for a TRA.

Reasons for Chance

This provision explicitly establishes Congress' intent that workers be eligible to receive pre-layoff and part-time training.

Effective Date

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

On-the-Job Training (Section 1731 (amending Section 236 of the Trade Act of 1974))

Present Law

Current law provides that the Secretary may approve on-the-job training ("OJT"), but does not govern the content of acceptable OJT.

Explanation of Provision

This provision permits the Secretary to approve OJT for any adversely affected worker if the worker meets the training requirements, and the Secretary determines the OJT (1) can reasonably lead to employment with the OJT employer; (2) is compatible with the worker's skills; (3) will allow the worker to become proficient in the job for which the worker is being trained; and (4) the State determines the OJT meets necessary requirements. The Secretary may not enter into contracts with OJT employers that exhibit a pattern of failing to provide workers with continued long-term employment and adequate wages, benefits, and working conditions as regular employees.

Reasons for Change

The provision incorporates requirements to ensure OJT is effective. Specifically, OJT must be (1) reasonably expected to lead to suitable employment; (2) compatible with the workers' skills; and (2) include a State-approved benchmark-based curriculum. Moreover, the provision is intended to prevent employers from treating workers participating in OJT differently in terms of wages, benefits, and working conditions from regular employees who have worked a similar period of time and are doing the same type of work.

Effective Date

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

Eligibility for Unemployment Insurance and Program Benefits While in Training (Section 1732 (amending Section 236 of the Trade Act of 1974))

Present Law

Current law states that a worker may not be deemed ineligible for UI (and thus, TAA) if they are in training or leave unsuitable work to enter training.

Explanation of Provision

The provision states that a worker will not be ineligible for UI or TAA if the worker (1) is in training, even if the worker does not meet the requirements of availability for work, active work search, or refusal to accept work under Federal and State UI law; (2) leaves work to participate in training, including temporary work during a break in training; or (3) leaves OJT that did not meet the requirements of this Act within 30 days of commencing such training.

Reasons for Change

The Conferees are concerned that confusion in present UI law surrounding a worker's decision to quit work to enter training and the ramifications of that decision from a UI eligibility perspective may preclude a worker from being able to participate in TAA training. The provision is meant to eliminate that confusion.

Effective Date

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

Job Search and Relocation Allowances (Section 1733 (amending Section 237 of the Trade Act of 1974))

Present Law

The Secretary may grant an application for a job search allowance where (1) the allowance will help the totally separated worker find a job in the United States; (2) suitable employment is not available in the local area; and (3) the application is filed by the later of (a) 1 year from separation, (b) 1 year from certification, or (c) 6 months after completing training (unless the worker received a waiver, in which case the worker must file by the later of one year after separation or certification). A worker may be reimbursed for 90 percent of his job search costs, up to $1,250.

The Secretary may grant an application for a relocation allowance where: (1) the allowance will assist a totally separated worker relocate within the United States; (2) suitable employment is not available in the local area; (3) the affected worker has no job at the time of relocation; (4) the worker has found suitable employment that may reasonably be expected to be of long-term duration; (5) the worker has a bona fide offer of employment; and (6) the worker filed the application the later of (a) 425 days from separation, (b) 425 days from certification, or (c) 6 months after completing training (unless the worker received a waiver, in which case the worker

must file by the later of 425 days after separation or certification). A worker may be reimbursed for 90 percent of his relocation costs plus a lump sum payment of three times the worker's weekly wage up to $1,250.

Explanation of Provision

The provision reimburses 100 percent of a worker's job search expenses, up to $1,500, and 100 percent of a worker's relocation expenses, and increases the additional lump sum payment for relocation to a maximum of $1,500. It also strikes the provision in existing law under which a worker who has completed training but who received a prior training waiver has a shorter period to apply for a job search allowance and relocation allowance than other workers who have completed training.

Reasons for Change

The Conferees believe that the job search and relocation allowances need to be increased to reflect the cost of inflation and the cost and difficulty a worker faces when looking for work and taking a job outside the worker's local community.

The Conferees believe that workers completing training should have the same periods after training to apply for job search and relocation allowances irrespective of whether a worker received a waiver from the enrollment in training requirements prior to undertaking and completing the training. This period allows workers a reasonable opportunity to obtain the same assistance as other workers needed to find and relocate to a new job after being trained.

Effective Date

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

4. SUBPART D—REEMPLOYMENT TRADE ADJUSTMENT ASSISTANCE PROGRAM

Reemployment Trade Adjustment Assistance Program (Section 1741 (amending Section 246 of the Trade Act of 1974))

Present Law

The Trade Act of 2002 created a demonstration project for alternative trade adjustment assistance for older workers (ATAA or "wage insurance"). Through this program, some workers who are eligible for TAA and reemployed at lower wages may receive a partial wage subsidy. Under the program, States use Federal funds provided under the Trade Act to pay eligible workers up to 50 percent of the difference between reemployment wages and wages at the time of separation. Eligible workers may not earn more than $50,000 in reemployment wages, and total payments to a worker may not exceed $10,000 during a maximum period of two years. In addition to having been certified for TAA, such workers must be at least 50 years of age, obtain full-time reemployment with a new firm within 26 weeks of separation from employment, and have been separated from a firm that is specifically certified for ATAA.

When considering certification of a firm for ATAA, the Secretary of Labor considers whether a significant number of workers in the firm are 50 years of age or older and possess skills that are not easily transferable. ATAA beneficiaries may not receive TAA benefits other than the Health Coverage Tax Credit (HCTC).

Explanation of Provision

The provision renames ATAA "reemployment TAA." The provision eliminates the requirement that a group of workers (in addition to individuals) be specifically certified for wage insurance in addition to TAA certification. The provision eliminates the current-law requirement that a worker must find employment within 26 weeks of being laid off to be eligible for the wage insurance benefit, and replaces it with a requirement that the clock on the two-year duration of the benefit begin at the sooner of exhaustion of regular unemployment benefits or reemployment, allowing initial receipt of the wage insurance benefit at any point during that two-year period. The provision allows workers to shift from receiving a TRA, while training, to receiving reemployment TAA, while employed, at any point during the two-year period. The provision increases the limit on wages in eligible reemployment from $50,000 a year to $55,000 a year. Similarly, it increases the maximum wage insurance benefit (over two years) from up to $10,000 to up to $12,000.

The provision lifts the restriction on wage insurance recipients' participation in TAA-funded training. It also permits workers reemployed less than full-time, but at least 20 hours a week, and in approved training, to receive the wage insurance benefit (which would be prorated if the worker is reemployed for fewer hours compared to previous employment).

Reasons for Change

The Conferees believe that the reemployment TAA, or wage insurance, program is a potentially beneficial option for many older workers, but it includes unnecessary barriers to participation. The Conferees believe that changes to section 246 of the Trade Act will make the wage insurance program a more viable option for many more potentially interested workers. Inflation has lessened the maximum value of the available benefit, and increasing personal, nominal, median income has lowered the share of workers eligible to participate in the program. Several other requirements make the program inaccessible and unattractive.

Findings from the Government Accountability Office (GAO) highlight the need to reform specific aspects of the program. First, the 26-week reemployment deadline was cited by the GAO as one of "two key factors [that] limit participation." The GAO went on to note that "[o]fficials in States [the GAO] visited said that one of the greatest obstacles to participation was the requirement for workers to find a new job within 26 weeks after being laid off. For example, according to officials in one State, 80 percent of participants who were seeking wage insurance but were unable to obtain it failed because they could not find a job within the 26-week period. The challenges of finding a job within this time frame may be compounded by the fact that workers may actually have less than 26 weeks to secure a job if they are laid off prior to becoming certified

for TAA. For example, a local caseworker in one State [the GAO] visited said that "the 26 weeks had passed completely before a worker was certified for the benefit." Additionally, the GAO found that automatically certifying workers for the wage insurance benefit would cut the Department of Labor's workload and promote program participation. Currently, workers opting for wage insurance must also surrender eligibility for TAA-funded training and be reemployed full-time. The provision eliminates these restrictions.

The Conferees believe that eliminating the 26-week deadline for reemployment, eliminating the need for firms to be certified for wage insurance, eliminating the prohibition on wage insurance beneficiaries receiving TAA-funded training, and allowing part-time workers and former TRA recipients access to the wage insurance benefit should make the wage insurance program more accessible and attractive.

Effective Date

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

5. SUBPART E—OTHER MATTERS

Office of Trade Adjustment Assistance (Section 1751 (amending Subchapter C of chapter 2 of title II of the Trade Act of 1974))

Present Law

The TAA for Workers program is currently operated by the Employment and Training Administration at the Department of Labor.

Explanation of Provision

The provision creates an Office of Trade Adjustment Assistance headed by an administrator who shall report directly to the Deputy Assistant Secretary for Employment and Training Administration. Under the provision, the administrator will be responsible for overseeing and implementing the TAA for Workers program and carrying out functions delegated to the Secretary of Labor, including: making group certification determinations; providing TAA information and assisting workers and others assisting such workers prepare petitions or applications for program benefits (including health care benefits); ensuring covered workers receive Section 235 employment and case management services; ensuring States comply with the terms of their Section 239 agreements; advocating for workers applying for benefits; and operating a hotline that workers and employers may call with questions about TAA benefits, eligibility requirements, and application procedures.

The provision requires the administrator to designate an employee of the Department with appropriate experience and expertise to receive complaints and requests for assistance, resolve such complaints and requests, compile basic information concerning the same, and carry out other tasks that the Secretary specifies.

Reasons for Change

It is the view of the Conferees that creating an Office of Trade Adjustment Assistance in the Department of Labor with primary accountability for the management and performance of the TAA for Workers program will improve the program's operation.

The creation of the Office of Trade Adjustment Assistance should not interfere with the coordination of services provided by TAA, the National Emergency Grant program, and Department of Labor Rapid Response services.

Effective Date

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act.

Accountability of State Agencies; Collection and Publication of Program Data; Agreements with States (Section 1752 (amending Section 239 of the Trade Act of 1974))

Present Law

Present law gives the Secretary of Labor the authority to delegate to the States through agreements many aspects of TAA implementation, including responsibilities to (1) receive applications for TAA and provide payments; (2) make arrangements to provide certain employment services through other Federal programs; and (3) issue waivers. It also mandates that any agreement entered into shall include sections requiring that the provision of TAA services and training be coordinated with the provision of Workforce Investment Act (WIA) services and training. In carrying out its responsibilities, each State must notify workers who apply for UI about TAA, facilitate early filing for TAA benefits, advise workers to apply for training when they apply for TRA, and interview affected workers as soon as possible for purposes of getting them into training. States must also submit to the Department of Labor information like that provided under a WIA State plan.

Explanation of Provision

The provision requires the Secretary, either directly or through the States (through cooperating agreements), to make the employment and case management services described in the amended section 235 available to TAA eligible workers. TAA eligible workers are not required to accept or participate in such services, however, if they choose not to do so.

The provision requires States and cooperating State agencies to implement effective control measures and to effectively oversee the operation and administration of the TAA program, including by monitoring the operation of control measures to improve the accuracy and timeliness of reported data.

The provision also requires States and cooperating State agencies to report comprehensive performance accountability data to the Secretary, on a quarterly basis.

Reasons for Change

To ensure that the employment and case management services described in the amended section 235 are made available to TAA

enrollees as required under that section, the Conferees believe that it is necessary to incorporate those obligations into the agreements that the Department of Labor enters into with each of the States concerning the administration of TAA.

Effective Date

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

Verification of Eligibility for Program Benefits (Section 1753 (amending Section 239 of the Trade Act of 1974))

Present Law

There is no provision in present law.

Explanation of Provision

Section 1753 requires a State to re-verify the immigration status of a worker receiving TAA benefits using the Systematic Alien Verification for Entitlements (SAVE) Program (42 U.S.C. 1320b–7(d)) if the documentation provided during the worker's initial verification for the purposes of establishing the worker's eligibility for unemployment compensation would expire during the period in which that worker is potentially eligible to receive TAA benefits.

The section also requires the Secretary to establish procedures to ensure that the re-verification process is implemented properly and uniformly from State to State.

Reasons for Change

This provision is intended to ensure that workers maintain a satisfactory immigration status while receiving benefits. This section was included for the purposes of the TAA program only and should not be extended to other programs.

Effective Date

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

Collection of Data and Reports; Information to Workers (Section 1754 (amending Subchapter C of chapter 2 of title II of the Trade Act of 1974))

Present Law

Present law does not contain statutory language requiring the collection of data or performance goals and the TAA program has suffered a history of problems with its performance data that has undermined the data's credibility and limited their usefulness. Most of the outcome data reported in a given program year actually reflects participants who left the program up to 5 calendar quarters earlier. In addition, as of FY 2006, the Department of Labor does not consistently report TAA data by State or industry or by services or benefits received.

While the Department of Labor has taken some steps aimed at improving performance data, the data remain suspect and fail to

capture outcomes for some of the program's participants, and many participants are not included in the final outcomes at all.

Explanation of Provision

The provision would require the Secretary of Labor to implement a system for collecting data on all workers who apply for or receive TAA. The system must include the following data classified by State, industry, and nationwide totals: number of petitions; number of workers covered; average processing time for petitions; a breakdown of certified petitions by the cause of job loss (increased imports etc.); the number of workers receiving benefits under any aspect of TAA (broken down by type of benefit); the average time during which workers receive each type of benefit; the number of workers enrolled in training, classified by type of training; the average duration of training; the number and type of training waiver granted; the number of workers who complete and do not complete training; data on outcomes, including the sectors in which workers are employed after receiving benefits; and data on rapid response activities.

The provision would also require, by December 15 of each year, the Secretary to provide to the Senate Finance Committee and the House Committee on Ways and Means a report that includes a summary of the information above, information on distributions of training funds under section 236(a)(2), and any recommendations on whether changes to eligibility requirements, benefits, or training funding should be made based on the data collected. Those data must be made available to the public on the Department of Labor's website in a searchable format and must be updated quarterly.

Reasons for Change

The Conferees believe that valuable information on TAA and its impact is neither being collected nor being made publicly available. This, in turn, inhibits the ability of Congress to perform its oversight responsibilities and, if necessary, to refine and improve the program, its performance, and worker outcomes. Additionally, the Conferees believe that all of the data that the Department of Labor gathers should be made available and posted on its website in a searchable format. This will enhance the accountability of the TAA program and the Department of Labor, not just to Congress, but to the American people as well.

Effective Date

The provision goes into effect on the date of enactment of this Act.

Fraud and recovery of overpayments (Section 1755 (amending Section 243(a)(1) of the Trade Act of 1974))

Present Law

An overpayment of TAA benefits may be waived if, in accordance with the Secretary's guidelines, the payment was made without fault on the part of such individual, and requiring such repayment would be contrary to "equity and good conscience."

Explanation of Provision

The provision states that the Secretary shall waive repayment if the overpayment was made without fault on the part of such individual and if repayment "would cause a financial hardship for the individual (or the individual's household, if applicable) when taking into consideration the income and resources reasonably available to the individual or household and other ordinary living expenses of the individual or household."

Reasons for Change

The Conferees believe that the Department of Labor has adopted a very strict standard for issuing overpayment waivers. In particular, 20 CFR 617.55(a)(2)(ii)(C) defines equity and good conscience to require "extraordinary and lasting financial hardship" that would "result directly" in the "loss of or inability to obtain minimal necessities of food, medicine, and shelter for a substantial period of time" and "may be expected to endure for the foreseeable future." The Conferees understand that no worker has met this strict waiver standard. In including standard statutory waiver language in TAA, there is no indication that Congress intended to make waivers impossible to secure. To the contrary, the Conferees believe that Congress intended that overpaid individuals who are without fault and unable to repay their TAA overpayments should have a reasonable opportunity for waivers of the requirement to return those overpayments. The provision clarifies this intent.

Effective Date

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

Sense of Congress on Application of Trade Adjustment Assistance (Section 1756 (amending Chapter 5 of title II of the Trade Act of 1974))

Present Law

There is no provision in present law.

Explanation of Provision

The provision expresses the Sense of Congress that the Secretaries of Labor, Commerce, and Agriculture should apply the provisions of their respective trade adjustment assistance programs with the utmost regard for the interests of workers, firms, communities, and farmers petitioning for benefits.

Reasons for Change

Courts reviewing determinations by the Department of Labor regarding certification for trade adjustment assistance have stated that the Department is obliged to conduct its investigations with "utmost regard for the interests of the petitioning workers." See, e.g., Former Employees of Komatsu Dresser v. United States Secretary of Labor, 16 C.I.T. 300, 303 (1992) (citations omitted). The courts have explained that such statements flow from the ex parte nature of the Department's certification process (as opposed to a ju-

dicial or quasi-judicial proceeding) and the remedial purpose of the trade adjustment assistance program. This section reflects such statements and extends them to the firms, farmers, and communities programs.

Effective Date

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

Consultations in Promulgation of Regulations (Section 1757 (amending Section 248 of the Trade Act of 1974))

Present Law

The Secretary is required to prescribe necessary regulations.

Explanation of Provision

This provision requires the Secretary to consult with the Senate Finance Committee and the House Committee on Ways and Means 90 days prior to the issuance of a final rule or regulation.

Reasons for Change

Requiring that the Secretary consult with the relevant committees 90 days prior to the issuance of a final rule or regulations will help ensure that such rules and regulations reflect Congress' intent.

Effective Date

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

B. Part II—Trade Adjustment Assistance for Firms

Trade Adjustment Assistance for Firms (Section 1761–1767 (amending Sections 251, 254, 255, 256, 257, and 258 of the Trade Act of 1974))

Present Law

A firm may file a petition for certification with the Secretary of Commerce. Upon receipt of the petition, the Secretary shall publish a notice in the Federal Register that the petition has been received and is being investigated. The petitioner, or anyone else with a substantial interest, may request a public hearing concerning the petition.

To be certified to receive TAA benefits, a firm must show (1) a "significant" number of workers became or are threatened to become totally or partially separated; (2) sales or production of an article, or both, decreased absolutely, or sales or production, or both, of an article that accounted for not less than 25 percent of the total production or sales of the firm during the 12-month period preceding the most recent 12-month period for which data are available have decreased absolutely; and (3) increased imports of competing articles "contributed importantly" to the decline in sales, production, and/or workforce.

A firm certified under section 251 has two years in which to file an adjustment assistance application, which must include an economic adjustment proposal.

In deciding whether to approve an application, the Secretary of Commerce must determine that the proposal (1) is reasonably calculated "to materially contribute" to the economic adjustment of the firm; (2) gives adequate consideration to the interests of the firm's workers; and (3) demonstrates that the firm will use its own resources for adjustment.

Criminal and civil penalties are applicable for, among other things, making false statements or failing to disclose material facts. However, the penalties do not cover the acts and omissions of customers or others responding to queries made in the course of an investigation of a firm's petition.

The Secretary must make its decisions within 60 days.

Explanation of Provision

The provision makes service sector firms potentially eligible for benefits under the TAA for Firms program. It also expands the look back so that all firms can use the average of one, two, or three years of sales or production data, as opposed to one year, to show that the firm's sales, production, or both, have decreased absolutely or that the firm's sales, production, or both of an article or service that accounts for at least 25 percent of its total production, or sales have decreased absolutely.

In determining eligibility, the provision makes clear that the Secretary may use data from the preceding 36 months to determine an increase in imports, and may determine that increased imports exist if customers accounting for a significant percentage of the decline in a firm's sales or production certify that their purchases of imported articles or services have increased absolutely or relative to the acquisition of such articles or services from suppliers in the United States.

The provision requires the Secretary of Commerce, upon receiving information from the Secretary of Labor that the workers of a firm are TAA-covered, to notify the firm of its potential TAA eligibility.

The provision requires the Secretary of Commerce to provide grants to intermediary organizations to deliver TAA benefits. The provision requires the Secretary to endeavor to align the contracting schedules for all such grants by 2010, and to provide annual grants to the intermediary organizations thereafter. The provision requires the Secretary to develop a methodology to ensure prompt initial distribution of a portion of the funds to each of the intermediary organizations, and to determine how the remaining funds will be allocated and distributed to them. The Secretary must develop the methodology in consultation with the Senate Finance Committee and the House Committee on Ways and Means.

The provision amends the penalties provision in section 259 to cover entities, including customers, providing information during an investigation of a firm's petition. Additionally, the provision requires the Secretary of Commerce to submit an annual report demonstrating the operation, effectiveness, and outcomes of the TAA for Firms program to the Senate Finance Committee and the

House Committee on Ways and Means, and to make the report available to the public. The methodology for the distribution of funds to the intermediary organizations shall include criteria based on the data in the report. The provision creates rules relating to the disclosure of confidential business information included in this annual report.

Reasons for Change

Most service sector firms are currently ineligible for the TAA for Firms program because of a statutory requirement that the workers must have been employed by a firm that produces an "article." In an era when 80 percent of U.S. workers are employed in the service sector, the Conferees believe service sector firms should be eligible for TAA.

The Conferees also note that firms currently have a limited "look back" under existing law, which unfairly restricts their ability to show that increased imports are hurting their businesses.

Because data is not always readily available to demonstrate an increase in imports of articles or services, or to show how such increased imports compete with the articles or services of a particular firm, the Conferees believe that the Secretary should be able to utilize information from the customers of a firm that account for a significant percentage of the decline in the firm's sales or production to verify these customers have increased their imports of the relevant articles or services, either absolutely or relative to their purchases from domestic suppliers.

Since a firm may not know that it could be eligible for TAA benefits, despite the fact that workers at the firm have qualified for the TAA for workers program, the Conferees believe it is important to give these firms notice of their potential eligibility for TAA benefits.

The Conferees are concerned that at present, the Economic Development Administration (EDA) is entering into contracts with intermediary organizations that vary in length. Thus, the contracts begin and end at different times during the year. The provision requires the Secretary of Commerce to provide grants to intermediary organizations to deliver TAA benefits and, to the maximum extent practicable, that contracts with such organizations be for 12 month periods and have the same beginning and end dates. The Conferees will leave it to the discretion of the Secretary to determine the appropriate 12 month contract cycle.

The Conferees also believe that the methodology for distributing funds to intermediary organizations should be based in part on their performance, the number of firms they serve, and the outcomes of firms completing the program. The Secretary of Commerce should consult Congress before finalizing such methodology.

The Conferees understand that some customers provide inaccurate or incomplete information in response to questionnaires posed by the Secretary. The penalty language included in this provision is designed to address this problem.

Effective Date

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

Extension of Authorization of Trade Adjustment Assistance for Firms (Section 1764)

Present Law

The authorization of the TAA for Firms program expired on December 31, 2007. The program is currently authorized at $16 million per year.

Explanation of Provision

The provision reauthorizes the program through December 31, 2010, and increases its funding to $50 million per year for fiscal years 2009 and 2010, and prorates such funding for the period beginning October 1, 2010 and ending December 31, 2010. Of that amount, $350,000 is set aside each year to fund full-time TAA for Firms positions at the Department of Commerce, including a director of the TAA for Firms program.

Reasons for Change

The Conferees believe that the TAA for Firms program has been underfunded, as at least $15 million in approved projects lack funding. Additionally, the Firms team at the Department of Commerce lacks adequate full-time staff to administer the program.

Effective Date

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

C. PART III—TRADE ADJUSTMENT ASSISTANCE FOR COMMUNITIES

Trade Adjustment Assistance for Communities (Section 1771–1773)

Present Law

There is no provision in present law.

Explanation of Provision

The provision creates a Trade Adjustment Assistance for Communities program that will allow a community to apply for designation as a community affected by trade. A community may receive such designation from the Secretary of Commerce if the community demonstrates that (1) the Secretary of Labor has certified a group of workers in the community as eligible for TAA for Workers benefits, the Secretary of Commerce has certified a firm in the community as eligible for TAA for Firms benefits, or a group of agricultural producers in the community has been certified to receive benefits under the TAA for Farmers and Fishermen program; and (2) the Secretary determines that the community is significantly affected by the threat to, or the loss of, jobs associated with that certification. The Secretary of Commerce must notify the community and the Governor of the State in which the community is located

upon making an affirmative determination that the community is affected by trade.

The Secretary of Commerce shall provide technical assistance to a community affected by trade to assist the community to (1) diversify and strengthen its economy; (2) identify impediments to economic development that result from the impact of trade; and (3) develop a community strategic plan to address economic adjustment and workforce dislocation in the community. The Secretary of Commerce shall also identify Federal, State and local resources available to assist the community, and ensure that Federal assistance is delivered in a targeted, integrated manner. The Secretary shall establish an Interagency Community Assistance Working Group to assist in coordinating the Federal response.

A community affected by trade may develop a strategic plan for the community's economic adjustment and submit the plan to the Secretary. The plan should be developed, to the extent possible, with participation from local, county, and State governments, local firms, local workforce investment boards, labor organizations, and educational institutions. The plan should include an analysis of the economic development challenges facing the community and the community's capacity to achieve economic adjustment to these challenges; an assessment of the community's long-term commitment to the plan and the participation of community members; a description of projects to be undertaken by the community; a description of educational opportunities and future employment needs in the community; and an assessment of the funding required to implement the strategic plan.

Of the funds appropriated, the Secretary of Commerce may award up to $25 million in grants to assist the community in developing a strategic plan.

The provision authorizes $150 million in discretionary grants to be awarded by the Secretary of Commerce. An eligible community may apply for a grant from the Secretary to implement a project or program included in the community's strategic plan. Grants may not exceed $5 million. The Federal share of the grant may not exceed 95 percent of the cost of the project and the community's share is an amount not less than 5 percent. Priority shall be given to grant applications submitted by small and medium-sized communities.

Educational institutions may also apply for Community College and Career Training grants from the Secretary of Labor. Grant proposals must include information regarding (1) the manner in which the grant will be used to develop or improve an education or training program suited to workers eligible for the TAA for Workers program; (2) the extent to which the program will meet the needs of the workers in the community; (3) the extent to which the proposal fits into a community's strategic plan or relates to a Sector Partnership Grant received by the community; and (4) any previous experience of the institution in providing programs to workers eligible for TAA. Educational institutions applying for a grant must also reach out to employers in the community to assess current deficiencies in training and the future employment opportunities in the community.

The provision authorizes $40 million in discretionary grants to be awarded by the Secretary of Labor for the Community College and Career Training Grant program. Priority shall be given to grant applications submitted by eligible institutions that serve communities that the Secretary of Commerce has certified under section 273.

The provision also establishes a Sector Partnership Grant program that allows the Secretary of Labor to award industry or sector partnership grants to facilitate efforts of the partnership to strengthen and revitalize industries. The partnerships shall consist of representatives of an industry sector; local county, or State government; multiple firms in the industry sector; local workforce investment boards established under section 117 of the Workforce Investment Act of 1998 (29 U.S.C. 2832); local labor organizations, including State labor federations and labor-management initiatives, representing workers in the community; and educational institutions.

The provision authorizes $40 million in discretionary grants to be awarded by the Secretary of Labor for the Sector Partnership Grant program. The Sector Partnership Grants may be used to help the partnerships identify the skill needs of the targeted industry or sector and any gaps in the available supply of skilled workers in the community impacted by trade; develop strategies for filling the gaps; assist firms, especially small- and medium-sized firms, in the targeted industry or sector increase their productivity and the productivity of their workers; and assist such firms to retain incumbent workers.

Reasons for Change

The TAA for Workers program provides assistance to individual workers who lose their jobs because of trade with foreign countries. The program does not, however, provide broader assistance when the closure or downsizing of a key industry, company, or plant creates severe economic challenges for an entire community impacted by trade. The Conferees believe there is a need for additional programs and incentives to assist such communities. Accordingly, the provision creates a TAA for Communities program to provide a coordinated Federal response to eligible communities by identifying Federal, State and local resources and helping such communities to access available Federal assistance.

The provision does not establish precise criteria for determining when a particular community is impacted by trade. In the view of the Conferees, this determination is better left to the discretion of the Secretary of Commerce, who can evaluate specific facts in specific cases. As a general matter, the Conferees believe the Secretary should review the underlying certification(s) that provide a basis for a community's application and evaluate the potential impact of the job losses (or threat thereof) associated with such certification(s) on the broader community, given the community's overall economic situation. The Conferees intend for the Secretary to focus grants on communities facing the most difficult hardships, to the extent practicable.

The Conferees believe small- and medium-sized communities, and in particular, those in rural areas where the manufacturing

sector has historically been a significant employer, would benefit from the technical assistance and grants available through this program. Such communities have been disproportionately impacted by the adverse effects of trade, where some lumber mills, factories and call centers, for instance, have scaled back operations or closed entirely in response to increased trade and globalization.

