

112TH CONGRESS }  
*2d Session*

HOUSE OF REPRESENTATIVES

{ REPORT  
112-399

MIDDLE CLASS TAX RELIEF AND JOB  
CREATION ACT OF 2012

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CONFERENCE REPORT

TO ACCOMPANY

H.R. 3630



FEBRUARY 16, 2012.—Ordered to be printed

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Mr. CAMP, from the committee of conference,  
submitted the following

CONFERENCE REPORT

[To accompany H.R. 3630]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3630), to provide incentives for the creation of jobs, 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 to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

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

(a) *SHORT TITLE.*—This Act may be cited as the “Middle Class Tax Relief and Job Creation Act of 2012”.

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

*Sec. 1. Short title; table of contents.*

**TITLE I—EXTENSION OF PAYROLL TAX REDUCTION**

*Sec. 1001. Extension of payroll tax reduction.*

**TITLE II—UNEMPLOYMENT BENEFIT CONTINUATION AND PROGRAM IMPROVEMENT**

*Sec. 2001. Short title.*

**Subtitle A—Reforms of Unemployment Compensation to Promote Work and Job Creation**

*Sec. 2101. Consistent job search requirements.*

*Sec. 2102. State flexibility to promote the reemployment of unemployed workers.*

*Sec. 2103. Improving program integrity by better recovery of overpayments.*

- Sec. 2104. Data exchange standardization for improved interoperability.*
- Sec. 2105. Drug testing of applicants.*

*Subtitle B—Provisions Relating To Extended Benefits*

- Sec. 2121. Short title.*
- Sec. 2122. Extension and modification of emergency unemployment compensation program.*
- Sec. 2123. Temporary extension of extended benefit provisions.*
- Sec. 2124. Additional extended unemployment benefits under the Railroad Unemployment Insurance Act.*

*Subtitle C—Improving Reemployment Strategies Under the Emergency Unemployment Compensation Program*

- Sec. 2141. Improved work search for the long-term unemployed.*
- Sec. 2142. Reemployment services and reemployment and eligibility assessment activities.*
- Sec. 2143. Promoting program integrity through better recovery of overpayments.*
- Sec. 2144. Restore State flexibility to improve unemployment program solvency.*

*Subtitle D—Short-Time Compensation Program*

- Sec. 2160. Short title.*
- Sec. 2161. Treatment of short-time compensation programs.*
- Sec. 2162. Temporary financing of short-time compensation payments in States with programs in law.*
- Sec. 2163. Temporary financing of short-time compensation agreements.*
- Sec. 2164. Grants for short-time compensation programs.*
- Sec. 2165. Assistance and guidance in implementing programs.*
- Sec. 2166. Reports.*

*Subtitle E—Self-Employment Assistance*

- Sec. 2181. State administration of self-employment assistance programs.*
- Sec. 2182. Grants for self-employment assistance programs.*
- Sec. 2183. Assistance and guidance in implementing self-employment assistance programs.*
- Sec. 2184. Definitions.*

**TITLE III—MEDICARE AND OTHER HEALTH PROVISIONS**

*Subtitle A—Medicare Extensions*

- Sec. 3001. Extension of MMA section 508 reclassifications.*
- Sec. 3002. Extension of outpatient hold harmless payments.*
- Sec. 3003. Physician payment update.*
- Sec. 3004. Work geographic adjustment.*
- Sec. 3005. Payment for outpatient therapy services.*
- Sec. 3006. Payment for technical component of certain physician pathology services.*
- Sec. 3007. Ambulance add-on payments.*

*Subtitle B—Other Health Provisions*

- Sec. 3101. Qualifying individual program.*
- Sec. 3102. Transitional medical assistance.*

*Subtitle C—Health Offsets*

- Sec. 3201. Reduction of bad debt treated as an allowable cost.*
- Sec. 3202. Rebase Medicare clinical laboratory payment rates.*
- Sec. 3203. Rebasing State DSH allotments for fiscal year 2021.*
- Sec. 3204. Technical correction to the disaster recovery FMAP provision.*
- Sec. 3205. Prevention and Public Health Fund.*

**TITLE IV—TANF EXTENSION**

- Sec. 4001. Short title.*
- Sec. 4002. Extension of program.*
- Sec. 4003. Data exchange standardization for improved interoperability.*
- Sec. 4004. Spending policies for assistance under State TANF programs.*
- Sec. 4005. Technical corrections.*

**TITLE V—FEDERAL EMPLOYEES RETIREMENT**

- Sec. 5001. Increase in contributions to Federal Employees' Retirement System for new employees.*

- Sec. 5002. Foreign Service Pension System.*  
*Sec. 5003. Central Intelligence Agency Retirement and Disability System.*

**TITLE VI—PUBLIC SAFETY COMMUNICATIONS AND ELECTROMAGNETIC SPECTRUM AUCTIONS**

- Sec. 6001. Definitions.*  
*Sec. 6002. Rule of construction.*  
*Sec. 6003. Enforcement.*  
*Sec. 6004. National security restrictions on use of funds and auction participation.*

**Subtitle A—Reallocation of Public Safety Spectrum**

- Sec. 6101. Reallocation of D block to public safety.*  
*Sec. 6102. Flexible use of narrowband spectrum.*  
*Sec. 6103. 470–512 MHz public safety spectrum.*

**Subtitle B—Governance of Public Safety Spectrum**

- Sec. 6201. Single public safety wireless network licensee.*  
*Sec. 6202. Public safety broadband network.*  
*Sec. 6203. Public Safety Interoperability Board.*  
*Sec. 6204. Establishment of the First Responder Network Authority.*  
*Sec. 6205. Advisory committees of the First Responder Network Authority.*  
*Sec. 6206. Powers, duties, and responsibilities of the First Responder Network Authority.*  
*Sec. 6207. Initial funding for the First Responder Network Authority.*  
*Sec. 6208. Permanent self-funding; duty to assess and collect fees for network use.*  
*Sec. 6209. Audit and report.*  
*Sec. 6210. Annual report to Congress.*  
*Sec. 6211. Public safety roaming and priority access.*  
*Sec. 6212. Prohibition on direct offering of commercial telecommunications service directly to consumers.*  
*Sec. 6213. Provision of technical assistance.*

**Subtitle C—Public Safety Commitments**

- Sec. 6301. State and Local Implementation Fund.*  
*Sec. 6302. State and local implementation.*  
*Sec. 6303. Public safety wireless communications research and development.*

**Subtitle D—Spectrum Auction Authority**

- Sec. 6401. Deadlines for auction of certain spectrum.*  
*Sec. 6402. General authority for incentive auctions.*  
*Sec. 6403. Special requirements for incentive auction of broadcast TV spectrum.*  
*Sec. 6404. Certain conditions on auction participation prohibited.*  
*Sec. 6405. Extension of auction authority.*  
*Sec. 6406. Unlicensed use in the 5 GHz band.*  
*Sec. 6407. Guard bands and unlicensed use.*  
*Sec. 6408. Study on receiver performance and spectrum efficiency.*  
*Sec. 6409. Wireless facilities deployment.*  
*Sec. 6410. Functional responsibility of NTIA to ensure efficient use of spectrum.*  
*Sec. 6411. System certification.*  
*Sec. 6412. Deployment of 11 GHz, 18 GHz, and 23 GHz microwave bands.*  
*Sec. 6413. Public Safety Trust Fund.*  
*Sec. 6414. Study on emergency communications by amateur radio and impediments to amateur radio communications.*

**Subtitle E—Next Generation 9–1–1 Advancement Act of 2012**

- Sec. 6501. Short title.*  
*Sec. 6502. Definitions.*  
*Sec. 6503. Coordination of 9–1–1 implementation.*  
*Sec. 6504. Requirements for multi-line telephone systems.*  
*Sec. 6505. GAO study of State and local use of 9–1–1 service charges.*  
*Sec. 6506. Parity of protection for provision or use of Next Generation 9–1–1 services.*  
*Sec. 6507. Commission proceeding on autodialing.*  
*Sec. 6508. Report on costs for requirements and specifications of Next Generation 9–1–1 services.*  
*Sec. 6509. Commission recommendations for legal and statutory framework for Next Generation 9–1–1 services.*

*Subtitle F—Telecommunications Development Fund*

*Sec. 6601. No additional Federal funds.*

*Sec. 6602. Independence of the Fund.*

*Subtitle G—Federal Spectrum Relocation*

*Sec. 6701. Relocation of and spectrum sharing by Federal Government stations.*

*Sec. 6702. Spectrum Relocation Fund.*

*Sec. 6703. National security and other sensitive information.*

**TITLE VII—MISCELLANEOUS PROVISIONS**

*Sec. 7001. Repeal of certain shifts in the timing of corporate estimated tax payments.*

*Sec. 7002. Repeal of requirement relating to time for remitting certain merchandise processing fees.*

*Sec. 7003. Treatment for PAYGO purposes.*

**TITLE I—EXTENSION OF PAYROLL TAX REDUCTION**

**SEC. 1001. EXTENSION OF PAYROLL TAX REDUCTION.**

(a) *IN GENERAL.*—Subsection (c) of section 601 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (26 U.S.C. 1401 note) is amended to read as follows:

“(c) **PAYROLL TAX HOLIDAY PERIOD.**—The term ‘payroll tax holiday period’ means calendar years 2011 and 2012.”.

(b) *CONFORMING AMENDMENTS.*—Section 601 of such Act (26 U.S.C. 1401 note) is amended by striking subsections (f) and (g).

(c) *EFFECTIVE DATE.*—The amendments made by this section shall apply to remuneration received, and taxable years beginning, after December 31, 2011.

**TITLE II—UNEMPLOYMENT BENEFIT CONTINUATION AND PROGRAM IMPROVEMENT**

**SEC. 2001. SHORT TITLE.**

*This title may be cited as the “Extended Benefits, Reemployment, and Program Integrity Improvement Act”.*

**Subtitle A—Reforms of Unemployment Compensation to Promote Work and Job Creation**

**SEC. 2101. CONSISTENT JOB SEARCH REQUIREMENTS.**

(a) *IN GENERAL.*—Section 303(a) of the Social Security Act is amended by adding at the end the following:

“(12) A requirement that, as a condition of eligibility for regular compensation for any week, a claimant must be able to work, available to work, and actively seeking work.”.

(b) *EFFECTIVE DATE.*—The amendment made by subsection (a) shall apply to weeks beginning after the end of the first session of the State legislature which begins after the date of enactment of this Act.

**SEC. 2102. STATE FLEXIBILITY TO PROMOTE THE REEMPLOYMENT OF UNEMPLOYED WORKERS.**

*Title III of the Social Security Act (42 U.S.C. 501 and following) is amended by adding at the end the following:*

**“DEMONSTRATION PROJECTS**

“SEC. 305. (a) *The Secretary of Labor may enter into agreements, with up to 10 States that submit an application described*



in subsection (b), for the purpose of allowing such States to conduct demonstration projects to test and evaluate measures designed—

“(1) to expedite the reemployment of individuals who have established a benefit year and are otherwise eligible to claim unemployment compensation under the State law of such State; or

“(2) to improve the effectiveness of a State in carrying out its State law with respect to reemployment.

“(b) The Governor of any State desiring to conduct a demonstration project under this section shall submit an application to the Secretary of Labor. Any such application shall include—

“(1) a general description of the proposed demonstration project, including the authority (under the laws of the State) for the measures to be tested, as well as the period of time during which such demonstration project would be conducted;

“(2) if a waiver under subsection (c) is requested, a statement describing the specific aspects of the project to which the waiver would apply and the reasons why such waiver is needed;

“(3) a description of the goals and the expected programmatic outcomes of the demonstration project, including how the project would contribute to the objective described in subsection (a)(1), subsection (a)(2), or both;

“(4) assurances (accompanied by supporting analysis) that the demonstration project would operate for a period of at least 1 calendar year and not result in any increased net costs to the State’s account in the Unemployment Trust Fund;

“(5) a description of the manner in which the State—

“(A) will conduct an impact evaluation, using a methodology appropriate to determine the effects of the demonstration project, including on individual skill levels, earnings, and employment retention; and

“(B) will determine the extent to which the goals and outcomes described in paragraph (3) were achieved;

“(6) assurances that the State will provide any reports relating to the demonstration project, after its approval, as the Secretary of Labor may require; and

“(7) assurances that employment meets the State’s suitable work requirement and the requirements of section 3304(a)(5) of the Internal Revenue Code of 1986.

“(c) The Secretary of Labor may waive any of the requirements of section 3304(a)(4) of the Internal Revenue Code of 1986 or of paragraph (1) or (5) of section 303(a), to the extent and for the period the Secretary of Labor considers necessary to enable the State to carry out a demonstration project under this section.

“(d) A demonstration project under this section—

“(1) may be commenced any time after the date of enactment of this section;

“(2) may not be approved for a period of time greater than 3 years; and

“(3) must be completed by not later than December 31, 2015.

“(e) Activities that may be pursued under a demonstration project under this section are limited to—

“(1) subsidies for employer-provided training, such as wage subsidies; and

*“(2) direct disbursements to employers who hire individuals receiving unemployment compensation, not to exceed the weekly benefit amount for each such individual, to pay part of the cost of wages that exceed the unemployed individual’s prior benefit level.*

*“(f) The Secretary of Labor shall, in the case of any State for which an application is submitted under subsection (b)—*

*“(1) notify the State as to whether such application has been approved or denied within 30 days after receipt of a complete application; and*

*“(2) provide public notice of the decision within 10 days after providing notification to the State in accordance with paragraph (1).*

*Public notice under paragraph (2) may be provided through the Internet or other appropriate means. Any application under this section that has not been denied within the 30-day period described in paragraph (1) shall be deemed approved, and public notice of any approval under this sentence shall be provided within 10 days thereafter.*

*“(g) The Secretary of Labor may terminate a demonstration project under this section if the Secretary determines that the State has violated the substantive terms or conditions of the project.*

*“(h) Funding certified under section 302(a) may be used for an approved demonstration project.”.*

**SEC. 2103. IMPROVING PROGRAM INTEGRITY BY BETTER RECOVERY OF OVERPAYMENTS.**

*(a) USE OF UNEMPLOYMENT COMPENSATION TO REPAY OVERPAYMENTS.—Section 3304(a)(4)(D) of the Internal Revenue Code of 1986 and section 303(g)(1) of the Social Security Act are each amended by striking “may” and inserting “shall”.*

*(b) USE OF UNEMPLOYMENT COMPENSATION TO REPAY FEDERAL ADDITIONAL COMPENSATION OVERPAYMENTS.—Section 303(g)(3) of the Social Security Act is amended by inserting “Federal additional compensation,” after “trade adjustment allowances,”.*

*(c) EFFECTIVE DATE.—The amendments made by this section shall apply to weeks beginning after the end of the first session of the State legislature which begins after the date of enactment of this Act.*

**SEC. 2104. DATA EXCHANGE STANDARDIZATION FOR IMPROVED INTEROPERABILITY.**

*(a) IN GENERAL.—Title IX of the Social Security Act is amended by adding at the end the following:*

*“DATA EXCHANGE STANDARDIZATION FOR IMPROVED  
INTEROPERABILITY*

*“Data Exchange Standards*

*“SEC. 911. (a)(1) The Secretary of Labor, in consultation with an interagency work group which shall be established by the Office of Management and Budget, and considering State and employer perspectives, shall, by rule, designate a data exchange standard for any category of information required under title III, title XII, or this title.*

*“(2) Data exchange standards designated under paragraph (1) shall, to the extent practicable, be nonproprietary and interoperable.*

*“(3) In designating data exchange standards under this subsection, the Secretary of Labor shall, to the extent practicable, incorporate—*

*“(A) interoperable standards developed and maintained by an international voluntary consensus standards body, as defined by the Office of Management and Budget, such as the International Organization for Standardization;*

*“(B) interoperable standards developed and maintained by intergovernmental partnerships, such as the National Information Exchange Model; and*

*“(C) interoperable standards developed and maintained by Federal entities with authority over contracting and financial assistance, such as the Federal Acquisition Regulations Council.*

*“Data Exchange Standards for Reporting*

*“(b)(1) The Secretary of Labor, in consultation with an interagency work group established by the Office of Management and Budget, and considering State and employer perspectives, shall, by rule, designate data exchange standards to govern the reporting required under title III, title XII, or this title.*

*“(2) The data exchange standards required by paragraph (1) shall, to the extent practicable—*

*“(A) incorporate a widely accepted, nonproprietary, searchable, computer-readable format;*

*“(B) be consistent with and implement applicable accounting principles; and*

*“(C) be capable of being continually upgraded as necessary.*

*“(3) In designating reporting standards under this subsection, the Secretary of Labor shall, to the extent practicable, incorporate existing nonproprietary standards, such as the eXtensible Markup Language.”.*

*(b) EFFECTIVE DATES.—*

*(1) DATA EXCHANGE STANDARDS.—The Secretary of Labor shall issue a proposed rule under section 911(a)(1) of the Social Security Act (as added by subsection (a)) within 12 months after the date of the enactment of this section, and shall issue a final rule under such section 911(a)(1), after public comment, within 24 months after such date of enactment.*

*(2) DATA REPORTING STANDARDS.—The reporting standards required under section 911(b)(1) of such Act (as so added) shall become effective with respect to reports required in the first reporting period, after the effective date of the final rule referred to in paragraph (1) of this subsection, for which the authority for data collection and reporting is established or renewed under the Paperwork Reduction Act.*

**SEC. 2105. DRUG TESTING OF APPLICANTS.**

*Section 303 of the Social Security Act is amended by adding at the end the following:*

*“(l)(1) Nothing in this Act or any other provision of Federal law shall be considered to prevent a State from enacting legislation to provide for—*

“(A) testing an applicant for unemployment compensation for the unlawful use of controlled substances as a condition for receiving such compensation, if such applicant—

“(i) was terminated from employment with the applicant’s most recent employer (as defined under the State law) because of the unlawful use of controlled substances; or

“(ii) is an individual for whom suitable work (as defined under the State law) is only available in an occupation that regularly conducts drug testing (as determined under regulations issued by the Secretary of Labor); or

“(B) denying such compensation to such applicant on the basis of the result of the testing conducted by the State under legislation described in subparagraph (A).

“(2) For purposes of this subsection—

“(A) the term ‘unemployment compensation’ has the meaning given such term in subsection (d)(2)(A); and

“(B) the term ‘controlled substance’ has the meaning given such term in section 102 of the Controlled Substances Act (21 U.S.C. 802).”.

### **Subtitle B—Provisions Relating To Extended Benefits**

#### **SEC. 2121. SHORT TITLE.**

This subtitle may be cited as the “Unemployment Benefits Extension Act of 2012”.

#### **SEC. 2122. EXTENSION AND MODIFICATION OF EMERGENCY UNEMPLOYMENT COMPENSATION PROGRAM.**

(a) **EXTENSION.**—Section 4007 of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 26 U.S.C. 3304 note) is amended—

(1) in subsection (a)—

(A) by striking “Except as provided in subsection (b), an” and inserting “An”; and

(B) by striking “March 6, 2012” and inserting “January 2, 2013”; and

(2) by striking subsection (b) and inserting the following:

“(b) **TERMINATION.**—No compensation under this title shall be payable for any week subsequent to the last week described in subsection (a).”.

(b) **MODIFICATIONS RELATING TO TRIGGERS.**—

(1) **FOR SECOND-TIER EMERGENCY UNEMPLOYMENT COMPENSATION.**—Section 4002(c) of such Act is amended—

(A) in the subsection heading, by striking “SPECIAL RULE” and inserting “SECOND-TIER EMERGENCY UNEMPLOYMENT COMPENSATION”;

(B) in paragraph (1), by striking “At” and all that follows through “augmented by an amount” and inserting “If, at the time that the amount established in an individual’s account under subsection (b) is exhausted or at any time thereafter, such individual’s State is in an extended benefit period (as determined under paragraph (2)), such account shall be augmented by an amount (hereinafter ‘second-tier emergency unemployment compensation’)”;

- (C) by redesignating paragraph (2) as paragraph (4);  
and  
(D) by inserting after paragraph (1) the following:
- “(2) *EXTENDED BENEFIT PERIOD.*—For purposes of paragraph (1), a State shall be considered to be in an extended benefit period, as of any given time, if such a period would then be in effect for such State under such Act if—
- “(A) section 203(f) of the Federal-State Extended Unemployment Compensation Act of 1970 were applied to such State (regardless of whether the State by law had provided for such application); and
- “(B) such section 203(f)—
- “(i) were applied by substituting the applicable percentage under paragraph (3) for ‘6.5 percent’ in paragraph (1)(A)(i) thereof; and
- “(ii) did not include the requirement under paragraph (1)(A)(ii) thereof.
- “(3) *APPLICABLE PERCENTAGE.*—The applicable percentage under this paragraph is, for purposes of determining if a State is in an extended benefit period as of a date occurring in a week ending—
- “(A) before June 1, 2012, 0 percent; and
- “(B) after the last week under subparagraph (A), 6 percent.”.
- (2) *FOR THIRD-TIER EMERGENCY UNEMPLOYMENT COMPENSATION.*—Section 4002(d) of such Act is amended—
- (A) in paragraph (2)(A), by striking “under such Act” and inserting “under the Federal-State Extended Unemployment Compensation Act of 1970”;
- (B) in paragraph (2)(B)(ii)(I), by striking the matter after “substituting” and before “in paragraph (1)(A)(i) thereof” and inserting “the applicable percentage under paragraph (3) for ‘6.5 percent’”;
- (C) by redesignating paragraph (3) as paragraph (4);  
and  
(D) by inserting after paragraph (2) the following:
- “(3) *APPLICABLE PERCENTAGE.*—The applicable percentage under this paragraph is, for purposes of determining if a State is in an extended benefit period as of a date occurring in a week ending—
- “(A) before June 1, 2012, 6 percent; and
- “(B) after the last week under subparagraph (A), 7 percent.”.
- (3) *FOR FOURTH-TIER EMERGENCY UNEMPLOYMENT COMPENSATION.*—Section 4002(e) of such Act is amended—
- (A) in paragraph (2)(A), by striking “under such Act” and inserting “under the Federal-State Extended Unemployment Compensation Act of 1970”;
- (B) in paragraph (2)(B)(ii)(I), by striking the matter after “substituting” and before “in paragraph (1)(A)(i) thereof” and inserting “the applicable percentage under paragraph (3) for ‘6.5 percent’”;
- (C) by redesignating paragraph (3) as paragraph (4);  
and  
(D) by inserting after paragraph (2) the following:

“(3) *APPLICABLE PERCENTAGE.*—The applicable percentage under this paragraph is, for purposes of determining if a State is in an extended benefit period as of a date occurring in a week ending—

“(A) before June 1, 2012, 8.5 percent; and

“(B) after the last week under subparagraph (A), 9 percent.”

(c) *MODIFICATIONS RELATING TO WEEKS OF EMERGENCY UNEMPLOYMENT COMPENSATION.*—

(1) *NUMBER OF WEEKS IN FIRST TIER BEGINNING AFTER SEPTEMBER 2, 2012.*—Section 4002(b) of such Act is amended—

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

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

“(2) *SPECIAL RULE RELATING TO AMOUNTS ESTABLISHED IN AN ACCOUNT AS OF A WEEK ENDING AFTER SEPTEMBER 2, 2012.*—Notwithstanding any provision of paragraph (1), in the case of any account established as of a week ending after September 2, 2012—

“(A) paragraph (1)(A) shall be applied by substituting ‘54 percent’ for ‘80 percent’; and

“(B) paragraph (1)(B) shall be applied by substituting ‘14 weeks’ for ‘20 weeks’.”

(2) *NUMBER OF WEEKS IN THIRD TIER BEGINNING AFTER SEPTEMBER 2, 2012.*—Section 4002(d) of such Act is amended by adding after paragraph (4) (as so redesignated by subsection (b)(2)(C)) the following:

“(5) *SPECIAL RULE RELATING TO AMOUNTS ADDED TO AN ACCOUNT AS OF A WEEK ENDING AFTER SEPTEMBER 2, 2012.*—Notwithstanding any provision of paragraph (1), if augmentation under this subsection occurs as of a week ending after September 2, 2012—

“(A) paragraph (1)(A) shall be applied by substituting ‘35 percent’ for ‘50 percent’; and

“(B) paragraph (1)(B) shall be applied by substituting ‘9 times’ for ‘13 times’.”

(3) *NUMBER OF WEEKS IN FOURTH TIER.*—Section 4002(e) of such Act is amended by adding after paragraph (4) (as so redesignated by subsection (b)(3)(C)) the following:

“(5) *SPECIAL RULES RELATING TO AMOUNTS ADDED TO AN ACCOUNT.*—

“(A) *MARCH TO MAY OF 2012.*—

“(i) *SPECIAL RULE.*—Notwithstanding any provision of paragraph (1) but subject to the following 2 sentences, if augmentation under this subsection occurs as of a week ending after the date of enactment of this paragraph and before June 1, 2012 (or if, as of such date of enactment, any fourth-tier amounts remain in the individual’s account)—

“(I) paragraph (1)(A) shall be applied by substituting ‘62 percent’ for ‘24 percent’; and

“(II) paragraph (1)(B) shall be applied by substituting ‘16 times’ for ‘6 times’.

The preceding sentence shall apply only if, at the time that the account would be augmented under this sub-

paragraph, such individual's State is not in an extended benefit period as determined under the Federal-State Extended Unemployment Compensation Act of 1970. In no event shall the total amount added to the account of an individual under this subparagraph cause, in the case of an individual described in the parenthetical matter in the first sentence of this clause, the sum of the total amount previously added to such individual's account under this subsection (as in effect before the date of enactment of this paragraph) and any further amounts added as a result of the enactment of this clause, to exceed the total amount allowable under subclause (I) or (II), as the case may be.

“(ii) *LIMITATION.*—Notwithstanding any other provision of this title, the amounts added to the account of an individual under this subparagraph may not cause the sum of the amounts previously established in or added to such account, plus any weeks of extended benefits provided to such individual under the Federal-State Extended Unemployment Compensation Act of 1970 (based on the same exhaustion of regular compensation under section 4001(b)(1)), to in the aggregate exceed the lesser of—

“(I) 282 percent of the total amount of regular compensation (including dependents' allowances) payable to the individual during the individual's benefit year under the State law; or

“(II) 73 times the individual's average weekly benefit amount (as determined under subsection (b)(3)) for the benefit year.

“(B) *AFTER AUGUST OF 2012.*—Notwithstanding any provision of paragraph (1), if augmentation under this subsection occurs as of a week ending after September 2, 2012—

“(i) paragraph (1)(A) shall be applied by substituting ‘39 percent’ for ‘24 percent’; and

“(ii) paragraph (1)(B) shall be applied by substituting ‘10 times’ for ‘6 times’.”

(d) *ORDER OF PAYMENTS REQUIREMENT.*—

(1) *IN GENERAL.*—Section 4001(e) of such Act is amended to read as follows:

“(e) *COORDINATION RULE.*—An agreement under this section shall apply with respect to a State only upon a determination by the Secretary that, under the State law or other applicable rules of such State, the payment of extended compensation for which an individual is otherwise eligible must be deferred until after the payment of any emergency unemployment compensation under section 4002, as amended by the Unemployment Benefits Extension Act of 2012, for which the individual is concurrently eligible.”

(2) *TECHNICAL AND CONFORMING AMENDMENTS.*—Section 4001(b)(2) of such Act is amended—

(A) by striking “or extended compensation”; and

(B) by striking “law (except as provided under subsection (e));” and inserting “law;”.

(e) *FUNDING.*—Section 4004(e)(1) of such Act is amended—

- (1) in subparagraph (G), by striking “and” at the end; and  
 (2) by inserting after subparagraph (H) the following:

“(I) the amendments made by section 2122 of the Unemployment Benefits Extension Act of 2012; and”.

(f) **EFFECTIVE DATES.**—

(1) **IN GENERAL.**—The amendments made by subsections (b), (c), and (d) shall take effect as of February 28, 2012, and shall apply with respect to weeks of unemployment beginning after that date.

(2) **WEEK DEFINED.**—For purposes of this subsection, the term “week” has the meaning given such term under section 4006 of the Supplemental Appropriations Act, 2008.

**SEC. 2123. TEMPORARY EXTENSION OF EXTENDED BENEFIT PROVISIONS.**

(a) **IN GENERAL.**—Section 2005 of the Assistance for Unemployed Workers and Struggling Families Act, as contained in Public Law 111–5 (26 U.S.C. 3304 note), is amended—

(1) by striking “March 7, 2012” each place it appears and inserting “December 31, 2012”; and

(2) in subsection (c), by striking “August 15, 2012” and inserting “June 30, 2013”.

(b) **EXTENSION OF MATCHING FOR STATES WITH NO WAITING WEEK.**—Section 5 of the Unemployment Compensation Extension Act of 2008 (Public Law 110–449; 26 U.S.C. 3304 note) is amended by striking “August 15, 2012” and inserting “June 30, 2013”.

(c) **EXTENSION OF MODIFICATION OF INDICATORS UNDER THE EXTENDED BENEFIT PROGRAM.**—Section 203 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) is amended—

(1) in subsection (d), by striking “February 29, 2012” and inserting “December 31, 2012”; and

(2) in subsection (f)(2), by striking “February 29, 2012” and inserting “December 31, 2012”.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall take effect as if included in the enactment of the Temporary Payroll Tax Cut Continuation Act of 2011 (Public Law 112–78).

**SEC. 2124. ADDITIONAL EXTENDED UNEMPLOYMENT BENEFITS UNDER THE RAILROAD UNEMPLOYMENT INSURANCE ACT.**

(a) **EXTENSION.**—Section 2(c)(2)(D)(iii) of the Railroad Unemployment Insurance Act, as added by section 2006 of the American Recovery and Reinvestment Act of 2009 (Public Law 96 111–5) and as amended by section 9 of the Worker, Homeownership, and Business Assistance Act of 2009 (Public Law 111–92), section 505 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (Public Law 111–312), and section 202 of the Temporary Payroll Tax Cut Continuation Act of 2011 (Public Law 112–78), is amended—

(1) by striking “August 31, 2011” and inserting “June 30, 2012”; and

(2) by striking “February 29, 2012” and inserting “December 31, 2012”.

(b) **CLARIFICATION ON AUTHORITY TO USE FUNDS.**—Funds appropriated under either the first or second sentence of clause (iv) of section 2(c)(2)(D) of the Railroad Unemployment Insurance Act shall be available to cover the cost of additional extended unemployment



benefits provided under such section 2(c)(2)(D) by reason of the amendments made by subsection (a) as well as to cover the cost of such benefits provided under such section 2(c)(2)(D), as in effect on the day before the date of enactment of this Act.

(c) **FUNDING FOR ADMINISTRATION.**—Out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Railroad Retirement Board \$500,000 for administrative expenses associated with the payment of additional extended unemployment benefits provided under section 2(c)(2)(D) of the Railroad Unemployment Insurance Act by reason of the amendments made by subsection (a), to remain available until expended.

**Subtitle C—Improving Reemployment Strategies Under the  
Emergency Unemployment Compensation Program**

**SEC. 2141. IMPROVED WORK SEARCH FOR THE LONG-TERM UNEMPLOYED.**

(a) **IN GENERAL.**—Section 4001(b) of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 26 U.S.C. 3304 note) is amended—

- (1) by striking “and” at the end of paragraph (2);
  - (2) by striking the period at the end of paragraph (3) and inserting “; and”; and
  - (3) by adding at the end the following:
- “(4) are able to work, available to work, and actively seeking work.”

(b) **ACTIVELY SEEKING WORK.**—Section 4001 of such Act is amended by adding at the end the following:

“(h) **ACTIVELY SEEKING WORK.**—

“(1) **IN GENERAL.**—For purposes of subsection (b)(4), the term ‘actively seeking work’ means, with respect to any individual, that such individual—

“(A) is registered for employment services in such a manner and to such extent as prescribed by the State agency;

“(B) has engaged in an active search for employment that is appropriate in light of the employment available in the labor market, the individual’s skills and capabilities, and includes a number of employer contacts that is consistent with the standards communicated to the individual by the State;

“(C) has maintained a record of such work search, including employers contacted, method of contact, and date contacted; and

“(D) when requested, has provided such work search record to the State agency.

“(2) **RANDOM AUDITING.**—The Secretary shall establish for each State a minimum number of claims for which work search records must be audited on a random basis in any given week.”

**SEC. 2142. REEMPLOYMENT SERVICES AND REEMPLOYMENT AND ELIGIBILITY ASSESSMENT ACTIVITIES.**

(a) **PROVISION OF SERVICES AND ACTIVITIES.**—Section 4001 of such Act, as amended by section 2141(b), is further amended by added at the end the following:

“(i) **PROVISION OF SERVICES AND ACTIVITIES.**—

*“(1) IN GENERAL.—An agreement under this section shall require the following:*

*“(A) The State which is party to such agreement shall provide reemployment services and reemployment and eligibility assessment activities to each individual—*

*“(i) who, on or after the 30th day after the date of enactment of the Extended Benefits, Reemployment, and Program Integrity Improvement Act, begins receiving amounts described in subsections (b) and (c); and*

*“(ii) while such individual continues to receive emergency unemployment compensation under this title.*

*“(B) As a condition of eligibility for emergency unemployment compensation for any week—*

*“(i) a claimant who has been duly referred to reemployment services shall participate in such services; and*

*“(ii) a claimant shall be actively seeking work (determined applying subsection (i)).*

*“(2) DESCRIPTION OF SERVICES AND ACTIVITIES.—The reemployment services and in-person reemployment and eligibility assessment activities provided to individuals receiving emergency unemployment compensation described in paragraph (1)—*

*“(A) shall include—*

*“(i) the provision of labor market and career information;*

*“(ii) an assessment of the skills of the individual;*

*“(iii) orientation to the services available through the one-stop centers established under title I of the Workforce Investment Act of 1998; and*

*“(iv) review of the eligibility of the individual for emergency unemployment compensation relating to the job search activities of the individual; and*

*“(B) may include the provision of—*

*“(i) comprehensive and specialized assessments;*

*“(ii) individual and group career counseling;*

*“(iii) training services;*

*“(iv) additional reemployment services; and*

*“(v) job search counseling and the development or review of an individual reemployment plan that includes participation in job search activities and appropriate workshops.*

*“(3) PARTICIPATION REQUIREMENT.—As a condition of continuing eligibility for emergency unemployment compensation for any week, an individual who has been referred to reemployment services or reemployment and eligibility assessment activities under this subsection shall participate in such services or activities, unless the State agency responsible for the administration of State unemployment compensation law determines that—*

*“(A) such individual has completed participating in such services or activities; or*

*“(B) there is justifiable cause for failure to participate or to complete participating in such services or activities, as*

*determined in accordance with guidance to be issued by the Secretary.”.*

(b) *ISSUANCE OF GUIDANCE.*—Not later than 30 days after the date of enactment of this Act, the Secretary shall issue guidance on the implementation of the reemployment services and reemployment and eligibility assessment activities required to be provided under the amendment made by subsection (a).

(c) *FUNDING.*—

(1) *IN GENERAL.*—Section 4004(c) of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 26 U.S.C. 3304 note) is amended—

(A) by striking “STATES.—There” and inserting the following: “STATES.—

“(1) *ADMINISTRATION.*—There”; and

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

“(2) *REEMPLOYMENT SERVICES AND REEMPLOYMENT AND ELIGIBILITY ASSESSMENT ACTIVITIES.*—

“(A) *APPROPRIATION.*—There are appropriated from the general fund of the Treasury, for the period of fiscal year 2012 through fiscal year 2013, out of the employment security administration account (as established by section 901(a) of the Social Security Act), such sums as determined by the Secretary of Labor in accordance with subparagraph (B) to assist States in providing reemployment services and reemployment and eligibility assessment activities described in section 4001(h)(2).

“(B) *DETERMINATION OF TOTAL AMOUNT.*—The amount referred to in subparagraph (A) is the amount the Secretary of Labor estimates is equal to—

“(i) the number of individuals who will receive reemployment services and reemployment eligibility and assessment activities described in section 4001(h)(2) in all States through the date specified in section 4007(b)(3); multiplied by

“(ii) \$85.