The Conferees do not intend for the preference for such communities to result in all grants, or the majority of grants, going to such communities to the exclusion of other impacted communities.

Effective Date

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act.

Authorization of Appropriations for Trade Adjustment Assistance for Communities (Section 1772)

Present Law

There is no provision in present law.

Explanation of Provision

The provision authorizes $150,000,000 to the Secretary of Commerce for each of fiscal years 2009 and 2010, and $37,500,000 for the period beginning October 1, 2010 through December 31, 2010 to carry out the TAA for Communities program.

The provision authorizes $40,000,000 to the Secretary of Labor for each of fiscal years 2009 and 2010, and $10,000,000 for the period beginning October 1, 2010 through December 31, 2010 to carry out the Community College and Career Training Grant Program.

The provision authorizes $40,000,000 to the Secretary of Labor for each of fiscal years 2009 and 2010, and $10,000,000 for the period beginning October 1, 2010 through December 31, 2010 to carry out the Sector Partnership Grant Program.

Effective Date

The provision goes into effect on the date of enactment of this Act.

D. PART IV—TRADE ADJUSTMENT ASSISTANCE FOR FARMERS

Trade Adjustment Assistance for Farmers (Section 1781–1786 (amending sections 291, 292, 293, 296 and 297 of the Trade Act of 1974))

Present Law

A group of agricultural producers or their representative may file a petition for certification with the Secretary of Agriculture. Upon receipt of the petition, the Secretary shall publish a notice in the Federal Register that the petition has been received and is being investigated. The petitioner, or anyone else with a substantial interest, may request a public hearing concerning the petition.

To be certified to receive TAA benefits under this chapter, the group of producers must show (1) that the national average price of the agricultural commodity in the most recent marketing year is less than 80 percent of the national average price for the com-

modity for the 5 previous marketing years, and (2) that increased imports of articles like or directly competitive with the commodity contributed importantly to the decline in price.

A group of producers certified under Section 291 has one year to receive TAA benefits, but may apply to be re-certified for a second year of benefits if the group can show a further 20 percent price decline in the national average price of the commodity, and that imports continued to contribute importantly to that decline.

To qualify to receive benefits, individual agricultural producers that are covered by a certified petition must show (1) that the individual producer produced the qualified commodity; and (2) the net income of the producer has decreased. Producers meeting these criteria are eligible to participate in an initial technical assistance course, and to receive cash benefits, not to exceed $10,000, based on their production and the decline in price for the commodity. Where available, the producer may also attend more intensive technical assistance.

Explanation of Provision

The provision defines an agricultural commodity producer, for the purpose of the TAA for Farmers program, to include fishermen, as well as farmers.

The provision allows a group of producers to petition the Secretary based on a 15 percent decline in price, value of production, quantity of production, or cash receipts for the commodity, rather than a 20 percent decline in price. The provision shortens the look back period, from an average of 5 years to an average of the national average price for the previous three year period. Petitioning producers must also show that imports contributed importantly to the decline in price, production, value of production, or cash receipts.

Once the Secretary certifies a group of commodity producers for TAA, individual producers can qualify for benefits if the producer shows (1) that they are producers of the commodity; and (2) that the price received, quantity of production, or value of production for the commodity has decreased.

Producers deemed eligible to receive benefits by the Secretary are eligible to receive initial technical assistance, and may opt to receive intensive technical assistance, which consists of a series of courses designed for producers of the certified commodity. Upon completion of the series of courses, the producer develops an initial business plan which (1) reflects the skills gained by the producer during the courses; and (2) demonstrates how the producer intends to apply these skills to the producer's farming or fishing operation. Upon approval by the Secretary of the business plan described above, the producer is entitled to receive up to $4,000 to implement the business plan or to assist in the development of a long-term business plan.

Producers who complete an initial business plan may choose to receive assistance to develop a long-term business adjustment plan. The Secretary must review the plan to ensure that it (1) will contribute to the economic adjustment of the producer; (2) considers the interests of the producer's employees, if any; and (3) demonstrates that the producer has sufficient resources to implement

the plan. If the Secretary approves the plan, the producer is eligible to receive up to $8,000 to implement the long-term business plan.

Once a petition is certified for the group of producers, qualifying producers are eligible for benefits for a 36-month period. A producer may not receive more than $12,000 in any 36-month period to develop and implement business plans under the program.

The provision allows fishermen and aquaculture producers who are otherwise eligible to receive TAA benefits to demonstrate increased imports based on imports of farm-raised or wild-caught fish or seafood, or both.

Reasons for Change

The Conferees believe that the 20 percent price decline currently required for a group of producers to be certified under the TAA for Farmers program is too high, and creates an unnecessary barrier for producers to qualify for TAA benefits. Further, producers and the Department of Agriculture were concerned that the current five-year look back period was too long and burdensome for producers.

Additionally, since net farm income is a function of many factors, it has proven very difficult for producers to show the required decline in net income, even when the price for specific commodities had declined significantly. Several disputes regarding whether producers met the net income test were taken to the U.S. Court of International Trade, resulting in significant administrative expense for both the producers and the Department of Agriculture.

The Conferees believe that demonstrating a decline in the production or price of the commodity facing import competition is a better measure of the impact of trade on the individual producer, rather than net income. The provision would allow farmers to demonstrate that either their production decisions or price received for the qualified commodity were affected.

The Conferees also believe that the focus of the TAA for Farmers program should be adjustment assistance, rather than cash benefits. Under the current program, most producers received only initial technical assistance, with little opportunity for additional curricula. The Conferees believe that all producers eligible for TAA benefits should receive more thorough technical assistance and the opportunity for individualized business planning, with financial assistance provided to help the producer implement the business plans.

Further, technical assistance should be provided by the Department of Agriculture through the National Institute on Food and Agriculture ("NIFA"), which may choose to make grants to land grant universities and other outside organizations to assist in the development and delivery of technical assistance. NIFA (formerly the Cooperative State Research, Education, and Extension Service) delivers technical assistance under the current Farmers program, and had successfully developed curricula to respond to producers' adjustment needs.

The Conferees believe that the current one-year limit to obtain TAA benefits unnecessarily limits producers' ability to access technical assistance, particularly when farmers and fishermen must

spend significant portions of each year in the fields or at sea. Extending the eligibility period to 36 months will allow producers to take advantage of all the benefits offered, and will eliminate the need for the current burdensome recertification process.

The Conferees believe that fishermen and aquaculture producers who are otherwise eligible for TAA should be able to demonstrate an increase in imports of like or directly competitive products without regard to whether those imported products were wild-caught or farm-raised. Current law allows these producers to apply for benefits based on imports of farm raised fish and seafood only.

The Conferees expect that the Department of Agriculture will fully fund and operate the TAA for Farmers and Fishermen program for the full duration of each fiscal year for which it is authorized.

Effective Date

The provision goes into effect upon expiration of the 90-day period beginning on the date of enactment of this Act, and applies to petitions filed on or after that date.

Extension of Authorization and Appropriation for Trade Adjustment Assistance for Farmers (Section 1787 (amending Section 298 of the Trade Act of 1974))

Present Law

The authorization and appropriation for the TAA for Farmers program expired on December 31, 2007. The program is currently authorized at $90 million per year.

Explanation of Provision

This provision reauthorizes the program through December 30, 2010, and maintains its funding at $90 million per year for fiscal years 2009 and 2010. The provision further provides funding on a prorated basis for the period beginning October 1, 2010, and ending December 31, 2010.

Effective Date

The provision goes into effect on the date of enactment of this Act.

E. Part V—General Provision

Government Accountability Office Report (Section 1793)

Present Law

There is no provision in present law.

Explanation of Provision

The provision requires the Comptroller General of the United States to prepare and submit a report to the Senate Finance Committee and the House Committee on Ways and Means on the operation and effectiveness of these amendments to chapters 2, 3, 4, and 6 of the Trade Act no later than September 30, 2012.

Reasons for Change

It is critical that GAO review and evaluate the TAA program to assess the changes made by this legislation to ensure that they have improved the effectiveness, operation, and performance of the program.

Effective Date

The provision goes into effect on the date of enactment of this Act.

2. CUSTOMS AND BORDER PROTECTION COLLECTIONS[227]

I. OVERVIEW

The conference report prevents U.S. Customs and Border Protection ("CBP") from collecting over $92 million in antidumping and countervailing duties that CBP collected on imports from Canada and Mexico between 2001 and 2005, and later distributed to U.S. companies that petitioned the U.S. Government for relief.

II. HOUSE BILL

No provision

III. SENATE AMENDMENT

Section 1801 of the American Recovery and Reinvestment Act of 2009, as passed by the Senate, has four sections. First, it prohibits the Secretary of Homeland Security, or any other person, from requiring repayment of, or in any other way recouping, duties that were (1) distributed pursuant to the Continued Dumping and Subsidy Offset Act of 2000 ("CDSOA"); (2) assessed and paid on imports of goods from Canada and Mexico; and (3) distributed on or after January 1, 2001, and before January 1, 2006. Second, it prohibits CBP from offsetting any current or future duty distributions on goods from countries other than Canada and Mexico in an attempt to recoup duties described above. Third, the provision requires CBP to refund any such duty repayments or recoupments it has already received. Further, it requires CBP to fully distribute any duties it is withholding as an offset against current or future duty distributions. Fourth, the provision clarifies that CBP is not prohibited from collecting payments resulting from (1) false statements or other misconduct by a recipient of a duty payment or (2) re-liquidation of entries with respect to which duty payments were made.

IV. CONFERENCE REPORT

The conferees adopted the Senate provision. The conferees do not intend this provision to amend the antidumping or countervailing duty laws of the United States.

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[227] Description prepared by the majority staffs of the House Committee on Ways and Means and the Senate Committee on Finance.

TITLE II OF DIVISION B

ASSISTANCE FOR UNEMPLOYED WORKERS AND STRUGGLING FAMILIES

CONFERENCE DOCUMENT

H.R. 1

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ASSISTANCE FOR UNEMPLOYED WORKERS AND STRUGGLING FAMILIES

Short Title (House bill Section 2000; Senate bill Section 2000; Conference agreement Section 2000)

Current Law

No provision.

House Bill

The "Assistance for Unemployed Workers and Struggling Families Act."

Senate Bill

Same as the House bill.

Conference Agreement

The conference agreement is the same as the House and Senate bills.

SUBTITLE A—UNEMPLOYMENT INSURANCE

Extension of Emergency Unemployment Compensation Program Benefits (House bill Sec. 2001; Senate bill Sec. 2001; Conference agreement Sec. 2001)

Current Law

Title IV, Emergency Unemployment Compensation, of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 26 U.S.C. 3304 note) as amended by the Unemployment Compensation Act of 2008 (Public Law 110–449) created a temporary emergency unemployment compensation program (EUC08). The program ends on the week ending on or before March 31, 2009. No compensation under the program is payable for any week beginning after August 27, 2009. Funds in the extended unemployment compensation account (EUCA) of the unemployment trust fund (UTF) are used for financing EUC08 payments. State administration funds are made from the employment security administration account (ESAA). Compensation for EUC08 payments to former employees of nonprofits and governments are from the general fund of the Treasury.

House Bill

The duration of the EUC08 program would extend through the week ending on or before December 31, 2009. No benefits would be payable for any week beginning after May 31, 2010. The extension would be financed through the general fund of the Treasury. The funds would not need to be repaid.

Senate Bill

Same provision.

Conference Agreement

The conference agreement includes the identical provisions of the House and Senate bills.

Increase in Unemployment Compensation Benefits (House bill Sec. 2002; Senate bill Sec. 2002; Conference agreement Sec. 2002)

Current Law

No such provision. Federal law does not provide formulas, floors, or ceilings of regular weekly State unemployment compensation amounts. In general, the States set weekly benefit amounts as a fraction of the individual's average weekly wage up to some State-determined maximum. Some States include dependents' allowances in addition to the underlying benefit.

House Bill

The provision would create an additional, federally-funded $25 weekly benefit that would be available to all individuals receiving regular unemployment compensation (UC) benefits. All the provisions of section 2002 would also apply to regular UC, extended benefits (EB), and EUC08 benefits. It would require States to not take the additional compensation into consideration when determining regular UC benefits (including any dependants' allowances). The additional benefit would be payable either at the same time and in the same manner as any regular UC payable for the week involved or payable separately but on the same weekly basis as any regular compensation otherwise payable. States would not be allowed to alter the method governing the computation of UC under State law in such a manner that the weekly benefit amount would be less than the benefit amount that would have been payable under State law as of December 31, 2008. Funding for the additional benefit would be appropriated from the general fund of the Treasury, without fiscal year limitation. The funds would not be required to be repaid.

States would pay the additional compensation to individuals once the State entered into an agreement with the Labor Secretary and ending before January 1, 2010. The additional compensation would be "grandfathered" for individuals who had not exhausted the right to regular compensation as of January 1, 2010. No additional compensation would be payable for any week beginning after June 30, 2010.

The additional benefit would be disregarded in considering the amount of income of any individual for any purposes under Medicaid and SCHIP.

Senate Bill

Same provision.

Conference Agreement

The conference agreement includes the identical provisions of the House and Senate bills.

Special Transfers for Unemployment Compensation Modernization (House bill Sec. 2003; Senate bill Sec. 2003; Conference agreement Sec. 2003)

Current Law

Section 903 of the Social Security Act (SSA) describes the set of conditions under which funds are transferred to eligible State unemployment accounts from the federal accounts in the Unemployment Trust Fund (UTF) when those federal account balances exceed certain levels. Transfers of excess funds in the UTF to State accounts are called Reed Act distributions. No Reed Act distributions are expected in the next 5 years.

Section 903(a)(2)(B) of the SSA describes the manner in which the distribution of Reed Act funds occurs. Funds are distributed to the State UTF accounts based on the State's share of estimated federal unemployment taxes (excluding reduced credit payments) made by the State's employers.

Unemployment Insurance Policy Letter 44–97, which interpreted section 5401 of P.L. 105–33, the Balanced Budget Act of 1997, says that States are not required to offer an alternative base period (ABP) in determining eligibility for UC benefits.

While federal laws and regulations provide broad guidelines on UC coverage, eligibility, and benefit determination, the specifics of regular UC benefits are determined by each State through State laws and regulations.

House Bill

The House bill would provide a special transfer of UTF funds from the federal unemployment account (FUA) of up to $7 billion to the State accounts within the UTF as "incentive payments" for changing or already having in place certain State UC laws. The maximum incentive payment allowable for a State would be calculated using the methods required by the Reed Act if a distribution were to have occurred on October 1, 2008.

One-third of the maximum payment would be contingent on State law calculating the base period by either:

(A) allowing use of a base period that includes the most recently completed calendar quarter before the start of the benefit year for the purpose of determining UC eligibility; or

(B) providing that, in the case of an individual who would not otherwise be UC-eligible under State law, eligibility shall be determined using a base period that includes the most recently completed calendar quarter.

The remaining 2/3 of the incentive payment would be contingent on qualifying for the first 1/3 payment and the applicable State law containing at least two of the following four provisions:

(A) No denial of UC under State law provisions relating to availability for work, active search for work, or refusal to accept work solely because the individual is seeking only part-time work. States may exclude an individual if the majority of the weeks of work in the individual's base period do not include part-time work. The Labor Secretary would define part-time.

(B) No UC disqualification for separation from employment if it is for compelling family reasons. These reasons must include (i) domestic violence, (ii) illness or disability of an immediate family member, and (iii) the need to accompany a spouse to a place from where it is impractical to commute and due to a change in location of the spouse's employment. The Labor Secretary would define immediate family member.

(C) Weekly UC continues for individuals who have exhausted all rights to regular benefits but are enrolled and making satisfactory progress in a State-approved training program or in a job training program authorized under the Workforce Investment Act of 1998. The benefit must be for at least an additional 26 weeks and be equivalent to the previously calculated UC benefit (including dependents' allowances) for the most recent benefit year. The training program must prepare the individual for entry into a "high-demand" occupation.

(D) UC Dependents' allowances are provided to all individuals with a dependent (as defined by State law) at a level equal to at least $15 per dependent per week. The aggregate limit on depend-

ents' allowances must be not less than the lesser of $50 or 50% of the weekly benefit amount for the benefit year.

Within 60 days after enactment, the Labor Secretary may prescribe (by regulation or otherwise) information required in relation to the compliance of the modernization requirements. The Labor Secretary would have 30 days after receiving a complete application to determine if modernization incentives are payable to the State.

The Labor Secretary, while determining if State law meets the requirements for an incentive payment, would disregard any State law provisions that are not currently effective as permanent law or are subject to a discontinuation under certain circumstances. Once the Treasury Secretary has been notified of the certification of the incentive payment, the appropriate transfer to the State account would occur within seven days. State law provisions which are to take effect within 12 months after the date of their certification would be considered to be in effect for the purposes of certification. States must be eligible for certification under section 303 [of the Social Security Act] and under section 3304 of the Federal Unemployment Tax Act (FUTA) [section 3304 of the Internal Revenue Code of 1986].

Applications submitted before enactment or after the latest date necessary (as determined by the Labor Secretary) will not be considered in order to ensure that all incentive payments are made before October 1, 2011. Incentive payments may be used only for the payment of UC benefits and dependents' allowances. An exception is made if the State appropriates the funds for administrative expenses. Funds that satisfy this exception may be used for the administration of UC law and for public employment offices.

The Treasury Secretary would be required to reserve $7 billion for incentive payments in the Federal Unemployment Account (FUA) of the UTF. Any amount so reserved for which the Secretary of the Treasury has not received a certification under the proposed paragraph (4)(B) of the bill by the deadline determined by the Secretary of Labor shall become unrestricted regarding its use as part of the FUA upon the close of fiscal year 2011.

The bill would transfer a total of $500 million from the federal employment security administration account (ESAA) to the States' accounts in the UTF within 30 days of enactment. Each State's transfers would be calculated using the methods required by the Reed Act if a distribution were to have occurred on October 1, 2008. Any amount transferred to a State account as a result of this $500 million transfer would be required to be used by the State agency of such State only in (A) payment of expenses incurred through carrying out of the purposes in State law required to receive the incentive payments, (B) improved outreach to individuals who might be eligible for regular UC by virtue of the changes in State law, (C) improvement of unemployment benefit and unemployment tax operations, including responding to increased demand for unemployment compensation, and (D) staff-assisted reemployment services for UC claimants.

Senate Bill

Same as the House bill, except that the Senate bill does not explicitly give the Secretary of Labor the ability to define part-time work.

The Senate bill would require that all payments be made before October 1, 2010 (rather than October 1, 2011) except in those States where the first day of the first regularly scheduled session of the State legislature following enactment begins after December 31, 2010. Those States' payments would be made before October 1, 2011.

Conference Agreement

The conference agreement follows the House bill with two exceptions.

If in a training program (option C under the qualifying conditions of the remaining 2/3 incentive payment), the agreement would allow States to not pay UC benefit if the individual is receiving stipends or other training allowances. Under the same training program option, the agreement would also allow States to opt to take any deductible income (as determined under State law) into account and offset the UC payment.

Temporary Assistance for States with Advances (House bill n.a.; Senate bill Sec. 2004; Conference agreement Sec. 2004)

Current Law

Section 1202(b) of the Social Security Act (42 U.S.C. 1322(b)) requires that States are charged interest on new loans that are not repaid by the end of the fiscal year in which they were obtained. The interest rate on the loans is the same rate as that paid by the federal government on State reserves in the UTF for the quarter ending December 31 of the preceding year, but not higher than 10% per annum. States may not pay the interest directly or indirectly from funds in their State account with the UTF.

Section 1202(b)(2) allows a State to borrow funds without interest from the FUA during the year if the State repays the loans by September 30 of the calendar year in which the advances were made. No loans may be made in October, November, or December of the calendar year of such an interest-free loan. Otherwise, the "interest-free" loan will accrue interest charges.

House Bill

No provision.

Senate Bill

The Senate bill would temporarily waive interest payments and the accrual of interest on advances to State unemployment funds by amending section 1202(b) of the Social Security Act. The interest payments that come due from the time of enactment of the proposal until December 31, 2010 would be deemed to have been made by the State. No interest on advances accrues during the period.

Conference Agreement

The conference agreement follows the Senate bill.

Full Federal Funding of Extended Unemployment Compensation for a Limited Period (House bill n.a.; Senate bill n.a.; Conference agreement Sec. 2005)

Current Law

The Extended Benefit (EB) program, established by the Federal-State Extended Unemployment Compensation Act of 1970 (EUCA), P.L. 91–373 (26 U.S.C. 3304, note), may extend receipt of unemployment benefits (extended benefits) at the State level if certain economic situations exist within the State.

Extended benefits (EB) are funded half (50%) by the federal government through its account for that purpose in the UTF; States fund the other half (50%) through their State accounts in the UTF.

Individual eligibility for EB payments, among other matters, requires that the worker has exhausted all rights to regular UC benefits and be within the State-determined benefit year (generally within 52 weeks of first claiming regular UC eligibility) when a State's EB program becomes active on account of economic conditions.

States that do not require a one-week UC waiting period, or have an exception for any reason to the waiting period, must pay 100% of the first week of EB (rather than 50%). P.L. 110–449, the Unemployment Compensation Extension Act of 2008, suspended this waiting week requirement from the time of its enactment until the week ending on or before December 8, 2009.

House Bill

No provision.

Senate Bill

No provision.

Conference Agreement

The conference agreement would temporarily alter Federal-State funding ratios. Extended benefits would be 100% federally financed from the date of enactment through January 1, 2010.

The agreement also would temporarily allow States to ignore benefit year calculations but instead base EB eligibility upon having qualified for and exhausted EUC08 benefits, disregarding benefit year calculations as long as the EB period fell between the date of enactment and before January 1, 2010.

The agreement would allow States to opt to grandfather those workers who received EUC08 payments and exhausted them on or after January 1, 2010. Those workers would be eligible to receive EB payments based on EUC08 exhaustion and disregarding benefit year determinations until the week ending on or before June 1, 2010.

The agreement would continue the temporary suspension of the waiting week requirement for federal funding until the week ending before May 30, 2010.

Temporary Increase in Extended Unemployment Benefits under the Railroad Unemployment Insurance Act. (House bill n.a.; Senate bill n.a.; Conference agreement Sec. 2006)

Current Law

The Railroad Unemployment Insurance Act (45 U.S.C. 351–369) provides up to 26 weeks of normal unemployment benefits for railroad employees. It also provides up to 13 weeks of extended benefits for railroad employees with 10 or more years of service.

House Bill

No provision.

Senate Bill

No provision.

Conference Agreement

The conference agreement would temporarily increase the duration of extended unemployment benefits for railroad workers. The agreement would add an additional 13 weeks to the maximum amount of time railroad workers may receive extended unemployment benefits, allowing for up to 26 weeks of extended benefits in addition to the 26 weeks of normal benefits provided under current law.

The agreement would apply to all qualifying railroad employees, regardless of their years of service (i.e., it would apply to those with fewer than 10 years of service, who do not qualify for extended benefits under current law). The provision would apply to employees who received normal unemployment benefits during the benefit year beginning July 1, 2008 and ending June 30, 2009. No extended benefits under this bill would begin after December 31, 2009.

The agreement would appropriate $20 million from the general fund of the Treasury to cover the cost of the additional extended unemployment benefits. Subsection 2006(b) would provide an additional $80,000 for administering the additional benefits. If the additional extended benefits were to reach $20 million in cost before December 31, 2009, the additional benefits would terminate.

SUBTITLE B—ASSISTANCE FOR VULNERABLE INDIVIDUALS

Emergency Fund for TANF Program (House bill Section 2101; Senate bill Sec. 2101; Conference agreement Sec. 2101)

Current Law

TANF Recession-Related Funds. The 1996 welfare reform established a contingency fund under the Temporary Assistance for Needy Families (TANF) block grant. To qualify for contingency dollars, States must spend under the TANF program a sum of their own dollars equal to their pre-TANF FY1994 spending and meet a test of economic need. Economic need is established by either: (1) Supplemental Nutrition Assistance Program (SNAP, formerly known as food stamps) participation for the most recent three months for which data are available that is at least 10% higher than it was during the corresponding three-month period in either

FY1994 or FY1995; or (2) a three-month average unemployment rate of at least 6.5% and that equals or exceeds 110% of the rate measured in the corresponding three-month period in either of the previous two years. Eligible expenditures above the pre-TANF level are matched at the Medicaid (Federal Medical Assistance Percentage or FMAP) rate. A state's annual contingency fund grant is capped at 20% of its basic TANF block grant. The 1996 welfare law appropriated $2 billion to the contingency fund. At the beginning of FY2009, about $1.3 billion remained in the contingency fund. The contingency fund is available to the 50 States and the District of Columbia. The Commonwealth of Puerto Rico, Guam, the Virgin Islands, and tribes operating tribal TANF programs are not eligible for contingency funds.

TANF Caseload Reduction Credit. TANF established federal work participation standards, which are numerical performance standards that States must meet or be subject to a financial penalty. A State must meet two standards—the all family standard of 50% and the two-parent standard of 90%. These standards may be met either by engaging participants in creditable activities or through reductions in the cash welfare caseload. States are given a caseload reduction credit toward the standards of one percentage point for each percent decline in the caseload from FY2005 to the preceding fiscal year. Under current law, the caseload reduction credit for FY2009 is based on caseload change from FY2005 to FY2008; the credit for FY2010 will be based on caseload change from FY2005 to FY2009; the caseload reduction credit for FY2011 will be based on caseload change from FY2005 to FY2010.

House Bill

TANF Recession Funds. The House bill retains the current TANF contingency fund and creates a new, temporary emergency contingency fund for FY2009 and FY2010. States with increased cash welfare caseloads under TANF or separate State programs funded with TANF State maintenance of effort dollars are eligible for capped grants from the fund. Also eligible are States with increased short-term non-recurrent benefit expenditures or increased subsidized employment expenditures under TANF and separate State programs. The fund reimburses States for 80% of the increased expenditures on basic assistance (cash welfare), short-term non-recurrent benefits, or subsidized employment in TANF and separate State programs, up to a cap. Increased caseloads and expenditures are measured on a quarterly basis, comparing each quarter in FY2009 and FY2010 to the corresponding quarter in the base years of FY2007 and FY2008. The applicable base period for a State varies depending on whichever results in the greatest increase for each State for the cash assistance caseload and by expenditure category.

Total combined State grants from the current law contingency fund and the emergency contingency fund are limited to 25% of a State's basic block grant. The emergency fund is appropriated such sums as necessary (no national funding cap, but total funding is limited by individual State caps discussed above). Puerto Rico, Guam, and the Virgin Islands are eligible for emergency contingency funds.

Caseload Reduction Credit. The House bill gives States an optional measuring period for the caseload reduction credit that would apply to the FY2010 and FY2011 standards. States would have the option to measure caseload reduction from FY2005 to either FY2007 or FY2008 when determining the caseload reduction credit toward the TANF work participation standards for those two years.

Senate Bill

The Senate bill includes all the provisions of the House bill, with modifications. The Senate bill caps the appropriation to the TANF emergency contingency fund at $3 billion. For the Commonwealth of Puerto Rico, Guam, and the Virgin Islands, any payments from the emergency contingency fund are excluded from the overall limit on federal funding for public assistance programs, including TANF, that applies to these jurisdictions. The Senate bill also gives States an optional measuring period for the caseload reduction credit for the FY2009 standards, allowing States to measure caseload reduction from FY2005 to FY2007 for that year.

Conference Agreement

The conference agreement follows the House and Senate bills, with some modifications. It sets the appropriation for the emergency contingency fund at $5 billion. The cap on each State's grant is modified, from a cap on each year's grant, to a cap on cumulative grants over the two years that the emergency fund will operate. Cumulative, combined grants from the existing contingency fund and the emergency fund are limited to 50% of a state's annual basic block grant for FY2009 and FY2010.

The agreement also makes tribes that operate tribal TANF programs eligible for the emergency fund. Tribes will be able to access the fund in the same manner as the States, and are similarly limited to cumulative emergency fund grants equal to 50% of its annual tribal family assistance grant.

The agreement follows the Senate bill for the temporary modifications to the caseload reduction credit. It also clarifies that all temporary provisions will be repealed. The emergency fund is repealed as of October 1, 2010. The change to the caseload reduction credit is repealed as of October 1, 2011.

Extension of Supplemental Grants (House bill n.a.; Senate bill Sec. 2102; Conference Agreement Sec. 2102).

Current Law

TANF provides supplemental grants to 17 States that met historical criteria of low federal grants for welfare per poor person and/or high population growth. Supplemental grants total $319 million, but are set to expire at the end of FY2009.