“(C) *DISTRIBUTION AMONG STATES.*—Of the amounts appropriated under subparagraph (A), the Secretary of Labor shall distribute amounts to each State, in accordance with section 4003(c), that the Secretary estimates is equal to—

“(i) the number of individuals who will receive reemployment services and reemployment and eligibility assessment activities described in section 4001(h)(2) in such State through the date specified in section 4007(b)(3); multiplied by

“(ii) \$85.”.

(2) *TRANSFER OF FUNDS.*—Section 4004(e) of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 26 U.S.C. 3304 note) is amended—

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

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

(C) by adding at the end the following paragraph:

“(3) to the Employment Security Administration account (as established by section 901(a) of the Social Security Act) such

*sums as the Secretary of Labor determines to be necessary in accordance with subsection (c)(2) to assist States in providing reemployment services and reemployment eligibility and assessment activities described in section 4001(h)(2).”.*

**SEC. 2143. PROMOTING PROGRAM INTEGRITY THROUGH BETTER RECOVERY OF OVERPAYMENTS.**

*Section 4005(c)(1) of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 26 U.S.C. 3304 note) is amended—*

- (1) by striking “may” and inserting “shall”; and*
- (2) by striking “except that” and all that follows through “made” and inserting “in accordance with the same procedures as apply to the recovery of overpayments of regular unemployment benefits paid by the State”.*

**SEC. 2144. RESTORE STATE FLEXIBILITY TO IMPROVE UNEMPLOYMENT PROGRAM SOLVENCY.**

*Subsection (g) of section 4001 of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 26 U.S.C. 3304 note) shall not apply with respect to a State that has enacted a law before March 1, 2012, that, upon taking effect, would violate such subsection.*

**Subtitle D—Short-Time Compensation Program**

**SEC. 2160. SHORT TITLE.**

*This subtitle may be cited as the “Layoff Prevention Act of 2012”.*

**SEC. 2161. TREATMENT OF SHORT-TIME COMPENSATION PROGRAMS.**

**(a) DEFINITION.—**

*(1) IN GENERAL.—Section 3306 of the Internal Revenue Code of 1986 (26 U.S.C. 3306) is amended by adding at the end the following new subsection:*

*“(v) SHORT-TIME COMPENSATION PROGRAM.—For purposes of this part, the term ‘short-time compensation program’ means a program under which—*

- “(1) the participation of an employer is voluntary;*
- “(2) an employer reduces the number of hours worked by employees in lieu of layoffs;*
- “(3) such employees whose workweeks have been reduced by at least 10 percent, and by not more than the percentage, if any, that is determined by the State to be appropriate (but in no case more than 60 percent), are not disqualified from unemployment compensation;*
- “(4) the amount of unemployment compensation payable to any such employee is a pro rata portion of the unemployment compensation which would otherwise be payable to the employee if such employee were unemployed;*
- “(5) such employees meet the availability for work and work search test requirements while collecting short-time compensation benefits, by being available for their workweek as required by the State agency;*
- “(6) eligible employees may participate, as appropriate, in training (including employer-sponsored training or worker training funded under the Workforce Investment Act of 1998) to enhance job skills if such program has been approved by the State agency;*

*“(7) the State agency shall require employers to certify that if the employer provides health benefits and retirement benefits under a defined benefit plan (as defined in section 414(j)) or contributions under a defined contribution plan (as defined in section 414(i)) to any employee whose workweek is reduced under the program that such benefits will continue to be provided to employees participating in the short-time compensation program under the same terms and conditions as though the workweek of such employee had not been reduced or to the same extent as other employees not participating in the short-time compensation program;*

*“(8) the State agency shall require an employer to submit a written plan describing the manner in which the requirements of this subsection will be implemented (including a plan for giving advance notice, where feasible, to an employee whose workweek is to be reduced) together with an estimate of the number of layoffs that would have occurred absent the ability to participate in short-time compensation and such other information as the Secretary of Labor determines is appropriate;*

*“(9) the terms of the employer’s written plan and implementation shall be consistent with employer obligations under applicable Federal and State laws; and*

*“(10) upon request by the State and approval by the Secretary of Labor, only such other provisions are included in the State law that are determined to be appropriate for purposes of a short-time compensation program.”.*

*(2) EFFECTIVE DATE.—Subject to paragraph (3), the amendment made by paragraph (1) shall take effect on the date of the enactment of this Act.*

*(3) TRANSITION PERIOD FOR EXISTING PROGRAMS.—In the case of a State that is administering a short-time compensation program as of the date of the enactment of this Act and the State law cannot be administered consistent with the amendment made by paragraph (1), such amendment shall take effect on the earlier of—*

*(A) the date the State changes its State law in order to be consistent with such amendment; or*

*(B) the date that is 2 years and 6 months after the date of the enactment of this Act.*

*(b) CONFORMING AMENDMENTS.—*

*(1) INTERNAL REVENUE CODE OF 1986.—*

*(A) Subparagraph (E) of section 3304(a)(4) of the Internal Revenue Code of 1986 is amended to read as follows:*

*“(E) amounts may be withdrawn for the payment of short-time compensation under a short-time compensation program (as defined under section 3306(v));”.*

*(B) Subsection (f) of section 3306 of the Internal Revenue Code of 1986 is amended—*

*(i) by striking paragraph (5) (relating to short-time compensation) and inserting the following new paragraph:*

*“(5) amounts may be withdrawn for the payment of short-time compensation under a short-time compensation program (as defined in subsection (v)); and”;* and

(ii) by redesignating paragraph (5) (relating to self-employment assistance program) as paragraph (6).

(2) **SOCIAL SECURITY ACT.**—Section 303(a)(5) of the Social Security Act is amended by striking “the payment of short-time compensation under a plan approved by the Secretary of Labor” and inserting “the payment of short-time compensation under a short-time compensation program (as defined in section 3306(v) of the Internal Revenue Code of 1986)”.

(3) **UNEMPLOYMENT COMPENSATION AMENDMENTS OF 1992.**—Subsections (b) through (d) of section 401 of the Unemployment Compensation Amendments of 1992 (26 U.S.C. 3304 note) are repealed.

**SEC. 2162. TEMPORARY FINANCING OF SHORT-TIME COMPENSATION PAYMENTS IN STATES WITH PROGRAMS IN LAW.**

(a) **PAYMENTS TO STATES.**—

(1) **IN GENERAL.**—Subject to paragraph (3), there shall be paid to a State an amount equal to 100 percent of the amount of short-time compensation paid under a short-time compensation program (as defined in section 3306(v) of the Internal Revenue Code of 1986, as added by section 2161(a)) under the provisions of the State law.

(2) **TERMS OF PAYMENTS.**—Payments made to a State under paragraph (1) shall be payable by way of reimbursement 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 the Secretary’s 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.

(3) **LIMITATIONS ON PAYMENTS.**—

(A) **GENERAL PAYMENT LIMITATIONS.**—No payments shall be made to a State under this section for short-time compensation paid to an individual by the State during a benefit year in excess of 26 times the amount of regular compensation (including dependents’ allowances) under the State law payable to such individual for a week of total unemployment.

(B) **EMPLOYER LIMITATIONS.**—No payments shall be made to a State under this section for benefits paid to an individual by the State under a short-time compensation program if such individual is employed by the participating employer on a seasonal, temporary, or intermittent basis.

(b) **APPLICABILITY.**—

(1) **IN GENERAL.**—Payments to a State under subsection (a) shall be available for weeks of unemployment—

(A) beginning on or after the date of the enactment of this Act; and

(B) ending on or before the date that is 3 years and 6 months after the date of the enactment of this Act.

(2) **THREE-YEAR FUNDING LIMITATION FOR COMBINED PAYMENTS UNDER THIS SECTION AND SECTION 2163.**—States may re-

ceive payments under this section and section 2163 with respect to a total of not more than 156 weeks.

(c) **TWO-YEAR TRANSITION PERIOD FOR EXISTING PROGRAMS.**—During any period that the transition provision under section 2161(a)(3) is applicable to a State with respect to a short-time compensation program, such State shall be eligible for payments under this section. Subject to paragraphs (1)(B) and (2) of subsection (b), if at any point after the date of the enactment of this Act the State enacts a State law providing for the payment of short-time compensation under a short-time compensation program that meets the definition of such a program under section 3306(v) of the Internal Revenue Code of 1986, as added by section 2161(a), the State shall be eligible for payments under this section after the effective date of such enactment.

(d) **FUNDING AND CERTIFICATIONS.**—

(1) **FUNDING.**—There are appropriated, out of moneys in the Treasury not otherwise appropriated, such sums as may be necessary for purposes of carrying out this section.

(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.

(e) **DEFINITIONS.**—In this section:

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

(2) **STATE; STATE AGENCY; STATE LAW.**—The terms “State”, “State agency”, and “State law” have the meanings given those terms in section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note).

**SEC. 2163. TEMPORARY FINANCING OF SHORT-TIME COMPENSATION AGREEMENTS.**

(a) **FEDERAL-STATE AGREEMENTS.**—

(1) **IN GENERAL.**—Any State which desires to do so may enter into, and participate in, an agreement under this section with the Secretary provided that such State’s law does not provide for the payment of short-time compensation under a short-time compensation program (as defined in section 3306(v) of the Internal Revenue Code of 1986, as added by section 2161(a)).

(2) **ABILITY TO TERMINATE.**—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 FEDERAL-STATE AGREEMENT.**—

(1) **IN GENERAL.**—Any agreement under this section shall provide that the State agency of the State will make payments of short-time compensation under a plan approved by the State. Such plan shall provide that payments are made in accordance with the requirements under section 3306(v) of the Internal Revenue Code of 1986, as added by section 2161(a).

(2) **LIMITATIONS ON PLANS.**—

(A) **GENERAL PAYMENT LIMITATIONS.**—A short-time compensation plan approved by a State shall not permit the payment of short-time compensation to an individual by the State during a benefit year in excess of 26 times the amount of regular compensation (including dependents’ allowances) under the State law payable to such individual for a week of total unemployment.

(B) *EMPLOYER LIMITATIONS.*—A short-time compensation plan approved by a State shall not provide payments to an individual if such individual is employed by the participating employer on a seasonal, temporary, or intermittent basis.

(3) *EMPLOYER PAYMENT OF COSTS.*—Any short-time compensation plan entered into by an employer must provide that the employer will pay the State an amount equal to one-half of the amount of short-time compensation paid under such plan. Such amount shall be deposited in the State's unemployment fund and shall not be used for purposes of calculating an employer's contribution rate under section 3303(a)(1) of the Internal Revenue Code of 1986.

(c) *PAYMENTS TO STATES.*—

(1) *IN GENERAL.*—There shall be paid to each State with an agreement under this section an amount equal to—

(A) one-half of the amount of short-time compensation paid to individuals by the State pursuant to such agreement; and

(B) any additional administrative expenses incurred by the State by reason of such agreement (as determined by the Secretary).

(2) *TERMS OF PAYMENTS.*—Payments made to a State under paragraph (1) shall be payable by way of reimbursement 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 the Secretary's 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.

(3) *FUNDING.*—There are appropriated, out of moneys in the Treasury not otherwise appropriated, such sums as may be necessary for purposes of carrying out this section.

(4) *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.

(d) *APPLICABILITY.*—

(1) *IN GENERAL.*—An agreement entered into under this section shall apply to weeks of unemployment—

(A) beginning on or after the date on which such agreement is entered into; and

(B) ending on or before the date that is 2 years and 13 weeks after the date of the enactment of this Act.

(2) *TWO-YEAR FUNDING LIMITATION.*—States may receive payments under this section with respect to a total of not more than 104 weeks.

(e) *SPECIAL RULE.*—If a State has entered into an agreement under this section and subsequently enacts a State law providing for the payment of short-time compensation under a short-time compensation program that meets the definition of such a program under section 3306(v) of the Internal Revenue Code of 1986, as added by section 2161(a), the State—



(1) shall not be eligible for payments under this section for weeks of unemployment beginning after the effective date of such State law; and

(2) subject to paragraphs (1)(B) and (2) of section 2162(b), shall be eligible to receive payments under section 2162 after the effective date of such State law.

(f) **DEFINITIONS.**—In this section:

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

(2) **STATE; STATE AGENCY; STATE LAW.**—The terms “State”, “State agency”, and “State law” have the meanings given those terms in section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note).

**SEC. 2164. GRANTS FOR SHORT-TIME COMPENSATION PROGRAMS.**

(a) **GRANTS.**—

(1) **FOR IMPLEMENTATION OR IMPROVED ADMINISTRATION.**—The Secretary shall award grants to States that enact short-time compensation programs (as defined in subsection (i)(2)) for the purpose of implementation or improved administration of such programs.

(2) **FOR PROMOTION AND ENROLLMENT.**—The Secretary shall award grants to States that are eligible and submit plans for a grant under paragraph (1) for such States to promote and enroll employers in short-time compensation programs (as so defined).

(3) **ELIGIBILITY.**—

(A) **IN GENERAL.**—The Secretary shall determine eligibility criteria for the grants under paragraphs (1) and (2).

(B) **CLARIFICATION.**—A State administering a short-time compensation program, including a program being administered by a State that is participating in the transition under the provisions of sections 301(a)(3) and 302(c), that does not meet the definition of a short-time compensation program under section 3306(v) of the Internal Revenue Code of 1986 (as added by 211(a)), and a State with an agreement under section 2163, shall not be eligible to receive a grant under this section until such time as the State law of the State provides for payments under a short-time compensation program that meets such definition and such law.

(b) **AMOUNT OF GRANTS.**—

(1) **IN GENERAL.**—The maximum amount available for making grants to a State under paragraphs (1) and (2) shall be equal to the amount obtained by multiplying \$100,000,000 (less the amount used by the Secretary under subsection (e)) by the same ratio as would apply under subsection (a)(2)(B) of section 903 of the Social Security Act (42 U.S.C. 1103) for purposes of determining such State’s share of any excess amount (as described in subsection (a)(1) of such section) that would have been subject to transfer to State accounts, as of October 1, 2010, under the provisions of subsection (a) of such section.

(2) **AMOUNT AVAILABLE FOR DIFFERENT GRANTS.**—Of the maximum incentive payment determined under paragraph (1) with respect to a State—

(A) one-third shall be available for a grant under subsection (a)(1); and

(B) two-thirds shall be available for a grant under subsection (a)(2).

(c) GRANT APPLICATION AND DISBURSAL.—

(1) APPLICATION.—Any State seeking a grant under paragraph (1) or (2) of subsection (a) shall submit an application to the Secretary at such time, in such manner, and complete with such information as the Secretary may require. In no case may the Secretary award a grant under this section with respect to an application that is submitted after December 31, 2014.

(2) NOTICE.—The Secretary 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 for a grant under paragraph (1) or (2) (or both) of subsection (a).

(3) CERTIFICATION.—If the Secretary finds that the State law provisions meet the requirements for a grant under subsection (a), the Secretary shall thereupon make a certification to that effect to the Secretary of the Treasury, together with a certification as to the amount of the grant payment to be transferred to the State account in the Unemployment Trust Fund (as established in section 904(a) of the Social Security Act (42 U.S.C. 1104(a))) pursuant to that finding. The Secretary of the Treasury shall make the appropriate transfer to the State account within 7 days after receiving such certification.

(4) REQUIREMENT.—No certification of compliance with the requirements for a grant under paragraph (1) or (2) of subsection (a) may be made with respect to any State whose—

(A) State law is not otherwise eligible for certification under section 303 of the Social Security Act (42 U.S.C. 503) or approvable under section 3304 of the Internal Revenue Code of 1986; or

(B) short-time compensation program is subject to discontinuation or is not scheduled to take effect within 12 months of the certification.

(d) USE OF FUNDS.—The amount of any grant awarded under this section shall be used for the implementation of short-time compensation programs and the overall administration of such programs and the promotion and enrollment efforts associated with such programs, such as through—

(1) the creation or support of rapid response teams to advise employers about alternatives to layoffs;

(2) the provision of education or assistance to employers to enable them to assess the feasibility of participating in short-time compensation programs; and

(3) the development or enhancement of systems to automate—

(A) the submission and approval of plans; and

(B) the filing and approval of new and ongoing short-time compensation claims.

(e) ADMINISTRATION.—The Secretary is authorized to use 0.25 percent of the funds available under subsection (g) to provide for outreach and to share best practices with respect to this section and short-time compensation programs.

(f) *RECOUPMENT.*—The Secretary shall establish a process under which the Secretary shall recoup the amount of any grant awarded under paragraph (1) or (2) of subsection (a) if the Secretary determines that, during the 5-year period beginning on the first date that any such grant is awarded to the State, the State—

(1) terminated the State's short-time compensation program; or

(2) failed to meet appropriate requirements with respect to such program (as established by the Secretary).

(g) *FUNDING.*—There are appropriated, out of moneys in the Treasury not otherwise appropriated, to the Secretary, \$100,000,000 to carry out this section, to remain available without fiscal year limitation.

(h) *REPORTING.*—The Secretary may establish reporting requirements for States receiving a grant under this section in order to provide oversight of grant funds.

(i) *DEFINITIONS.*—In this section:

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

(2) *SHORT-TIME COMPENSATION PROGRAM.*—The term “short-time compensation program” has the meaning given such term in section 3306(v) of the Internal Revenue Code of 1986, as added by section 2161(a).

(3) *STATE; STATE AGENCY; STATE LAW.*—The terms “State”, “State agency”, and “State law” have the meanings given those terms in section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note).

**SEC. 2165. ASSISTANCE AND GUIDANCE IN IMPLEMENTING PROGRAMS.**

(a) *IN GENERAL.*—In order to assist States in establishing, qualifying, and implementing short-time compensation programs (as defined in section 3306(v) of the Internal Revenue Code of 1986, as added by section 2161(a)), the Secretary of Labor (in this section referred to as the “Secretary”) shall—

(1) develop model legislative language which may be used by States in developing and enacting such programs and periodically review and revise such model legislative language;

(2) provide technical assistance and guidance in developing, enacting, and implementing such programs;

(3) establish reporting requirements for States, including reporting on—

(A) the number of estimated averted layoffs;

(B) the number of participating employers and workers;

and

(C) such other items as the Secretary of Labor determines are appropriate.

(b) *MODEL LANGUAGE AND GUIDANCE.*—The model language and guidance developed under subsection (a) shall allow sufficient flexibility by States and participating employers while ensuring accountability and program integrity.

(c) *CONSULTATION.*—In developing the model legislative language and guidance under subsection (a), and in order to meet the requirements of subsection (b), the Secretary shall consult with employers, labor organizations, State workforce agencies, and other program experts.

**SEC. 2166. REPORTS.****(a) REPORT.—**

(1) *IN GENERAL.*—Not later than 4 years after the date of the enactment of this Act, the Secretary of Labor shall submit to Congress and to the President a report or reports on the implementation of the provisions of this subtitle.

(2) *REQUIREMENTS.*—Any report under paragraph (1) shall at a minimum include the following:

(A) A description of best practices by States and employers in the administration, promotion, and use of short-time compensation programs (as defined in section 3306(v) of the Internal Revenue Code of 1986, as added by section 2161(a)).

(B) An analysis of the significant challenges to State enactment and implementation of short-time compensation programs.

(C) A survey of employers in all States to determine the level of interest in participating in short-time compensation programs.

(b) *FUNDING.*—There are appropriated, out of any moneys in the Treasury not otherwise appropriated, to the Secretary of Labor, \$1,500,000 to carry out this section, to remain available without fiscal year limitation.

**Subtitle E—Self-Employment Assistance****SEC. 2181. STATE ADMINISTRATION OF SELF-EMPLOYMENT ASSISTANCE PROGRAMS.**

(a) *AVAILABILITY FOR INDIVIDUALS RECEIVING EXTENDED COMPENSATION.*—Title II of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) is amended by inserting at the end the following new section:

**“AUTHORITY TO CONDUCT SELF-EMPLOYMENT ASSISTANCE PROGRAMS**

“SEC. 208. (a)(1) At the option of a State, for any weeks of unemployment beginning after the date of enactment of this section, the State agency of the State may establish a self-employment assistance program, as described in subsection (b), to provide for the payment of extended compensation as self-employment assistance allowances to individuals who would otherwise satisfy the eligibility criteria under this title.

“(2) Subject to paragraph (3), the self-employment assistance allowance described in paragraph (1) shall be paid to an eligible individual from such individual’s extended compensation account, as described in section 202(b), and the amount in such account shall be reduced accordingly.

“(3)(A) Subject to subparagraph (B), for purposes of self-employment assistance programs established under this section and section 4001(j) of the Supplemental Appropriations Act, 2008, an individual shall be provided with self-employment assistance allowances under such programs for a total of not greater than 26 weeks (referred to in this section as the ‘combined eligibility limit’).

“(B) For purposes of an individual who is participating in a self-employment assistance program established under this section and has not reached the combined eligibility limit as of the date on which such individual exhausts all rights to extended compensation

*under this title, the individual shall be eligible to receive self-employment assistance allowances under a self-employment assistance program established under section 4001(j) of the Supplemental Appropriations Act, 2008, until such individual has reached the combined eligibility limit, provided that the individual otherwise satisfies the eligibility criteria described under title IV of such Act.*

*“(b) For the purposes of this section, the term ‘self-employment assistance program’ means a program as defined under section 3306(t) of the Internal Revenue Code of 1986, except as follows:*

*“(1) all references to ‘regular unemployment compensation under the State law’ shall be deemed to refer instead to ‘extended compensation under title II of the Federal-State Extended Unemployment Compensation Act of 1970’;*

*“(2) paragraph (3)(B) shall not apply;*

*“(3) clause (i) of paragraph (3)(C) shall be deemed to state as follows:*

*“(i) include any entrepreneurial training that the State or non-profit organizations may provide in coordination with programs of training offered by the Small Business Administration, which may include business counseling, mentorship for participants, access to small business development resources, and technical assistance; and”;*

*“(4) the reference to ‘5 percent’ in paragraph (4) shall be deemed to refer instead to ‘1 percent’; and*

*“(5) paragraph (5) shall not apply.*

*“(c) In the case of an individual who is eligible to receive extended compensation under this title, such individual shall not receive self-employment assistance allowances under this section unless the State agency has a reasonable expectation that such individual will be entitled to at least 13 times the individual’s average weekly benefit amount of extended compensation and emergency unemployment compensation.*

*“(d)(1) An individual who is participating in a self-employment assistance program established under this section may elect to discontinue participation in such program at any time.*

*“(2) For purposes of an individual whose participation in a self-employment assistance program established under this section is terminated pursuant to subsection (a)(3) or who has discontinued participation in such program, if the individual continues to satisfy the eligibility requirements for extended compensation under this title, the individual shall receive extended compensation payments with respect to subsequent weeks of unemployment, to the extent that amounts remain in the account established for such individual under section 202(b).”.*

*(b) AVAILABILITY FOR INDIVIDUALS RECEIVING EMERGENCY UNEMPLOYMENT COMPENSATION.—Section 4001 of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 26 U.S.C. 3304 note), as amended by sections 2141(b) and 2142(a), is further amended by inserting at the end the following new subsection:*

*“(j) AUTHORITY TO CONDUCT SELF-EMPLOYMENT ASSISTANCE PROGRAM.—*

*“(1) IN GENERAL.—*

*“(A) ESTABLISHMENT.—Any agreement under subsection (a) may provide that the State agency of the State*

shall establish a self-employment assistance program, as described in paragraph (2), to provide for the payment of emergency unemployment compensation as self-employment assistance allowances to individuals who would otherwise satisfy the eligibility criteria specified in subsection (b).

“(B) PAYMENT OF ALLOWANCES.—Subject to subparagraph (C), the self-employment assistance allowance described in subparagraph (A) shall be paid to an eligible individual from such individual’s emergency unemployment compensation account, as described in section 4002, and the amount in such account shall be reduced accordingly.

“(C) LIMITATION ON SELF-EMPLOYMENT ASSISTANCE FOR INDIVIDUALS RECEIVING EXTENDED COMPENSATION AND EMERGENCY UNEMPLOYMENT COMPENSATION.—

“(i) COMBINED ELIGIBILITY LIMIT.—Subject to clause (ii), for purposes of self-employment assistance programs established under this subsection and section 208 of the Federal-State Extended Unemployment Compensation Act of 1970, an individual shall be provided with self-employment assistance allowances under such programs for a total of not greater than 26 weeks (referred to in this subsection as the ‘combined eligibility limit’).

“(ii) CARRYOVER RULE.—For purposes of an individual who is participating in a self-employment assistance program established under this subsection and has not reached the combined eligibility limit as of the date on which such individual exhausts all rights to extended compensation under this title, the individual shall be eligible to receive self-employment assistance allowances under a self-employment assistance program established under section 208 of the Federal-State Extended Unemployment Compensation Act of 1970 until such individual has reached the combined eligibility limit, provided that the individual otherwise satisfies the eligibility criteria described under title II of such Act.

“(2) DEFINITION OF ‘SELF-EMPLOYMENT ASSISTANCE PROGRAM’.—For the purposes of this section, the term ‘self-employment assistance program’ means a program as defined under section 3306(t) of the Internal Revenue Code of 1986, except as follows:

“(A) all references to ‘regular unemployment compensation under the State law’ shall be deemed to refer instead to ‘emergency unemployment compensation under title IV of the Supplemental Appropriations Act, 2008’;

“(B) paragraph (3)(B) shall not apply;

“(C) clause (i) of paragraph (3)(C) shall be deemed to state as follows:

“(i) include any entrepreneurial training that the State or non-profit organizations may provide in coordination with programs of training offered by the Small Business Administration, which may include business counseling, mentorship for participants, ac-

cess to small business development resources, and technical assistance; and”;

“(D) the reference to ‘5 percent’ in paragraph (4) shall be deemed to refer instead to ‘1 percent’; and

“(E) paragraph (5) shall not apply.

“(3) *AVAILABILITY OF SELF-EMPLOYMENT ASSISTANCE ALLOWANCES.*—In the case of an individual who is eligible to receive emergency unemployment compensation payment under this title, such individual shall not receive self-employment assistance allowances under this subsection unless the State agency has a reasonable expectation that such individual will be entitled to at least 13 times the individual’s average weekly benefit amount of extended compensation and emergency unemployment compensation.

“(4) *PARTICIPANT OPTION TO TERMINATE PARTICIPATION IN SELF-EMPLOYMENT ASSISTANCE PROGRAM.*—

“(A) *TERMINATION.*—An individual who is participating in a self-employment assistance program established under this subsection may elect to discontinue participation in such program at any time.

“(B) *CONTINUED ELIGIBILITY FOR EMERGENCY UNEMPLOYMENT COMPENSATION.*—For purposes of an individual whose participation in the self-employment assistance program established under this subsection is terminated pursuant to paragraph (1)(C) or who has discontinued participation in such program, if the individual continues to satisfy the eligibility requirements for emergency unemployment compensation under this title, the individual shall receive emergency unemployment compensation payments with respect to subsequent weeks of unemployment, to the extent that amounts remain in the account established for such individual under section 4002(b) or to the extent that such individual commences receiving the amounts described in subsections (c), (d), or (e) of such section, respectively.”.

#### **SEC. 2182. GRANTS FOR SELF-EMPLOYMENT ASSISTANCE PROGRAMS.**

(a) *IN GENERAL.*—

(1) *ESTABLISHMENT OR IMPROVED ADMINISTRATION.*—Subject to the requirements established under subsection (b), the Secretary shall award grants to States for the purposes of—

(A) improved administration of self-employment assistance programs that have been established, prior to the date of the enactment of this Act, pursuant to section 3306(t) of the Internal Revenue Code of 1986 (26 U.S.C. 3306(t)), for individuals who are eligible to receive regular unemployment compensation;

(B) development, implementation, and administration of self-employment assistance programs that are established, subsequent to the date of the enactment of this Act, pursuant to section 3306(t) of the Internal Revenue Code of 1986, for individuals who are eligible to receive regular unemployment compensation; and

(C) development, implementation, and administration of self-employment assistance programs that are established pursuant to section 208 of the Federal-State Extended Un-

employment Compensation Act of 1970 or section 4001(j) of the Supplemental Appropriations Act, 2008, for individuals who are eligible to receive extended compensation or emergency unemployment compensation.

(2) *PROMOTION AND ENROLLMENT.*—Subject to the requirements established under subsection (b), the Secretary shall award additional grants to States that submit approved applications for a grant under paragraph (1) for such States to promote self-employment assistance programs and enroll unemployed individuals in such programs.

(b) *APPLICATION AND DISBURSAL.*—

(1) *APPLICATION.*—Any State seeking a grant under paragraph (1) or (2) of subsection (a) shall submit an application to the Secretary at such time, in such manner, and containing such information as is determined appropriate by the Secretary. In no case shall the Secretary award a grant under this section with respect to an application that is submitted after December 31, 2013.

(2) *NOTICE.*—Not later than 30 days after receiving an application described in paragraph (1) from a State, the Secretary shall notify the State agency as to whether a grant has been approved for such State for the purposes described in subsection (a).

(3) *CERTIFICATION.*—If the Secretary determines that a State has met the requirements for a grant under subsection (a), the Secretary shall make a certification to that effect to the Secretary of the Treasury, as well as a certification as to the amount of the grant payment to be transferred to the State account in the Unemployment Trust Fund under section 904 of the Social Security Act (42 U.S.C. 1104). The Secretary of the Treasury shall make the appropriate transfer to the State account not later than 7 days after receiving such certification.

(c) *ALLOTMENT FACTORS.*—For purposes of allotting the funds available under subsection (d) to States that have met the requirements for a grant under this section, the amount of the grant provided to each State shall be determined based upon the percentage of unemployed individuals in the State relative to the percentage of unemployed individuals in all States.

(d) *FUNDING.*—There are appropriated, out of moneys in the Treasury not otherwise appropriated, \$35,000,000 for the period of fiscal year 2012 through fiscal year 2013 for purposes of carrying out the grant program under this section,

**SEC. 2183. ASSISTANCE AND GUIDANCE IN IMPLEMENTING SELF-EMPLOYMENT ASSISTANCE PROGRAMS.**

(a) *MODEL LANGUAGE AND GUIDANCE.*—For purposes of assisting States in establishing, improving, and administering self-employment assistance programs, the Secretary shall—

(1) develop model language that may be used by States in enacting such programs, as well as periodically review and revise such model language; and

(2) provide technical assistance and guidance in establishing, improving, and administering such programs.

(b) *REPORTING AND EVALUATION.*—



(1) *REPORTING.*—The Secretary shall establish reporting requirements for States that have established self-employment assistance programs, which shall include reporting on—

(A) the total number of individuals who received unemployment compensation and—

(i) were referred to a self-employment assistance program;

(ii) participated in such program; and

(iii) received an allowance under such program;

(B) the total amount of allowances provided to individuals participating in a self-employment assistance program;

(C) the total income (as determined by survey or other appropriate method) for businesses that have been established by individuals participating in a self-employment assistance program, as well as the total number of individuals employed through such businesses; and

(D) any additional information, as determined appropriate by the Secretary.

(2) *EVALUATION.*—Not later than 5 years after the date of the enactment of this Act, the Secretary shall submit to Congress a report that evaluates the effectiveness of self-employment assistance programs established by States, including—

(A) an analysis of the implementation and operation of self-employment assistance programs by States;

(B) an evaluation of the economic outcomes for individuals who participated in a self-employment assistance program as compared to individuals who received unemployment compensation and did not participate in a self-employment assistance program, including a comparison as to employment status, income, and duration of receipt of unemployment compensation or self-employment assistance allowances; and

(C) an evaluation of the state of the businesses started by individuals who participated in a self-employment assistance program, including information regarding—

(i) the type of businesses established;

(ii) the sustainability of the businesses;

(iii) the total income collected by the businesses;

(iv) the total number of individuals employed through such businesses; and

(v) the estimated Federal and State tax revenue collected from such businesses and their employees.

(c) *FLEXIBILITY AND ACCOUNTABILITY.*—The model language, guidance, and reporting requirements developed by the Secretary under subsections (a) and (b) shall—

(1) allow sufficient flexibility for States and participating individuals; and

(2) ensure accountability and program integrity.

(d) *CONSULTATION.*—For purposes of developing the model language, guidance, and reporting requirements described under subsections (a) and (b), the Secretary shall consult with employers, labor organizations, State agencies, and other relevant program experts.

(e) *ENTREPRENEURIAL TRAINING PROGRAMS.*—The Secretary shall utilize resources available through the Department of Labor and coordinate with the Administrator of the Small Business Administration to ensure that adequate funding is reserved and made available for the provision of entrepreneurial training to individuals participating in self-employment assistance programs.

(f) *SELF-EMPLOYMENT ASSISTANCE PROGRAM.*—For purposes of this section, the term “self-employment assistance program” means a program established pursuant to section 3306(t) of the Internal Revenue Code of 1986 (26 U.S.C. 3306(t)), section 208 of the Federal-State Extended Unemployment Compensation Act of 1970, or section 4001(j) of the Supplemental Appropriations Act, 2008, for individuals who are eligible to receive regular unemployment compensation, extended compensation, or emergency unemployment compensation.

**SEC. 2184. DEFINITIONS.**

*In this subtitle:*

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

(2) *STATE; STATE AGENCY.*—The terms “State” and “State agency” have the meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note).

**TITLE III—MEDICARE AND OTHER HEALTH PROVISIONS**

**Subtitle A—Medicare Extensions**

**SEC. 3001. EXTENSION OF MMA SECTION 508 RECLASSIFICATIONS.**

(a) *IN GENERAL.*—Section 106(a) of division B of the Tax Relief and Health Care Act of 2006 (42 U.S.C. 1395 note), as amended by section 117 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110–173), section 124 of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110–275), sections 3137(a) and 10317 of the Patient Protection and Affordable Care Act (Public Law 111–148), section 102(a) of the Medicare and Medicaid Extenders Act of 2010 (Public Law 111–309), and section 302(a) of the Temporary Payroll Tax Cut Continuation Act of 2011 (Public Law 112–78), is amended by striking “November 30, 2011” and inserting “March 31, 2012”.

(b) *SPECIAL RULE.*—

(1) *IN GENERAL.*—Subject to paragraph (2), for purposes of implementation of the amendment made by subsection (a), including for purposes of the implementation of paragraph (2) of section 117(a) of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110–173), for the period beginning on December 1, 2011, and ending on March 31, 2012, the Secretary of Health and Human Services shall use the hospital wage index that was promulgated by the Secretary of Health and Human Services in the Federal Register on August 18, 2011 (76 Fed. Reg. 51476), and any subsequent corrections.