House Bill

No provision.

Senate Bill

The Senate bill extends supplemental grants through FY2010.

Conference Agreement

The conference agreement includes the Senate provision, extending supplemental grants through FY2010.

Clarification of Authority of States to Use TANF Funds Carried Over From Prior Years To Provide TANF Benefits and Services (House bill n.a.; Senate bill Sec. 2103; Conference Agreement Sec. 2103)

Current Law

States and tribes may reserve unused TANF funds without fiscal year limit. However, the use of these reserves is restricted to providing assistance (essentially cash welfare).

House Bill

No provision.

Senate Bill

Allows States to use reserve TANF funds for any TANF benefit, service, or activity.

Conference Agreement

The conference agreement includes the Senate provision.

Temporary Resumption of Prior Child Support Law (House bill Sec. 2103; Senate bill Sec. 2104; Conference agreement Sec. 2104)

Current Law

The federal government reimburses each State 66% of its expenditures on Child Support Enforcement (CSE) activities. The federal government also provides States with an incentive payment to encourage them to operate effective CSE programs. Federal law requires States to reinvest CSE incentive payments back into the CSE program or related activities. P.L. 109–171 (the Deficit Reduction Act of 2005) prohibited federal matching/reimbursement of CSE incentive payments that are reinvested in the CSE program.

House Bill

The House bill requires HHS to temporarily provide federal matching funds on CSE incentive payments that States reinvest back into the CSE program. This means that CSE incentive payments that are/were received by States and reinvested in the CSE program can be used to draw down federal funds. Federal matching funds for CSE incentive payments are to be provided for FY2009 and FY2010 (i.e., from October 1, 2008 through September 30, 2010).

Senate Bill

Same as the House bill, except that federal matching funds for CSE incentive payments are to be provided for the period October 1, 2008 through December 31, 2010 (i.e., from October 1, 2008 through December 31, 2010).

Conference Agreement

The conference agreement follows the House bill.

One-Time Emergency Payments to Certain Social Security, Supplemental Security Income, Railroad Retirement, Veterans Beneficiaries, and Certain Government Retirees (House bill Sec. 2102; Senate bill Sec. 1601; Conference agreement sections 2201 and 2202).

SECTION 2201. ECONOMIC RECOVERY PAYMENTS TO RECIPIENTS OF SOCIAL SECURITY, SUPPLEMENT SECURITY INCOME, RAILROAD RETIREMENT BENEFITS, AND VETERANS DISABILITY COMPENSATION OR PENSION BENEFITS.

Current Law

Title II of the Social Security Act authorizes cash benefits for retired and disabled workers and their dependents and survivors under the Old Age and Survivors Insurance (OASI) and Disability Insurance (DI) programs. Title XVI of the Social Security Act authorizes monthly cash benefits for blind and disabled persons and persons age 65 or over who have limited income and resources under the Supplemental Security Income (SSI) program.

The Railroad Retirement Act of 1974 authorizes cash benefits for retired and disabled railroad workers and their dependents and survivors.

Title 38 of the United States Code authorizes cash benefits for certain veterans and their dependents and survivors.

Current law does not authorize any one-time emergency payments for any of these programs.

Under Title II of the Social Security Act, a person is eligible for Social Security benefits only if he or she has insured status as the result of sufficient employment that was covered by the Social Security system and for which Social Security payroll taxes were paid. Federal employees hired before 1983 were covered by the Civil Service Retirement System (CSRS) and, unless they were eligible for the CSRS-Offset or elected to enroll in the Federal Employees Retirement System (FERS), they are not eligible for Social Security benefits on the basis of their federal service. In addition, some state and local government employees are not covered by the Social Security system and thus are not eligible for Social Security benefits on the basis of their public service.

Current law does not authorize any one-time tax credit for government retirees who are not eligible for Social Security benefits.

House Bill

The House bill authorizes a one-time emergency payment to be made to SSI recipients. This payment must be made by the Social Security Administration (SSA) at the earliest practical date and no more than 120 days after enactment of the law. The amount of this one-time emergency payment would be equal to the average monthly amount of federal SSI benefits paid to an individual (approximately $456) or a married couple (approximately $637) in the most recent month for which data are available.

To be eligible for the one-time emergency payment, a person must be eligible for an SSI benefit, other than a personal needs allowance, for at least one day during the month of the payment. A person who was eligible for an SSI benefit, other than a personal needs allowance, for at least one day during the two-month period preceding the month of the emergency payment and their SSI eligibility ended during the two-month period solely because their income exceeded the SSI income guidelines is also eligible for the one-time emergency payment.

Only persons who are determined by the Commissioner of Social Security in calendar year 2009 to fall into one of the categories described above are eligible for the emergency payment. Thus, a person who is awarded SSI benefits anytime after 2009 would not be eligible for the emergency payment, even if he or she is awarded benefits retroactive to a date before the date of the emergency payment.

The one-time emergency payment would be protected from garnishment and assignment and would not be considered income in the month of receipt and the following 6 months for the purposes of determining eligibility of the recipient (or the recipient's spouse or family) for any means-tested program funded entirely or in part with federal funds.

The House bill provides an appropriation of such sums as may be necessary to carry out this section, including any administrative costs associated with the payment.

Senate Bill

The Senate bill provides for a one-time economic recovery payment of $300 to adult Social Security (Old Age and Survivors Insurance and Disability Insurance) and Railroad Retirement beneficiaries, Supplemental Security Income (SSI) recipients, and veterans receiving compensation or pension benefits from the Department of Veterans Affairs.

The economic recovery payment would be made by the Secretary of the Treasury after eligible beneficiaries are identified by the Social Security Administration (SSA), the Railroad Retirement Board, and the Department of Veterans Affairs. Payments are to be made at the earliest practicable date and in no event later than 120 days after enactment.

To be eligible for the economic recovery payment, a person must have been during the three-month period prior to the month of the enactment: an adult Social Security Old Age and Survivors Insurance (OASI) or Disability Insurance (DI) beneficiary (including adults eligible for child's benefits on the basis of as disability that began before the age of 22, persons eligible under transitional insured status, and persons eligible under special rules for uninsured persons over the age of 72), an adult Railroad Retirement or disability beneficiary (including dependents, survivors, and disabled adult children), a veterans pension or compensation beneficiary, or an SSI recipient (excluding persons who only receive a personal needs allowance).

The Senate bill requires that economic recovery payment recipients live in the United States or its territories. The Senate bill prohibits any person from receiving more than one economic recov-

ery payment regardless of whether the individual is entitled to, or eligible for, more than one benefit or cash payment under this section.

The Senate bill prohibits the payment of an economic recovery payment to any Social Security beneficiary or person eligible for Social Security benefits paid by the Railroad Retirement Board, or SSI recipient, if, for the most recent month of the three-month period prior to enactment the person's benefits were not payable due to his or her status as a prisoner, inmate in a public institute, illegal alien, or fugitive felon.

The bill prohibits an economic recovery payment to any veterans compensation or pension beneficiary if, for the most recent month of the three-month period prior to enactment, the person's benefits were not payable due to his or her status as a prisoner or fugitive felon. It also prohibits the payment of an economic recovery payment to any person who dies before the date he or she is certified as eligible to receive a payment.

The bill limits the applicability of the economic recovery payments to retroactive beneficiaries by providing that no payment may be made for any reason after December 31, 2010.

The economic recovery payment would not be considered income in the month of receipt and the following 9 months for the purposes of determining eligibility of the recipient (or the recipient's spouse or family) for any means-tested program funded entirely or in part with federal funds. The payment would not be considered income for the purposes of taxation and would be protected from garnishment and assignment. However, the payment could be used to collect debts owed to the federal government. Electronic payments and payments to representative payees and fiduciaries would be authorized.

The Senate bill provides additional appropriations for the period from fiscal year 2009 through fiscal year 2011 in the amounts of: $57,000,000 to the Department of the Treasury; $90,000,000 to the SSA; $1,000,000 to the Railroad Retirement Board; and $7,200,000 to the Department of Veterans Affairs for administrative expenses associated with the one-time economic recovery payment. Of the money appropriated to the Department of Veterans Affairs, $100,000 shall be for the Information Systems Technology Account and $7,100,000 for general expenses related to the administration of the economic recovery payment. It also appropriates to the Department of the Treasury such sums as may be necessary for making economic recovery payments.

The Senate bill provides that the amount of a person's Making Work Pay tax credit authorized by Section 1001 of Division A of the Senate bill would be offset by the amount of any economic recovery payment that person receives.

Conference Agreement

The conference agreement follows the Senate bill, with some modifications. The conference agreement directs the Secretary of the Treasury to disburse a onetime Economic Recovery Payment of $250 to adults who were eligible for Social Security benefits, Railroad Retirement benefits, or veteran's compensation or pension benefits; or individuals who were eligible for Supplemental Security

Income (SSI) benefits (excluding individuals who receive SSI while in a Medicaid institution). Only individuals who were eligible for one of the four programs for any of the three months prior to the month of enactment shall receive an Economic Recovery Payment.

The provision stipulates that Economic Recovery Payments will only be made to individuals whose address of record is in 1 of the 50 states, the District of Columbia, Puerto Rico, Guam, the United States Virgin Islands, American Samoa, or the Northern Mariana Islands.

An individual shall only receive one $250 Economic Recovery Payment under this section regardless of whether the individual is eligible for a benefit from more than one of the four federal programs. If the individual is also eligible for the "Making Work Pay" credit from Section 1001, that credit shall be reduced by the Economic Recovery Payment made under this section.

Individuals who are otherwise eligible for an Economic Recovery Payment will not receive a payment if their federal program benefits have been suspended because they are in prison, a fugitive, a probation or parole violator, have committed fraud, or are no longer lawfully present in the United States.

The provision directs the Commissioner of Social Security, the Railroad Retirement Board, and the Secretary of Veterans Affairs to provide the Secretary of the Treasury with information and data to send the payments to eligible individuals and to disburse the payments.

The provision provides that the Economic Recovery Payments shall not be taken into account as income, or taken into account as resources for the month of receipt and the following 9 months, for purposes of determining the eligibility of such individual or any other individual for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program or under any State or local program financed in whole or in part with Federal funds.

The provision provides that Economic Recovery Payments shall not be considered gross income for income tax purposes and that the payments are protected by the assignment and garnishment provisions of the four federal benefit programs. The payments will be subject to the Treasury Offset Program.

The provision stipulates that if an individual who is eligible for an Economic Recovery Payment has a representative payee, the payment shall be made to the representative payee and the entire payment shall only be used for the benefit of the individual who is entitled to the Economic Recovery Payment.

The provision appropriates the following amounts for FY2009 through FY2011: to the Secretary of the Treasury, $131 million for administrative costs to carry out the provisions of this section and the new Section 36A (the Making Work Pay credit); to the Commissioner of Social Security, such funds as are necessary to make the payments and $90 million to carry out the provisions of this section; to the Railroad Retirement Board, such funds as are necessary to make the payments and $1.4 million to carry out the provisions of this section; and to the Secretary of Veterans Affairs, such funds as are necessary to make the payments, $100,000 for

the Information Systems Technology account and $7,100,000 to the General Operating Expenses account.

The Secretary of the Treasury shall commence making payments as soon as possible, but no later than 120 days after the date of enactment. No Economic Recovery Payments shall be made after December 31, 2010.

SECTION 2202. SPECIAL CREDIT FOR CERTAIN GOVERNMENT RETIREES.

Current Law

No provision.

House Bill

No provision.

Senate Bill

No provision.

Conference Agreement

The conference agreement creates a $250 credit ($500 for a joint return where both spouses are eligible) against income taxes owed for tax year 2009 for individuals who receive a government pension or annuity from work not covered by Social Security, and were not eligible to receive a payment under section 2201. If the individual is also eligible for the "Making Work Pay" credit from Section 1001, that credit shall be reduced by the credit made under this section. Each tax return on which this credit is claimed must include the social security number of the taxpayer (in the case of a joint return, the social security number of at least one spouse).μ The provision states that the credit under this section shall be a refundable credit.

The provision provides that any credit or refund allowed or made by this provision shall not be taken into account as income and shall not be taken into account as resources for the month of receipt and the following two months for purposes of determining the eligibility of such individual or any other individual for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program or under any State or local program financed in whole or in part with Federal funds.

The provision is effective on the date of enactment.

TITLE III—HEALTH INSURANCE ASSISTANCE

A. ASSISTANCE FOR COBRA CONTINUATION COVERAGE (SEC. 3002(A) OF THE HOUSE BILL, SEC. 3001 OF THE SENATE AMENDMENT, SEC. 3001 OF THE CONFERENCE AGREEMENT, AND SEC. 4980B AND NEW SECS. 139C, 6432, AND 6720C OF THE CODE)

PRESENT LAW

In general

The Code contains rules that require certain group health plans to offer certain individuals ("qualified beneficiaries") the opportunity to continue to participate for a specified period of time

in the group health plan ("continuation coverage") after the occurrence of certain events that otherwise would have terminated such participation ("qualifying events").[228] These continuation coverage rules are often referred to as "COBRA continuation coverage" or "COBRA," which is a reference to the acronym for the law that added the continuation coverage rules to the Code.[229]

The Code imposes an excise tax on a group health plan if it fails to comply with the COBRA continuation coverage rules with respect to a qualified beneficiary. The excise tax with respect to a qualified beneficiary generally is equal to $100 for each day in the noncompliance period with respect to the failure. A plan's noncompliance period generally begins on the date the failure first occurs and ends when the failure is corrected. Special rules apply that limit the amount of the excise tax if the failure would not have been discovered despite the exercise of reasonable diligence or if the failure is due to reasonable cause and not willful neglect.

In the case of a multiemployer plan, the excise tax generally is imposed on the group health plan. A multiemployer plan is a plan to which more than one employer is required to contribute, that is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer, and that satisfies such other requirements as the Secretary of Labor may prescribe by regulation. In the case of a plan other than a multiemployer plan (a "single employer plan"), the excise tax generally is imposed on the employer.

Plans subject to COBRA

A group health plan is defined as a plan of, or contributed to by, an employer (including a self-employed person) or employee organization to provide health care (directly or otherwise) to the employees, former employees, the employer, and others associated or formerly associated with the employer in a business relationship, or their families. A group health plan includes a self-insured plan. The term group health plan does not, however, include a plan under which substantially all of the coverage is for qualified long-term care services.

The following types of group health plans are not subject to the Code's COBRA rules: (1) a plan established and maintained for its employees by a church or by a convention or association of churches which is exempt from tax under section 501 (a "church plan"); (2) a plan established and maintained for its employees by the Federal government, the government of any State or political subdivision thereof, or by any instrumentality of the foregoing (a "governmental plan");[230] and (3) a plan maintained by an employer that normally employed fewer than 20 employees on a typical busi-

[228] Sec. 4980B.

[229] The COBRA rules were added to the Code by the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. No. 99–272. The rules were originally added as Code sections 162(i) and (k). The rules were later restated as Code section 4980B, pursuant to the Technical and Miscellaneous Revenue Act of 1988, Pub. L. No. 100–647.

[230] A governmental plan also includes certain plans established by an Indian tribal government.

ness day during the preceding calendar year[231] (a "small employer plan").

Qualifying events and qualified beneficiaries

A qualifying event that gives rise to COBRA continuation coverage includes, with respect to any covered employee, the following events which would result in a loss of coverage of a qualified beneficiary under a group health plan (but for COBRA continuation coverage): (1) death of the covered employee; (2) the termination (other than by reason of such employee's gross misconduct), or a reduction in hours, of the covered employee's employment; (3) divorce or legal separation of the covered employee; (4) the covered employee becoming entitled to Medicare benefits under title XVIII of the Social Security Act; (5) a dependent child ceasing to be a dependent child under the generally applicable requirements of the plan; and (6) a proceeding in a case under the U.S. Bankruptcy Code commencing on or after July 1, 1986, with respect to the employer from whose employment the covered employee retired at any time.

A "covered employee" is an individual who is (or was) provided coverage under the group health plan on account of the performance of services by the individual for one or more persons maintaining the plan and includes a self-employed individual. A "qualified beneficiary" means, with respect to a covered employee, any individual who on the day before the qualifying event for the employee is a beneficiary under the group health plan as the spouse or dependent child of the employee. The term qualified beneficiary also includes the covered employee in the case of a qualifying event that is a termination of employment or reduction in hours.

Continuation coverage requirements

Continuation coverage that must be offered to qualified beneficiaries pursuant to COBRA must consist of coverage which, as of the time coverage is being provided, is identical to the coverage provided under the plan to similarly situated non-COBRA beneficiaries under the plan with respect to whom a qualifying event has not occurred. If coverage under a plan is modified for any group of similarly situated non-COBRA beneficiaries, the coverage must also be modified in the same manner for qualified beneficiaries. Similarly situated non-COBRA beneficiaries means the group of covered employees, spouses of covered employees, or dependent children of covered employees who (i) are receiving coverage under the group health plan for a reason other than pursuant to COBRA, and (ii) are the most similarly situated to the situation of the qualified beneficiary immediately before the qualifying event, based on all of the facts and circumstances.

The maximum required period of continuation coverage for a qualified beneficiary (i.e., the minimum period for which continuation coverage must be offered) depends upon a number of factors, including the specific qualifying event that gives rise to a qualified beneficiary's right to elect continuation coverage. In the case of a qualifying event that is the termination, or reduction of hours, of

[231] If the plan is a multiemployer plan, then each of the employers contributing to the plan for a calendar year must normally employ fewer than 20 employees during the preceding calendar year.

a covered employee's employment, the minimum period of coverage that must be offered to the qualified beneficiary is coverage for the period beginning with the loss of coverage on account of the qualifying event and ending on the date that is 18 months[232] after the date of the qualifying event. If coverage under a plan is lost on account of a qualifying event but the loss of coverage actually occurs at a later date, the minimum coverage period may be extended by the plan so that it is measured from the date when coverage is actually lost.

The minimum coverage period for a qualified beneficiary generally ends upon the earliest to occur of the following events: (1) the date on which the employer ceases to provide any group health plan to any employee, (2) the date on which coverage ceases under the plan by reason of a failure to make timely payment of any premium required with respect to the qualified beneficiary, and (3) the date on which the qualified beneficiary first becomes (after the date of election of continuation coverage) either (i) covered under any other group health plan (as an employee or otherwise) which does not include any exclusion or limitation with respect to any preexisting condition of such beneficiary or (ii) entitled to Medicare benefits under title XVIII of the Social Security Act. Mere eligibility for another group health plan or Medicare benefits is not sufficient to terminate the minimum coverage period. Instead, the qualified beneficiary must be actually covered by the other group health plan or enrolled in Medicare. Coverage under another group health plan or enrollment in Medicare does not terminate the minimum coverage period if such other coverage or Medicare enrollment begins on or before the date that continuation coverage is elected.

Election of continuation coverage

The COBRA rules specify a minimum election period under which a qualified beneficiary is entitled to elect continuation coverage. The election period begins not later than the date on which coverage under the plan terminates on account of the qualifying event, and ends not earlier than the later of 60 days or 60 days after notice is given to the qualified beneficiary of the qualifying event and the beneficiary's election rights.

Notice requirements

A group health plan is required to give a general notice of COBRA continuation coverage rights to employees and their spouses at the time of enrollment in the group health plan.

An employer is required to give notice to the plan administrator of certain qualifying events (including a loss of coverage on account of a termination of employment or reduction in hours) generally within 30 days of the qualifying event. A covered employee or qualified beneficiary is required to give notice to the plan administrator of certain qualifying events within 60 days after the event. The qualifying events giving rise to an employee or beneficiary no-

[232] In the case of a qualified beneficiary who is determined, under Title II or XVI of the Social Security Act, to have been disabled during the first 60 days of continuation coverage, the 18 month minimum coverage period is extended to 29 months with respect to all qualified beneficiaries if notice is given before the end of the initial 18 month continuation coverage period.

tification requirement are the divorce or legal separation of the covered employee or a dependent child ceasing to be a dependent child under the terms of the plan. Upon receiving notice of a qualifying event from the employer, covered employee, or qualified beneficiary, the plan administrator is then required to give notice of COBRA continuation coverage rights within 14 days to all qualified beneficiaries with respect to the event.

Premiums

A plan may require payment of a premium for any period of continuation coverage. The amount of such premium generally may not exceed 102 percent [233] of the "applicable premium" for such period and the premium must be payable, at the election of the payor, in monthly installments.

The applicable premium for any period of continuation coverage means the cost to the plan for such period of coverage for similarly situated non-COBRA beneficiaries with respect to whom a qualifying event has not occurred, and is determined without regard to whether the cost is paid by the employer or employee. The determination of any applicable premium is made for a period of 12 months (the "determination period") and is required to be made before the beginning of such 12 month period.

In the case of a self-insured plan, the applicable premium for any period of continuation coverage of qualified beneficiaries is equal to a reasonable estimate of the cost of providing coverage during such period for similarly situated non-COBRA beneficiaries which is determined on an actuarial basis and takes into account such factors as the Secretary of Treasury prescribes in regulations. A self-insured plan may elect to determine the applicable premium on the basis of an adjusted cost to the plan for similarly situated non-COBRA beneficiaries during the preceding determination period.

A plan may not require payment of any premium before the day which is 45 days after the date on which the qualified beneficiary made the initial election for continuation coverage. A plan is required to treat any required premium payment as timely if it is made within 30 days after the date the premium is due or within such longer period as applies to, or under, the plan.

Other continuation coverage rules

Continuation coverage rules which are parallel to the Code's continuation coverage rules apply to group health plans under the Employee Retirement Income Security Act of 1974 (ERISA).[234] ERISA generally permits the Secretary of Labor and plan participants to bring a civil action to obtain appropriate equitable relief to enforce the continuation coverage rules of ERISA, and in the case of a plan administrator who fails to give timely notice to a participant or beneficiary with respect to COBRA continuation coverage, a court may hold the plan administrator liable to the partici-

[233] In the case of a qualified beneficiary whose minimum coverage period is extended to 29 months on account of a disability determination, the premium for the period of the disability extension may not exceed 150 percent of the applicable premium for the period.

[234] Secs. 601 to 608 of ERISA.

pant or beneficiary in the amount of up to $110 a day from the date of such failure.

Although the Federal government and State and local governments are not subject to the Code and ERISA's continuation coverage rules, other laws impose similar continuation coverage requirements with respect to plans maintained by such governmental employers.[235] In addition, many States have enacted laws or promulgated regulations that provide continuation coverage rights that are similar to COBRA continuation coverage rights in the case of a loss of group health coverage. Such State laws, for example, may apply in the case of a loss of coverage under a group health plan maintained by a small employer.

HOUSE BILL

Reduced COBRA premium

The provision provides that, for a period not exceeding 12 months, an assistance eligible individual is treated as having paid any premium required for COBRA continuation coverage under a group health plan if the individual pays 35 percent of the premium.[236] Thus, if the assistance eligible individual pays 35 percent of the premium, the group health plan must treat the individual as having paid the full premium required for COBRA continuation coverage, and the individual is entitled to a subsidy for 65 percent of the premium. An assistance eligible individual is any qualified beneficiary who elects COBRA continuation coverage and satisfies two additional requirements. First, the qualifying event with respect to the covered employee for that qualified beneficiary must be a loss of group health plan coverage on account of an involuntary termination of the covered employee's employment. However, a termination of employment for gross misconduct does not qualify (since such a termination under present law does not qualify for COBRA continuation coverage). Second, the qualifying event must occur during the period beginning September 1, 2008 and ending with December 31, 2009 and the qualified beneficiary must be eligible for COBRA continuation coverage during that period and elect such coverage.

An assistance eligible individual can be any qualified beneficiary associated with the relevant covered employee (e.g., a dependent of an employee who is covered immediately prior to a qualifying event), and such qualified beneficiary can independently elect COBRA (as provided under present law COBRA rules) and independently receive a subsidy. Thus, the subsidy for an assist-

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[235] Continuation coverage rights similar to COBRA continuation coverage rights are provided to individuals covered by health plans maintained by the Federal government. 5 U.S.C. sec. 8905a. Group health plans maintained by a State that receives funds under Chapter 6A of Title 42 of the United States Code (the Public Health Service Act) are required to provide continuation coverage rights similar to COBRA continuation coverage rights for individuals covered by plans maintained by such State (and plans maintained by political subdivisions of such State and agencies and instrumentalities of such State or political subdivision of such State). 42 U.S.C. sec. 300bb–1.

[236] For this purpose, payment by an assistance eligible individual includes payment by another individual paying on behalf of the individual, such as a parent or guardian, or an entity paying on behalf of the individual, such as a State agency or charity. Further, the amount of the premium used to calculate the reduced premium is the premium amount that the employee would be required to pay for COBRA continuation coverage absent this premium reduction (e.g. 102 percent of the "applicable premium" for such period).

ance eligible individual continues after an intervening death of the covered employee.

Under the provision, any subsidy provided is excludible from the gross income of the covered employee and any assistance eligible individuals. However, for purposes of determining the gross income of the employer and any welfare benefit plan of which the group health plan is a part, the amount of the premium reduction is intended to be treated as an employee contribution to the group health plan. Finally, under the provision, notwithstanding any other provision of law, the subsidy is not permitted to be considered as income or resources in determining eligibility for, or the amount of assistance or benefits under, any public benefit provided under Federal or State law (including the law of any political subdivision).

Eligible COBRA continuation coverage

Under the provision, continuation coverage that qualifies for the subsidy is not limited to coverage required to be offered under the Code's COBRA rules but also includes continuation coverage required under State law that requires continuation coverage comparable to the continuation coverage required under the Code's COBRA rules for group health plans not subject to those rules (e.g., a small employer plan) and includes continuation coverage requirements that apply to health plans maintained by the Federal government or a State government. Comparable continuation coverage under State law does not include every State law right to continue health coverage, such as a right to continue coverage with no rules that limit the maximum premium that can be charged with respect to such coverage. To be comparable, the right generally must be to continue substantially similar coverage as was provided under the group health plan (or substantially similar coverage as is provided to similarly situated beneficiaries) at a monthly cost that is based on a specified percentage of the group health plan's cost of providing such coverage.

The cost of coverage under any group health plan that is subject to the Code's COBRA rules (or comparable State requirements or continuation coverage requirement under health plans maintained by the Federal government or any State government) is eligible for the subsidy, except contributions to a health flexible spending account.

Termination of eligibility for reduced premiums

The assistance eligible individual's eligibility for the subsidy terminates with the first month beginning on or after the earlier of (1) the date which is 12 months after the first day of the first month for which the subsidy applies, (2) the end of the maximum required period of continuation coverage for the qualified beneficiary under the Code's COBRA rules or the relevant State or Federal law (or regulation), or (3) the date that the assistance eligible individual becomes eligible for Medicare benefits under title XVIII of the Social Security Act or health coverage under another group health plan (including, for example, a group health plan maintained by the new employer of the individual or a plan maintained by the employer of the individual's spouse). However, eligibility for

coverage under another group health plan does not terminate eligibility for the subsidy if the other group health plan provides only dental, vision, counseling, or referral services (or a combination of the foregoing), is a health flexible spending account or health reimbursement arrangement, or is coverage for treatment that is furnished in an on-site medical facility maintained by the employer and that consists primarily of first-aid services, prevention and wellness care, or similar care (or a combination of such care).

If a qualified beneficiary paying a reduced premium for COBRA continuation coverage under this provision becomes eligible for coverage under another group health plan or Medicare, the provision requires the qualified beneficiary to notify, in writing, the group health plan providing the COBRA continuation coverage with the reduced premium of such eligibility under the other plan or Medicare. The notification by the assistance eligible individual must be provided to the group health plan in the time and manner as is specified by the Secretary of Labor. If an assistance eligible individual fails to provide this notification at the required time and in the required manner, and as a result the individual's COBRA continuation coverage continues to be subsidized after the termination of the individual's eligibility for such subsidy, a penalty is imposed on the individual equal to 110 percent of the subsidy provided after termination of eligibility.

This penalty only applies if the subsidy in the form of the premium reduction is actually provided to a qualified beneficiary for a month that the beneficiary is not eligible for the reduction. Thus, for example, if a qualified beneficiary becomes eligible for coverage under another group health plan and stops paying the reduced COBRA continuation premium, the penalty generally will not apply. As discussed below, under the provision, the group health plan is reimbursed for the subsidy for a month (65 percent of the amount of the premium for the month) only after receipt of the qualified beneficiary's portion (35 percent of the premium amount). Thus, the penalty generally will only arise when the qualified beneficiary continues to pay the reduced premium and does not notify the group health plan providing COBRA continuation coverage of the beneficiary's eligibility under another group health plan or Medicare.