(2) *EXCEPTION.*—In determining the wage index applicable to hospitals that qualify for wage index reclassification, the Secretary shall, for the period described in paragraph (1), include the average hourly wage data of hospitals whose reclassification

*was extended pursuant to the amendment made by subsection (a) only if including such data results in a higher applicable reclassified wage index. Any revision to hospital wage indexes made as a result of this paragraph shall not be effected in a budget neutral manner.*

*(c) TIMEFRAME FOR PAYMENTS.—*

*(1) IN GENERAL.—The Secretary shall make payments required under subsections (a) and (b) by not later than June 30, 2012.*

*(2) OCTOBER 2011 AND NOVEMBER 2011 CONFORMING CHANGE.—Section 302(c) of the Temporary Payroll Tax Cut Continuation Act of 2011 (Public Law 112-78) is amended by striking “December 31, 2012” and inserting “June 30, 2012”.*

**SEC. 3002. EXTENSION OF OUTPATIENT HOLD HARMLESS PAYMENTS.**

*(a) IN GENERAL.—Section 1833(t)(7)(D)(i) of the Social Security Act (42 U.S.C. 1395l(t)(7)(D)(i)), as amended by section 308 of the Temporary Payroll Tax Cut Continuation Act of 2011 (Public Law 112-78), is amended—*

*(1) in subclause (II)—*

*(A) in the first sentence, by striking “March 1, 2012” and inserting “January 1, 2013”; and*

*(B) in the second sentence, by striking “or the first two months of 2012” and inserting “or 2012”; and*

*(2) in subclause (III), in the first sentence, by striking “March 1, 2012” and inserting “January 1, 2013”.*

*(b) REPORT.—Not later than July 1, 2012, the Secretary of Health and Human Services shall submit to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate a report including recommendations for which types of hospitals should continue to receive hold harmless payments described in subclauses (II) and (III) of section 1833(t)(7)(D)(i) of the Social Security Act (42 U.S.C. 1395l(t)(7)(D)(i)) in order to maintain adequate beneficiary access to outpatient services. In conducting such report, the Secretary should examine why some similarly situated hospitals do not receive such hold harmless payments and are able to rely only on the prospective payment system for hospital outpatient department services under section 1833(t) of the Social Security Act (42 U.S.C. 1395l(t)).*

**SEC. 3003. PHYSICIAN PAYMENT UPDATE.**

*(a) IN GENERAL.—Section 1848(d)(13) of the Social Security Act (42 U.S.C. 1395w-4(d)(13)), as added by section 301 of the Temporary Payroll Tax Cut Continuation Act of 2011 (Public Law 112-78), is amended—*

*(1) in the heading, by striking “FIRST TWO MONTHS OF 2012” and inserting “2012”;*

*(2) in subparagraph (A), by striking “the period beginning on January 1, 2012, and ending on February 29, 2012” and inserting “2012”;*

*(3) in the heading of subparagraph (B), by striking “REMAINING PORTION OF 2012” and inserting “2013”; and*

*(4) in subparagraph (B), by striking “for the period beginning on March 1, 2012, and ending on December 31, 2012, and for 2013” and inserting “for 2013”.*

(b) **MANDATED STUDIES ON PHYSICIAN PAYMENT REFORM.**—(1) **STUDY BY SECRETARY ON OPTIONS FOR BUNDLED OR EPISODE-BASED PAYMENT.**—

(A) **IN GENERAL.**—*The Secretary of Health and Human Services shall conduct a study that examines options for bundled or episode-based payments, to cover physicians' services currently paid under the physician fee schedule under section 1848 of the Social Security Act (42 U.S.C. 1395w-4), for one or more prevalent chronic conditions (such as cancer, diabetes, and congestive heart failure) or episodes of care for one or more major procedures (such as medical device implantation). In conducting the study, the Secretary shall consult with medical professional societies and other relevant stakeholders. The study shall include an examination of related private payer payment initiatives.*

(B) **REPORT.**—*Not later than January 1, 2013, the Secretary shall submit to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate a report on the study conducted under this paragraph. The Secretary shall include in the report recommendations on suitable alternative payment options for services paid under such fee schedule and on associated implementation requirements (such as timelines, operational issues, and interactions with other payment reform initiatives).*

(2) **GAO STUDY OF PRIVATE PAYER INITIATIVES.**—

(A) **IN GENERAL.**—*The Comptroller General of the United States shall conduct a study that examines initiatives of private entities offering or administering health insurance coverage, group health plans, or other private health benefit plans to base or adjust physician payment rates under such coverage or plans for performance on quality and efficiency, as well as demonstration of care delivery improvement activities (such as adherence to evidence-based guidelines and patient-shared decision making programs). In conducting such study, the Comptroller General shall consult, to the extent appropriate, with medical professional societies and other relevant stakeholders.*

(B) **REPORT.**—*Not later than January 1, 2013, the Comptroller General shall submit to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate a report on the study conducted under this paragraph. Such report shall include an assessment of the applicability of the payer initiatives described in subparagraph (A) to the Medicare program and recommendations on modifications to existing Medicare performance-based initiatives.*

**SEC. 3004. WORK GEOGRAPHIC ADJUSTMENT.**

(a) **IN GENERAL.**—*Section 1848(e)(1)(E) of the Social Security Act (42 U.S.C. 1395w-4(e)(1)(E)), as amended by section 303 of the Temporary Payroll Tax Cut Continuation Act of 2011 (Public Law 112-78), is amended by striking “before March 1, 2012” and inserting “before January 1, 2013”.*

(b) *REPORT.*—Not later than June 15, 2013, the Medicare Payment Advisory Commission shall submit to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate a report that assesses whether any adjustment under section 1848 of the Social Security Act (42 U.S.C. 1395w–4) to distinguish the difference in work effort by geographic area is appropriate and, if so, what that level should be and where it should be applied. The report shall also assess the impact of the work geographic adjustment under such section, including the extent to which the floor on such adjustment impacts access to care.

**SEC. 3005. PAYMENT FOR OUTPATIENT THERAPY SERVICES.**

(a) *APPLICATION OF ADDITIONAL REQUIREMENTS.*—Section 1833(g)(5) of the Social Security Act (42 U.S.C. 1395l(g)(5)), as amended by section 304 of the Temporary Payroll Tax Cut Continuation Act of 2011 (Public Law 112–78), is amended—

- (1) by inserting “(A)” after “(5)”;
- (2) in the first sentence, by striking “February 29, 2012” and inserting “December 31, 2012”;
- (3) in the first sentence, by inserting “and if the requirement of subparagraph (B) is met” after “medically necessary”;
- (4) in the second sentence, by inserting “made in accordance with such requirement” after “receipt of the request”; and
- (5) by adding at the end the following new subparagraphs:  
“(B) In the case of outpatient therapy services for which an exception is requested under the first sentence of subparagraph (A), the claim for such services shall contain an appropriate modifier (such as the KX modifier used as of the date of the enactment of this subparagraph) indicating that such services are medically necessary as justified by appropriate documentation in the medical record involved.

“(C)(i) In applying this paragraph with respect to a request for an exception with respect to expenses that would be incurred for outpatient therapy services (including services described in subsection (a)(8)(B)) that would exceed the threshold described in clause (ii) for a year, the request for such an exception, for services furnished on or after October 1, 2012, shall be subject to a manual medical review process that is similar to the manual medical review process used for certain exceptions under this paragraph in 2006.

“(ii) The threshold under this clause for a year is \$3,700. Such threshold shall be applied separately—

- “(I) for physical therapy services and speech-language pathology services; and
- “(II) for occupational therapy services.”.

(b) *TEMPORARY APPLICATION OF THERAPY CAP TO THERAPY FURNISHED AS PART OF HOSPITAL OUTPATIENT SERVICES.*—Section 1833(g) of such Act (42 U.S.C. 1395l(g)) is amended—

- (1) in each of paragraphs (1) and (3), by striking “but not described in section 1833(a)(8)(B)” and inserting “but (except as provided in paragraph (6)) not described in subsection (a)(8)(B)”;
- (2) by adding at the end the following new paragraph:  
“(6) In applying paragraphs (1) and (3) to services furnished during the period beginning not later than October 1, 2012, and ending on December 31, 2012, the exclusion of services described in

subsection (a)(8)(B) from the uniform dollar limitation specified in paragraph (2) shall not apply to such services furnished during 2012.”.

(c) *REQUIREMENT FOR INCLUSION ON CLAIMS OF NPI OF PHYSICIAN WHO REVIEWS THERAPY PLAN.*—Section 1842(t) of such Act (42 U.S.C. 1395u(t)) is amended—

(1) by inserting “(1)” after “(t)”; and

(2) by adding at the end the following new paragraph:

“(2) Each request for payment, or bill submitted, for therapy services described in paragraph (1) or (3) of section 1833(g), including services described in section 1833(a)(8)(B), furnished on or after October 1, 2012, for which payment may be made under this part shall include the national provider identifier of the physician who periodically reviews the plan for such services under section 1861(p)(2).”.

(d) *IMPLEMENTATION.*—The Secretary of Health and Human Services shall implement such claims processing edits and issue such guidance as may be necessary to implement the amendments made by this section in a timely manner. Notwithstanding any other provision of law, the Secretary may implement the amendments made by this section by program instruction. Of the amount of funds made available to the Secretary for fiscal year 2012 for program management for the Centers for Medicare & Medicaid Services, not to exceed \$9,375,000 shall be available for such fiscal year and the first 3 months of fiscal year 2013 to carry out section 1833(g)(5)(C) of the Social Security Act (relating to manual medical review), as added by subsection (a).

(e) *EFFECTIVE DATE.*—The requirement of subparagraph (B) of section 1833(g)(5) of the Social Security Act (42 U.S.C. 1395l(g)(5)), as added by subsection (a), shall apply to services furnished on or after March 1, 2012.

(f) *MEDPAC REPORT ON IMPROVED MEDICARE THERAPY BENEFITS.*—Not later than June 15, 2013, the Medicare Payment Advisory Commission shall submit to the Committees on Energy and Commerce and Ways and Means of the House of Representatives and to the Committee on Finance of the Senate a report making recommendations on how to improve the outpatient therapy benefit under part B of title XVIII of the Social Security Act. The report shall include recommendations on how to reform the payment system for such outpatient therapy services under such part so that the benefit is better designed to reflect individual acuity, condition, and therapy needs of the patient. Such report shall include an examination of private sector initiatives relating to outpatient therapy benefits.

(g) *COLLECTION OF ADDITIONAL DATA.*—

(1) *STRATEGY.*—The Secretary of Health and Human Services shall implement, beginning on January 1, 2013, a claims-based data collection strategy that is designed to assist in reforming the Medicare payment system for outpatient therapy services subject to the limitations of section 1833(g) of the Social Security Act (42 U.S.C. 1395l(g)). Such strategy shall be designed to provide for the collection of data on patient function during the course of therapy services in order to better understand patient condition and outcomes.

(2) *CONSULTATION.*—In proposing and implementing such strategy, the Secretary shall consult with relevant stakeholders.

(h) *GAO REPORT ON MANUAL MEDICAL REVIEW PROCESS IMPLEMENTATION.*—Not later than May 1, 2013, the Comptroller General of the United States shall submit to the Committees on Energy and Commerce and Ways and Means of the House of Representatives and to the Committee on Finance of the Senate a report on the implementation of the manual medical review process referred to in section 1833(g)(5)(C) of the Social Security Act, as added by subsection (a). Such report shall include aggregate data on the number of individuals and claims subject to such process, the number of reviews conducted under such process, and the outcome of such reviews.

**SEC. 3006. PAYMENT FOR TECHNICAL COMPONENT OF CERTAIN PHYSICIAN PATHOLOGY SERVICES.**

Section 542(c) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (as enacted into law by section 1(a)(6) of Public Law 106–554), as amended by section 732 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (42 U.S.C. 1395w–4 note), section 104 of division B of the Tax Relief and Health Care Act of 2006 (42 U.S.C. 1395w–4 note), section 104 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110–173), section 136 of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110–275), section 3104 of the Patient Protection and Affordable Care Act (Public Law 111–148), section 105 of the Medicare and Medicaid Extenders Act of 2010 (Public Law 111–309), and section 305 of the Temporary Payroll Tax Cut Continuation Act of 2011 (Public Law 112–78), is amended by striking “and the first two months of 2012” and inserting “and the first six months of 2012”.

**SEC. 3007. AMBULANCE ADD-ON PAYMENTS.**

(a) *GROUND AMBULANCE.*—Section 1834(l)(13)(A) of the Social Security Act (42 U.S.C. 1395m(l)(13)(A)), as amended by section 306(a) of the Temporary Payroll Tax Cut Continuation Act of 2011 (Public Law 112–78), is amended—

(1) in the matter preceding clause (i), by striking “March 1, 2012” and inserting “January 1, 2013”; and

(2) in each of clauses (i) and (ii), by striking “March 1, 2012” and inserting “January 1, 2013” each place it appears.

(b) *AIR AMBULANCE.*—Section 146(b)(1) of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110–275), as amended by sections 3105(b) and 10311(b) of the Patient Protection and Affordable Care Act (Public Law 111–148), section 106(b) of the Medicare and Medicaid Extenders Act of 2010 (Public Law 111–309) and section 306(b) of the Temporary Payroll Tax Cut Continuation Act of 2011 (Public Law 112–78), is amended by striking “February 29, 2012” and inserting “December 31, 2012”.

(c) *SUPER RURAL AMBULANCE.*—Section 1834(l)(12)(A) of the Social Security Act (42 U.S.C. 1395m(l)(12)(A)), as amended by section 306(c) of Temporary Payroll Tax Cut Continuation Act of 2011 (Public Law 112–78), is amended in the first sentence by striking “March 1, 2012” and inserting “January 1, 2013”.

(d) *GAO REPORT UPDATE.*—Not later than October 1, 2012, the Comptroller General of the United States shall update the GAO re-

port GAO-07-383 (relating to Ambulance Providers: Costs and Expected Medicare Margins Vary Greatly) to reflect current costs for ambulance providers.

(e) *MEDPAC REPORT.*—The Medicare Payment Advisory Commission shall conduct a study of—

(1) the appropriateness of the add-on payments for ambulance providers under paragraphs (12)(A) and (13)(A) of section 1834(l) of the Social Security Act (42 U.S.C. 1395m(l)) and the treatment of air ambulance providers under section 146(b)(1) of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110-275);

(2) the effect these add-on payments and such treatment have on the Medicare margins of ambulance providers; and

(3) whether there is a need to reform the Medicare ambulance fee schedule under such section and, if so, what should such reforms be, including whether the add-on payments should be included in the base rate.

Not later than June 15, 2013, the Commission shall submit to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate a report on such study and shall include in the report such recommendations as the Commission deems appropriate.

### **Subtitle B—Other Health Provisions**

#### **SEC. 3101. QUALIFYING INDIVIDUAL PROGRAM.**

(a) *EXTENSION.*—Section 1902(a)(10)(E)(iv) of the Social Security Act (42 U.S.C. 1396a(a)(10)(E)(iv)), as amended by section 310(a) of the Temporary Payroll Tax Cut Continuation Act of 2011 (Public Law 112-78), is amended by striking “February” and inserting “December”.

(b) *EXTENDING TOTAL AMOUNT AVAILABLE FOR ALLOCATION.*—Section 1933(g) of such Act (42 U.S.C. 1396u-3(g)), as amended by section 310(b) of the Temporary Payroll Tax Cut Continuation Act of 2011 (Public Law 112-78), is amended—

(1) in paragraph (2)—

(A) in subparagraph (P), by striking “and” after the semicolon;

(B) in subparagraph (Q), by striking “February 29, 2012, the total allocation amount is \$150,000,000.” and inserting “September 30, 2012, the total allocation amount is \$450,000,000; and”; and

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

“(R) for the period that begins on October 1, 2012, and ends on December 31, 2012, the total allocation amount is \$280,000,000.”; and

(2) in paragraph (3), in the matter preceding subparagraph (A), by striking “or (P)” and inserting “(P), or (R)”.

#### **SEC. 3102. TRANSITIONAL MEDICAL ASSISTANCE.**

Sections 1902(e)(1)(B) and 1925(f) of the Social Security Act (42 U.S.C. 1396a(e)(1)(B), 1396r-6(f)), as amended by section 311 of the Temporary Payroll Tax Cut Continuation Act of 2011 (Public Law 112-78), are each amended by striking “February 29” and inserting “December 31”.



**Subtitle C—Health Offsets**

**SEC. 3201. REDUCTION OF BAD DEBT TREATED AS AN ALLOWABLE COST.**

(a) *HOSPITALS.*—Section 1861(v)(1)(T) of the Social Security Act (42 U.S.C. 1395x(v)(1)(T)) is amended—

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

(2) in clause (iv)—

(A) by striking “a subsequent fiscal year” and inserting “fiscal years 2001 through 2012”; and

(B) by striking the period at the end and inserting “, and”; and

(3) by adding at the end the following:

“(v) for cost reporting periods beginning during fiscal year 2013 or a subsequent fiscal year, by 35 percent of such amount otherwise allowable.”.

(b) *SKILLED NURSING FACILITIES.*—Section 1861(v)(1)(V) of such Act (42 U.S.C. 1395x(v)(1)(V)) is amended—

(1) in the matter preceding clause (i), by striking “with respect to cost reporting periods beginning on or after October 1, 2005” and inserting “and (beginning with respect to cost reporting periods beginning during fiscal year 2013) for covered skilled nursing services described in section 1888(e)(2)(A) furnished by hospital providers of extended care services (as described in section 1883)”;

(2) in clause (i), by striking “reduced by” and all that follows through “allowable; and” and inserting the following: “reduced by—

“(I) for cost reporting periods beginning on or after October 1, 2005, but before fiscal year 2013, 30 percent of such amount otherwise allowable; and

“(II) for cost reporting periods beginning during fiscal year 2013 or a subsequent fiscal year, by 35 percent of such amount otherwise allowable.”; and

(3) in clause (ii), by striking “such section shall not be reduced.” and inserting “such section—

“(I) for cost reporting periods beginning on or after October 1, 2005, but before fiscal year 2013, shall not be reduced;

“(II) for cost reporting periods beginning during fiscal year 2013, shall be reduced by 12 percent of such amount otherwise allowable;

“(III) for cost reporting periods beginning during fiscal year 2014, shall be reduced by 24 percent of such amount otherwise allowable; and

“(IV) for cost reporting periods beginning during a subsequent fiscal year, shall be reduced by 35 percent of such amount otherwise allowable.”.

(c) *CERTAIN OTHER PROVIDERS.*—Section 1861(v)(1) of such Act (42 U.S.C. 1395x(v)(1)) is amended by adding at the end the following new subparagraph:

“(W)(i) In determining such reasonable costs for providers described in clause (ii), the amount of bad debts otherwise treated as allowable costs which are attributable to deductibles and coinsurance amounts under this title shall be reduced—

“(I) for cost reporting periods beginning during fiscal year 2013, by 12 percent of such amount otherwise allowable;

“(II) for cost reporting periods beginning during fiscal year 2014, by 24 percent of such amount otherwise allowable; and

“(III) for cost reporting periods beginning during a subsequent fiscal year, by 35 percent of such amount otherwise allowable.

“(ii) A provider described in this clause is a provider of services not described in subparagraph (T) or (V), a supplier, or any other type of entity that receives payment for bad debts under the authority under subparagraph (A).”.

(d) **CONFORMING AMENDMENT FOR HOSPITAL SERVICES.**—Section 4008(c) of the Omnibus Budget Reconciliation Act of 1987 (42 U.S.C. 1395 note), as amended by section 8402 of the Technical and Miscellaneous Revenue Act of 1988 and section 6023 of the Omnibus Budget Reconciliation Act of 1989, is amended by adding at the end the following new sentence: “Effective for cost reporting periods beginning on or after October 1, 2012, the provisions of the previous two sentences shall not apply.”.

**SEC. 3202. REBASE MEDICARE CLINICAL LABORATORY PAYMENT RATES.**

Section 1833(h)(2)(A) of the Social Security Act (42 U.S.C. 1395l(h)(2)(A)) is amended—

(1) in clause (i), by striking “paragraph (4)” and inserting “clause (v), subparagraph (B), and paragraph (4)”;

(2) by moving clause (iv), subclauses (I) and (II) of such clause, and the flush matter at the end of such clause 6 ems to the left; and

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

“(v) The Secretary shall reduce by 2 percent the fee schedules otherwise determined under clause (i) for 2013, and such reduced fee schedules shall serve as the base for 2014 and subsequent years.”.

**SEC. 3203. REBASING STATE DSH ALLOTMENTS FOR FISCAL YEAR 2021.**

Section 1923(f) of the Social Security Act (42 U.S.C. 1396r–4(f)) is amended—

(1) by redesignating paragraph (8) as paragraph (9);

(2) in paragraph (3)(A) by striking “paragraphs (6) and (7)” and inserting “paragraphs (6), (7), and (8)”;

(3) by inserting after paragraph (7) the following new paragraph:

“(8) **REBASING OF STATE DSH ALLOTMENTS FOR FISCAL YEAR 2021.**—With respect to fiscal year 2021, for purposes of applying paragraph (3)(A) to determine the DSH allotment for a State, the amount of the DSH allotment for the State under paragraph (3) for fiscal year 2020 shall be equal to the DSH allotment as reduced under paragraph (7).”.

**SEC. 3204. TECHNICAL CORRECTION TO THE DISASTER RECOVERY FMAP PROVISION.**

(a) **IN GENERAL.**—Section 1905(aa) of the Social Security Act (42 U.S.C. 1396d(aa)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (A), by striking “the Federal medical assistance percentage determined for the fiscal year” and all that follows through the period and inserting “the State’s regular FMAP shall be increased by 50 percent of

*the number of percentage points by which the State's regular FMAP for such fiscal year is less than the Federal medical assistance percentage determined for the State for the preceding fiscal year after the application of only subsection (a) of section 5001 of Public Law 111-5 (if applicable to the preceding fiscal year) and without regard to this subsection, subsections (y) and (z), and subsections (b) and (c) of section 5001 of Public Law 111-5.”; and*

*(B) in subparagraph (B), by striking “Federal medical assistance percentage determined for the preceding fiscal year” and all that follows through the period and inserting “State's regular FMAP for such fiscal year shall be increased by 25 percent of the number of percentage points by which the State's regular FMAP for such fiscal year is less than the Federal medical assistance percentage received by the State during the preceding fiscal year.”;*

*(2) in paragraph (2)—*

*(A) in subparagraph (A)—*

*(i) by striking “Federal medical assistance percentage determined for the State for the fiscal year” and all that follows through “Act,” and inserting “State's regular FMAP for the fiscal year”; and*

*(ii) by striking “subsection (y)” and inserting “subsections (y) and (z)”;* and

*(B) in subparagraph (B), by striking “Federal medical assistance percentage determined for the State for the fiscal year” and all that follows through “Act,” and inserting “State's regular FMAP for the fiscal year”;*

*(3) by redesignating paragraph (3) as paragraph (4); and*

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

*“(3) In this subsection, the term ‘regular FMAP’ means, for each fiscal year for which this subsection applies to a State, the Federal medical assistance percentage that would otherwise apply to the State for the fiscal year, as determined under subsection (b) and without regard to this subsection, subsections (y) and (z), and section 10202 of the Patient Protection and Affordable Care Act.”.*

*(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on October 1, 2013.*

#### **SEC. 3205. PREVENTION AND PUBLIC HEALTH FUND.**

*Section 4002(b) of the Patient Protection and Affordable Care Act (42 U.S.C. 300u-11(b)) is amended by striking paragraphs (2) through (6) and inserting the following:*

*“(2) for each of fiscal years 2012 through 2017, \$1,000,000,000;*

*“(3) for each of fiscal years 2018 and 2019, \$1,250,000,000;*

*“(4) for each of fiscal years 2020 and 2021, \$1,500,000,000;*

*and*

*“(5) for fiscal year 2022, and each fiscal year thereafter, \$2,000,000,000.”.*

### **TITLE IV—TANF EXTENSION**

#### **SEC. 4001. SHORT TITLE.**

*This title may be cited as the “Welfare Integrity and Data Improvement Act”.*

**SEC. 4002. EXTENSION OF PROGRAM.**

(a) **FAMILY ASSISTANCE GRANTS.**—Section 403(a)(1) of the Social Security Act (42 U.S.C. 603(a)(1)) is amended—

(1) in subparagraph (A), by striking “each of fiscal years 1996” and all that follows through “2003” and inserting “fiscal year 2012”;

(2) in subparagraph (B)—

(A) by inserting “(as in effect just before the enactment of the Welfare Integrity and Data Improvement Act)” after “this paragraph” the 1st place it appears; and

(B) by inserting “(as so in effect)” after “this paragraph” the 2nd place it appears; and

(3) in subparagraph (C), by striking “2003” and inserting “2012”.

(b) **HEALTHY MARRIAGE PROMOTION AND RESPONSIBLE FATHERHOOD GRANTS.**—Section 403(a)(2)(D) of such Act (42 U.S.C. 603(a)(2)(D)) is amended by striking “2011” each place it appears and inserting “2012”.

(c) **MAINTENANCE OF EFFORT REQUIREMENT.**—Section 409(a)(7) of such Act (42 U.S.C. 609(a)(7)) is amended—

(1) in subparagraph (A), by striking “fiscal year” and all that follows through “2013” and inserting “a fiscal year”; and

(2) in subparagraph (B)(ii)—

(A) by striking “for fiscal years 1997 through 2012,”; and

(B) by striking “407(a) for the fiscal year,” and inserting “407(a),”.

(d) **TRIBAL GRANTS.**—Section 412(a) of such Act (42 U.S.C. 612(a)) is amended in each of paragraphs (1)(A) and (2)(A) by striking “each of fiscal years 1997” and all that follows through “2003” and inserting “fiscal year 2012”.

(e) **STUDIES AND DEMONSTRATIONS.**—Section 413(h)(1) of such Act (42 U.S.C. 613(h)(1)) is amended by striking “each of fiscal years 1997 through 2002” and inserting “fiscal year 2012”.

(f) **CENSUS BUREAU STUDY.**—Section 414(b) of such Act (42 U.S.C. 614(b)) is amended by striking “each of fiscal years 1996” and all that follows through “2003” and inserting “fiscal year 2012”.

(g) **CHILD CARE ENTITLEMENT.**—Section 418(a)(3) of such Act (42 U.S.C. 618(a)(3)) is amended by striking “appropriated” and all that follows and inserting “appropriated \$2,917,000,000 for fiscal year 2012.”.

(h) **GRANTS TO TERRITORIES.**—Section 1108(b)(2) of such Act (42 U.S.C. 1308(b)(2)) is amended by striking “fiscal years 1997 through 2003” and inserting “fiscal year 2012”.

(i) **PREVENTION OF DUPLICATE APPROPRIATIONS FOR FISCAL YEAR 2012.**—Expenditures made pursuant to the Short-Term TANF Extension Act (Public Law 112–35) and the Temporary Payroll Tax Cut Continuation Act of 2011 (Public Law 112–78) for fiscal year 2012 shall be charged to the applicable appropriation or authorization provided by the amendments made by this section for such fiscal year.

(j) **EFFECTIVE DATE.**—This section and the amendments made by this section shall take effect on the date of the enactment of this Act.

**SEC. 4003. DATA EXCHANGE STANDARDIZATION FOR IMPROVED INTEROPERABILITY.**

(a) *IN GENERAL.*—Section 411 of the Social Security Act (42 U.S.C. 611) is amended by adding at the end the following:

“(d) *DATA EXCHANGE STANDARDIZATION FOR IMPROVED INTEROPERABILITY.*—

“(1) *DATA EXCHANGE STANDARDS.*—

“(A) *DESIGNATION.*—The Secretary, in consultation with an interagency work group which shall be established by the Office of Management and Budget, and considering State and tribal perspectives, shall, by rule, designate a data exchange standard for any category of information required to be reported under this part.

“(B) *DATA EXCHANGE STANDARDS MUST BE NONPROPRIETARY AND INTEROPERABLE.*—The data exchange standard designated under subparagraph (A) shall, to the extent practicable, be nonproprietary and interoperable.

“(C) *OTHER REQUIREMENTS.*—In designating data exchange standards under this section, the Secretary shall, to the extent practicable, incorporate—

“(i) interoperable standards developed and maintained by an international voluntary consensus standards body, as defined by the Office of Management and Budget, such as the International Organization for Standardization;

“(ii) interoperable standards developed and maintained by intergovernmental partnerships, such as the National Information Exchange Model; and

“(iii) interoperable standards developed and maintained by Federal entities with authority over contracting and financial assistance, such as the Federal Acquisition Regulatory Council.

“(2) *DATA EXCHANGE STANDARDS FOR REPORTING.*—

“(A) *DESIGNATION.*—The Secretary, in consultation with an interagency work group established by the Office of Management and Budget, and considering State and tribal perspectives, shall, by rule, designate data exchange standards to govern the data reporting required under this part.

“(B) *REQUIREMENTS.*—The data exchange standards required by subparagraph (A) shall, to the extent practicable—

“(i) incorporate a widely-accepted, nonproprietary, searchable, computer-readable format;

“(ii) be consistent with and implement applicable accounting principles; and

“(iii) be capable of being continually upgraded as necessary.

“(C) *INCORPORATION OF NONPROPRIETARY STANDARDS.*—In designating reporting standards under this paragraph, the Secretary shall, to the extent practicable, incorporate existing nonproprietary standards, such as the eXtensible Markup Language.”.

(b) *EFFECTIVE DATES.*—

(1) *DATA EXCHANGE STANDARDS.*—The Secretary of Health and Human Services shall issue a proposed rule under section

411(d)(1) of the Social Security Act within 12 months after the date of the enactment of this section, and shall issue a final rule under such section 411(d)(1), after public comment, within 24 months after such date of enactment.

(2) **DATA REPORTING STANDARDS.**—The reporting standards required under section 411(d)(2) of such Act shall become effective with respect to reports required in the first reporting period, after the effective date of the final rule referred to in paragraph (1) of this subsection, for which the authority for data collection and reporting is established or renewed under the Paperwork Reduction Act.

**SEC. 4004. SPENDING POLICIES FOR ASSISTANCE UNDER STATE TANF PROGRAMS.**

(a) **STATE REQUIREMENT.**—Section 408(a) of the Social Security Act (42 U.S.C. 608(a)) is amended by adding at the end the following:

“(12) **STATE REQUIREMENT TO PREVENT UNAUTHORIZED SPENDING OF BENEFITS.**—

“(A) **IN GENERAL.**—A State to which a grant is made under section 403 shall maintain policies and practices as necessary to prevent assistance provided under the State program funded under this part from being used in any electronic benefit transfer transaction in—

“(i) any liquor store;

“(ii) any casino, gambling casino, or gaming establishment; or

“(iii) any retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment.

“(B) **DEFINITIONS.**—For purposes of subparagraph (A)—

“(i) **LIQUOR STORE.**—The term ‘liquor store’ means any retail establishment which sells exclusively or primarily intoxicating liquor. Such term does not include a grocery store which sells both intoxicating liquor and groceries including staple foods (within the meaning of section 3(r) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(r))).

“(ii) **CASINO, GAMBLING CASINO, OR GAMING ESTABLISHMENT.**—The terms ‘casino’, ‘gambling casino’, and ‘gaming establishment’ do not include—

“(I) a grocery store which sells groceries including such staple foods and which also offers, or is located within the same building or complex as, casino, gambling, or gaming activities; or

“(II) any other establishment that offers casino, gambling, or gaming activities incidental to the principal purpose of the business.

“(iii) **ELECTRONIC BENEFIT TRANSFER TRANSACTION.**—The term ‘electronic benefit transfer transaction’ means the use of a credit or debit card service, automated teller machine, point-of-sale terminal, or access to an online system for the withdrawal of funds or

*the processing of a payment for merchandise or a service.”.*

(b) *PENALTY.*—Section 409(a) of such Act (42 U.S.C. 609(a)) is amended by adding at the end the following:

“(16) *PENALTY FOR FAILURE TO ENFORCE SPENDING POLICIES.*—

“(A) *IN GENERAL.*—If, within 2 years after the date of the enactment of this paragraph, any State has not reported to the Secretary on such State’s implementation of the policies and practices required by section 408(a)(12), or the Secretary determines, based on the information provided in State reports, that any State has not implemented and maintained such policies and practices, the Secretary shall reduce, by an amount equal to 5 percent of the State family assistance grant, the grant payable to such State under section 403(a)(1) for—

“(i) the fiscal year immediately succeeding the year in which such 2-year period ends; and

“(ii) each succeeding fiscal year in which the State does not demonstrate that such State has implemented and maintained such policies and practices.

“(B) *REDUCTION OF APPLICABLE PENALTY.*—The Secretary may reduce the amount of the reduction required under subparagraph (A) based on the degree of noncompliance of the State.

“(C) *STATE NOT RESPONSIBLE FOR INDIVIDUAL VIOLATIONS.*—Fraudulent activity by any individual in an attempt to circumvent the policies and practices required by section 408(a)(12) shall not trigger a State penalty under subparagraph (A).”.

(c) *ADDITIONAL STATE PLAN REQUIREMENTS.*—Section 402(a)(1)(A) of such Act (42 U.S.C. 602(a)(1)(A)) is amended by adding at the end the following:

“(vii) Implement policies and procedures as necessary to prevent access to assistance provided under the State program funded under this part through any electronic fund transaction in an automated teller machine or point-of-sale device located in a place described in section 408(a)(12), including a plan to ensure that recipients of the assistance have adequate access to their cash assistance.

“(viii) Ensure that recipients of assistance provided under the State program funded under this part have access to using or withdrawing assistance with minimal fees or charges, including an opportunity to access assistance with no fee or charges, and are provided information on applicable fees and surcharges that apply to electronic fund transactions involving the assistance, and that such information is made publicly available.”.

(d) *CONFORMING AMENDMENT.*—Section 409(c)(4) of such Act (42 U.S.C. 609(c)(4)) is amended by striking “or (13)” and inserting “(13), or (16)”.

**SEC. 4005. TECHNICAL CORRECTIONS.**

(a) Section 404(d)(1)(A) of the Social Security Act (42 U.S.C. 604(d)(1)(A)) is amended by striking “subtitle 1 of Title” and inserting “Subtitle A of title”.

(b) Sections 407(c)(2)(A)(i) and 409(a)(3)(C) of such Act (42 U.S.C. 607(c)(2)(A)(i) and 609(a)(3)(C)) are each amended by striking “403(b)(6)” and inserting “403(b)(5)”.

(c) Section 409(a)(2)(A) of such Act (42 U.S.C. 609(a)(2)(A)) is amended by moving clauses (i) and (ii) 2 ems to the right.

(d) Section 409(c)(2) of such Act (42 U.S.C. 609(c)(2)) is amended by inserting a comma after “appropriate”.

(e) Section 411(a)(1)(A)(ii)(III) of such Act (42 U.S.C. 611(a)(1)(A)(ii)(III)) is amended by striking the last close parenthesis.

**TITLE V—FEDERAL EMPLOYEES RETIREMENT****SEC. 5001. INCREASE IN CONTRIBUTIONS TO FEDERAL EMPLOYEES’ RETIREMENT SYSTEM FOR NEW EMPLOYEES.**

(a) **DEFINITIONS.**—Section 8401 of title 5, United States Code, is amended—

(1) in paragraph (35), by striking “and” at the end;

(2) in paragraph (36), by striking the period and inserting “; and”; and

(3) by adding at the end the following:

“(37) the term ‘revised annuity employee’ means any individual who—

“(A) on December 31, 2012—

“(i) is not an employee or Member covered under this chapter;

“(ii) is not performing civilian service which is creditable service under section 8411; and

“(iii) has less than 5 years of creditable civilian service under section 8411; and

“(B) after December 31, 2012, becomes employed as an employee or becomes a Member covered under this chapter performing service which is creditable service under section 8411.”.

(b) **INCREASE IN CONTRIBUTIONS.**—Section 8422(a)(3) of title 5, United States Code, is amended—

(1) by striking “The applicable percentage under this paragraph for civilian service” and inserting “(A) The applicable percentage under this paragraph for civilian service by employees or Members other than revised annuity employees”; and

(2) by adding at the end the following:

“(B) The applicable percentage under this paragraph for civilian service by revised annuity employees shall be as follows:

“Employee	9.3	After December 31, 2012.
Congressional employee	9.3	After December 31, 2012.
Member	9.3	After December 31, 2012.
Law enforcement officer, firefighter, member of the Capitol Police, member of the Supreme Court Police, or air traffic controller	9.8	After December 31, 2012.
Nuclear materials courier	9.8	After December 31, 2012.



<i>Customs and border protection officer</i>	9.8	<i>After December 31, 2012.”.</i>
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(c) **REDUCTION IN CONGRESSIONAL ANNUITIES.—**

(1) **IN GENERAL.**—Section 8415 of title 5, United States Code, is amended—

(A) by redesignating subsections (d) through (m) as subsections (e) through (n), respectively; and

(B) by inserting after subsection (c) the following:

“(d) Notwithstanding any other provision of law, the annuity of an individual described in subsection (b) or (c) who is a revised annuity employee shall be computed in the same manner as in the case of an individual described in subsection (a).”.

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

(A) Section 8422(d)(2) of title 5, United States Code, is amended by striking “section 8415(l)” and inserting “section 8415(m)”.

(B) Section 8452(d)(1) of title 5, United States Code, is amended by striking “subsection (g)” and inserting “subsection (h)”.

(C) Section 8468(b)(1)(A) of title 5, United States Code, is amended by striking “section 8415(a) through (h)” and inserting “section 8415(a) through (i)”.

(D) Section 805(a)(2)(B) of the Foreign Service Act of 1980 (22 U.S.C. 4045(a)(2)(B)) is amended by striking “section 8415(d)” and inserting “section 8415(e)”.

(E) Section 806(a) of the Foreign Service Act of 1980 (22 U.S.C. 4046(a)) is amended by striking “section 8415(d)” each place it appears and inserting “section 8415(e)”.