Special COBRA election opportunity

The provision provides a special 60-day election period for a qualified beneficiary who is eligible for a reduced premium and who has not elected COBRA continuation coverage as of the date of enactment. The 60-day election period begins on the date that notice is provided to the qualified beneficiary of the special election period. However, this special election period does not extend the period of COBRA continuation coverage beyond the original maximum required period (generally 18 months after the qualifying event) and any COBRA continuation coverage elected pursuant to this special election period begins on the date of enactment and does not include any period prior to that date. Thus, for example, if a covered employee involuntarily terminated employment on September 10, 2008, but did not elect COBRA continuation coverage and was not eligible for coverage under another group health plan,

the employee would have 60 days after date of notification of this new election right to elect the coverage and receive the subsidy. If the employee made the election, the coverage would begin with the date of enactment and would not include any period prior to that date. However, the coverage would not be required to last for 18 months. Instead the maximum required COBRA continuation coverage period would end not later than 18 months after September 10, 2008.

The special enrollment provision applies to a group health plan that is subject to the COBRA continuation coverage requirements of the Code, ERISA, Title 5 of the United States Code (relating to plans maintained by the Federal government), or the Public Health Service Act ("PHSA").

With respect to an assistance eligible individual who elects coverage pursuant to the special election period, the period beginning on the date of the qualifying event and ending with the day before the date of enactment is disregarded for purposes of the rules that limit the group health plan from imposing pre-existing condition limitations with respect to the individual's coverage.[237]

Reimbursement of group health plans

The provision provides that the entity to which premiums are payable (determined under the applicable COBRA continuation coverage requirement)[238] shall be reimbursed by the amount of the premium for COBRA continuation coverage that is not paid by an assistance eligible individual on account of the premium reduction. An entity is not eligible for subsidy reimbursement, however, until the entity has received the reduced premium payment from the assistance eligible individual. To the extent that such entity has liability for income tax withholding from wages[239] or FICA taxes[240] with respect to its employees, the entity is reimbursed by treating the amount that is reimbursable to the entity as a credit against its liability for these payroll taxes.[241] To the extent that such amount exceeds the amount of the entity's liability for these payroll taxes, the Secretary shall reimburse the entity for the excess directly. The provision requires any entity entitled to such reimbursement to submit such reports as the Secretary of the Treasury may require, including an attestation of the involuntary termination of employment of each covered employee on the basis of whose termination entitlement to reimbursement of premiums is

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[237] Section 9801 provides that a group health plan may impose a pre-existing condition exclusion for no more than 12 months after a participant or beneficiary's enrollment date. Such 12-month period must be reduced by the aggregate period of creditable coverage (which includes periods of coverage under another group health plan). A period of creditable coverage can be disregarded if, after the coverage period and before the enrollment date, there was a 63-day period during which the individual was not covered under any creditable coverage. Similar rules are provided under ERISA and PHSA.

[238] Applicable continuation coverage that qualifies for the subsidy and thus for reimbursement is not limited to coverage required to be offered under the Code's COBRA rules but also includes continuation coverage required under State law that requires continuation coverage comparable to the continuation coverage required under the Code's COBRA rules for group health plans not subject to those rules (e.g., a small employer plan) and includes continuation coverage requirements that apply to health plans maintained by the Federal government or a State government.

[239] Sec. 3401.

[240] Sec. 3102 (relating to FICA taxes applicable to employees) and sec. 3111 (relating to FICA taxes applicable to employers).

[241] In determining any amount transferred or appropriated to any fund under the Social Security Act, amounts credited against an employer's payroll tax obligations pursuant to the provision shall not be taken into account.

claimed, and a report of the amount of payroll taxes offset for a reporting period and the estimated offsets of such taxes for the next reporting period. This report is required to be provided at the same time as the deposits of the payroll taxes would have been required, absent the offset, or such times as the Secretary specifies.

Notice requirements

The notice of COBRA continuation coverage that a plan administrator is required to provide to qualified beneficiaries with respect to a qualifying event under present law must contain, under the provision, additional information including, for example, information about the qualified beneficiary's right to the premium reduction (and subsidy) and the conditions on the subsidy, and a description of the obligation of the qualified beneficiary to notify the group health plan of eligibility under another group health plan or eligibility for Medicare benefits under title XVIII of the Social Security Act, and the penalty for failure to provide this notification. The provision also requires a new notice to be given to qualified beneficiaries entitled to a special election period after enactment. In the case of group health plans that are not subject to the COBRA continuation coverage requirements of the Code, ERISA, Title 5 of the United States Code (relating to plans maintained by the Federal government), or PHSA, the provision requires that notice be given to the relevant employees and beneficiaries as well, as specified by the Secretary of Labor. Within 30 days after enactment, the Secretary of Labor is directed to provide model language for the additional notification required under the provision. The provision also provides an expedited 10-day review process by the Department of Labor, under which an individual may request review of a denial of treatment as an assistance eligible individual by a group health plan.

Regulatory authority

The provision provides authority to the Secretary of the Treasury to issue regulations or other guidance as may be necessary or appropriate to carry out the provision, including any reporting requirements or the establishment of other methods for verifying the correct amounts of payments and credits under the provision. For example, the Secretary of the Treasury might require verification on the return of an assistance eligible individual who is the covered employee that the individual's termination of employment was involuntary. The provision directs the Secretary of the Treasury to issue guidance or regulations addressing the reimbursement of the subsidy in the case of a multiemployer group health plan. The provision also provides authority to the Secretary of the Treasury to promulgate rules, procedures, regulations, and other guidance as is necessary and appropriate to prevent fraud and abuse in the subsidy program, including the employment tax offset mechanism.

Reports

The provision requires the Secretary of the Treasury to submit an interim and a final report regarding the implementation of the premium reduction provision. The interim report is to include information about the number of individuals receiving assistance, and

the total amount of expenditures incurred, as of the date of the report. The final report, to be issued as soon as practicable after the last period of COBRA continuation coverage for which premiums are provided, is to include similar information as provided in the interim report, with the addition of information about the average dollar amount (monthly and annually) of premium reductions provided to such individuals. The reports are to be given to the Committee on Ways and Means, the Committee on Energy and Commerce, the Committee on Health, Education, Labor and Pensions and the Committee on Finance.

Effective date

The provision is effective for premiums for months of coverage beginning on or after the date of enactment. However, it is intended that a group health plan will not fail to satisfy the requirements for COBRA continuation coverage merely because the plan accepts payment of 100 percent of the premium from an assistance eligible employee during the first two months beginning on or after the date of enactment while the premium reduction is being implemented, provided the amount of the resulting premium overpayment is credited against the individual's premium (35 percent of the premium) for future months or the overpayment is otherwise repaid to the employee as soon as practical.

SENATE AMENDMENT

The Senate amendment is the same as the House bill with certain modifications. The amount of the COBRA premium reduction (or subsidy) is 50 percent of the required premium under the Senate amendment (rather than 65 percent as provided under the House bill).

In addition, a group health plan is permitted to provide a special enrollment right to assistance eligible individuals to allow them to change coverage options under the plan in conjunction with electing COBRA continuation coverage. Under this special enrollment right, the assistance eligible individual must only be offered the option to change to any coverage option offered to employed workers that provides the same or lower health insurance premiums than the individual's group health plan coverage as of the date of the covered employee's qualifying event. If the individual elects a different coverage option under this special enrollment right in conjunction with electing COBRA continuation coverage, this is the coverage that must be provided for purposes of satisfying the COBRA continuation coverage requirement. However the coverage plan option into which the individual must be given the opportunity to enroll under this special enrollment right does not include the following: a coverage option providing only dental, vision, counseling, or referral services (or a combination of the foregoing); a health flexible spending account or health reimbursement arrangement; or coverage for treatment that is furnished in an onsite medical facility maintained by the employer and that consists primarily of first-aid services, prevention and wellness care, or similar care (or a combination of such care).

Effective date.—The provision is effective for months of coverage beginning after the date of enactment. In addition, the Sen-

ate amendment specifically provides rules for reimbursement of an assistance eligible individual if such individual pays 100 percent of the premium required for COBRA continuation coverage for any month during the 60-day period beginning on the first day of the first month after the date of enactment. The person who receives the premium overpayment is permitted to provide a credit to the assistance eligible individual for the amount overpaid against one or more subsequent premiums (subject to the 50-percent payment rule) for COBRA continuation coverage, but only if it is reasonable to believe that the credit for the excess will be used by the assistance eligible individual within 180 days of the individual's overpayment. Otherwise, the person must make a reimbursement payment to the individual for the amount of the premium overpayment within 60 days of receiving the overpayment. Further, if as of any day during the 180-day period it is no longer reasonable to believe that the credit will be used during that period by the assistance eligible individual (e.g., the individual ceases to be eligible for COBRA continuation coverage), payment equal to the remainder of the credit outstanding must be made to the individual within 60 days of such day.

CONFERENCE AGREEMENT

In general

The conference agreement generally follows the House bill. Thus, as under the House bill, the rate of the premium subsidy is 65 percent of the premium for a period of coverage. However, the period of the premium subsidy is limited to a maximum of 9 months of coverage (instead of a maximum of 12 months). As under the House bill and Senate amendment, the premium subsidy is only provided with respect to involuntary terminations that occur on or after September 1, 2008, and before January 1, 2010.

The conference agreement includes the provision in the Senate amendment that permits a group health plan to provide a special enrollment right to assistance eligible individuals to allow them to change coverage options under the plan in conjunction with electing COBRA continuation coverage.[242] This provision only allows a group health plan to offer additional coverage options to assistance eligible individuals and does not change the basic requirement under Federal COBRA continuation coverage requirements that a group health plan must allow an assistance eligible individual to choose to continue with the coverage in which the individual is enrolled as of the qualifying event.[243] However, once the election of the other coverage is made, it becomes COBRA continuation coverage under the applicable COBRA continuation provisions. Thus, for example, under the Federal COBRA continuation coverage provisions, if a covered employee chooses different coverage pursuant to being provided this option, the different coverage elected must generally be permitted to be continued for the applicable required period (generally 18 months or 36 months, absent an event that permits coverage to be terminated under the Federal COBRA con-

[242] An employer can make this option available to covered employees under current law.

[243] All references to "Federal COBRA continuation coverage" mean the COBRA continuation coverage provisions of the Code, ERISA, and PHSA.

tinuation provisions) even though the premium subsidy is only for nine months.

The conference agreement adds an income threshold as an additional condition on an individual's entitlement to the premium subsidy during any taxable year. The income threshold applies based on the modified adjusted gross income for an individual income tax return for the taxable year in which the subsidy is received (i.e., either 2009 or 2010) with respect to which the assistance eligible individual is the taxpayer, the taxpayer's spouse or a dependent of the taxpayer (within the meaning of section 152 of the Code, determined without regard to sections 152(b)(1), (b)(2) and (d)(1)(B)). Modified adjusted gross income for this purpose means adjusted gross income as defined in section 62 of the Code increased by any amount excluded from gross income under section 911, 931, or 933 of the Code. Under this income threshold, if the premium subsidy is provided with respect to any COBRA continuation coverage which covers the taxpayer, the taxpayer's spouse, or any dependent of the taxpayer during a taxable year and the taxpayer's modified adjusted gross income exceeds $145,000 (or $290,000 for joint filers), then the amount of the premium subsidy for all months during the taxable year must be repaid. The mechanism for repayment is an increase in the taxpayer's income tax liability for the year equal to such amount. For taxpayers with adjusted gross income between $125,000 and $145,000 (or $250,000 and $290,000 for joint filers), the amount of the premium subsidy for the taxable year that must be repaid is reduced proportionately.

Under this income threshold, for example, an assistance eligible individual who is eligible for Federal COBRA continuation coverage based on the involuntary termination of a covered employee in August 2009 but who is not entitled to the premium subsidy for the periods of coverage during 2009 due to having income above the threshold, may nevertheless be entitled to the premium subsidy for any periods of coverage in the remaining period (e.g. 5 months of coverage) during 2010 to which the subsidy applies if the modified adjusted gross income for 2010 of the relevant taxpayer is not above the income threshold.

The conference report allows an individual to make a permanent election (at such time and in such form as the Secretary of the Treasury may prescribe) to waive the right to the premium subsidy for all periods of coverage. For the election to take effect, the individual must notify the entity (to which premiums are reimbursed under section 6432(a) of the Code) of the election. This waiver provision allows an assistance eligible individual who is certain that the modified adjusted gross income limit prevents the individual from being entitled to any premium subsidy for any coverage period to decline the subsidy for all coverage periods and avoid being subject to the recapture tax. However, this waiver applies to all periods of coverage (regardless of the tax year of the coverage) for which the individual might be entitled to the subsidy. The premium subsidy for any period of coverage cannot later be claimed as a tax credit or otherwise be recovered, even if the individual later determines that the income threshold was not exceeded for a relevant tax year. This waiver is made separately by each

qualified beneficiary (who could be an assistance eligible individual) with respect to a covered employee.

Technical changes

The conference agreement makes a number of technical changes to the COBRA premium subsidy provisions in the House bill. The conference agreement clarifies that a reference to a period of coverage in the provision is a reference to the monthly or shorter period of coverage with respect to which premiums are charged with respect to such coverage. For example, the provision is effective for a period of coverage beginning after the date of enactment. In the case of a plan that provides and charges for COBRA continuation coverage on a calendar month basis, the provision is effective for the first calendar month following date of enactment.

The conference agreement specifically provides that if a person other than the individual's employer pays on the individual's behalf then the individual is treated as paying 35 percent of the premium, as required to be entitled to the premium subsidy. Thus, the conference agreement makes clear that, for this purpose, payment by an assistance eligible individual includes payment by another individual paying on behalf of the individual, such as a parent or guardian, or an entity paying on behalf of the individual, such as a State agency or charity.

The conference agreement clarifies that, for the special 60 day election period for a qualified beneficiary who is eligible for a reduced premium and who has not elected COBRA continuation coverage as of the date of enactment provided in the House bill, the election period begins on the date of enactment and ends 60 days after the notice is provided to the qualified beneficiary of the special election period. In addition, the conference agreement clarifies that coverage elected under this special election right begins with the first period of coverage beginning on or after the date of enactment. The conference agreement also extends this special COBRA election opportunity to a qualified beneficiary who elected COBRA coverage but who is no longer enrolled on the date of enactment, for example, because the beneficiary was unable to continue paying the premium.

The conference agreement clarifies that a violation of the new notice requirements is also a violation of the notice requirements of the underlying COBRA provision. As under the House bill, a notice must be provided to all individuals who terminated employment during the applicable time period, and not just to individuals who were involuntarily terminated.

As under the House bill, coverage under a flexible spending account ("FSA") is not eligible for the subsidy. The conference agreement clarifies that a FSA is defined as a health flexible spending account offered under a cafeteria plan within the meaning of section 125 of the Code.[244]

As under the House bill, there is a provision for expedited review, by the Secretary of Labor or Health and Human Services (in

[244] Other FSA coverage does not terminate eligibility for coverage. Coverage under another group Health Reimbursement Account ("HRA") will not terminate an individual's eligibility for the subsidy as long as the HRA is properly classified as an FSA under relevant IRS guidance. See Notice 2002–45, 2002–2 CB 93.

consultation with the Secretary of the Treasury), of denials of the premium subsidy. Under the conference agreement, such reviews must be completed within 15 business days (rather than 10 business days as provided in the House bill) after receipt of the individual's application for review. The conference agreement is intended to give the Secretaries the flexibility necessary to make determinations within 15 business days based upon evidence they believe, in their discretion, to be appropriate. Additionally, the conference agreement intends that, if an individual is denied treatment as an assistance eligible individual and also submits a claim for benefits to the plan that would be denied by reason of not being eligible for Federal COBRA continuation coverage (or failure to pay full premiums), the individual would be eligible to proceed with expedited review irrespective of any claims for benefits that may be pending or subject to review under the provisions of ERISA 503. Under the conference agreement, either Secretary's determination upon review is de novo and is the final determination of such Secretary.

The conference agreement clarifies the reimbursement mechanism for the premium subsidy in several respects. First, it clarifies that the person to whom the reimbursement is payable is either (1) the multiemployer group health plan, (2) the employer maintaining the group health plan subject to Federal COBRA continuation coverage requirements, and (3) the insurer providing coverage under an insured plan. Thus, this is the person who is eligible to offset its payroll taxes for purposes of reimbursement. It also clarifies that the credit for the reimbursement is treated as a payment of payroll taxes. Thus, it clarifies that any reimbursement for an amount in excess of the payroll taxes owed is treated in the same manner as a tax refund. Similarly, it clarifies that overstatement of reimbursement is a payroll tax violation. For example, IRS can assert appropriate penalties for failing to truthfully account for the reimbursement. However, it is not intended that any portion of the reimbursement is taken into account when determining the amount of any penalty to be imposed against any person, required to collect, truthfully account for, and pay over any tax under section 6672 of the Code.

It is intended that reimbursement not be mirrored in the U.S. possessions that have mirror income tax codes (the Commonwealth of the Northern Mariana Islands, Guam, and the Virgin Islands). Rather, the intent of Congress is that reimbursement will have direct application to persons in those possessions. Moreover, it is intended that income tax withholding payable to the government of any possession (American Samoa, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, Guam, or the Virgin Islands) (in contrast with FICA withholding payable to the U.S. Treasury) will not be reduced as a result of the application of this provision. A person liable for both FICA withholding payable to the U.S. Treasury and income tax withholding payable to a possession government will be credited or refunded any excess of (1) the amount of FICA taxes treated as paid under the reimbursement rule of the provision over (2) the amount of the person's liability for those FICA taxes.

Effective date

The provision is effective for periods of coverage beginning after the date of enactment. In addition, specific rules are provided in the case of an assistance eligible individual who pays 100 percent of the premium required for COBRA continuation coverage for any coverage period during the 60-day period beginning on the first day of the first coverage period after the date of enactment. Such rules follow the Senate amendment.

B. Extension of Minimum COBRA Continuation Coverage (sec. 3002(b) of the House Bill)

PRESENT LAW

A covered employee's termination of employment (other than for gross misconduct), whether voluntary or involuntary, is a COBRA qualifying event.[245] A covered employee's reduction in hours of employment, whether voluntary or involuntary, is also a COBRA qualifying event if the reduction results in a loss of employer sponsored group health plan coverage.[246]

The minimum length of coverage continuation that must be offered to a qualified beneficiary depends upon a number of factors, including the specific qualifying event that gives rise to a qualified beneficiary's right to elect coverage continuation. In the case of a qualifying event that is the termination, or reduction of hours, of a covered employee's employment, the minimum period of coverage that must be offered to each qualified beneficiary generally must extend until 18 months after the date of the qualifying event.[247] Under certain circumstances, however, the coverage continuation period can be extended up to a maximum total of 36 months. For example, if a second qualifying event occurs within the initial 18 month continuation period the initial period will be extended up to an additional 18 months (for a total of 36 months) for qualified beneficiaries other than the covered employee. Similarly, if a qualified beneficiary is determined to be disabled for purposes of Social Security during the first 60 days of the initial 18 month continuation coverage period, the initial 18 month period may be extended up to an additional 11 months (for a total of 29 months) for the disabled beneficiary and all of his or her covered family members. If a second qualifying event then occurs during the additional 11 month coverage period, the continuation period may be extended for another seven months, for a total of 36 months of continuation coverage.

HOUSE BILL

The provision amends section 4980B(f)(2)(B) to provide extended COBRA coverage periods for covered employees who qualify for COBRA continuation coverage due to termination of employment or reduction in hours and who (a) are age 55 or older, or (b) have 10 or more years of service with the employer, at the time of

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[245] Sec. 4980B(f)(3)(B); Treas. Reg. 54.4980B–4.

[246] Sec. 4980(f)(3)(B).

[247] Sec. 4980B(f)(2)(B)(i)(I). If coverage under a plan is lost on account of a qualifying event but the loss of coverage actually occurs at a later date, the minimum coverage period may be extended by the plan so that it is measured from the date when coverage is actually lost.

the qualifying event. Such individuals would be permitted to continue their COBRA coverage until the earlier of enrollment for Medicare benefits under title XVIII of the Social Security Act, becomes covered under another group health plan (described in section 4980B(f)(2)(B)(iv)), or termination of all health plans sponsored by the employer offering the COBRA coverage. The extended coverage period would apply to all qualified beneficiaries of the covered employee.

The provision makes parallel changes to ERISA and PHSA.

Effective date.—The provision is effective for periods of coverage which would (without regard to any amendments made by the provision) end on or after the date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision.

C. MODIFY THE HEALTH COVERAGE TAX CREDIT (SECS. 1899 TO 1899L OF THE CONFERENCE AGREEMENT AND SECS. 35, 4980B, 7527, AND 9801 OF THE CODE)

PRESENT LAW

In general

Under the Trade Act of 2002,[248] in the case of taxpayers who are eligible individuals, a refundable tax credit is provided for 65 percent of the taxpayer's premiums for qualified health insurance of the taxpayer and qualifying family members for each eligible coverage month beginning in the taxable year. The credit is commonly referred to as the health coverage tax credit ("HCTC"). The credit is available only with respect to amounts paid by the taxpayer. The credit is available on an advance basis.[249]

Qualifying family members are the taxpayer's spouse and any dependent of the taxpayer with respect to whom the taxpayer is entitled to claim a dependency exemption. Any individual who has other specified coverage is not a qualifying family member.

Persons eligible for the credit

Eligibility for the credit is determined on a monthly basis. In general, an eligible coverage month is any month if, as of the first day of the month, the taxpayer (1) is an eligible individual, (2) is covered by qualified health insurance, (3) does not have other specified coverage, and (4) is not imprisoned under Federal, State, or local authority.[250] In the case of a joint return, the eligibility re-

[248] Pub. L. No. 107–210 (2002).

[249] An individual is eligible for the advance payment of the credit once a qualified health insurance costs credit eligibility certificate is in effect. Sec. 7527. Unless otherwise indicated, all "section" references are to the Internal Revenue Code of 1986, as amended.

[250] An eligible month must begin after November 4, 2002. This date is 90 days after the date of enactment of the Trade Act of 2002, which was August 6, 2002.

quirements are met if at least one spouse satisfies the requirements.

An eligible individual is an individual who is (1) an eligible TAA recipient, (2) an eligible alternative Trade Adjustment Assistance ("TAA") recipient, or (3) an eligible Pension Benefit Guaranty Corporation ("PBGC") pension recipient.

An individual is an eligible TAA recipient during any month the individual (1) is receiving for any day of such month a trade readjustment allowance [251] or who would be eligible to receive such an allowance but for the requirement that the individual exhaust unemployment benefits before being eligible to receive an allowance and (2) with respect to such allowance, is covered under a certification issued under subchapter A or D of chapter 2 of title II of the Trade Act of 1974. An individual is treated as an eligible TAA recipient during the first month that such individual would otherwise cease to be an eligible TAA recipient.

An individual is an eligible alternative TAA recipient during any month if the individual (1) is a worker described in section 246(a)(3)(B) of the Trade Act of 1974 who is participating in the program established under section 246(a)(1) of such Act, and (2) is receiving a benefit for such month under section 246(a)(2) of such Act. An individual is treated as an eligible alternative TAA recipient during the first month that such individual would otherwise cease to be an eligible TAA recipient.

An individual is a PBGC pension recipient for any month if he or she (1) is age 55 or over as of the first day of the month, and (2) is receiving a benefit any portion of which is paid by the PBGC. The IRS has interpreted the definition of PBGC pension recipient to also include certain alternative recipients and recipients who have received certain lump-sum payments on or after August 6, 2002. A person is not an eligible individual if he or she may be claimed as a dependent on another person's tax return.

An otherwise eligible taxpayer is not eligible for the credit for a month if, as of the first day of the month, the individual has other specified coverage. Other specified coverage is (1) coverage under any insurance which constitutes medical care (except for insurance substantially all of the coverage of which is for excepted benefits) [252] maintained by an employer (or former employer) if at least 50 percent of the cost of the coverage is paid by an employer [253] (or former employer) of the individual or his or her

[251] The eligibility rules and conditions for such an allowance are specified in chapter 2 of title II of the Trade Act of 1974. Among other requirements, payment of a trade readjustment allowance is conditioned upon the individual enrolling in certain training programs or receiving a waiver of training requirements.

[252] Excepted benefits are: (1) coverage only for accident or disability income or any combination thereof; (2) coverage issued as a supplement to liability insurance; (3) liability insurance, including general liability insurance and automobile liability insurance; (4) worker's compensation or similar insurance; (5) automobile medical payment insurance; (6) credit-only insurance; (7) coverage for on-site medical clinics; (8) other insurance coverage similar to the coverages in (1)–(7) specified in regulations under which benefits for medical care are secondary or incidental to other insurance benefits; (9) limited scope dental or vision benefits; (10) benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; and (11) other benefits similar to those in (9) and (10) as specified in regulations; (12) coverage only for a specified disease or illness; (13) hospital indemnity or other fixed indemnity insurance; and (14) Medicare supplemental insurance.

[253] An amount is considered paid by the employer if it is excludable from income. Thus, for example, amounts paid for health coverage on a salary reduction basis under an employer plan

Continued

spouse or (2) coverage under certain governmental health programs. Specifically, an individual is not eligible for the credit if, as of the first day of the month, the individual is (1) entitled to benefits under Medicare Part A, enrolled in Medicare Part B, or enrolled in Medicaid or SCHIP, (2) enrolled in a health benefits plan under the Federal Employees Health Benefit Plan, or (3) entitled to receive benefits under chapter 55 of title 10 of the United States Code (relating to military personnel). An individual is not considered to be enrolled in Medicaid solely by reason of receiving immunizations.

A special rule applies with respect to alternative TAA recipients. For eligible alternative TAA recipients, an individual has other specified coverage if the individual is (1) eligible for coverage under any qualified health insurance (other than coverage under a COBRA continuation provision, State-based continuation coverage, or coverage through certain State arrangements) under which at least 50 percent of the cost of coverage is paid or incurred by an employer of the taxpayer or the taxpayer's spouse or (2) covered under any such qualified health insurance under which any portion of the cost of coverage is paid or incurred by an employer of the taxpayer or the taxpayer's spouse.

Qualified health insurance

Qualified health insurance eligible for the credit is: (1) COBRA continuation[254] coverage; (2) State-based continuation coverage provided by the State under a State law that requires such coverage; (3) coverage offered through a qualified State high risk pool; (4) coverage under a health insurance program offered to State employees or a comparable program; (5) coverage through an arrangement entered into by a State and a group health plan, an issuer of health insurance coverage, an administrator, or an employer; (6) coverage offered through a State arrangement with a private sector health care coverage purchasing pool; (7) coverage under a State-operated health plan that does not receive any Federal financial participation; (8) coverage under a group health plan that is available through the employment of the eligible individual's spouse; and (9) coverage under individual health insurance if the eligible individual was covered under individual health insurance during the entire 30-day period that ends on the date the individual became separated from the employment which qualified the individual for the TAA allowance, the benefit for an eligible alternative TAA recipient, or a pension benefit from the PBGC, whichever applies.[255]

Qualified health insurance does not include any State-based coverage (i.e., coverage described in (2)–(7) in the preceding paragraph), unless the State has elected to have such coverage treated as qualified health insurance and such coverage meets certain re-

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are considered paid by the employer. A rule aggregating plans of the same employer applies in determining whether the employer pays at least 50 percent of the cost of coverage.

[254] COBRA continuation is defined in section 9832(d)(1).

[255] For this purpose, "individual health insurance" means any insurance which constitutes medical care offered to individuals other than in connection with a group health plan. Such term does not include Federal- or State-based health insurance coverage.

quirements.[256] Such State coverage must provide that each qualifying individual is guaranteed enrollment if the individual pays the premium for enrollment or provides a qualified health insurance costs eligibility certificate and pays the remainder of the premium. In addition, the State-based coverage cannot impose any pre-existing condition limitation with respect to qualifying individuals. State-based coverage cannot require a qualifying individual to pay a premium or contribution that is greater than the premium or contribution for a similarly situated individual who is not a qualified individual. Finally, benefits under the State-based coverage must be the same as (or substantially similar to) benefits provided to similarly situated individuals who are not qualifying individuals.