(F) Section 855(b) of the Foreign Service Act of 1980 (22 U.S.C. 4071d(b)) is amended—

(i) in paragraph (2)(A), by striking “section 8415(d)(1)” and inserting “section 8415(e)(1)”; and

(ii) in paragraph (5), by striking “section 8415(f)(1)” and inserting “section 8415(g)(1)”.

(G) Section 303(b)(1) of the Central Intelligence Agency Retirement Act (50 U.S.C. 2153(b)(1)) is amended by striking “section 8415(d)” and inserting “section 8415(e)”.

**SEC. 5002. FOREIGN SERVICE PENSION SYSTEM.**

(a) **DEFINITION.**—Section 852 of the Foreign Service Act of 1980 (22 U.S.C. 4071a) is amended—

(1) by redesignating paragraphs (7), (8), and (9) as paragraphs (8), (9), and (10), respectively; and

(2) by inserting after paragraph (6) the following:

“(7) the term ‘revised annuity participant’ means any individual who—

“(A) on December 31, 2012—

“(i) is not a participant;

“(ii) is not performing service which is creditable service under section 854; and

“(iii) has less than 5 years creditable service under section 854; and

“(B) after December 31, 2012, becomes a participant performing service which is creditable service under section 854;”.

(b) **DEDUCTIONS AND WITHHOLDINGS FROM PAY.**—Section 856(a)(2) of the Foreign Service Act of 1980 (22 U.S.C. 4071e(a)(2)) is amended—

(1) by striking “The applicable percentage under this subsection” and inserting “(A) The applicable percentage for a participant other than a revised annuity participant”; and

(2) by adding at the end the following:

“(B) The applicable percentage for a revised annuity participant shall be as follows:

“9.85 ..... After December 31, 2012”.

**SEC. 5003. CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM.**

Section 211(a) of the Central Intelligence Agency Retirement Act (50 U.S.C. 2021(a)) is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

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

“(1) **DEFINITION.**—In this subsection, the term ‘revised annuity participant’ means an individual who—

“(A) on December 31, 2012—

“(i) is not a participant;

“(ii) is not performing qualifying service; and

“(iii) has less than 5 years of qualifying service;

and

“(B) after December 31, 2012, becomes a participant performing qualifying service.

“(2) **CONTRIBUTIONS.**—

“(A) **IN GENERAL.**—Except as provided in subsection (d), 7 percent of the basic pay received by a participant other than a revised annuity participant for any pay period shall be deducted and withheld from the pay of that participant and contributed to the fund.

“(B) **REVISED ANNUITY PARTICIPANTS.**—Except as provided in subsection (d), 9.3 percent of the basic pay received by a revised annuity participant for any pay period shall be deducted and withheld from the pay of that revised annuity participant and contributed to the fund.

“(3) **AGENCY CONTRIBUTIONS.**—

“(A) **IN GENERAL.**—An amount equal to 7 percent of the basic pay received by a participant other than a revised annuity participant shall be contributed to the fund for a pay period for the participant from the appropriation or fund which is used for payment of the participant’s basic pay.

“(B) **REVISED ANNUITY PARTICIPANTS.**—An amount equal to 4.7 percent of the basic pay received by a revised annuity participant shall be contributed to the fund for a pay period for the revised annuity participant from the appropriation or fund which is used for payment of the revised annuity participant’s basic pay.”.

## **TITLE VI—PUBLIC SAFETY COMMUNICATIONS AND ELECTROMAGNETIC SPECTRUM AUCTIONS**

### **SEC. 6001. DEFINITIONS.**

*In this title:*

(1) **700 MHZ BAND.**—The term “700 MHz band” means the portion of the electromagnetic spectrum between the frequencies from 698 megahertz to 806 megahertz.

(2) **700 MHZ D BLOCK SPECTRUM.**—The term “700 MHz D block spectrum” means the portion of the electromagnetic spectrum between the frequencies from 758 megahertz to 763 megahertz and between the frequencies from 788 megahertz to 793 megahertz.

(3) **APPROPRIATE COMMITTEES OF CONGRESS.**—Except as otherwise specifically provided, the term “appropriate committees of Congress” means—

(A) the Committee on Commerce, Science, and Transportation of the Senate; and

(B) the Committee on Energy and Commerce of the House of Representatives.

(4) **ASSISTANT SECRETARY.**—The term “Assistant Secretary” means the Assistant Secretary of Commerce for Communications and Information.

(5) **BOARD.**—The term “Board” means the Board of the First Responder Network Authority established under section 6204(b).

(6) **BROADCAST TELEVISION LICENSEE.**—The term “broadcast television licensee” means the licensee of—

(A) a full-power television station; or

(B) a low-power television station that has been accorded primary status as a Class A television licensee under section 73.6001(a) of title 47, Code of Federal Regulations.

(7) **BROADCAST TELEVISION SPECTRUM.**—The term “broadcast television spectrum” means the portions of the electromagnetic spectrum between the frequencies from 54 megahertz to 72 megahertz, from 76 megahertz to 88 megahertz, from 174 megahertz to 216 megahertz, and from 470 megahertz to 698 megahertz.

(8) **COMMERCIAL MOBILE DATA SERVICE.**—The term “commercial mobile data service” means any mobile service (as defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153)) that is—

(A) a data service;

(B) provided for profit; and

(C) available to the public or such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission.

(9) **COMMERCIAL MOBILE SERVICE.**—The term “commercial mobile service” has the meaning given such term in section 332 of the Communications Act of 1934 (47 U.S.C. 332).

(10) **COMMERCIAL STANDARDS.**—The term “commercial standards” means the technical standards followed by the commercial mobile service and commercial mobile data service industries for network, device, and Internet Protocol connectivity.

*Such term includes standards developed by the Third Generation Partnership Project (3GPP), the Institute of Electrical and Electronics Engineers (IEEE), the Alliance for Telecommunications Industry Solutions (ATIS), the Internet Engineering Task Force (IETF), and the International Telecommunication Union (ITU).*

(11) *COMMISSION.*—The term “Commission” means the Federal Communications Commission.

(12) *CORE NETWORK.*—The term “core network” means the core network described in section 6202(b)(1).

(13) *EMERGENCY CALL.*—The term “emergency call” means any real-time communication with a public safety answering point or other emergency management or response agency, including—

(A) through voice, text, or video and related data; and

(B) nonhuman-initiated automatic event alerts, such as alarms, telematics, or sensor data, which may also include real-time voice, text, or video communications.

(14) *EXISTING PUBLIC SAFETY BROADBAND SPECTRUM.*—The term “existing public safety broadband spectrum” means the portion of the electromagnetic spectrum between the frequencies—

(A) from 763 megahertz to 768 megahertz;

(B) from 793 megahertz to 798 megahertz;

(C) from 768 megahertz to 769 megahertz; and

(D) from 798 megahertz to 799 megahertz.

(15) *FIRST RESPONDER NETWORK AUTHORITY.*—The term “First Responder Network Authority” means the First Responder Network Authority established under section 6204.

(16) *FORWARD AUCTION.*—The term “forward auction” means the portion of an incentive auction of broadcast television spectrum under section 6403(c).

(17) *INCENTIVE AUCTION.*—The term “incentive auction” means a system of competitive bidding under subparagraph (G) of section 309(j)(8) of the Communications Act of 1934, as added by section 6402.

(18) *INTEROPERABILITY BOARD.*—The term “Interoperability Board” means the Technical Advisory Board for First Responder Interoperability established under section 6203.

(19) *MULTICHANNEL VIDEO PROGRAMMING DISTRIBUTOR.*—The term “multichannel video programming distributor” has the meaning given such term in section 602 of the Communications Act of 1934 (47 U.S.C. 522).

(20) *NARROWBAND SPECTRUM.*—The term “narrowband spectrum” means the portion of the electromagnetic spectrum between the frequencies from 769 megahertz to 775 megahertz and between the frequencies from 799 megahertz to 805 megahertz.

(21) *NATIONWIDE PUBLIC SAFETY BROADBAND NETWORK.*—The term “nationwide public safety broadband network” means the nationwide, interoperable public safety broadband network described in section 6202.

(22) *NEXT GENERATION 9–1–1 SERVICES.*—The term “Next Generation 9–1–1 services” means an IP-based system com-

prised of hardware, software, data, and operational policies and procedures that—

(A) provides standardized interfaces from emergency call and message services to support emergency communications;

(B) processes all types of emergency calls, including voice, text, data, and multimedia information;

(C) acquires and integrates additional emergency call data useful to call routing and handling;

(D) delivers the emergency calls, messages, and data to the appropriate public safety answering point and other appropriate emergency entities;

(E) supports data or video communications needs for coordinated incident response and management; and

(F) provides broadband service to public safety answering points or other first responder entities.

(23) NIST.—The term “NIST” means the National Institute of Standards and Technology.

(24) NTIA.—The term “NTIA” means the National Telecommunications and Information Administration.

(25) PUBLIC SAFETY ANSWERING POINT.—The term “public safety answering point” has the meaning given such term in section 222 of the Communications Act of 1934 (47 U.S.C. 222).

(26) PUBLIC SAFETY ENTITY.—The term “public safety entity” means an entity that provides public safety services.

(27) PUBLIC SAFETY SERVICES.—The term “public safety services”—

(A) has the meaning given the term in section 337(f) of the Communications Act of 1934 (47 U.S.C. 337(f)); and

(B) includes services provided by emergency response providers, as that term is defined in section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101).

(28) PUBLIC SAFETY TRUST FUND.—The term “Public Safety Trust Fund” means the trust fund established under section 6413(a)(1).

(29) RADIO ACCESS NETWORK.—The term “radio access network” means the radio access network described in section 6202(b)(2).

(30) REVERSE AUCTION.—The term “reverse auction” means the portion of an incentive auction of broadcast television spectrum under section 6403(a), in which a broadcast television licensee may submit bids stating the amount it would accept for voluntarily relinquishing some or all of its broadcast television spectrum usage rights.

(31) STATE.—The term “State” has the meaning given such term in section 3 of the Communications Act of 1934 (47 U.S.C. 153).

(32) ULTRA HIGH FREQUENCY.—The term “ultra high frequency” means, with respect to a television channel, that the channel is located in the portion of the electromagnetic spectrum between the frequencies from 470 megahertz to 698 megahertz.

(33) VERY HIGH FREQUENCY.—The term “very high frequency” means, with respect to a television channel, that the channel is located in the portion of the electromagnetic spec-

trum between the frequencies from 54 megahertz to 72 megahertz, from 76 megahertz to 88 megahertz, or from 174 megahertz to 216 megahertz.

**SEC. 6002. RULE OF CONSTRUCTION.**

*Each range of frequencies described in this title shall be construed to be inclusive of the upper and lower frequencies in the range.*

**SEC. 6003. ENFORCEMENT.**

(a) *IN GENERAL.*—The Commission shall implement and enforce this title as if this title is a part of the Communications Act of 1934 (47 U.S.C. 151 et seq.). A violation of this title, or a regulation promulgated under this title, shall be considered to be a violation of the Communications Act of 1934, or a regulation promulgated under such Act, respectively.

(b) *EXCEPTIONS.*—

(1) *OTHER AGENCIES.*—Subsection (a) does not apply in the case of a provision of this title that is expressly required to be carried out by an agency (as defined in section 551 of title 5, United States Code) other than the Commission.

(2) *NTIA REGULATIONS.*—The Assistant Secretary may promulgate such regulations as are necessary to implement and enforce any provision of this title that is expressly required to be carried out by the Assistant Secretary.

**SEC. 6004. NATIONAL SECURITY RESTRICTIONS ON USE OF FUNDS AND AUCTION PARTICIPATION.**

(a) *USE OF FUNDS.*—No funds made available by subtitle B or C may be used to make payments under a contract to a person described in subsection (c).

(b) *AUCTION PARTICIPATION.*—A person described in subsection (c) may not participate in a system of competitive bidding under section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j))—

(1) that is required to be conducted by this title; or

(2) in which any spectrum usage rights for which licenses are being assigned were made available under clause (i) of subparagraph (G) of paragraph (8) of such section, as added by section 6402.

(c) *PERSON DESCRIBED.*—A person described in this subsection is a person who has been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction, or receiving a grant.

**Subtitle A—Reallocation of Public Safety Spectrum**

**SEC. 6101. REALLOCATION OF D BLOCK TO PUBLIC SAFETY.**

(a) *IN GENERAL.*—The Commission shall reallocate the 700 MHz D block spectrum for use by public safety entities in accordance with the provisions of this Act.

(b) *SPECTRUM ALLOCATION.*—Section 337(a) of the Communications Act of 1934 (47 U.S.C. 337(a)) is amended—

(1) by striking “24” in paragraph (1) and inserting “34”; and

(2) by striking “36” in paragraph (2) and inserting “26”.

**SEC. 6102. FLEXIBLE USE OF NARROWBAND SPECTRUM.**

*The Commission may allow the narrowband spectrum to be used in a flexible manner, including usage for public safety broadband communications, subject to such technical and interference protection measures as the Commission may require.*

**SEC. 6103. 470–512 MHZ PUBLIC SAFETY SPECTRUM.**

*(a) IN GENERAL.—Not later than 9 years after the date of enactment of this title, the Commission shall—*

*(1) reallocate the spectrum in the 470–512 MHz band (referred to in this section as the “T-Band spectrum”) currently used by public safety eligibles as identified in section 90.303 of title 47, Code of Federal Regulations; and*

*(2) begin a system of competitive bidding under section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) to grant new initial licenses for the use of the spectrum described in paragraph (1).*

*(b) AUCTION PROCEEDS.—Proceeds (including deposits and upfront payments from successful bidders) from the competitive bidding system described in subsection (a)(2) shall be available to the Assistant Secretary to make grants in such sums as necessary to cover relocation costs for the relocation of public safety entities from the T-Band spectrum.*

*(c) RELOCATION.—Relocation shall be completed not later than 2 years after the date on which the system of competitive bidding described in subsection (a)(2) is completed.*

**Subtitle B—Governance of Public Safety Spectrum****SEC. 6201. SINGLE PUBLIC SAFETY WIRELESS NETWORK LICENSEE.**

*(a) REALLOCATION AND GRANT OF LICENSE.—Notwithstanding any other provision of law, and subject to the provisions of this Act, the Commission shall reallocate and grant a license to the First Responder Network Authority for the use of the 700 MHz D block spectrum and existing public safety broadband spectrum.*

*(b) TERM OF LICENSE.—*

*(1) INITIAL LICENSE.—The license granted under subsection (a) shall be for an initial term of 10 years from the date of the initial issuance of the license.*

*(2) RENEWAL OF LICENSE.—Prior to expiration of the term of the initial license granted under subsection (a) or the expiration of any subsequent renewal of such license, the First Responder Network Authority shall submit to the Commission an application for the renewal of such license. Such renewal application shall demonstrate that, during the preceding license term, the First Responder Network Authority has met the duties and obligations set forth under this Act. A renewal license granted under this paragraph shall be for a term of not to exceed 10 years.*

*(c) FACILITATION OF TRANSITION.—The Commission shall take all actions necessary to facilitate the transition of the existing public safety broadband spectrum to the First Responder Network Authority.*

**SEC. 6202. PUBLIC SAFETY BROADBAND NETWORK.**

(a) *ESTABLISHMENT.*—*The First Responder Network Authority shall ensure the establishment of a nationwide, interoperable public safety broadband network.*

(b) *NETWORK COMPONENTS.*—*The nationwide public safety broadband network shall be based on a single, national network architecture that evolves with technological advancements and initially consists of—*

(1) *a core network that—*

(A) *consists of national and regional data centers, and other elements and functions that may be distributed geographically, all of which shall be based on commercial standards; and*

(B) *provides the connectivity between—*

(i) *the radio access network; and*

(ii) *the public Internet or the public switched network, or both; and*

(2) *a radio access network that—*

(A) *consists of all cell site equipment, antennas, and backhaul equipment, based on commercial standards, that are required to enable wireless communications with devices using the public safety broadband spectrum; and*

(B) *shall be developed, constructed, managed, maintained, and operated taking into account the plans developed in the State, local, and tribal planning and implementation grant program under section 6302(a).*

**SEC. 6203. PUBLIC SAFETY INTEROPERABILITY BOARD.**

(a) *ESTABLISHMENT.*—*There is established within the Commission an advisory board to be known as the “Technical Advisory Board for First Responder Interoperability”.*

(b) *MEMBERSHIP.*—

(1) *IN GENERAL.*—

(A) *VOTING MEMBERS.*—*Not later than 30 days after the date of enactment of this title, the Chairman of the Commission shall appoint 14 voting members to the Interoperability Board, of which—*

(i) *4 members shall be representatives of wireless providers, of which—*

(I) *2 members shall be representatives of national wireless providers;*

(II) *1 member shall be a representative of regional wireless providers; and*

(III) *1 member shall be a representative of rural wireless providers;*

(ii) *3 members shall be representatives of equipment manufacturers;*

(iii) *4 members shall be representatives of public safety entities, of which—*

(I) *not less than 1 member shall be a representative of management level employees of public safety entities; and*

(II) *not less than 1 member shall be a representative of employees of public safety entities;*

(iv) *3 members shall be representatives of State and local governments, chosen to reflect geographic*



and population density differences across the United States; and

(v) all members shall have specific expertise necessary to developing technical requirements under this section, such as technical expertise, public safety communications expertise, and commercial network experience.

(B) *NON-VOTING MEMBER.*—The Assistant Secretary shall appoint 1 non-voting member to the Interoperability Board.

(2) *PERIOD OF APPOINTMENT.*—

(A) *IN GENERAL.*—Except as provided in subparagraph (B), members of the Interoperability Board shall be appointed for the life of the Interoperability Board.

(B) *REMOVAL FOR CAUSE.*—A member of the Interoperability Board may be removed for cause upon the determination of the Chairman of the Commission.

(3) *VACANCIES.*—Any vacancy in the Interoperability Board shall not affect the powers of the Interoperability Board, and shall be filled in the same manner as the original appointment.

(4) *CHAIRPERSON AND VICE CHAIRPERSON.*—The Interoperability Board shall select a Chairperson and Vice Chairperson from among the members of the Interoperability Board.

(5) *QUORUM.*—A majority of the members of the Interoperability Board shall constitute a quorum.