A qualifying individual is an eligible individual who seeks to enroll in the State-based coverage and who has aggregate periods of creditable coverage[257] of three months or longer, does not have other specified coverage, and who is not imprisoned. In general terms, creditable coverage includes health care coverage without a gap of more than 63 days. Therefore, if an individual's qualifying coverage were terminated more than 63 days before the individual enrolled in the State-based coverage, the individual would not be a qualifying individual and would not be entitled to the State-based protections. A qualifying individual also includes qualified family members of such an eligible individual.

Qualified health insurance does not include coverage under a flexible spending or similar arrangement or any insurance if substantially all of the coverage is for excepted benefits.

Other rules

Amounts taken into account in determining the credit may not be taken into account in determining the amount allowable under the itemized deduction for medical expenses or the deduction for health insurance expenses of self-employed individuals. Amounts distributed from a medical savings account or health savings accounts are not eligible for the credit. The amount of the credit available through filing a tax return is reduced by any credit received on an advance basis. Married taxpayers filing separate returns are eligible for the credit; however, if both spouses are eligible individuals and the spouses file separate returns, then the spouse of the taxpayer is not a qualifying family member.

The Secretary of the Treasury is authorized to prescribe such regulations and other guidance as may be necessary or appropriate to carry out the credit provision.

COBRA

The Consolidated Omnibus Reconciliation Act of 1985 ("COBRA") requires that a group health plan must offer continuation coverage to qualified beneficiaries in the case of a qualifying event. An excise tax under the Code applies on the failure of a

[256] For guidance on how a State elects a health program to be qualified health insurance for purposes of the credit, see Rev. Proc. 2004–12, 2004–1 C.B. 528.

[257] Creditable coverage is determined under the Health Insurance Portability and Accountability Act. Sec. 9801(c).

group health plan to meet the requirement.[258] Qualifying events include the death of the covered employee, termination of the covered employee's employment, divorce or legal separation of the covered employee, and certain bankruptcy proceedings of the employer. In the case of termination from employment, the coverage must be extended for a period of not less than 18 months. In certain other cases, coverage must be extended for a period of not less than 36 months. Under such period of continuation coverage, the plan may require payment of a premium by the beneficiary of up to 102 percent of the applicable premium for the period.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.[259]

CONFERENCE AGREEMENT

Increase in credit percentage amount

The provision increases the amount of the HCTC to 80 percent of the taxpayer's premiums for qualified health insurance of the taxpayer and qualifying family members.

Effective date.—The provision is effective for coverage months beginning on or after the first day of the first month beginning 60 days after date of enactment. The increased credit rate does not apply to months beginning after December 31, 2010.

Payment for monthly premiums paid prior to commencement of advance payment of credit

The provision provides that the Secretary of the Treasury shall make one or more retroactive payments on behalf of certified individuals equal to 80 percent of the premiums for coverage of the taxpayer and qualifying family members for qualified health insurance for eligible coverage months occurring prior to the first month for which an advance payment is made on behalf of such individual. The amount of the payment must be reduced by the amount of any payment made to the taxpayer under a national emergency grant pursuant to section 173(f) of the Workforce Investment Act of 1998 for a taxable year including such eligible coverage months.

Effective date.—The provision is effective for eligible coverage months beginning after December 31, 2008. The Secretary of the Treasury, however, is not required to make any payments under the provision until after the date that is six months after the date of enactment. The provision does not apply to months beginning after December 31, 2010.

TAA recipients not enrolled in training programs eligible for credit

The provision modifies the definition of an eligible TAA recipient to eliminate the requirement that an individual be enrolled in

[258] Sec. 4980B.

[259] The Senate amendment did not amend the HCTC, but section 1701 of the Senate amendment provided for a temporary extension of the Trade Adjustment Assistance Program (generally until December 31, 2010). Certain beneficiaries of this program are eligible for the HCTC.

training in the case of an individual receiving unemployment compensation. In addition, the provision clarifies that the definition of an eligible TAA recipient includes an individual who would be eligible to receive a trade readjustment allowance except that the individual is in a break in training that exceeds the period specified in section 233(e) of the Trade Act of 1974, but is within the period for receiving the allowance.

Effective date.—The provision is effective for months beginning after the date of enactment in taxable years ending after such date. The provision does not apply to months beginning after December 31, 2010.

TAA pre-certification period rule for purposes of determining whether there is a 63-day lapse in creditable coverage

Under the provision, in determining if there has been a 63-day lapse in coverage (which determines, in part, if the State-based consumer protections apply), in the case of a TAA-eligible individual, the period beginning on the date the individual has a TAA-related loss of coverage and ending on the date which is seven days after the date of issuance by the Secretary (or by any person or entity designated by the Secretary) of a qualified health insurance costs credit eligibility certificate (under section 7527) for such individual is not taken into account.

Effective date.—The provision is effective for plan years beginning after the date of enactment. The provision does not apply to plan years beginning after December 31, 2010.

Continued qualification of family members after certain events

The provision provides continued eligibility for the credit for family members after certain events. The rule applies in the case of (1) the eligible individual becoming entitled to Medicare, (2) divorce and (3) death.

In the case of a month which would be an eligible coverage month with respect to an eligible individual except that the individual is entitled to benefits under Medicare Part A or enrolled in Medicare Part B, the month is treated as an eligible coverage month with respect to the individual solely for purposes of determining the amount of the credit with respect to qualifying family members (i.e., the credit is allowed for expenses paid for qualifying family members after the eligible individual is eligible for Medicare). Such treatment applies only with respect to the first 24 months after the eligible individual is first entitled to benefits under Medicare Part A or enrolled in Medicare Part B.

In the case of the finalization of a divorce between an eligible individual and the individual's spouse, the spouse is treated as an eligible individual for a period of 24 months beginning with the date of the finalization of the divorce. Under such rule, the only family members that may be taken into account with respect to the spouse as qualifying family members are those individuals who were qualifying family members immediately before such divorce finalization.

In the case of the death of an eligible individual, the spouse of such individual (determined at the time of death) is treated as an eligible individual for a period of 24 months beginning with the

date of death. Under such rule, the only qualifying family members that may be taken into account with respect to the spouse are those individuals who were qualifying family members immediately before such death. In addition, any individual who was a qualifying family member of the decedent immediately before such death[260] treated as an eligible individual for a period of 24 months beginning with the date of death, except that in determining the amount of the HCTC only such qualifying family member may be taken into account.

Effective date.—The provision is effective for months beginning after December 31, 2009. The provision does not apply to months that begin after December 31, 2010.

Alignment of COBRA coverage

The maximum required COBRA continuation coverage period is modified by the provision with respect to certain individuals whose qualifying event is a termination of employment or a reduction in hours. First, in the case of such a qualifying event with respect to a covered employee who has a nonforfeitable right to a benefit any portion of which is paid by the PBGC, the maximum coverage period must end not earlier than the date of death of the covered employee (or in the case of the surviving spouse or dependent children of the covered employee, not earlier than 24 months after the date of death of the covered employee). Second, in the case of such a qualifying event where the covered employee is a TAA eligible individual as of the date that the maximum coverage period would otherwise terminate, the maximum coverage period must extend during the period that the individual is a TAA eligible individual.

Effective date.—The provision is effective for periods of coverage that would, without regard to the provision, end on or after the date of enactment, provided that the provision does not extend any periods of coverage beyond December 31, 2010.

Addition of coverage through voluntary employees' beneficiary associations

The provision expands the definition of qualified health insurance by including coverage under an employee benefit plan funded by a voluntary employees' beneficiary association ("VEBA", as defined in section 501(c)(9)) established pursuant to an order of a bankruptcy court, or by agreement with an authorized representative, as provided in section 1114 of title 11, United States Code.

Effective date.—The provision is effective on the date of enactment. The provision does not apply with respect to certificates of eligibility issued after December 31, 2010.

Notice requirements

The provision requires that the qualified health insurance costs credit eligibility certificate provided in connection with the advance payment of the HCTC must include (1) the name, address, and telephone number of the State office or offices responsible for

[260] In the case of a dependent, the rule applies to the taxpayer to whom the personal exemption deduction under section 151 is allowable.

providing the individual with assistance with enrollment in qualified health insurance, (2) a list of coverage options that are treated as qualified health insurance by the State in which the individual resides, (3) in the case of a TAA-eligible individual, a statement informing the individual that the individual has 63 days from the date that is seven days after the issuance of such certificate to enroll in such insurance without a lapse in creditable coverage, and (4) such other information as the Secretary may provide.

Effective date.—The provision is effective for certificates issued after the date that is six months after the date of enactment. The provision does not apply to months beginning after December 31, 2010.

Survey and report on enhanced health coverage tax credit program

Survey

The provision requires that the Secretary of the Treasury must conduct a biennial survey of eligible individuals containing the following information:

1. In the case of eligible individuals receiving the HCTC (including those participating in the advance payment program (the "HCTC program")) (A) demographic information of such individuals, including income and education levels, (B) satisfaction of such individuals with the enrollment process in the HCTC program, (C) satisfaction of such individuals with available health coverage options under the credit, including level of premiums, benefits, deductibles, cost-sharing requirements, and the adequacy of provider networks, and (D) any other information that the Secretary determines is appropriate.

2. In the case of eligible individuals not receiving the HCTC (A) demographic information on each individual, including income and education levels, (B) whether the individual was aware of the HCTC or the HCTC program, (C) the reasons the individual has not enrolled in the HCTC program, including whether such reasons include the burden of process of enrollment and the affordability of coverage, (D) whether the individual has health insurance coverage, and, if so, the source of such coverage, and (E) any other information that the Secretary determines is appropriate.

Not later than December 31 of each year in which a survey described above is conducted (beginning in 2010), the Secretary of the Treasury must report to the Committee on Finance and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives the findings of the most recent survey.

Report

Not later than October 1 of each year (beginning in 2010), the Secretary of the Treasury must report to the Committee on Finance and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives the following information with respect to the most recent taxable year ending before such date:

1. In each State and nationally (A) the total number of eligible individuals and the number of eligible individuals receiving the HCTC, (B) the total number of such eligible individuals who receive an advance payment of the HCTC through the HCTC program, (C) the average length of the time period of participation of eligible individuals in the HCTC program, and (D) the total number of participating eligible individuals in the HCTC program who are enrolled in each category of qualified health insurance with respect to each category of eligible individuals.

2. In each State and nationally, an analysis of (A) the range of monthly health insurance premiums, for self-only coverage and for family coverage, for individuals receiving the benefit of the HCTC and (B) the average and median monthly health insurance premiums, for self-only coverage and for family coverage, for individuals receiving the HCTC with respect to each category of qualified health insurance.

3. In each State and nationally, an analysis of the following information with respect to the health insurance coverage of individuals receiving the HCTC who are enrolled in State-based coverage: (A) deductible amounts, (B) other out-of-pocket cost-sharing amounts, and (C) a description of any annual or lifetime limits on coverage or any other significant limits on coverage services or benefits. The information must be reported with respect to each category of coverage.

4. In each State and nationally, the gender and average age of eligible individuals who receive the HCTC in each category of qualified health insurance with respect to each category of eligible individuals.

5. The steps taken by the Secretary of the Treasury to increase the participation rates in the HCTC program among eligible individuals, including outreach and enrollment activities.

6. The cost of administering the HCTC program by function, including the cost of subcontractors, and recommendations on ways to reduce the administrative costs, including recommended statutory changes.

7. After consultation with the Secretary of Labor, the number of States applying for and receiving national emergency grants under section 173(f) of the Workforce Investment Act of 1998, the activities funded by such grants on a State-by-State basis, and the time necessary for application approval of such grants.

Other non-revenue provisions

The provision also authorizes appropriations for implementation of the revenue provisions of the provision and provides grants under the Workforce Investment Act of 1998 for purposes related to the HCTC.

GAO study

The provision requires the Comptroller General of the United States to conduct a study regarding the HCTC to be submitted to Congress no later than March 31, 2010. The study is to include an analysis of (1) the administrative costs of the Federal government with respect to the credit and the advance payment of the credit and of providers of qualified health insurance with respect to pro-

viding such insurance to eligible individuals and their families, (2) the health status and relative risk status of eligible individuals and qualified family members covered under such insurance, (3) participation in the credit and the advance payment of the credit by eligible individuals and their qualifying family members, including the reasons why such individuals did or did not participate and the effects of the provision on participation, and (4) the extent to which eligible individuals and their qualifying family members obtained health insurance other than qualifying insurance or went without insurance coverage. The provision provides the Comptroller General access to the records within the possession or control of providers of qualified health insurance if determined relevant to the study. The Comptroller General may not disclose the identity of any provider of qualified health insurance or eligible individual in making information available to the public.

EFFECTIVE DATE

The provision is generally effective upon the date of enactment, except as otherwise noted above.

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Part II—Medicare Program

INCENTIVES FOR ELIGIBLE PROFESSIONALS. (HOUSE BILL SEC. 4311; SENATE BILL SEC. 4201; CONFERENCE AGREEMENT SEC. 4101)

CURRENT LAW

There are several current legislative and administrative initiatives to promote the use of Health Information Technology (HIT) and Electronic Health Records (EHRs) in the Medicare program. The Medicare Modernization Act of 2003 (MMA; P.L. 108–173) established a timetable for the Centers for Medicare and Medicaid Services (CMS) to develop e-prescribing standards, which provide for the transmittal of such information as eligibility and benefits

for the transmittal of such information as eligibility and benefits (including formulary drugs), information on the drug being prescribed and other drugs listed in the patient's medication history (including drug-drug interactions), and information on the availability of lower-cost, therapeutically appropriate alternative drugs. CMS issued a set of foundation standards in 2005, then piloted and tested additional standards in 2006, several of which were part of a 2008 final rule. The final Medicare e-prescribing standards, which become effective on April 1, 2009, apply to all Part D sponsors, as well as to prescribers and dispensers that electronically transmit prescriptions and prescription-related information about Part D drugs prescribed for Part D eligible individuals. The MMA did not require Part D drug prescribers and dispensers to e-prescribe. Under its provisions, only those who choose to e-prescribe must comply with the new standards. However, the Medicare Improvement for Patients and Providers Act of 2008 (MIPPA; P.L. 110–275) included an e-prescribing mandate and authorized incentive bonus payments for e-prescribers between 2009 and 2013. Beginning in 2012, payments will be reduced for those who fail to e-prescribe.

CMS is administering a number of additional programs to promote EHR adoption. The MMA mandated a three-year pay-for-performance demonstration in four states (AR, CA, MA, UT) to encourage physicians to adopt and use EHR to improve care for chronically ill Medicare patients. Physicians participating in the Medicare Care Management Performance (MCMP) demonstration receive bonus payments for reporting clinical quality data and meeting clinical performance standards for treating patients with certain chronic conditions. They are eligible for an additional incentive payment for using a certified EHR and reporting the clinical performance data electronically.

CMS has developed a second demonstration to promote EHR adoption using its Medicare waiver authority. The five-year Medicare EHR demonstration is intended to build on the foundation created by the MCMP program. It will provide financial incentives to as many as 1,200 small- to medium-sized physician practices in 12 communities across the country for using certified EHRs to improve quality, as measured by their performance on specific clinical quality measures. Additional bonus payments will be made based on the number of EHR functionalities a physician group has incorporated into its practice.

The Tax Relief and Health Care Act of 2006 (P.L. 109–432) established a voluntary physician quality reporting system, including an incentive payment for Medicare providers who report data on quality measures. The Medicare Physician Quality Reporting Initiative (PQRI) was expanded by the Medicare, Medicaid, and SCHIP Extension Act of 2007 (P.L. 110–173) and by MIPPA, which authorized the program indefinitely and increased the incentive that eligible physicians can receive for satisfactorily reporting quality measures. In 2009, eligible physicians may earn a bonus payment equivalent to 2.0% of their total allowed charges for covered Medicare physician fee schedule services. The PQRI quality measures include a structural measure that conveys whether a physician has and uses an EHR.

HOUSE BILL

The House bill would add an incentive payment to certain eligible professionals for the adoption and "meaningful use," defined below, of a certified EHR system. Professionals eligible for the incentive payments are those who participate in Medicare and who are defined under Sec. 1861(r) of the Social Security Act.

Incentive payments. The amount of EHR incentive payments that eligible providers could receive would be capped, based on the amount of Medicare-covered professional services furnished during the year in question, and the total possible amount of the incentive payment would decrease over time. The bill permits a rolling implementation period, with cohorts starting in 2011, 2012, and 2013, respectively, being eligible for the entire five years of incentives. For example, incentives that start in 2011 would continue through 2015, while those that begin in 2012 would run through 2016 and those starting in 2013 would run through 2017.

For the first calendar year of the designated period described above, the limit would be $15,000. Over the next four calendar years, the total possible amount would decrease respectively by year to $12,000, $8,000, $4,000, and $2,000. The phase-down is different for eligible professionals first adopting EHR after 2013. For these eligible providers, the limit on the amount of the incentive payment would equal the limit in the first payment year for someone whose first payment year is 2013. For example, if the first payment year is after 2014 then the limit on the incentive payments for that year would be $12,000 rather than $15,000. The EHR incentive payments for professionals would not be available to a hospital-based eligible physician, such as a pathologist, anesthesiologist or emergency physician who furnishes substantially all such services in a hospital setting using the hospital's facilities and equipment, including computer equipment. However, health IT incentive payments are made available to hospitals in Sec. 4312.

The payments could be in the form of a single consolidated payment or in periodic installments, as determined by the Secretary. The Secretary would establish rules to coordinate the limits on the incentive payments for eligible professionals who provide covered professional services in more than one practice. The Secretary would seek to avoid duplicative requirements from federal and state governments to demonstrate meaningful use of certified EHR technology under the Medicare and Medicaid programs. The Secretary would be allowed to adjust the reporting periods in order to carry out this clause.

Meaningful use. For purposes of the EHR incentive payment, an eligible professional would be treated as a "meaningful user" of EHR technology if the eligible professional meets the following three criteria: (1) the eligible professional demonstrates to the satisfaction of the Secretary that during the period the professional is using a certified EHR technology in a meaningful manner, which would include the use of electronic prescribing as determined to be appropriate by the Secretary; (2) the eligible professional demonstrates to the satisfaction of the Secretary that during such period such certified EHR technology is connected in a manner that provides, in accordance with law and standards applicable to the

exchange of information, for the electronic exchange of health information to improve the quality of health care, such as promoting care coordination; and (3) the eligible professional submits information on clinical quality measures.

The Secretary could provide for the use of alternative means for meeting the above requirements in the case of an eligible professional furnishing covered professional services in a group practice (as defined by the Secretary). The Secretary would seek to improve the use of electronic health records and health care quality by requiring more stringent measures of meaningful use over time.

Clinical quality measures. The Secretary would select the clinical quality measures and other measures but must be consistent with the following: (1) the Secretary would provide preference to clinical quality measures that have been endorsed by the consensus-based entity regarding performance measurement with which the Secretary has a contract under Sec. 1890(a) of the Social Security Act; and (2) prior to any measure being selected for the purposes of this provision, the Secretary would publish the measure in the Federal Register and provide for a period of public comment. The Secretary could not require the electronic reporting of information on clinical quality measures unless the Secretary has the capacity to accept the information electronically, which may be on a pilot basis. In selecting the measures and in establishing the form and manner for reporting these measures, the Secretary would seek to avoid redundant or duplicative reporting otherwise required, including reporting under the physician quality reporting initiative.

A professional could satisfy the demonstration requirement above through means specified by the Secretary, which may include the following: (1) an attestation; (2) the submission of claims with appropriate coding (such as a code indicating that a patient encounter was documented using certified EHR technology); (3) a survey response; (4) reporting the clinical quality and other measures mentioned above; and (5) other means specified by the Secretary. Notwithstanding other provisions of law that place restrictions on the use of Part D data, the Secretary could use data regarding drug claims submitted for purposes of determining payment under Part D for purposes of determining the EHR incentive payments under this legislation.

Payment adjustments. Fee schedule payments to eligible professionals would be adjusted under certain conditions. For covered professional services furnished by an eligible professional during 2016 or any subsequent payment year, if the professional is not a meaningful EHR user during the previous year's reporting period, the fee schedule amount would be reduced to 99% in 2016, 98% in 2017, and 97% in 2018 and in each subsequent year.

For 2019 and each subsequent year, if the Secretary finds that the proportion of eligible professionals who are meaningful EHR users is less than 75%, the applicable fee schedule amount would be decreased by 1 percentage point from the applicable percent in the preceding year, but in no case would the applicable percent be less than 95%.

Hardship exemption. The Secretary could, on a case-by-case basis, exempt an eligible professional from the application of the

payment adjustment above if the Secretary determines, subject to annual renewal, that being a meaningful EHR user would result in a significant hardship, such as in the case of an eligible professional who practices in a rural area without sufficient Internet access. In no case would an eligible professional be granted such an exemption for more than five years.

Medicare Advantage. In general, Medicare incentives created under this section are not available to Medicare Advantage (MA) plans, and both the payments and penalties made under this section are exempt from the MA benchmark determinations. However, the legislation establishes conditions under which the EHR bonus payments and penalties for the adoption and meaningful use of certified EHR technology would apply to certain HMO-affiliated eligible professionals. In general, with respect to eligible professionals in a qualifying MA organization for whom the organization attests to the Secretary as meaningful users of EHR, the incentive payments and adjustments would apply in a similar manner as they apply to other eligible professionals. Incentive payments would be made to, and payment adjustments would apply to, the qualifying organizations. With respect to a qualifying MA organization, an eligible professional would be an eligible professional who (i) is employed by the organization or is employed by or is a partner of an entity that through contract furnishes at least 80% of the entity's patient care services to enrollees of the organization; and furnishes at least 80% of the professional services of the eligible professional to enrollees of the organization; and (ii) furnishes, on average, at least 20 hours per week of patient care services. For these MA-affiliated eligible professionals, the Secretary would determine the incentive payments which should be similar to the payments that would have been available to the professionals under FFS.

To avoid duplication of payments, if an eligible professional is both an MA-affiliated professional and eligible for the maximum payment under the fee-for-service program (FFS), the payment incentive would be made only under FFS. Otherwise, the incentive payment would be made to the plan. The Secretary would develop a process to ensure that duplicate payments are not made. A qualifying MA organization would specify a year (not earlier than 2011) that would be treated as the first payment year for all eligible professionals with respect to the MA organization.

In applying the applicable percentage payment adjustment to MA-affiliated eligible professionals, instead of the payment adjustment being an applicable percent of the fee schedule amount for a year, the payment adjustment to the payment to the MA organization would be a proportional amount based on the payment adjustment applicable to FFS providers and the fraction of the organization's eligible professionals who are not meaningfully using EHRs.

SENATE BILL

The Senate bill is mostly the same as the House bill, but with the following exceptions. The Senate bill does not provide for any incentive payments to eligible professionals who first adopt EHR in 2014 or in subsequent years but does provide a greater incentive for early adoption of EHR, with payments of $18,000 if the first payment year under the EHR incentive program is 2011 or 2012.

Certain rural eligible providers would receive larger incentive payments in the Senate bill. The incentive payment would be increased by 25% if the provider predominantly serves beneficiaries in a rural area designated as a health professional shortage area.

Under the Senate bill, the Secretary would also be given the authority to deem providers who satisfy state requirements for demonstrating meaningful use of EHR technology as meeting the criteria for meaningful use under the Medicare EHR incentive program. No similar authority or provision is included in the House bill.

The incentive adjustment (penalty) would begin a year earlier in 2015 under the Senate bill as opposed to 2016 in the House bill. The schedule of reductions over time in the applicable percentage also reflects this difference, so that the applicable percent under the Senate bill would be 99% in 2015, 98% in 2016, and 97% in 2017.

With respect to the application of the incentive payment program to managed care organizations, the Senate bill differs from the House bill in two areas. First, the Senate bill applies a slightly different requirement to determine an eligible professional. Under the Senate bill, a professional who furnishes at least 75% (vs. 80% in the House bill) of his or her professional services to enrollees of the managed care organization and who also met the additional criteria noted above would be eligible for this incentive program. Second, the Senate bill includes a cap on large managed care organizations that limits incentive payments to no more than 5,000 eligible professionals of the organization in recognition of economies of scale in such organizations. This difference is also reflected in the payment adjustment penalty calculation in the Senate bill.

The Senate bill would require that the names, business addresses, and business phone numbers of each qualifying managed care organization and the associated eligible professionals receiving EHR incentive payments be posted on the CMS website in an easily understandable format.

Finally, the Senate bill would require the HHS Secretary to provide assistance to eligible professionals, Medicaid providers, and eligible hospitals located in rural or other medically underserved areas to successfully choose, implement, and use certified EHR technology. To the extent practicable, the assistance would be through entities that have expertise in this area.

CONFERENCE AGREEMENT

With regard to eligible professionals, the conference agreement includes provisions from the House and Senate bills.

The conference agreement provides eligible professionals who show meaningful use of an EHR in 2011 or 2012 with incentive payments of $18,000 in the first year; provides no payment incentives after 2016; and does not provide incentive payments to eligible professionals who first adopt an EHR in 2015 or subsequent years.

Incentive payments would be increased by 10% if the provider predominately serves beneficiaries in any area designated as a health professional shortage area. The conference agreement mirrors the Senate bill in that payment adjustments for eligible profes-

sionals not demonstrating meaningful use of an EHR would begin in 2015.

The conference agreement, like the House and Senate-passed bills, prohibits payments to hospital-based professionals (because such professionals are generally expected to use the EHR system of that hospital). This policy does not disqualify otherwise eligible professionals merely on the basis of some association or business relationship with a hospital. Common examples of such arrangements include professionals who are employed by a hospital to work in an ambulatory care clinic or billing arrangements in which physicians submit claims to Medicare together with hospitals or other entities. The change in the conference agreement clarifies that this test will be based on the setting in which a provider furnishes services rather than any billing or employment arrangement between a provider and hospital or other provider entity.

For MA organizations, the conference agreement reflects the Senate bill with the following exceptions. The agreement requires MA-affiliated professionals to provide 80 percent of their Medicare services to the enrollees of the qualifying MA organization and removes the payment incentive cap on eligible professionals affiliated with health maintenance organizations. It also extends the language of limitations on review for eligible professionals to professionals eligible under the managed care section and makes several technical corrections.

In addition, the conference report requires the Secretary to report to Congress on methods of making payment incentives and adjustments with respect to eligible professionals who (1) contract with one or more MA organizations or with intermediary organizations that contracts with one or more MA organizations and (2) are not eligible for incentive payments under this legislation. The report is due to Congress within 120 days of enactment and shall include recommendations for legislation as appropriate. The agreement reflects the Congress's intent to provide payment incentives and adjustments towards the meaningful use of certified EHRs with respect to all physicians who treat Medicare patients without regard to practice organization.

INCENTIVES FOR HOSPITALS. (HOUSE BILL SEC. 4312; SENATE BILL SEC. 4202; CONFERENCE AGREEMENT SEC. 4102)

CURRENT LAW

Medicare pays acute care hospitals using a prospectively determined payment for each discharge. These payment rates are increased annually by an update factor that is established, in part, by the projected increase in the hospital market basket (MB) index. However, starting in FY2007, hospitals that do not submit required quality data will have the applicable MB percentage reduced by two percentage points. The reduction would apply for that year and would not be taken into account in subsequent years. Currently, Medicare's payments to acute care hospitals under the inpatient prospective payment system (IPPS) are not affected by the adoption of EHR technology. Critical access hospitals (CAHs) receive cost-plus reimbursement under Medicare. Under current law, Medicare reimburses CAHs at 101% of their Medicare costs. These reim-

bursements include payments for Medicare's share of CAH expenditures on health IT, plus an additional 1%.

HOUSE BILL

The bill would establish incentives, starting in FY2011, within Medicare's IPPS for eligible hospitals that are meaningful EHR users. Generally, these hospitals would receive diminishing additional payments over a four-year period. Starting in FY2016, eligible hospitals that do not become meaningful EHR users could receive lower payments because of reductions to their annual MB updates.

Incentive payments. Subject to certain limitations, each qualified hospital would receive an incentive payment calculated as the sum of a base amount ($2 million) added to its discharge related payment, which would then be multiplied by its Medicare's share. These payments would be reduced over a four-year transition period. A qualified hospital would receive $200 for each discharge paid under the inpatient prospective payment system (IPPS) starting with its 1,150th discharge through its 23,000th discharge.

A hospital's Medicare share would be calculated according to a specified formula. The numerator would equal inpatient bed days attributable to individuals for whom a Part A payment may be made, either under traditional Medicare or for those who are enrolled in Medicare Advantage (MA) organizations. The denominator would equal the total number of inpatient bed days in the hospital adjusted by a hospital's share of charges attributed to charity care. Specifically, the hospital's total days would be multiplied by a fraction calculated by dividing the hospital's total charges minus its charges attributed to charity care by its total charges. If a hospital's charge data on charity care is not available, the Secretary would be required to use the hospital's uncompensated care data which may be adjusted to eliminate bad debt. If hospital data to construct the charity care factor is unavailable, the fraction would be set at one. If hospital data necessary to include MA days is not available, that component of the formula would be set at zero.

The legislation establishes a four-year incentive payment transition schedule. A hospital that is a meaningful EHR user would receive the full amount of the incentive payment in its first payment year; 75% of the amount in its second payment year; 50% of the amount in its third payment year; and finally, 25% of the amount in its fourth payment year. The first payment year for a meaningful EHR user would be FY2011 or, alternatively, the first fiscal year for which an eligible hospital would qualify for an incentive payment. Hospitals that first qualify for the incentive payments after FY2013, would receive incentive payments on the transition schedule as if their first payment year is FY2013. Hospitals that become meaningful EHR users after FY2015 would not receive incentive payments. The incentive payments may be made as a single consolidated payment or may be made as periodic payments, as determined by the Secretary.

Meaningful use. An eligible hospital would be treated as a meaningful EHR user if it demonstrates that it uses certified EHR technology in a meaningful manner and provides for the electronic exchange of health information (in accordance with applicable legal

standards) to improve the quality of care. A hospital would satisfy the demonstration requirements through an attestation; the submission of appropriately coded claims; a survey response; EHR reporting on certain measures; or other means specified by the Secretary.

Clinical quality measures. EHR measures would include clinical quality measures and other measures selected by the Secretary. Prior to implementation, the measures would be published in the Federal Register and subject to public comment. The electronic reporting of the clinical quality measures would not be required unless the Secretary has the capacity to accept the information electronically, which may be on a pilot basis. When establishing the measures, the Secretary shall provide preference to clinical quality measures that have been selected for the Reporting Hospital Quality Data for Annual Payment Update program (RHQDAPU) established at 1886(b)(3)(B)(viii) of the Social Security Act or that have been endorsed by the entity with a contract with the Secretary under Sec. 1890(a), which is currently the National Quality Forum. The Secretary shall seek to avoid redundant measures or duplicative reporting. Not withstanding restrictions placed on the use and disclosure of Medicare Part D information, the Secretary would be able to use data regarding drug claims.

Miscellaneous. There would be no administrative or judicial review of the determination of any incentive payment or payment update adjustment (described subsequently), including, the determination of a meaningful EHR user, the determination of the measures, or the determination of an exception to the payment update adjustment.

The Secretary would post listings of the eligible hospitals that are meaningful EHR users or that are subject to the penalty and other relevant data on the CMS website. Hospitals would have the opportunity to review the other relevant data prior to the data being made publicly available.

Penalties. Starting in FY2016, eligible IPPS hospitals that do not submit the required quality data would be subject to a 25% reduction in their annual update, rather than the 2 percentage point reduction under current law. Those hospitals that are not meaningful EHR users would be subject to a reduction in their annual MB update for the remaining three-quarters of the update. This reduction would be implemented over a three-year period. In FY2016, one-quarter of the update will be at risk for quality reporting and one-quarter at risk for meaningful use of EHR. In FY2017, one-quarter of the update will be at risk for quality reporting and one-half will be at risk for meaningful use of EHR. In FY2018 and subsequent years, one-quarter of the update will be at risk for quality reporting and three-quarters will be at risk for meaningful use of EHR. These reductions would apply only to the fiscal year involved and would not be taken into account in subsequent fiscal years. Starting in FY2016, payments to acute care hospitals that are not meaningful EHR users in a state operating under a Medicare waiver under section 1814(b)(3) of the Social Security Act would be subject to comparable aggregate reductions. The state would be required to report its payment adjustment methodology to the Secretary.

Hardship exemption. The Secretary would be able to exempt certain IPPS hospitals from these payment adjustments for a fiscal year if the Secretary determines that requiring a hospital to be a meaningful EHR user during that year would result in significant hardship, such as a hospital in a rural area without adequate Internet access. Such determinations would be subject to annual renewal. In no case would a hospital be granted an exemption for more than five years.

Medicare Advantage. In general, Medicare incentives created under this section are not available to Medicare Advantage (MA) plans and the payments made under this section are exempt from the benchmark determinations. However, payment incentives and penalties would be established for certain qualifying MA organizations to ensure maximum capture of relevant data relating to Medicare beneficiaries. An eligible hospital would be one that is under common corporate governance with a qualifying MA organization and serves enrollees in an MA plan offered by the organization. The Secretary would be required to determine incentive payment amounts similar to the estimated amount in the aggregate that would be paid if the hospital services had been payable under Part A as described above. The Secretary would be required to avoid duplicative EHR incentive payments to hospitals. If an eligible hospital under Medicare Part C was also eligible for EHR incentive payments under Medicare Part A, and for which at least 33% of hospital discharges (or bed days) were covered under Medicare Part A, the EHR incentive payment would only be made under Part A and not Part C. If fewer than 33% of discharges are covered under Part A, the Secretary would be required to develop a process to ensure that duplicative payments were not made and to collect data from MA organizations to ensure against duplicative payments.

If one or more eligible hospitals under a common corporate governance with a qualifying MA Health Maintenance Organization are not meaningful EHR users, the incentive payment to the organization would be reduced by a specified percentage. The percentage is defined as 100% minus the product of (a) the percentage point reduction to the payment update for the period described above and (b) the Medicare hospital expenditure proportion. This hospital expenditure proportion is defined as the Secretary's estimate of the portion of expenditures under Parts A and B that are not attributable to this part, that are attributable to expenditures for inpatient hospital services. The Secretary would be required to apply the payment adjustment based on a methodology specified by the Secretary, taking into account the proportion of eligible hospitals or discharges from eligible hospitals that are not meaningful EHR users for the period.

SENATE BILL

The Senate bill is largely the same as the House bill, but with the following differences. First, instead of a fixed amount per discharge, a qualified hospital would receive $200 per discharge for the 1,150th through the 9,200th discharge, $100 per discharge for the 9,201st through the 13,800th discharge, and $60 per discharge for the 13,801st through the 23,000th discharge. Second, the Senate bill would include CAHs as eligible hospitals, and limit the

total amount of payments to a CAH for all payment years to $1.5 million. CAHs would continue to also receive their cost-plus reimbursement available under current law. Third, the penalties would begin a year earlier in FY2015; in the House bill the penalties begin in FY2016. Fourth, beginning in FY2015, a CAH that is not a meaningful EHR user would have its Medicare reimbursement rate as a percentage of its Medicare costs reduced to the following: FY2015, 100.66%; FY2016, 100.33%; FY2017 and each subsequent fiscal year, 100%. The Secretary would be permitted, on a case-by-case basis, to exempt a CAH from the penalties due to significant hardship. Finally, the Senate bill would require that the names, business addresses, and business phone numbers of each qualifying MA organization receiving EHR incentive payments be posted on the CMS website in an easily understandable format.

CONFERENCE AGREEMENT

The Conference Agreement follows the House bill, but with the following differences. First, the Conference agreement includes bonus payments for CAHs that are meaningful users of EHR technology. These bonus payments are capped at an enhanced Medicare share of 101 percent of those reasonable costs that are normally subject to depreciation and that are for the purchase of certified EHR. The enhanced Medicare share will equal the Medicare share calculated for 1886(d) hospitals, for EHR bonuses, including an adjustment for charity care, plus an additional 20 percentage points, except that the Medicare share may not exceed 100 percent. CAHs that are meaningful users of EHR technology will be able to expense these costs in a single payment year and receive prompt interim payments, rather than receiving reimbursement over a multi-year depreciation schedule. Beginning in 2011, if a CAH is a meaningful EHR user, they are eligible for four consecutive years of these bonuses, regardless of the year they meet the meaningful user standard, except that a CAH cannot get bonuses after 2015, similar to the bonus timeframe for a 1886(d) hospital. CAHs will continue to receive cost-plus reimbursement for their remaining costs, such as for ongoing maintenance or other costs that are not subject to depreciation. This cost-plus reimbursement continues beyond the bonus period, consistent with current law. Normal cost reporting rules would apply for the purchase of certified EHR technology until the CAH becomes a meaningful EHR user. CAHs are eligible for the same hardship exemption that is available to 1886(d) hospitals. Second, the conference agreement adopts the Senate's penalty schedule for both 1886(d) hospitals and CAHs. Third, the conference agreement includes the Senate provision requiring CMS to post information about qualifying MA hospitals on the website. Fourth, the conference agreement clarifies which provisions are subject to limitations on review for hospitals and extends appropriate limitations to CAHs and MA hospitals.

TREATMENT OF PAYMENTS AND SAVINGS; IMPLEMENTATION FUNDING. (HOUSE BILL SEC. 4313; SENATE BILL SEC. 4203; CONFERENCE AGREEMENT SEC. 4103)

CURRENT LAW

Physician and outpatient services provided under Medicare Part B are financed through a combination of beneficiary premiums, deductibles, and federal general revenues. In general, Part B beneficiary premiums are set to equal 25% of estimated program costs for the aged, with federal general revenues accounting for the remainder. The Part B premium fluctuates along with total Part B expenditures.

Absent specific legislation to exempt premiums from policy effects, the recent growth in expenditures for physician services, led by the increase in imaging and diagnostic services, generally results in premium increases to cover the beneficiaries 25% share of total expenditures. While an individual's Social Security payment cannot decrease from one year to the next as a result of an increase in the Part B premium (except for those subject to the income-related premium), current law does permit the entire cost-of-living (COLA) increase to be consumed by Medicare premium increases.

MIPPA established the Medicare Improvement Fund (MIF), available to the Secretary to make improvements under the original fee-for-service program under parts A and B for Medicare beneficiaries.

For FY2009 through FY2013, the Secretary of Health and Human Services would transfer $140 million from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund to the CMS Program Management Account. The amounts drawn from the funds would be in the same proportion as for Medicare managed care payments (Medicare Advantage), that is, in a proportion that reflects the relative weight that benefits under part A and under part B represent of the actuarial value of the total benefits.

HOUSE BILL

The House bill would exempt spending under this title from the annual amount of Medicare physician expenditures used to calculate the Part B premium; beneficiaries would be held harmless from potential premium increases due to the increased Part B expenditures that result from this added payment. Further, the bill would authorize the transfer of funds from the Treasury to the Supplementary Medical Insurance (Part B) Trust Fund to cover the amount of EHR payment incentives that would otherwise be offset by Part B premiums.

The bill would modify the purposes of the Medicare Improvement Fund by allowing the monies to be used to adjust Medicare part B payments to protect against projected shortfalls due to any increase in the conversion factor used to calculate the Medicare Part B fee schedule.

The amount in the fund in FY2014, after taking into account the transfer directed by this section, would be modified to be $22.29 billion. For FY2020 and each subsequent fiscal year, the amount in the fund would be the Secretary's estimate, as of July

1 of the fiscal year, of the aggregate reduction in Medicare expenditures directly resulting from the penalties imposed as a result of various Medicare providers not using HIT in a meaningful fashion.

To implement the provisions in and amendments made by this section, $60 million for each of FY2009 through FY2015 and $30 million for each succeeding fiscal year through FY2019 would be appropriated to the Secretary for the CMS Program Management Account. The amounts appropriated would be available until expended.

SENATE BILL

The premium hold-harmless provisions in the Senate bill are identical to those in the House. However, the Senate bill does not include the provisions regarding the Medicare Improvement Fund including the transfers of aggregate reductions resulting from the penalties into the MIF. The two bills also differ in the funding amounts to CMS for implementation. Whereas the House bill would appropriate $60 million for each of FY2009–FY2015 and $30 million for FY2016 through FY2019, the Senate bill would appropriate $100 million for each of FY2009–FY2015 and $45 million for FY2016 through FY2018.

CONFERENCE AGREEMENT

The conference agreement includes the premium hold-harmless, as well as changes contained in the House bill to the Medicare Improvement Fund. The agreement also appropriates $100 million in FY2009–FY2015 and $45 million in FY 2016.

STUDY ON APPLICATION OF HIT PAYMENT INCENTIVES FOR PROVIDERS NOT RECEIVING OTHER INCENTIVE PAYMENTS. (HOUSE BILL SEC. 4314; SENATE BILL SEC. 4205; CONFERENCE AGREEMENT SEC. 4104)

CURRENT LAW

No current law.

HOUSE BILL

The House bill would require the Secretary to conduct a study to determine whether payment incentives to implement and use qualified HIT should be made available to health care providers who are receiving minimal or no payment incentives or other funding under this Act, including from Medicare or Medicaid, or any other funding. These health care providers could include skilled nursing facilities, home health agencies, hospice programs, laboratories, federally qualified health centers, and non-physician professionals.

The study would include an examination of the following: (1) the adoption rates of qualified HIT by such health care providers; (2) the clinical utility of HIT by such health care providers; (3) whether the services furnished by such health care providers are appropriate for or would benefit from the use of such technology; (4) the extent to which such health care providers work in settings that might otherwise receive an incentive payment or other fund-

ing under this Act, Medicare or Medicaid, or otherwise; (5) the potential costs and the potential benefits of making payment incentives and other funding available to such health care providers; and (6) any other issues the Secretary deems to be appropriate. The Secretary would be required to submit a report to Congress on the findings and conclusions of the study by June 30, 2010.

SENATE BILL

Same provision.

CONFERENCE AGREEMENT

The conference report includes the study contained in the House and Senate bills on providing incentive payments to encourage use of health IT to providers who are receiving minimal or no payment incentives or other funding under this Act. It also includes a study in Section 4206 of the Senate bill on the availability of open source health IT systems.

STUDY ON AVAILABILITY OF OPEN SOURCE HEALTH INFORMATION TECHNOLOGY SYSTEMS. (SENATE BILL SEC. 4206)

CURRENT LAW

No provision.

HOUSE BILL

No provision.

SENATE BILL

The Senate bill would require the Secretary, in consultation with other federal agencies, to study and report to Congress by October 1, 2010, on the availability of open source HIT systems to safety net providers.

CONFERENCE AGREEMENT

This study is included in Section 4104 of the conference agreement.

Part III—Medicaid Funding

MEDICAID PROVIDER HIT ADOPTION AND OPERATION PAYMENTS; IMPLEMENTATION FUNDING. (HOUSE BILL SEC. 4321; SENATE BILL SEC. 4211; CONFERENCE AGREEMENT SEC. 4201)

CURRENT LAW

The federal government pays a share of every state's spending on Medicaid services and program administration. The federal match for administrative expenditures does not vary by state and is generally 50%, but certain functions receive a higher amount. Section 1903(a)(3) of the Social Security Act authorizes a 90% match for expenditures attributable to the design, development, or installation of mechanized claims processing and information retrieval systems—referred to as Medicaid Management Information Systems (MMISs)—and a 75% match for the operation of MMISs

that are approved by the Secretary of Health and Human Services (HHS). A 50% match is available for non-approved MMISs under Section 1903(a)(7). In order to receive payments under Section 1903(a) for the use of automated data systems in the administration of their Medicaid programs, states are required under Section 1903(r) to have an MMIS that meets specified requirements and that the Secretary has found (among other things) is compatible with the claims processing and information retrieval systems used in the administration of the Medicare program.

State expenditures to encourage the purchase, adoption, and use of electronic health records do not receive federal financial participation, nor do State expenditures for the operation and maintenance of such systems.

HOUSE BILL

The House Bill would amend Title XIX of the Social Security Act to authorize a 100% Federal match for a portion of payments to encourage the adoption of EHR technology (including support services and maintenance) to certain Medicaid providers who meet certain requirements. The state must prove to the Secretary that allowable costs are paid directly to the provider without any deduction or rebate; that the provider is responsible for payment of the EHR technology costs not provided for; and, that for costs not associated with purchase and initial implementation, the provider certifies meaningful use of the EHR technology. Finally, the certified EHR technology should be compatible with state or Federal administrative management systems.

Eligible providers would include physicians, nurse mid-wives, and nurse practitioners who are not hospital-based, and who have patient volume of at least 30% attributable to Medicaid patients. In order to qualify as a Medicaid provider, the professional would have to waive any right to Medicare EHR incentive payments for professionals detailed in the bill. This group of providers would be eligible for a payment equal to 85% of their net allowable technology costs. However, the allowable costs for the purchase and initial implementation of EHR technology cannot exceed $25,000 or include costs over a period of more than 5 years. Annual allowable costs not associated with initial implementation or purchase of the EHR technology could not exceed $10,000 per year or be made over a period of more than 5 years. Aggregate allowable costs for these eligible professionals, after application of the 85% adjustment, could not exceed $63,750.

Acute care hospitals with at least 10% Medicaid patient volume would be eligible for payments, as would children's hospitals of any Medicaid patient volume. Payments to hospitals would be limited to amounts analogous to those specified for eligible hospitals in Medicare in Section 4312. The payment limit for such hospitals is calculated as a base amount plus an amount related to the total number of discharges for such a hospital. The hospital's patient share attributable to Medicaid is then multiplied by that amount to calculate the limit of the payment an eligible hospital can receive. Unlike the Medicare hospital amount, the Medicaid hospital amount in the House bill is available, subject to State administration, without restriction as to the schedule of payments

over time. That amount may not exceed the total amount described above.

Rural health clinics and Federally-Qualified Health Centers with at least 30% patient volume attributable to Medicaid patients would also be eligible for a payment for the costs of adoption and use of certified EHR technology, limited to amounts to be determined by the Secretary.

In counting towards patient volume thresholds, patients in Medicaid managed care plans are to be counted equivalently to other individuals in Medicaid in all circumstances. Individuals enrolled in optional Medicaid expansion programs financed through title XXI of the Social Security Act also must be counted.

Because the payments to eligible professionals would be sufficient to cover most or all of the costs of acquiring and operating a certified EHR, providers eligible under for both Medicare and Medicaid payments are required to choose one. The Secretary would be required to ensure that eligible professionals do not receive payments from both Medicare and Medicaid. The Secretary would also be instructed to attempt to avoid duplicative requirements for Federal and state governments to demonstrate meaningful use of EHR technology under Medicaid and Medicare, and may deem demonstration of meaningful use of certified EHRs in Medicare to be sufficient for demonstration of meaningful use of such technology in Medicaid.

By contrast, hospital limitations for Medicare and Medicaid are assessed on a proportional basis depending upon a hospital's patient volume from each payer, so hospitals could receive funding from both sources.

The House bill would authorize a 90% Federal match for payment to the states for administrative expenses related to EHR technology payments. In order for a state to receive the match it must show that: it is using the funds provided for these purposes to administer these systems including tracking of meaningful use by providers; conducting adequate oversight of meaningful use of the systems; and pursuing initiatives to encourage the adoption of certified EHR technology to promote health care quality and the appropriate exchange of information.

The House bill would appropriate $40 million for each of FY2009 through FY2015 and $20 million for each succeeding fiscal year through FY2019 to the Centers for Medicare & Medicaid Services for the costs of administering the provisions of this section.

SENATE BILL

The Senate bill is very similar to the House bill, with the following differences. First, in measuring meaningful use, which may include the reporting of clinical quality measures, a State would be required to ensure that populations with unique needs, such as children, are appropriately addressed. Second, rural health clinics and Federally-Qualified Health Centers that have at least 30% of their patient volume attributable to Medicaid patients would face a somewhat higher required contribution to the costs of adoption and use of certified EHRs. Finally, the Senate bill would require that the Secretary submit a report to Congress no later than July

1, 2012, that details the process developed to ensure coordination of the different health information technology program payments.

CONFERENCE AGREEMENT

The Conference agreement mirrors both the House-passed and Senate-passed bills. Across all eligible provider categories, the conference agreement provides Medicaid incentives towards the use of certified EHR technology based on a provider's involvement in the Medicaid program or other care for the uninsured and low-income populations. In addition to payment incentives for eligible professionals and hospitals contained in both bills, the agreement also provides for expanded funding to pediatricians, federally qualified health clinics (FQHCs), rural health clinics (RHCs), and physician assistants in physician assistant-led rural health clinics.

Specifically, eligible pediatricians with 20 to 30 percent patient volume attributable to patients receiving assistance through Medicaid would be eligible to receive up to two-thirds of the amount of eligible professionals with 30 percent patient volume attributable to such individuals (approximately $42,500 over a period of six years).

Federally qualified health centers and rural health clinics would be able to count additional patients towards the 30 percent qualifying threshold for Medicaid payments, including Medicaid patients; individuals receiving assistance through the Children's Health Insurance Program; individuals receiving charity care; and individuals receiving care for which payment is made on a sliding scale basis according to a patient's ability to pay. In addition, FQHCs and RHCs would be paid an amount for the adoption and use of certified EHRs proportional to the number of eligible professionals practicing predominantly in such settings according to the payment amounts determined for other eligible professionals (typically, up to $63,750 in federal contributions over a period of six years).

Additionally, the conference agreement provides that physician assistants practicing in RHCs and FQHCs that are led by physician assistants may receive Medicaid payments related to certified EHRs, provided that the facility meets the 30% facility threshold described above.

Like both the House-passed and Senate-passed bills, the conference agreement provides for up to $63,750 in federal contributions towards the adoption, implementation, upgrade, maintenance, and operation of certified EHR technology for eligible professionals. Up to 85% of $25,000, or $21,250, subject to a cap on average allowable costs, would be provided to eligible professionals to aid in adopting, implementing, and upgrading certified EHR systems. And up to 85% of $10,000, or $8,500, would be provided to eligible professionals for purposes of operation and maintenance of such systems over a period of up to 5 years.

Payments to hospitals would be limited to amounts analogous to those specified for eligible hospitals in Medicare in Section 4102. The payment limit for such hospitals is calculated as a base amount plus an amount related to the total number of discharges for such a hospital. The hospital's patient share attributable to Medicaid is then multiplied by that amount to calculate the limit

of the payment an eligible hospital can receive. Relative to both the House and Senate-passed bills, the conference agreement provides additional specificity on the spending limitations for eligible hospitals in Medicaid. States may not pay more than 50% of the aggregate amount to a hospital in any year, and must spread payments to hospitals out over at least three years (contingent on demonstration of meaningful use of certified electronic health records).

Like both the House-passed and Senate-passed bills, the conference agreement prohibits payments to hospital-based professionals (because such professionals are generally expected to use the EHR system of that hospital). This policy does not disqualify otherwise eligible professionals merely on the basis of some association or business relationship with a hospital. Common examples of such arrangements include professionals who are employed by a hospital to work in an ambulatory care clinic or billing arrangements in which physicians submit claims to Medicare together with hospitals or other entities. The conference agreement clarifies that this test will be based on the setting in which a provider furnishes services rather than any billing or employment arrangement between a provider and hospital or other provider entity.

The agreement requires coordination of payments to eligible professionals with Medicare payments under sections 1848(o) and 1853(l) in order to assure no duplication of funding. The provision requires that such coordination include, to the extent practicable, a data matching process between State Medicaid agencies and the CMS using national provider numbers. The Congress intends that such process be used to identify providers who have received funding from either Medicare or Medicaid so as to prevent such providers from accessing incentives in the other program.

MEDICAID NURSING HOME GRANT PROGRAM. (HOUSE BILL SEC. 4322)

CURRENT LAW

No provision.

HOUSE BILL

The House bill would authorize the appropriation of $600, to remain available until expended, for the Secretary to establish a Medicaid grant program for the purpose of making incentive payments, through States, to nursing facilities to encourage the meaningful use of certified EHR technology in nursing facilities. The program would require nursing facilities to engage in quality improvement programs in addition to demonstrating meaningful use of certified EHR technology. The Secretary would be authorized to award grants to not more than 10 states. Incentive payments would cover up to 90% of a facility's EHR adoption and operation costs.

SENATE BILL

No provision.

CONFERENCE AGREEMENT

No provision.

Subtitle E—Miscellaneous Medicare Provisions

MORATORIA ON CERTAIN MEDICARE REGULATIONS. (HOUSE BILL SEC. 4501; SENATE BILL SEC. 4204; CONFERENCE AGREEMENT SEC. 4301)

(a) Delay in phase out of Medicare hospice budget neutrality adjustment factor during Fiscal Year 2009

CURRENT LAW

The prospective payment methodology for hospice was established in 1983. This prospective payment system (PPS) pays hospices according to the general type of care provided to a beneficiary on a daily basis. This rate attempts to adjust for geographic differences through a wage index adjustment. The current hospice wage index methodology was implemented in 1997 through the rulemaking process. The hospice wage index is updated annually and based upon the most current hospital wage data and any changes to the Office of Management and Budget's (OMB) Metropolitan Statistical Areas (MSA) definitions. Prior to this date, the wage adjustment used a hospice wage index based upon 1981 hospital data collected by the Bureau of Labor Statistics (BLS). The change in 1997 was intended to improve the data used to account for disparities in geographic location and improve accuracy, reliability, and equity of Medicare payments to hospices across the country.

When the data source used to adjust hospice payments for differences in the cost of labor across geographic area was changed in 1997 from the BLS data to the hospital wage data, a budget neutrality adjustment factor (BNAF) was instituted as part of the payment system. The BNAF prevents participating hospices from experiencing reductions in total payments as a result of the wage data change. The BNAF increases payments to those hospices that would otherwise experience a payment reduction by boosting hospice payments to these providers by amounts that would make overall payments budget neutral to the levels they would have received had the BLS based wage adjustment data been used. On August 8, 2008, in a final rule, published by HHS, the BNAF would be phased-out over three years, beginning with a 25% reduction in FY2009, an additional 50% reduction (totaling 75%) in FY2010, and a final 100%, or elimination, in FY2011. The phase-out of the BNAF went into effect on October 1, 2008.

HOUSE BILL

The House bill would require that the Secretary not phase-out or eliminate the budget neutrality adjustment factor before October 1, 2009. The hospice wage index used for FY2009 would be recomputed as if there had been no reduction in the budget neutrality factor.

SENATE BILL

No provision.

CONFERENCE AGREEMENT

The Conference Agreement recedes to the House provision. The Conferees do not anticipate extending this provision as they expect the hospice community to seek a permanent fix in the annual rulemaking cycle for Medicare hospice payments.

(b) Non-application of phased-out Indirect Medical Education (IME) adjustment factor for Fiscal Year 2009

CURRENT LAW

Medicare sets separate per discharge payment rates to cover the costs for depreciation, interest, rent and other property-related expenses in acute care hospitals. Due to a regulatory change implemented by the Centers for Medicare and Medicaid Services (CMS), Medicare's indirect medical education (IME) adjustment in its capital inpatient prospective payment system (IPPS) is scheduled to be phased out over a 2-year period starting in FY2009. In FY2009, teaching hospitals will receive half of the IME adjustment in Medicare's capital IPPS; in FY2010 and in subsequent years, the capital IME adjustment will be eliminated.

HOUSE BILL

The FY2009 adjustment to 50% of the capital IME adjustment would not be implemented. Medicare payments would be recomputed for discharges after October 1, 2008. The elimination of capital IME in FY2010 would not be affected. To implement this provision, $2 million would be transferred from Medicare's Federal Hospital Insurance Trust Fund into the CMS Program Management Account for FY2009.

SENATE BILL

The Senate bill includes the same IME adjustment provision, but without implementation funding.

CONFERENCE AGREEMENT

The Conference Agreement recedes to the House provision. The Conferees do not anticipate extending this provision as they expect the hospital community to seek a permanent fix in the annual IPPS rulemaking cycle.

LONG-TERM CARE HOSPITAL TECHNICAL CORRECTIONS. (HOUSE BILL SEC. 4502; CONFERENCE AGREEMENT SEC. 4302)

CURRENT LAW

Long-term care hospitals (LTCHs) are generally defined as hospitals that have an average Medicare inpatient length of stay greater than 25 days. LTCHs are designed to provide extended medical and rehabilitative care for patients who are clinically complex and have multiple acute or chronic conditions.

Starting October 1, 2004, CMS established limits on the number of discharged Medicare patients that an LTCH hospital-within-hospital (HwH) or satellite LTCH could admit from its co-located host hospital. In general, CMS applied a payment adjustment for discharges in excess of a 25% threshold that an LTCH HwH or satellite admitted from its co-located host hospital. After that threshold had been reached, generally, the LTCH would receive a lower payment for subsequent patient admissions that had been discharged from the host hospital. The adjustment was not applied to "grandfathered" HwHs or "grandfathered" LTCH satellites. Beginning in rate year 2008, CMS extended the 25% threshold payment adjustment for discharges from co-located host hospitals to grandfathered HwHs and LTCH satellite facilities. CMS also extended the 25% threshold payment adjustment to LTCH discharges admitted from hospitals with which the LTCH or satellite facility was not co-located, also referred to as freestanding LTCHs. The regulatory policy setting forth the payment adjustment policy for referrals from co-located hospitals is in 42 CFR 412.534. The regulatory policy setting forth the payment adjustment policy for referrals from non-co-located hospitals is in 42 CFR 412.536.

The Medicare, Medicaid and SCHIP Extension Act of 2007 (MMSEA) provided for a three-year delay for grandfathered LTCH HwHs of the 25% threshold for discharges admitted from a co-located host (42 CFR 412.534). MMSEA also provided for a three-year delay for grandfathered LTCH HwHs and freestanding LTCHs of the 25% threshold payment adjustment for referrals from non-co-located hospitals (42 CFR 412.536). These provisions in MMSEA became effective for cost reporting periods beginning on or after December 29, 2007.

MMSEA also increased the patient percentage thresholds from 25% to 50% for certain LTCH HwH and non-grandfathered satellite discharges admitted from a co-located hospital (CFR 412.534), and from 50% to 75% for certain LTCH HwH and satellite discharges admitted from a co-located rural, MSA-dominant, or urban single hospital for a three-year period. These provisions were effective for cost reporting periods beginning on or after December 29, 2007.

MMSEA provided a three-year moratorium on new LTCHs or satellite LTCHs, with exceptions for an LTCH that, as of the date of enactment: (1) began its qualifying payment period as an LTCH; (2) had binding written agreements and had expended a certain percent of estimated cost or dollar amount for the purpose of construction, renovation, lease or demolition; and, (3) had an approved certificate of need from a State where one is required.

HOUSE BILL

The House bill would align the start date of the three-year delay in the implementation of the 25% patient threshold adjustment for referrals from non-co-located facilities for freestanding LTCHs and grandfathered HwHs with the original effective date for the phase-in of this regulatory policy. This new effective date is July 1, 2007. The bill also would align the start date of the three-year delay in the implementation of the 25% patient threshold for referrals from co-located hospitals with the original effective date for the phase-in of this regulatory policy (at 42 CFR

412.534(g)). The new effective date is October 1, 2007. For grandfathered LTCH satellite facilities, the effective date is July 1, 2007.

The bill would clarify that the 3-year delay from the 25% threshold policy for referrals from non-co-located facilities applies to LTCH or LTCH satellites that are co-located with an entity that is a provider-based, off-campus location of a subsection (d) hospital which did not provide 1886(d) services at the off-campus location. It also clarifies that grandfathered satellite facilities receive the same relief as non-grandfathered satellites from 42 CFR 412.534 pertaining to applicable patient percentage thresholds.

The bill would clarify that the exception from the LTCH moratorium applies to LTCHs with certificates of need for bed expansions prior to date of enactment but no earlier than April 1, 2005.

SENATE BILL

No provision.

CONFERENCE AGREEMENT

The Conference Agreement recedes to the House provision.

TITLE V—STATE FISCAL RELIEF

SEC. 5000. PURPOSES (SEC. 5000 OF THE SENATE BILL)

CURRENT LAW

No provision.

HOUSE BILL

No provision.

SENATE BILL

The Senate bill sets forth the purposes of the State Fiscal Relief title as: (1) to provide fiscal relief to states in a period of economic downturn, and (2) to protect and maintain state Medicaid programs during a period of economic downturn, including by helping to avert cuts to provider payment rates and benefits or services, and to prevent constrictions of income eligibility requirements for such programs, but not to promote increases in such requirements.

CONFERENCE AGREEMENT

The conference agreement follows the Senate bill.

SEC. 5001. TEMPORARY INCREASE OF MEDICAID FMAP (SEC. 5001 OF THE HOUSE BILL; SEC. 5001 OF THE SENATE BILL)

CURRENT LAW

The federal medical assistance percentage (FMAP) is the rate at which states are reimbursed by the federal government for most Medicaid service expenditures. It is based on a formula that provides higher reimbursement to states with lower per capita incomes relative to the national average (and vice versa); it has a statutory minimum of 50% and maximum of 83%. Exceptions to the FMAP formula have been made for certain states and situations.

For example, the District of Columbia's Medicaid FMAP is set in statute at 70%, and the territories have FMAPs set at 50% (they are also subject to federal spending caps). During the last economic downturn under the Jobs and Growth Tax Relief Reconciliation Act of 2003 (P.L. 108–27), all states received a temporary increase in Medicaid FMAPs for the last two quarters of FY2003 and the first three quarters of FY2004 as part of a fiscal relief package. In addition to Medicaid, the FMAP is used in determining the federal share of certain other programs (e.g., foster care and adoption assistance under Title IV–E of the Social Security Act) and serves as the basis for calculating an enhanced FMAP that applies to the Children's Health Insurance Program.

HOUSE BILL

The House bill provides a temporary adjustment FMAP during a recession adjustment period that begins with the first quarter of FY2009 and runs through the first quarter of FY2011. The House provision would hold all states harmless from any scheduled decline in their regular FMAPs, provide all states with an across-the-board increase of 4.9 percentage points, and provide high unemployment states with an additional increase. It would also allow each territory to choose between an FMAP increase of 4.9 percentage points along with a 10% increase in its spending cap, or its regular FMAP along with a 20% increase in its spending cap. It is estimated that the House provision would provide about half of its spending via the hold harmless and across-the-board increases, and about half via the unemployment-related increase which is targeted to the states hit hardest by job loss.

States would be evaluated on a quarterly basis for the additional unemployment-related FMAP increase, which would equal a percentage reduction in the state share. The percentage reduction would be applied to the state share after the hold harmless increase and before the 4.9 percentage point increase. For example, after applying the 4.9 point increase provided to all states, a state with a regular FMAP of 50% (state share of 50%) would have an FMAP of 54.90%. If the state share were further reduced by 6%, the state would receive an additional FMAP increase of 3 points (50 * 0.06 = 3). The state's total FMAP increase would be 7.9 points (4.9 + 3 = 7.9), providing an FMAP of 57.90%.

The additional unemployment-related FMAP increase would be based on a state's unemployment rate in the most recent 3-month period for which data are available (except for the first two and last two quarters of the recession adjustment period, for which the 3-month period would be specified) compared to its lowest unemployment rate in any 3-month period beginning on or after January 1, 2006. The criteria would be as follows:

- unemployment rate increase of at least 1.5 but less than 2.5 percentage points = 6% reduction in state share;
- unemployment rate increase of at least 2.5 but less than 3.5 percentage points = 12% reduction in state share; and
- unemployment rate increase of at least 3.5 percentage points = 14% reduction in state share.

If a state qualifies for the additional unemployment-related FMAP increase and later has a decrease in its unemployment rate,

its percentage reduction in state share could not decrease until the fourth quarter of FY2010 (for most states, this corresponds with the first quarter of SFY2011). If a state qualifies for the additional unemployment-related FMAP increase and later has an increase in its unemployment rate, its percentage reduction in state share could increase.

The full amount of the temporary FMAP increase would only apply to Medicaid (excluding disproportionate share hospital payments). A portion of the temporary FMAP increase (hold harmless plus 4.9 percentage points) would apply to Title IV–E foster care and adoption assistance. States would be required to maintain their Medicaid eligibility standards, methodologies, and procedures as in effect on July 1, 2008, in order to be eligible for the increase. They would be prohibited from depositing or crediting the additional federal funds paid as a result of the temporary FMAP increase to any reserve or rainy day fund. States would also be required to ensure that local governments do not pay a larger percentage of the state's nonfederal Medicaid expenditures than otherwise would have been required on September 30, 2008.

SENATE BILL

Similar to the House provision, the Senate provision would hold all states harmless from any decline in their regular FMAPs. However, it would provide a larger across-the-board increase of 7.6 percentage points and a smaller unemployment-related increase. It would apply the 7.6 percentage point increase and raise the territories' spending caps in the territories by 15.2%. It is estimated that the Senate provision would provide about 80% of its spending via the hold harmless and across-the-board increases, and about 20% via the unemployment-related increase.

As in the House provision, the Senate provision would calculate the unemployment-related increase as a percentage reduction in the state share. However, the percentage reduction would be applied to the state share after both the hold harmless increase and the across-the-board increase of 7.6 percentage points. The Senate provision would evaluate states based on the same unemployment data, except that it would not specify the three-month period to be used for the first two and last two quarters of the temporary FMAP increase. The criteria would be as follows: unemployment rate increase of at least 1.5 but less than 2.5 percentage points = 2.5% reduction in state share; increase of at least 2.5 but less than 3.5 percentage points = 4.5% reduction; increase of at least 3.5 percentage points = 6.5% reduction. Like the House provision, a state's percentage reduction could increase over time as its unemployment rate increases, but it would not be allowed to decrease until the last quarter of FY2010.

Unlike the House provision, the Senate provision would not apply the temporary FMAP increase to expenditures for individuals who are eligible for Medicaid because of an increase in a state's income eligibility standards above what was in effect on July 1, 2008. It would also prohibit states from receiving the temporary increase if they are not in compliance with existing requirements for prompt payment of health care providers under Medicaid and would extend this requirement to nursing facilities. States would be required to

report to the Secretary of HHS on their compliance with such requirements. Otherwise, the Senate provision is similar to the House provision.

CONFERENCE AGREEMENT

The conference agreement follows the Senate bill with modifications. The across-the-board increase in FMAP would be 6.2 percentage points. The reductions in state share for states with increases in unemployment rates would be 5.5%, 8.5%, and 11.5%. These percent reductions would be applied against the state share after the hold harmless reduction and after an across-the-board increase of 3.1 percentage points. Each territory would be allowed to choose between an FMAP increase of 6.2 percentage points along with a 15% increase in its spending cap, or its regular FMAP along with a 30% increase in its spending cap. It is estimated that the conference agreement would provide about 65% of its spending via the hold harmless and across-the-board increases, and about 35% via the unemployment-related increase.

The conference agreement would also prohibit states from receiving the temporary increase if they are not in compliance with existing requirements for prompt payment of practitioners under Medicaid and would extend this requirement to nursing facilities and hospitals. States would be required to report to the Secretary of HHS on their compliance with such requirements.

SEC. 5001(f)(2). COMPLIANCE WITH PROMPT PAY REQUIREMENTS (SEC. 3304 OF THE SENATE BILL)

CURRENT LAW

Under SSA Sec. 1902(a)(37)(A) states are to reimburse providers for services within 30 days of the receipt of a reimbursement claim. State Medicaid programs are to reimburse providers for 90% of claims submitted for payment within 30 days of receipt of the claim. Medicaid also is to process and pay 99% of claims within 90 days from the date of receipt of such claims. These requirements allow states additional time to process claims that are inaccurate, incomplete, or otherwise cannot be processed in a timely manner.

HOUSE BILL

No provision.

SENATE BILL

Under this provision, for states to qualify for the temporary enhanced FMAP funding under section 5001, states would have to meet current prompt payment requirements under section 1902(a)(37)(A), as well as a temporary extension of those requirements to nursing facilities, which are not currently subject to the prompt pay requirements in title XIX.

CONFERENCE AGREEMENT

The conference agreement follows the Senate bill with modifications to the reporting requirements, to temporarily extend application of the prompt pay requirements to hospitals, and to pro-

vide a grace period before states become ineligible for increased FMAP as a result of failure to comply with the requirements as relate to nursing facilities and hospitals.

SEC. 5002. TEMPORARY INCREASE IN DSH ALLOTMENTS DURING RECESSION (SEC. 5006 OF THE HOUSE BILL; SEC. 5002 OF THE SENATE BILL)

CURRENT LAW

Medicaid law requires that states make Medicaid payment adjustments for hospitals that serve a disproportionate share of low-income patients with special needs. Payments to these hospitals known as disproportionate share hospital (DSH) payments, are specifically defined in Medicaid law. They are subject to aggregate annual state-specific limits on federal financial participation. States are required to provide an annual report to the Secretary describing the payment adjustments made to each DSH hospital.

HOUSE BILL

This provision would increase states' FY2009 annual Disproportionate Share Hospital (DSH) allotments by 2.5% above the allotment they would have received in FY2009 under current law. In addition, states' DSH allotments in FY2010 would be equal to the FY2009 DSH allotment (with the adjustment) increased by 2.5%. After FY2010, states' annual DSH allotments would be determined as under current law. If, under current law, states' annual DSH allotments are higher in either FY 2009 or FY 2010 than they would have been with the 2.5% adjustment, then states would receive the higher DSH allotments without the recession adjustment.

SENATE BILL

Under this provision, states that reported to the Health and Human Services Secretary, as of August 31, 2009, FY2006 total (federal and state) DSH allotments of less than 3% of the state's total state plan medical assistance expenditures would receive special DSH allotments established under the Medicare Modernization Act of 2003 (MMA, P.L. 108–391). This new provision may affect the number of states that are determined to be low-DSH states since the provision would rely on a different base year than that used under MMA. Under this provision, low-DSH states would receive the following revised DSH allotments:

- for FY2009, the DSH allotment would be the FY2008 DSH allotment increased by 16%;
- for FY2010, the DSH allotment would be the FY2009 DSH allotment increased by 16%;
- for the first quarter of FY2011(through December 31, 2010), the DSH allotment would be ¼ of the DSH allotment for FY2010 increased by 16%;
- for the remainder of FY2011 (January 1, 2011–September 30, 2011), the DSH allotment would be ¾ of the FY2010 DSH allotment for each qualified state without the changes contained in this provision;

• for FY2012, qualified states' DSH allotments would be FY2010 DSH allotment (as if this provision had not been enacted);

• for FY2013 and subsequent years, qualified states would receive the DSH allotment for the previous fiscal year with an inflation adjustment, as described in the Social Security Act (SSA), Section 1923(f)(5).

CONFERENCE AGREEMENT

The conference agreement follows the House provision.

SEC. 5003. MORATORIA ON CERTAIN MEDICAID FINAL REGULATIONS (SEC. 5002 OF THE HOUSE BILL; SEC. 5002 OF THE SENATE BILL)

CURRENT LAW

In 2007 and 2008, the Centers for Medicare and Medicaid Services (CMS) issued seven Medicaid regulations that generated controversy during the 110th Congress. To address concerns with the impact of the regulations, Congress passed a law that imposed moratoria on six of the Medicaid regulations until April 1, 2009 (excluding the rule on outpatient hospital facility and clinic services). The seven Medicaid regulations covered the following Medicaid areas:

- Graduate Medical Education,
- Cost Limit for Public Providers,
- Rehabilitation Services,
- Targeted Case Management,
- School-Based Services,
- Provider Taxes, and
- Outpatient Hospital Services.

HOUSE BILL

This provision would extend the moratoria on the first six regulations beyond April 1, 2009, when the current moratoria expire, to July 1, 2009. The regulations covered under the extension would include: (1) Graduate Medical Education, (2) Cost Limit for Public Providers, (3) Rehabilitative Services, (4) Targeted Case Management, (5) School-Based Services, and (6) Provider Taxes. In addition, this provision would specifically prohibit the Health and Human Services Secretary from taking any action until after June 30, 2009 (through regulation, regulatory guidance, use of federal payment audit procedures, or other administrative action, policy, or practice, including Medical Assistance Manual transmittal or state Medicaid director letter) to implement a final regulation covering Outpatient Hospital facility services.

SENATE BILL

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill with a modification limiting the application of the moratoria to the four regulations that have been published as final: (1) Targeted Case Manage-

ment, (2) School-Based Services, (3) Provider Taxes, and (4) Outpatient Hospital Services. The conference agreement also states the sense of the Congress that the Secretary of HHS should not promulgate as final the proposed regulations relating to Graduate Medical Education, Cost Limit for Public Providers, and Rehabilitative Services.

SEC. 5004. EXTENSION OF TRANSITIONAL MEDICAL ASSISTANCE (TMA) (SEC. 5003 OF THE HOUSE BILL; SEC. 3101 OF THE SENATE BILL)

CURRENT LAW

States are required to continue Medicaid benefits for certain low-income families who would otherwise lose coverage because of changes in their income. This continuation is called transitional medical assistance (TMA). Federal law permanently requires four months of TMA for families who lose Medicaid eligibility due to increased child or spousal support collections, as well as those who lose eligibility due to an increase in earned income or hours of employment. However, Congress expanded work-related TMA under Section 1925 of the Social Security Act in 1988, requiring states to provide at least six, and up to 12, months of coverage. Since 2001, these work-related TMA requirements have been funded by a series of short-term extensions, most recently through June 30, 2009.

To qualify for work-related TMA under Section 1925, a family must have received Medicaid in at least three of the six months preceding the month in which eligibility is lost and have a dependent child in the home. During the initial 6-month period of TMA, states must provide the same benefits the family was receiving, although this requirement may be met by paying a family's premiums, deductibles, coinsurance, and similar costs for employer-based health coverage. An additional 6-month extension of TMA (for a total of up to 12 months) is available for families who continue to have a dependent child in the home, who meet reporting requirements, and whose average gross monthly earnings (less work-related child care costs) are below 185% of the federal poverty line. States may impose a premium, limit the scope of benefits, and use an alternative service delivery system during the second six months of TMA.

HOUSE BILL

The provision would extend work-related TMA under Section 1925 for 18 months through December 31, 2010. The provision also would give States the flexibility to extend an initial eligibility period of 12 months of Medicaid coverage to families transitioning from welfare to work, in which case the additional 6-month extension would not apply. The House bill also gives states the option of waiving the requirement that a family must have received Medicaid in at least three of the last six months in order to qualify.

Under the House provision, states would be required to collect and submit to the Secretary of Health and Human Services (and make publicly available) information on average monthly enrollment and participation rates for adults and children under work-related TMA; states would also be required to collect and submit

information on the number and percentage of children who become ineligible for work-related TMA, but who continue to be eligible under another Medicaid eligibility category or who are enrolled in the Children's Health Insurance Program.

SENATE BILL

The Senate bill is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House and Senate bills.

SEC. 5005. EXTENSION OF THE QUALIFYING INDIVIDUAL (QI) PROGRAM (SEC. 3201 OF THE SENATE BILL)

CURRENT LAW

Certain low-income individuals who are aged or have disabilities, as defined under the Supplemental Security Income (SSI) program, and who are eligible for Medicare, are also eligible to have their Medicare Part B premiums paid for by Medicaid under the Medicare Savings Program (MSP). Eligible groups include Qualified Medicare Beneficiaries (QMBs), Specified Low-Income Medicare Beneficiaries (SLMBs), and Qualifying Individuals (QIs). QMBs have incomes no greater than 100% of the federal poverty level (FPL) and assets no greater than $4,000 for an individual and $6,000 for a couple. SLMBs meet QMB criteria, except that their incomes are greater than 100% of FPL but do not exceed 120% FPL. QIs meet the QMB criteria, except that their income is between 120% and 135% of FPL. Further, they are not otherwise eligible for Medicaid. The QI program is currently slated to terminate December 2009.

In general, Medicaid payments are shared between federal and state governments according to a matching formula. Unlike the QMB and SLMB programs, the QI program is paid 100% by the federal government from the Part B Trust fund. The total amount of federal QI spending is limited each year and allocated among the states. States are required to cover only the number of people that would bring their annual spending on these population groups to their allocation levels. For the period beginning on January 1, 2009 and ending on September 30, 2009, the total allocation amount for all states was $350 million. For the period that begins on October 1, 2009 and ends on December 31, 2009, the total allocation is $150 million.

HOUSE BILL

No provision.

SENATE BILL

This provision would extend the QI program an additional year from December 2009 to December 2010. It establishes specific funding limits:

- from January 1, 2010, through September 30, 2010, the total allocation amount would be $412.5 million, and

• from October 1, 2010, through December 31, 2010, the total allocation amount would be $150 million.

CONFERENCE AGREEMENT

The conference agreement follows the Senate bill.

SEC. 5006(A), (B), (C). PROTECTIONS FOR INDIANS UNDER MEDICAID AND CHIP (SEC. 5004 OF THE HOUSE BILL; SEC. 3301 OF THE SENATE BILL)

CURRENT LAW

Premiums and Cost Sharing. In Medicaid, premiums and enrollment fees generally are prohibited for most beneficiaries. Nominal premiums and enrollment fees specified in regulations may be imposed on selected groups (e.g., medically needy, certain families qualifying for transitional Medicaid, pregnant women and infants with income over 150% FPL). Premiums and enrollment fees can exceed these nominal amounts for other selected groups (e.g., certain workers with disabilities and individuals covered under Section 1115 demonstrations).

Service-related cost-sharing (e.g., deductibles, copayments, coinsurance) is prohibited for selected groups (e.g., children under 18, pregnant women) and for selected benefits (e.g., hospice care, emergency services, family planning services and supplies). For most other groups and services, nominal cost-sharing amounts specified in regulations may be applied at state option. For other selected groups (e.g., workers with disabilities and individuals covered under Section 1115 demonstrations), cost-sharing can exceed nominal amounts.

The Deficit Reduction Act of 2005 (P.L. 109–171) added a new Medicaid state option for alternative premiums and cost-sharing for certain subgroups. Applicable maximum amounts vary by income level (as a percent of the federal poverty level). Special rules apply to prescription drugs and to non-emergency services provided in hospital emergency rooms.

Indians are not explicitly exempted from cost-sharing and premium charges in Medicaid. When an Indian Medicaid beneficiary receives services from a contract health services (CHS) provider, Medicaid pays for the service. Any copayment that Medicaid does not pay must be paid by the Indian Health Service (IHS) or the Tribe from its CHS budget, since the CHS provider may not bill the Indian patient. The practical effect of this is simply to reduce the amount of appropriated funds available for health care from IHS or CHS for Tribes that already lack sufficient resources. CHIP programs are already prohibited from imposing cost-sharing on eligible Indians.

Eligibility Determinations under Medicaid and CHIP. The federal Medicaid statute defines more than 50 eligibility pathways. For some pathways, states are required to apply an assets test. For other pathways, assets tests are a state option. When assets tests apply, some pathways give states flexibility to define specific assets that are to be counted and which can be disregarded. For other pathways, primarily for people qualifying on the basis of having a disability or who are elderly, assets tests are required. States gen-

erally follow asset guidelines specified for the Supplementary Security Income (SSI) program. Medicaid also defines the rules for the counting of certain assets. Under SSI law, several types of assets are excluded, including: (1) any land held in trust by the United States for a member of a federally-recognized tribe, or any land held by an individual Indian or tribe and which can only be sold, transferred, or otherwise disposed of with the approval of other individuals, his or her tribe, or an agency of the federal government; and (2) certain distributions (including land or an interest in land) received by an individual Alaska Native or descendant of an Alaska Native from an Alaska Native Regional and Village Corporation pursuant to the Alaska Native Claims Settlement Act. Most other property is required to be counted. There is no similar provision in current CHIP law.

Estate Recovery. The Omnibus Budget Reconciliation Act of 1993 requires all states to recover property and assets of deceased Medicaid beneficiaries for the cost of certain services provided by Medicaid. At a minimum, states must seek recovery for certain services provided, including nursing home care, services provided by an intermediate care facility for the mentally retarded or other similar medical institutions, and Medicaid payments to Medicare for cost-sharing related benefits. The state has discretion to recover further assets to cover the costs for all Medicaid services provided to the beneficiary. The state also has the authority to grant an exemption if the recovery would place undue hardship against the estate. The Secretary specifies the standards for a state hardship waiver for Medicaid estate recovery purposes.

HOUSE BILL

Premiums and Cost Sharing. The provision would specify that no enrollment fee, premium or similar charge, and no deduction, co-payment, cost-sharing, or similar charge shall be imposed against an Indian who receives Medicaid-coverable services or items directly from the Indian Health Service (IHS), an Indian Tribe (IT), Tribal Organization (TO), or Urban Indian Organization (UIO), or through referral under the contract health services (CHS) program. In addition, Medicaid payments due to the IHS, an IT, TO, or UIO, or to a health care provider through referral under the CHS program for providing services to a Medicaid-eligible Indian, could not be reduced by the amount of any enrollment fee, premium or similar charge, as well as any cost-sharing or similar charge that would otherwise be due from an Indian, if such charges were permitted. A rule of construction would specify that nothing in this provision could be construed as restricting the application of any other limitations on the imposition of premiums or cost-sharing that may apply to a Medicaid-enrolled Indian. This language would also add Indians receiving services through Indian entities to the list of individuals exempt from paying premiums or cost-sharing under the DRA option for alternative premiums and cost-sharing under Medicaid. The effective date of this provision would be October 1, 2009.

Eligibility Determinations under Medicaid and CHIP. The provision would prohibit consideration of four different classes of property from resources in determining Medicaid eligibility of an In-

dian. These classes include: (1) property, including real property and improvements, that is held in trust (subject to federal restrictions or otherwise under the supervision of the Secretary of the Interior), located on a reservation, including any federally recognized Indian Tribes reservation, Pueblo, or Colony, including former reservations in Oklahoma, Alaska Native regions established by the Alaska Native Claims Settlement Act (ANCSA), and Indian allotments on or near a reservation as designated and approved by the Bureau of Indian Affairs; (2) for any federally recognized Tribe not described in the first class, property located within the most recent boundaries of a prior federal reservation; (3) ownership interests in rents, leases, royalties, or usage rights related to natural resources, including extraction of natural resources or harvesting of timber, other plants and plant products, animals, fish, and shellfish, resulting from the exercise of federally protected rights; and (4) ownership interest in or usage rights to items not covered in the previous classes that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional life style according to applicable tribal law or custom. This provision is modeled on the provisions of the Centers for Medicare & Medicaid Services (CMS) State Medicaid Manual that exempt the same type of Indian property from Medicaid estate recovery. The House bill would also apply this new language to CHIP in the same manner in which it applies to Medicaid.

Estate Recovery. The provision would provide that certain income, resources, and property would remain exempt from Medicaid estate recovery if they were exempted under Section 1917(b)(3) of the Social Security Act (allowing the Secretary to specify standards for a state hardship waiver of asset criteria) under instructions regarding Indian tribes and Alaskan Native Villages as of April 1, 2003. The provision also would allow the Secretary to provide for additional estate recovery exemptions for Indians under Medicaid.

SENATE BILL

Same as House bill, except that these provisions would sunset on December 31, 2010. The Senate bill did not specify an effective date for the premiums and cost sharing provision, meaning those provisions would take effect upon enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate bill with modifications for the provisions to be permanently effective July 1, 2009.

SEC. 5006(d). RULES APPLICABLE UNDER MEDICAID AND CHIP TO MANAGED CARE ENTITIES WITH RESPECT TO INDIAN ENROLLEES AND INDIAN HEALTH CARE PROVIDERS AND INDIAN MANAGED CARE ENTITIES (SEC. 3302 OF THE SENATE BILL)

CURRENT LAW

Section 1903(m)(1) of Title XIX defines: (1) the term Medicaid managed care organization (MCO), (2) requirements regarding accessibility of services for Medicaid MCO beneficiaries vis-a-vis non-MCO Medicaid beneficiaries within the area served by the MCO; (3) solvency standards in general and specific to different types of

organizations; and (4) the duties and functions of the Secretary with respect to the status of an organization as a Medicaid MCO.

Section 1905(t) of Title XIX defines another type of managed care arrangement called primary care case management (PCCM). Under such arrangements, states contract with primary care case managers who are responsible for locating, coordinating and monitoring covered primary care (and other services stipulated in contracts) provided to all individuals enrolled in such PCCM programs.

Title XIX contains a number of additional provisions regarding managed care under Medicaid. Section 1932(a)(5) specifies rules regarding the provision of information about managed care to beneficiaries and potential enrollees. Such information must be in an easily understood form, and must address the following topics: (1) who providers are and where they are located, (2) enrollee rights and responsibilities, (3) grievance and appeal procedures, (4) covered items and services, (5) comparative information for available MCOs regarding benefits, cost-sharing, service area and quality and performance, and (6) information on benefits not covered under managed care arrangements. In addition, Section 1932(d)(2)(B) requires managed care entities to distribute marketing materials to their entire service areas.

Sections 1903(m) and 1932 provide cross-referencing definitions for the term "Medicaid managed care organization." Under Title XIX, section 1932(a)(2)(C) stipulates the rules regarding Indian enrollment in Medicaid managed care. A state may not require an Indian (as defined in Section 4(c) of the Indian Health Care Improvement Act (IHCIA) to enroll in a managed care entity unless the entity is one of the following (and only if such entity is participating under the plan): (1) the IHS, (2) an IHP operated by an Indian tribe or tribal organization pursuant to a contract, grant, cooperative agreement, or compact with the IHS pursuant to the Indian Self-Determination Act, or (3) an urban IHP operated by a UIO pursuant to a grant or contract with the IHS pursuant to Title V of IHCIA.

In general, Federally Qualified Health Centers (FQHCs) are paid on a per visit basis, using a prospective payment system that takes into account costs incurred and changes in the scope of services provided. Per visit payment rates are also adjusted annually by the Medicare Economic Index applicable to primary care services. When an FQHC is a participating provider with a Medicaid managed care entity (MCE), the state must make supplemental payments to the center in an amount equal to any difference between the rate paid by the MCE and the per visit amount determined under the prospective payment system.

HOUSE BILL

No provision.

SENATE BILL

Under this provision, Medicaid managed care contracts with Managed Care Entities (MCEs) and Primary Care Case Management (PCCMs) companies would be required to meet certain condi-

tions relating to access for Indian Medicaid beneficiaries in order to receive Medicaid payments, including:

- MCEs and PCCMs would need to demonstrate that the number of participating Indian health care providers was sufficient to ensure timely access to covered Medicaid managed care services for eligible enrollees, and
- MCEs and PCCMs would need to agree to pay Indian health care providers (IHPs) at rates equal to the rates negotiated between these organizations and the provider involved, or, if such a rate has not been negotiated, at a rate that is not less than the level and amount of payment which the MCE or PCCM would make for services rendered by a participating non-Indian health care provider.

In addition, this provision would specify that MCEs and PCCMs must agree to make prompt payment, as required under Medicaid rules for all providers, to participating Indian health care providers, and states would be prohibited from waiving requirements relating to assurance that payments are consistent with efficiency, economy, and quality.

Further, this provision would apply special payment provisions to certain Indian health care providers that are Federally Qualified Health Centers (FQHCs). For non-participating Indian FQHCs that provide covered Medicaid managed care services to Indian MCE enrollees, the MCE must pay a rate equal to the payment that would apply to a participating non-Indian FQHC. When payments to such participating and non-participating providers by an MCE for services rendered to an Indian enrollee with the MCE are less than the rate under the state plan, the state must pay such providers the difference between the rate and the MCE payment. Likewise, if the amount paid to a non-FQHC Indian provider (whether or not the provider participates with the MCE) is less than the rate that applies under the state plan, the state must pay the difference between the applicable rate and the amount paid by MCEs. Under this provision, Indian Medicaid MCEs would be permitted to restrict enrollment to Indians and to members of specific tribes in the same manner as IHPs may restrict the delivery of services to such Indians and tribal members.

Finally, the provision would apply specific sections affecting Medicaid to the CHIP program, including (1) Section 1932(a)(2)(C) in current law regarding enrollment of Indians in Medicaid managed care (e.g., states cannot require Indians to enroll in a MCE unless the entity is the IHS, certain IHPs operated by tribes or tribal organizations, or certain urban IHPs operated by Urban Indian Organizations (UIOs), and (2) the new Section 1932(h) as described above.

CONFERENCE AGREEMENT

The conference agreement follows the Senate bill with a modification deleting the sunset date clarifying that Indian Medicaid MCEs would be permitted to restrict enrollment to Indians but not to members of specific tribes, and clarifying access standards in states where there are no Indian providers. The provision would be effective July 1, 2009.

SEC. 5006(e). CONSULTATION ON MEDICAID, CHIP, AND OTHER HEALTH CARE PROGRAMS FUNDED UNDER THE SOCIAL SECURITY ACT INVOLVING INDIAN HEALTH PROGRAMS AND URBAN INDIAN ORGANIZATIONS (SEC. 5005 OF THE HOUSE BILL; SEC. 3303 OF THE SENATE BILL)

CURRENT LAW

There are no provisions in current Medicaid or CHIP statutes regarding a Tribal Technical Advisory Group (TTAG) within the Centers for Medicare and Medicaid Services (CMS), the federal agency that oversees the Medicare, Medicaid and CHIP programs. CMS currently maintains a TTAG for consultation on matters relating to Indian health care, but it is not codified in law.

HOUSE BILL

The provision would require the Secretary to maintain within CMS a Tribal TAG, previously established in accordance with requirements of a charter dated September 30, 2003. The provision also would require that the TAG include a representative of the UIOs and IHS. The UIO representative would be deemed an elected official of a tribal government for the purposes of applying Section 204(b) of the Unfunded Mandates Reform Act of 1995, which exempts elected tribal officials from the Federal Advisory Committee Act for certain meetings with federal officials.

The provision would also require states in which one or more IHPs or UIOs provide health services to establish a process for obtaining advice on a regular, on-going basis from designees of IHPs and UIOs regarding Medicaid law and its direct effects on those entities. This process must include seeking advice prior to submission of state Medicaid plan amendments, waiver requests or proposed demonstrations likely to directly affect Indians, IHPs, or UIOs. This process may include appointment of an advisory panel and of a designee of IHPs and UIOs to the Medicaid medical care advisory committee advising the state on its state Medicaid plan. The provision would also apply this new language to CHIP in the same manner in which it applies to Medicaid. Finally, the provision would prohibit construing these amendments as superseding existing advisory committees, working groups, guidance or other advisory procedures established by the Secretary or any state with respect to the provision of health care to Indians.

SENATE BILL

This provision is similar to the House provision. Both versions would require the Secretary to maintain within CMS a Tribal Technical Advisory Group (TTAG), previously established in accordance with requirements of a charter dated September 30, 2003. The provision also would require that the TTAG include a IHS representative. Unlike the House bill, however, under this provision in S.Amdt. 570, the TTAG also would include a representative of a national urban Indian Health organization, rather than a representative of the UIOs. The non-application of Federal Advisory Committee Act (FACA) would still hold for a representative of a national UIO.

CONFERENCE AGREEMENT

The conference agreement follows the Senate bill with a modification deleting the sunset date. The provision would be effective July 1, 2009.

SEC. 5007. FUNDING FOR OVERSIGHT AND IMPLEMENTATION (SEC. 5004 OF THE SENATE BILL)

CURRENT LAW

The Office of Inspector General (OIG) of the Department of Health and Human Services is responsible for ensuring program integrity of over 300 programs in the Department, including the Medicaid program. The OIG's program integrity activities are funded through a combination of discretionary appropriations and mandatory funding through the Health Care Fraud and Abuse Control Program. The Centers for Medicare & Medicaid Services (CMS) in the Department of Health and Human Services administers the Medicaid program at the federal level. These administrative activities are funded through discretionary appropriations.

HOUSE BILL

No provision.

SENATE BILL

Under this provision, the Health and Human Services Office of the Inspector General (HHS OIG) is to receive $31.25 million to ensure the proper expenditure of federal Medicaid funds. These funds are appropriated from any money in the Treasury not otherwise appropriated and are available throughout the recession period (defined as October 1, 2008 through December 31, 2010). Amounts appropriated under this provision would be available until September 30, 2012, without further appropriation, and would be in addition to any other amounts appropriated or made available to HHS OIG.

CONFERENCE AGREEMENT

The conference agreement follows the Senate bill with a modification. The funds for the HHSOIG would be appropriated in FY2009 and would be available for expenditure until September 30, 2011. The conference agreement would also appropriate $5 million in FY2009 to CMS for the implementation and oversight of the state fiscal relief provisions relating to Medicaid. These funds would remain available until expended.

SEC. 5008. GAO STUDY AND REPORT REGARDING STATE NEEDS DURING PERIODS OF NATIONAL ECONOMIC DOWNTURN (SEC. 5005 OF THE SENATE BILL)

CURRENT LAW

No provision.

HOUSE BILL

No provision.

SENATE BILL

Under this provision, the Comptroller General of the United States, would study the current (as of the date of enactment of the legislation) economic recession as well as previous national economic downturns since 1974. GAO would develop recommendations to address states' needs during economic recessions, including the past and projected effects of temporary increases in the federal medical assistance percentage (FMAP) during these recessions. By April 1, 2011, GAO would submit a report to appropriate congressional committees that would include the following:

- Recommendations for modifying the national economic downturn assistance formula for temporary Medicaid FMAP adjustments (a "countercyclical FMAP," as described in GAO report number, GAO–07–97), to improve the effectiveness of the countercyclical FMAP for addressing states' needs during national economic downturns:
  - what improvements are needed to identify factors to begin and end the application of a countercyclical FMAP;
  - how to adjust the amount of a countercyclical FMAP to account for state and regional variations; and
  - how a countercyclical FMAP could be adjusted to better account for actual Medicaid costs incurred by states during economic recessions.
- Analysis of the impact on states of recessions, including declines in private health insurance benefits coverage; declines in state revenues; and maintenance and growth of caseloads under Medicaid, CHIP, or any other publicly funded programs that provide health benefits coverage to state residents.

CONFERENCE AGREEMENT

The conference agreement follows the Senate bill.

PAYMENT OF MEDICARE LIABILITY TO STATES AS A RESULT OF THE SPECIAL DISABILITY WORKLOAD PROJECT (SEC. 5003 OF THE SENATE BILL)

CURRENT LAW

No provision.

HOUSE BILL

No provision.

SENATE BILL

Under this provision, within three months after enactment of this law, the Secretary, in consultation with the Commissioner of Social Security, would negotiate an agreement on a payment amount to be made to each state for the Medicare Special Disability Workload (SDW) project. Payments to states would be subject to certain conditions:

- states would waive the right to file or be a part of any civil action in any federal or state court where payment was sought for liability related to the Medicare SDW project;

- states would release the federal government from any further claims for reimbursement of state expenditures arising from the SDW project;
- states that are parties to civil actions in any federal or state court seeking reimbursement for the SDW project, would be ineligible to receive payment under this provision while such action is pending or if it is resolved in a state's favor.

In negotiating with states, the Secretary and SSA Commissioner would use the most recent federal data available, including estimates, to determine the amount of payment to be offered to each state that elects to enter into an agreement with the Secretary. The payment methodology would consist of the following factors:

- the number of SDW cases that were eligible for benefits under Medicare and the month when these cases initially became eligible;
- the applicable non-federal share of Medicaid expenditures made by states during the period these cases were eligible; and
- other factors determined appropriate by the Secretary and the SSA Commissioner in consultation with states.

However, as a condition of payment under a negotiated agreement for SDW cases, states would not be required to submit individual paid Medicaid claims data.

To make payments to states for the SDW project, $3 billion would be appropriated for FY2009 from money in the treasury not otherwise appropriated. Aggregate payments to states could not exceed $3 billion. Payments to states would be provided within four months from the date of enactment of ARRA.

An SDW case would be defined as an individual determined by the SSA Commissioner to have been eligible for benefits under Title II of the SSA for a period during which such benefits were not provided to the individual and who was, during all or part of such period, enrolled in Medicaid.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

TITLE VI—BROADBAND TECHNOLOGY OPPORTUNITIES PROGRAM

HOUSE BILL

Section 6001 of the House bill directs the National Telecommunications and Information Administration ("NTIA") to develop and maintain a broadband inventory map of the United States that identifies and depicts broadband service availability and capability and directs the NTIA to make the map accessible on the NTIA's website no later than 2 years after the date of enactment of this Act. It authorizes the creation of grant programs for the deployment of wireless and wireline broadband infrastructure to be administered by the NTIA. It also authorizes a state to submit a priority report to the NTIA that identifies the geographic

areas within that state that have greatest need for new or additional telecommunications infrastructure. A state may not identify areas encompassing more than 20% of that state's population.

Section 6002 of the House bill authorizes the NTIA to award wireless deployment grants and broadband deployment grants to eligible entities for the non-recurring costs of deploying broadband infrastructure in qualified urban, suburban, and rural areas. Section 6002 directs the NTIA to seek to distribute wireless grants, to the extent possible, so that 25% of the available funds go to "unserved areas" for basic wireless voice services and 75% to "underserved areas" for advanced wireless broadband services. It also directs that the NTIA shall seek to distribute broadband deployment grants, to the extent possible, so that 25% of the available funds go to "unserved areas" for basic broadband services and 75% to "underserved areas" for advanced broadband services. Section 6002 directs the NTIA to establish certain grant requirements, including that grant recipients are not unjustly enriched by the program, adhere to the FCC's August 5, 2005, broadband Internet policy statement, operate networks on an open access basis, and adhere to a build out schedule.

Section 6002 of the House bill sets forth the requirements of the grant application and grant selection criteria. The NTIA is required to consider certain public policy goals (e.g., public safety benefits and enhancement of computer ownership or literacy) before awarding grants. It requires the NTIA to coordinate with the FCC and to consult with other agencies as necessary. Section 6002 requires the NTIA to submit an annual report to Congress assessing the impact of the grants on the policy objectives and criteria contained in this Section and grants the NTIA authority to prescribe rules as necessary to implement this Section. Section 6002 also contains definitions of terms used in this Section, and directs the FCC to develop definitions for the terms unserved, underserved, and open access.

Section 6002 defines "basic broadband service" as a service delivering data to the end user at a speed of at least 5 megabits per second downstream and 1 megabit per second upstream. The term "advanced broadband service" means a service capable of delivering at least 45 megabits per second downstream and 15 megabits per second upstream. The term advanced wireless broadband service means a service capable of delivering at least 3 megabits downstream and 1 megabit upstream.

Section 6003 of the House bill requires the FCC to, not later than one year after the date of enactment of this section, develop and submit to Congress a report containing a national broadband plan and specifies what the plan should include.

SENATE BILL

Section 201 of the Senate bill authorizes the NTIA to create a grant program entitled the Broadband Technology Opportunity Program to award competitive grants to State and local governments, nonprofits, and public-private partnerships to: (1) accelerate broadband deployment in unserved and underserved areas and to strategic institutions that are likely to create jobs or provide significant public benefits; (2) increase sustained broadband adoption;

and (3) upgrade technology and capacity for public safety entities and at public computing centers, which are a key source of access to the Internet for lower income users, such as libraries and community colleges.

Section 201 gives the NTIA the authority to impose grant conditions with regard to interconnection and nondiscrimination requirements that apply to facilities funded in part by this program, regardless of who operates those facilities.

Section 201 also (1) imposes a 20-percent match requirement for grants, which may be satisfied by the grant applicant or any third-party partnering with the grant applicant, and may be waived only under special circumstances; (2) requires specific commitments from grantees on scheduled progress for meeting the goals of the grant; (3) requires that grant applications show that the proposed broadband deployment would not occur during the grant period without this Federal investment; (4) requires quarterly reporting by any entity receiving funds regarding how funds are spent and progress meeting the schedule, as well as quarterly reporting to Congress by Federal agencies making grants regarding how funds are being spent; (5) requires strong public transparency regarding how funds are spent under the program and grantees' progress fulfilling specific commitments to deploy facilities, increase broadband adoption or deploy computer infrastructure; and (6) empowers the NTIA to revoke funding in any case of misspending, and to recapture funds in certain circumstances.

CONFERENCE AGREEMENT

Summary

The Conference substitute retains the general structure and language of the Senate bill, while incorporating a series of amendments related to the priorities of the House.

Section 6001. Section 6001 establishes the Broadband Technology Opportunities Program within the NTIA. The Conferees intend that the NTIA has discretion in selecting the grant recipients that will best achieve the broad objectives of the program. The Conferees also intend that the NTIA select grant recipients that it judges will best meet the broadband access needs of the area to be served, whether by a wireless provider, a wireline provider, or any provider offering to construct last-mile, middle-mile, or long haul facilities. The Conferees intend that the NTIA award grants serving all parts of the country, including rural, suburban, and urban areas. The Conferees intend that the NTIA seek to ensure, to the extent practicable, that grant funds be used to assist infrastructure investments that would not otherwise be made by the entity applying, or, secondarily, that might not be made as quickly.

Part of the program is directed towards competitive grants for innovative programs to encourage sustainable adoption of broadband service in particular by vulnerable populations. The Conferees note the success of such programs in several States, and hope that these grantees will be involved in aggregating demand, ensuring community involvement, and fostering useful technology applications, thereby stimulating economic growth and job creation.

Eligible Entities. The Conference substitute creates a new, broad definition of entities that are eligible to receive grants. It is the intent of the Conferees that, consistent with the public interest and purposes of this section, as many entities as possible be eligible to apply for a competitive grant, including wireless carriers, wireline carriers, backhaul providers, satellite carriers, public-private partnerships, and tower companies.

Grant Distribution Considerations and Broadband Speeds. The Conference substitute inserts a new Section 6001(h) that incorporates several of the grant distribution considerations from the House bill. In particular, new Section 6001(h)(3) requires the NTIA to consider whether a grant applicant is a socially and economically disadvantaged small business, as defined under the Small Business Act.

New Section 6001(h)(2)(*B*) also requires the NTIA to consider whether an application will result in the greatest possible broadband speeds being delivered to consumers. While the House bill had included specific speed thresholds that an applicant must have met to be eligible for a grant, the substitute requires only that the NTIA consider the speeds that would be delivered to consumers in awarding grants. The Conferees are mindful that a specific speed threshold could have the unintended result of thwarting broadband deployment in certain areas. The Conferees are also mindful that the construction of broadband facilities capable of delivering next-generation broadband speeds is likely to result in greater job creation and job preservation than projects centered on current-generation broadband speeds. Therefore, the Conferees instruct the NTIA to seek to fund, to the extent practicable, projects that provide the highest possible, next-generation broadband speeds to consumers.

Broadband Policy Statement. The Conference substitute inserts the House language that requires grant recipients to adhere to the principles contained in the Federal Communications Commission's Broadband Policy Statement.

National Broadband Plan. The Conference substitute adopts the House language on the creation of a national broadband plan, with some minor modifications.

Federal/State Cooperation. Section 6001(c) directs the NTIA to consult with States on: (1) the identification of unserved and underserved areas within their borders; and (2) the allocation of grants funds to projects affecting each State. The Conferees recognize that States have resources and a familiarity with local economic, demographic, and market conditions that could contribute to the success of the broadband grant program. States are encouraged to coalesce stakeholders and partners, assess community needs, aggregate demand for services, and evaluate demand for technical assistance. The Conferees therefore expect and intend that the NTIA, at its discretion, will seek advice and assistance from the States in reviewing grant applications, as long as the NTIA retains the sole authority to approve the awards. The Conferees further intend that the NTIA will, in its discretion, assist the States in post-grant monitoring to ensure that recipients comply fully with the terms and conditions of their grants.

Definitions. The substitute does not define such terms as "unserved area" "underserved areas" and "broadband." The Conferees instruct the NTIA to coordinate its understanding of these terms with the FCC, so that the NTIA may benefit from the FCC's considerable expertise in these matters. In defining "broadband service," the Conferees intend that the NTIA take into consideration the technical differences between wireless and wireline networks, and consider the actual speeds that broadband networks are able to deliver to consumers under a variety of circumstances.

TITLE VII—LIMITS ON EXECUTIVE COMPENSATION

A. Executive Compensation Oversight (Secs. 6001 to 6006 of the Senate Amendment and Sec. 7001 of the Conference Agreement)

PRESENT LAW

An employer generally may deduct reasonable compensation for personal services as an ordinary and necessary business expense. Section 162(m) (relating to remuneration expenses for certain executives that are in excess of $1 million) and section 280G (relating to excess parachute payments) provide explicit limitations on the deductibility of certain compensation expenses in the case of corporate employers, and section 4999 imposes an additional tax of 20 percent on the recipient of an excess parachute payment. The Emergency Economic Stabilization Act of 2008 ("EESA") limits the amount of payments that may be deducted as reasonable compensation by certain financial institutions ("TARP recipients") that receive financial assistance from the United States pursuant to the troubled asset relief program ("TARP") established under EESA by modifying the section 162(m) and section 280G limits. EESA also provided non-tax rules relating to the compensation that is payable by such a financial institution (the "TARP executive compensation rules").

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision modifies and expands the present law non-tax TARP executive compensation rules. The modifications include: (1) expanding the requirement of recovery of a bonus, retention award, or incentive compensation paid to a senior executive officer based on statements of earnings, revenues, gains, or other criteria that are found to be materially inaccurate to the next 20 most highly compensated employees of a TARP recipient; (2) expanding the prohibition on the payment of golden parachute payments from senior executive officers to the next five most highly compensated employees of the TARP recipient, and defining the term "golden parachute payment" as any payment to a senior executive officer for departure from a company for any reason, except for payments for services performed or benefits accrued; and (3) prohibiting a TARP recipient from paying or accruing any bonus, retention award, or incentive compensation to at least the 25 most highly compensated

employees; and (4) prohibiting any compensation plan that would encourage manipulation of the reported earnings of a TARP recipient to enhance the compensation of any of its employees. The provision also provides rules relating to the compensation committees of TARP recipients, nonbinding shareholder votes on executive compensation payable by a TARP recipient, and the adoption by TARP recipients of policies regarding luxury expenditures such as entertainment, aviation, and office renovation expenses.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment with several modifications. Among the modifications are (1) a rule that provides that financial assistance under TARP is not treated as outstanding for a period in which the United States only holds warrants to purchase common stock of the TARP recipient; (2) rules that phase-in the restriction on bonuses, retention awards, and other incentive compensation by the amount of financial assistance received by the entity receiving TARP assistance, and that permit compensation to be paid in the form of restricted stock; and (3) and a directive to the Secretary of the Treasury to review compensation paid to senior executive officers and the next 20 most highly compensated employees of an entity receiving TARP assistance before the date of enactment to determine whether such payments were inconsistent with the provision, the TARP, or public interest.

TAX COMPLEXITY ANALYSIS

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (the "IRS Reform Act") requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Treasury Department) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses. For each such provision identified by the staff of the Joint Committee on Taxation a summary description of the provision is provided along with an estimate of the number and type of affected taxpayers, and a discussion regarding the relevant complexity and administrative issues.

Following the analysis of the staff of the Joint Committee on Taxation are the comments of the IRS and Treasury regarding each of the provisions included in the complexity analysis.

1. MAKE WORK PAY CREDIT

SUMMARY DESCRIPTION OF THE PROVISION

The provision creates a refundable tax credit for taxable years beginning in 2009 and 2010 equal to the lesser of (1) 6.2 percent of an individual's earned income or (2) $400 ($800 in the case of a joint return). The credit is phased out at a rate of two percent of the eligible individual's modified adjusted gross income above $75,000 ($150,000 in the case of a joint return).

NUMBER OF AFFECTED TAXPAYERS

It is estimated that the provision will affect in excess of 100 million individual tax returns.

DISCUSSION

The provision will require additional paperwork for taxpayers and additional processing burdens for IRS. It is expected that taxpayers will need to complete additional worksheets and or forms to compute the amount of the credit. Taxpayers may also wish to adjust their income tax withholding by filing the appropriate forms before the end of 2009. The IRS is anticipated to revise income tax withholding schedules and publish new schedules. These revised income tax withholding schedules should be designed to reduce taxpayers' income tax withheld for each remaining pay period in the remainder of 2009 so that the full benefit of the provision is reflected in the income tax withholding schedules during the balance of 2009.

2. Extension of Alternative Minimum Tax Relief for Individuals

SUMMARY DESCRIPTION OF THE PROVISION

The provision increases the individual AMT exemption amount for taxable years beginning in 2009 to $70,950 in the case of married individuals filing a joint return and surviving spouses; $46,700 in the case of other unmarried individuals; and $35,475 in the case of married individuals filing separate returns. In addition, for taxable years beginning in 2009, the provision allows an individual to offset the entire regular tax liability and alternative minimum tax liability by the nonrefundable personal credits.

NUMBER OF AFFECTED TAXPAYERS

It is estimated that the provision will affect approximately 25 million individual tax returns.

DISCUSSION

Many individuals will not have to compute their alternative minimum tax and file the IRS forms relating to that tax.

3. Special Allowance for Certain Property Acquired During 2009

SUMMARY DESCRIPTION OF THE PROVISION

The provision extends the additional first-year depreciation deduction for one year, generally through 2009 (through 2010 for certain longer-lived and transportation property).

NUMBER OF AFFECTED TAXPAYERS

It is estimated that more than 10 percent of small businesses will be affected by the provision.

DISCUSSION

It is not anticipated that small businesses will have to keep additional records due to this provision, nor will additional regulatory guidance be necessary to implement this provision. It is not anticipated that the provision will result in an increase in disputes between small businesses and the IRS. However, small businesses will have to perform additional analysis to determine whether property qualifies for the provision. In addition, for qualified property, small businesses will be required to perform additional calculations to determine the proper amount of allowable depreciation. Complexity may also be increased because the provision is temporary. For example, different tax treatment will apply for identical equipment based on the acquisition and placed in service date. Further, the Secretary of the Treasury is expected to have to make appropriate revisions to the applicable depreciation tax forms.

4. Premium Assistance for COBRA Benefits

SUMMARY DESCRIPTION OF THE PROVISION

The provision reimburses employers providing COBRA continuation health coverage to employees to the extent of 65 percent of the premium amount for up to nine months and requires the eligible individual to pay 35 percent of the premium. The program is mandatory for employers required to offer COBRA continuation health coverage. Eligible individuals must have a qualifying event between September 1, 2008 and December 31, 2009, and must have been terminated involuntarily. Firms providing COBRA benefits will be able to allow those electing COBRA to choose from other insurance options at the time of the qualifying event, and firms will be able to contribute to the individual portion of the premium. Lastly, the benefit phases out for single taxpayers with modified adjusted gross incomes between $125,000 and $145,000 ($250,000 and $290,000 for joint filers) for the taxable year.

Employers will pay reduced payroll taxes in the aggregate amount of 65 percent of the premium for all individuals who opt into the provision, or, if COBRA subsidy exceeds payroll taxes, employers will be reimbursed directly through a program established by the Department of Treasury. COBRA continuation health coverage for this purpose includes not only coverage that applies to private, nongovernmental employers with 20 or more employees but also coverage rules that apply to Federal and State and local governmental employers pursuant to Federal law, and to State law mandates that apply to small employers (employers with less than 20 employees) and other employers not covered by Federal law, provided that such State law mandates require an employer or other entity to offer comparable continuation health coverage. The social security trust fund is held harmless from payroll tax offsets that are permitted under the program.

NUMBER OF AFFECTED TAXPAYERS

It is estimated that more than 10 percent of small businesses will be affected by the provision.

DISCUSSION

This provision will require additional processing by the IRS in three areas; accounting, income eligibility and provision enforcement. First, for all firms with eligible employees, the firm must deduct that amount from their payroll taxes, so IRS must be aware of the number of employees eligible for the reimbursement and the average monthly premium at the firm to properly assess the amount of the deduction from payroll taxes. The Department of the Treasury must then transfer the appropriate amount of funds back into the social security trust fund. All employers bound by COBRA or COBRA-type legislation described above, and who terminate individuals from employment between September 1, 2008, and December 31, 2009, are affected by this provision. In addition, firms are permitted to collect full premiums from individuals for 60 days in accordance with their current premium billing cycles, but must then credit back the difference in later payments or if later payments are insufficient to credit back all funds, the employer will submit payment to the individual. The IRS must also distinguish between the 65 percent of subsidy contribution mandated and any optional firm contribution to the remaining 35 percent of premium.

Second, the income eligibility provision in the bill limits eligibility for the modified adjusted gross income limit of the provision phasing out between $125,000 and $145,000 for single filers ($250,000 and $290,000 for joint filers) for the taxable year. While individuals may waive the subsidy if they believe their earnings will exceed the limit, if an individual accepts the subsidy and earns over the limit the individual will be responsible for paying the subsidy back to Treasury. For married individuals filing separately, if any family member is over the single modified adjusted gross income limit of $125,000, the entire non-subsidized portion (this accounts for the phase out) must be repaid. This clause requires IRS to match the incomes of spouses filing separately and determine if the modified adjusted gross income of either spouse disqualifies both for the subsidy received. Children not claimed as dependents, however, who are still on family plans have their incomes excluded from this limitation.

Third, the IRS must create rules and regulations to prevent fraud and abuse of this provision. For example, taxpayers may be required to provide evidence of eligibility for the subsidy including evidence of involuntary separation from work, which can include attestation from the former employer or certification from state unemployment insurance agencies. If a premium assistance eligible individual becomes eligible for other group coverage while receiving premium assistance, that individual must forfeit the subsidy or face a penalty and the IRS must attempt to prevent individuals from claiming the subsidy while eligible for other group coverage either through a spouse or through a new employer.

COMPLIANCE WITH CLAUSE 9 OF RULE XXI (EARMARKS)

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, neither this conference report nor the accompanying joint statement of managers contains any congressional

earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI.

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CHARLES RANGEL,
HENRY WAXMAN,
Managers on the Part of the House.

DANIEL K. INOUYE,
MAX BAUCUS,
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