(c) *DUTIES OF THE INTEROPERABILITY BOARD.*—

(1) *DEVELOPMENT OF TECHNICAL REQUIREMENTS.*—Not later than 90 days after the date of enactment of this Act, the Interoperability Board, in consultation with the NTIA, NIST, and the Office of Emergency Communications of the Department of Homeland Security, shall—

(A) develop recommended minimum technical requirements to ensure a nationwide level of interoperability for the nationwide public safety broadband network; and

(B) submit to the Commission for review in accordance with paragraph (3) recommended minimum technical requirements described in subparagraph (A).

(2) *CONSIDERATION.*—In developing recommended minimum technical requirements under paragraph (1), the Interoperability Board shall base the recommended minimum technical requirements on the commercial standards for Long Term Evolution (LTE) service.

(3) *APPROVAL OF RECOMMENDATIONS.*—

(A) *IN GENERAL.*—Not later than 30 days after the date on which the Interoperability Board submits recommended minimum technical requirements under paragraph (1)(B), the Commission shall approve the recommendations, with any revisions it deems necessary, and transmit such recommendations to the First Responder Network Authority.

(B) *REVIEW.*—Any actions taken under subparagraph (A) shall not be reviewable as a final agency action.

(d) *TRAVEL EXPENSES.*—The members of the Interoperability Board 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 Interoperability Board.

(e) *EXEMPTION FROM FACa.*—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Interoperability Board.

(f) *TERMINATION OF AUTHORITY.*—The Interoperability Board shall terminate 15 days after the date on which the Commission transmits the recommendations to the First Responder Network Authority under subsection (c)(3)(A).

**SEC. 6204. ESTABLISHMENT OF THE FIRST RESPONDER NETWORK AUTHORITY.**

(a) *ESTABLISHMENT.*—There is established as an independent authority within the NTIA the “First Responder Network Authority” or “FirstNet”.

(b) *BOARD.*—

(1) *IN GENERAL.*—The First Responder Network Authority shall be headed by a Board, which shall consist of—

(A) the Secretary of Homeland Security;

(B) the Attorney General of the United States;

(C) the Director of the Office of Management and Budget; and

(D) 12 individuals appointed by the Secretary of Commerce in accordance with paragraph (2).

(2) *APPOINTMENTS.*—

(A) *IN GENERAL.*—In making appointments under paragraph (1)(D), the Secretary of Commerce shall—

(i) appoint not fewer than 3 individuals to represent the collective interests of the States, localities, tribes, and territories;

(ii) seek to ensure geographic and regional representation of the United States in such appointments;

(iii) seek to ensure rural and urban representation in such appointments; and

(iv) appoint not fewer than 3 individuals who have served as public safety professionals.

(B) *REQUIRED QUALIFICATIONS.*—

(i) *IN GENERAL.*—Each member appointed under paragraph (1)(D) should meet not less than 1 of the following criteria:

(I) *PUBLIC SAFETY EXPERIENCE.*—Knowledge and experience in the use of Federal, State, local, or tribal public safety or emergency response.

(II) *TECHNICAL EXPERTISE.*—Technical expertise and fluency regarding broadband communications, including public safety communications.

(III) *NETWORK EXPERTISE.*—Expertise in building, deploying, and operating commercial telecommunications networks.

(IV) *FINANCIAL EXPERTISE.*—Expertise in financing and funding telecommunications networks.

(ii) *EXPERTISE TO BE REPRESENTED.*—In making appointments under paragraph (1)(D), the Secretary of Commerce shall appoint—

(I) not fewer than 1 individual who satisfies the requirement under subclause (II) of clause (i);

(II) not fewer than 1 individual who satisfies the requirement under subclause (III) of clause (i); and

(III) not fewer than 1 individual who satisfies the requirement under subclause (IV) of clause (i).

(C) CITIZENSHIP.—No individual other than a citizen of the United States may serve as a member of the Board.

(c) TERMS OF APPOINTMENT.—

(1) INITIAL APPOINTMENT DEADLINE.—Members of the Board shall be appointed not later than 180 days after the date of the enactment of this title.

(2) TERMS.—

(A) LENGTH.—

(i) IN GENERAL.—Each member of the Board described in subparagraphs (A) through (C) of subsection (b)(1) shall serve as a member of the Board for the life of the First Responder Network Authority.

(ii) APPOINTED INDIVIDUALS.—The term of office of each individual appointed to be a member of the Board under subsection (b)(1)(D) shall be 3 years. No member described in this clause may serve more than 2 consecutive full 3-year terms.

(B) EXPIRATION OF TERM.—Any member whose term has expired may serve until such member's successor has taken office, or until the end of the calendar year in which such member's term has expired, whichever is earlier.

(C) APPOINTMENT TO FILL VACANCY.—Any member appointed to fill a vacancy occurring prior to the expiration of the term for which that member's predecessor was appointed shall be appointed for the remainder of the predecessor's term.

(D) STAGGERED TERMS.—With respect to the initial members of the Board appointed under subsection (b)(1)(D)—

(i) 4 members shall serve for a term of 3 years;

(ii) 4 members shall serve for a term of 2 years;

and

(iii) 4 members shall serve for a term of 1 year.

(3) VACANCIES.—A vacancy in the membership of the Board shall not affect the Board's powers, and shall be filled in the same manner as the original member was appointed.

(d) CHAIR.—

(1) SELECTION.—The Secretary of Commerce shall select, from among the members of the Board appointed under subsection (b)(1)(D), an individual to serve for a 2-year term as Chair of the Board.

(2) CONSECUTIVE TERMS.—An individual may not serve for more than 2 consecutive terms as Chair of the Board.

(e) MEETINGS.—

(1) FREQUENCY.—The Board shall meet—

(A) at the call of the Chair ; and

(B) not less frequently than once each quarter.

(2) TRANSPARENCY.—Meetings of the Board, including any committee of the Board, shall be open to the public. The Board may, by majority vote, close any such meeting only for the time

*necessary to preserve the confidentiality of commercial or financial information that is privileged or confidential, to discuss personnel matters, or to discuss legal matters affecting the First Responder Network Authority, including pending or potential litigation.*

(f) **QUORUM.**—*Eight members of the Board shall constitute a quorum, including at least 6 of the members appointed under subsection (b)(1)(D).*

(g) **COMPENSATION.**—

(1) **IN GENERAL.**—*The members of the Board appointed under subsection (b)(1)(D) shall be compensated at the daily rate of basic pay for level IV of the Executive Schedule for each day during which such members are engaged in performing a function of the Board.*

(2) **PROHIBITION ON COMPENSATION.**—*A member of the Board appointed under subparagraphs (A) through (C) of subsection (b)(1) shall serve without additional pay, and shall not otherwise benefit, directly or indirectly, as a result of their service to the First Responder Network Authority, but shall be allowed a per diem allowance for travel expenses, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 5, United States Code, while away from the home or regular place of business of the member in the performance of the duties of the First Responder Network Authority.*

**SEC. 6205. ADVISORY COMMITTEES OF THE FIRST RESPONDER NETWORK AUTHORITY.**

(a) **ADVISORY COMMITTEES.**—*The First Responder Network Authority—*

*(1) shall establish a standing public safety advisory committee to assist the First Responder Network Authority in carrying out its duties and responsibilities under this subtitle; and*

*(2) may establish additional standing or ad hoc committees, panels, or councils as the First Responder Network Authority determines are necessary.*

(b) **SELECTION OF AGENTS, CONSULTANTS, AND EXPERTS.**—

(1) **IN GENERAL.**—*The First Responder Network Authority shall select parties to serve as its agents, consultants, or experts in a fair, transparent, and objective manner, and such agents may include a program manager to carry out certain of the duties and responsibilities of deploying and operating the nationwide public safety broadband network described in subsections (b) and (c) of section 6206.*

(2) **BINDING AND FINAL.**—*If the selection of an agent, consultant, or expert satisfies the requirements under paragraph (1), the selection of that agent, consultant, or expert shall be final and binding.*

**SEC. 6206. POWERS, DUTIES, AND RESPONSIBILITIES OF THE FIRST RESPONDER NETWORK AUTHORITY.**

(a) **GENERAL POWERS.**—*The First Responder Network Authority shall have the authority to do the following:*

*(1) To exercise, through the actions of its Board, all powers specifically granted by the provisions of this subtitle, and such incidental powers as shall be necessary.*

*(2) To hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the*

*First Responder Network Authority considers necessary to carry out its responsibilities and duties.*

*(3) To obtain grants and funds from and make contracts with individuals, private companies, organizations, institutions, and Federal, State, regional, and local agencies.*

*(4) To accept, hold, administer, and utilize gifts, donations, and bequests of property, both real and personal, for the purposes of aiding or facilitating the work of the First Responder Network Authority.*

*(5) To spend funds under paragraph (3) in a manner authorized by the Board, but only for purposes that will advance or enhance public safety communications consistent with this title.*

*(6) To take such other actions as the First Responder Network Authority (through the Board) may from time to time determine necessary, appropriate, or advisable to accomplish the purposes of this title.*

*(b) DUTY AND RESPONSIBILITY TO DEPLOY AND OPERATE A NATIONWIDE PUBLIC SAFETY BROADBAND NETWORK.—*

*(1) IN GENERAL.—The First Responder Network Authority shall hold the single public safety wireless license granted under section 6201 and take all actions necessary to ensure the building, deployment, and operation of the nationwide public safety broadband network, in consultation with Federal, State, tribal, and local public safety entities, the Director of NIST, the Commission, and the public safety advisory committee established in section 6205(a), including by, at a minimum—*

*(A) ensuring nationwide standards for use and access of the network;*

*(B) issuing open, transparent, and competitive requests for proposals to private sector entities for the purposes of building, operating, and maintaining the network that use, without materially changing, the minimum technical requirements developed under section 6203;*

*(C) encouraging that such requests leverage, to the maximum extent economically desirable, existing commercial wireless infrastructure to speed deployment of the network; and*

*(D) managing and overseeing the implementation and execution of contracts or agreements with non-Federal entities to build, operate, and maintain the network.*

*(2) REQUIREMENTS.—In carrying out the duties and responsibilities of this subsection, including issuing requests for proposals, the First Responder Network Authority shall—*

*(A) ensure the safety, security, and resiliency of the network, including requirements for protecting and monitoring the network to protect against cyberattack;*

*(B) promote competition in the equipment market, including devices for public safety communications, by requiring that equipment for use on the network be—*

*(i) built to open, non-proprietary, commercially available standards;*

*(ii) capable of being used by any public safety entity and by multiple vendors across all public safety*

broadband networks operating in the 700 MHz band;  
and

(iii) backward-compatible with existing commercial networks to the extent that such capabilities are necessary and technically and economically reasonable;

(C) promote integration of the network with public safety answering points or their equivalent; and

(D) address special considerations for areas or regions with unique homeland security or national security needs.

(3) *RURAL COVERAGE.*—In carrying out the duties and responsibilities of this subsection, including issuing requests for proposals, the nationwide, interoperable public safety broadband network, consistent with the license granted under section 6201, shall require deployment phases with substantial rural coverage milestones as part of each phase of the construction and deployment of the network. To the maximum extent economically desirable, such proposals shall include partnerships with existing commercial mobile providers to utilize cost-effective opportunities to speed deployment in rural areas.

(4) *EXECUTION OF AUTHORITY.*—In carrying out the duties and responsibilities of this subsection, the First Responder Network Authority may—

(A) obtain grants from and make contracts with individuals, private companies, and Federal, State, regional, and local agencies;

(B) hire or accept voluntary services of consultants, experts, advisory boards, and panels to aid the First Responder Network Authority in carrying out such duties and responsibilities;

(C) receive payment for use of—

(i) network capacity licensed to the First Responder Network Authority; and

(ii) network infrastructure constructed, owned, or operated by the First Responder Network Authority; and

(D) take such other actions as may be necessary to accomplish the purposes set forth in this subsection.

(c) *OTHER SPECIFIC DUTIES AND RESPONSIBILITIES.*—

(1) *ESTABLISHMENT OF NETWORK POLICIES.*—In carrying out the requirements under subsection (b), the First Responder Network Authority shall develop—

(A) requests for proposals with appropriate—

(i) timetables for construction, including by taking into consideration the time needed to build out to rural areas and the advantages offered through partnerships with existing commercial providers under paragraph (3);

(ii) coverage areas, including coverage in rural and nonurban areas;

(iii) service levels;

(iv) performance criteria; and

(v) other similar matters for the construction and deployment of such network;

(B) the technical and operational requirements of the network;

(C) *practices, procedures, and standards for the management and operation of such network;*

(D) *terms of service for the use of such network, including billing practices; and*

(E) *ongoing compliance review and monitoring of the—*

(i) *management and operation of such network;*

(ii) *practices and procedures of the entities operating on and the personnel using such network; and*

(iii) *necessary training needs of network operators and users.*

(2) *STATE AND LOCAL PLANNING.—*

(A) *REQUIRED CONSULTATION.—In developing requests for proposals and otherwise carrying out its responsibilities under this Act, the First Responder Network Authority shall consult with regional, State, tribal, and local jurisdictions regarding the distribution and expenditure of any amounts required to carry out the policies established under paragraph (1), including with regard to the—*

(i) *construction of a core network and any radio access network build out;*

(ii) *placement of towers;*

(iii) *coverage areas of the network, whether at the regional, State, tribal, or local level;*

(iv) *adequacy of hardening, security, reliability, and resiliency requirements;*

(v) *assignment of priority to local users;*

(vi) *assignment of priority and selection of entities seeking access to or use of the nationwide public safety interoperable broadband network established under subsection (b); and*

(vii) *training needs of local users.*

(B) *METHOD OF CONSULTATION.—The consultation required under subparagraph (A) shall occur between the First Responder Network Authority and the single officer or governmental body designated under section 6302(d).*

(3) *LEVERAGING EXISTING INFRASTRUCTURE.—In carrying out the requirement under subsection (b), the First Responder Network Authority shall enter into agreements to utilize, to the maximum extent economically desirable, existing—*

(A) *commercial or other communications infrastructure; and*

(B) *Federal, State, tribal, or local infrastructure.*

(4) *MAINTENANCE AND UPGRADES.—The First Responder Network Authority shall ensure the maintenance, operation, and improvement of the nationwide public safety broadband network, including by ensuring that the First Responder Network Authority updates and revises any policies established under paragraph (1) to take into account new and evolving technologies.*

(5) *ROAMING AGREEMENTS.—The First Responder Network Authority shall negotiate and enter into, as it determines appropriate, roaming agreements with commercial network providers to allow the nationwide public safety broadband network to roam onto commercial networks and gain prioritization of pub-*

lic safety communications over such networks in times of an emergency.

(6) **NETWORK INFRASTRUCTURE AND DEVICE CRITERIA.**—The Director of NIST, in consultation with the First Responder Network Authority and the Commission, shall ensure the development of a list of certified devices and components meeting appropriate protocols and standards for public safety entities and commercial vendors to adhere to, if such entities or vendors seek to have access to, use of, or compatibility with the nationwide public safety broadband network.

(7) **REPRESENTATION BEFORE STANDARD SETTING ENTITIES.**—The First Responder Network Authority, in consultation with the Director of NIST, the Commission, and the public safety advisory committee established under section 6205(a), shall represent the interests of public safety users of the nationwide public safety broadband network before any proceeding, negotiation, or other matter in which a standards organization, standards body, standards development organization, or any other recognized standards-setting entity addresses the development of standards relating to interoperability.

(8) **PROHIBITION ON NEGOTIATION WITH FOREIGN GOVERNMENTS.**—The First Responder Network Authority shall not have the authority to negotiate or enter into any agreements with a foreign government on behalf of the United States.

(d) **EXEMPTION FROM CERTAIN LAWS.**—Any action taken or decisions made by the First Responder Network Authority shall be exempt from the requirements of—

(1) section 3506 of title 44, United States Code (commonly referred to as the Paperwork Reduction Act);

(2) chapter 5 of title 5, United States Code (commonly referred to as the Administrative Procedures Act); and

(3) chapter 6 of title 5, United States Code (commonly referred to as the Regulatory Flexibility Act).

(e) **NETWORK CONSTRUCTION FUND.**—

(1) **ESTABLISHMENT.**—There is established in the Treasury of the United States a fund to be known as the “Network Construction Fund”.

(2) **USE OF FUND.**—Amounts deposited into the Network Construction Fund shall be used by the—

(A) First Responder Network Authority to carry out this section, except for administrative expenses; and

(B) NTIA to make grants to States under section 6302(e)(3)(C)(iii)(I).

(f) **TERMINATION OF AUTHORITY.**—The authority of the First Responder Network Authority shall terminate on the date that is 15 years after the date of enactment of this title.

(g) **GAO REPORT.**—Not later than 10 years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on what action Congress should take regarding the 15-year sunset of authority under subsection (f).

#### **SEC. 6207. INITIAL FUNDING FOR THE FIRST RESPONDER NETWORK AUTHORITY.**

(a) **BORROWING AUTHORITY.**—Prior to the deposit of proceeds into the Public Safety Trust Fund from the incentive auctions to be carried out under section 309(j)(8)(G) of the Communications Act of



1934 or the auction of spectrum pursuant to section 6401, the NTIA may borrow from the Treasury such sums as may be necessary, but not to exceed \$2,000,000,000, to implement this subtitle. The NTIA shall reimburse the Treasury, without interest, from funds deposited into the Public Safety Trust Fund.

(b) **PROHIBITION.**—

(1) **IN GENERAL.**—Administrative expenses of the First Responder Network Authority may not exceed \$100,000,000 during the 10-year period beginning on the date of enactment of this title.

(2) **DEFINITION.**—For purposes of this subsection, the term “administrative expenses” does not include the costs incurred by the First Responder Network Authority for oversight and audits to protect against waste, fraud, and abuse.

**SEC. 6208. PERMANENT SELF-FUNDING; DUTY TO ASSESS AND COLLECT FEES FOR NETWORK USE.**

(a) **IN GENERAL.**—Notwithstanding section 337 of the Communications Act of 1934 (47 U.S.C. 337), the First Responder Network Authority is authorized to assess and collect the following fees:

(1) **NETWORK USER FEE.**—A user or subscription fee from each entity, including any public safety entity or secondary user, that seeks access to or use of the nationwide public safety broadband network.

(2) **LEASE FEES RELATED TO NETWORK CAPACITY.**—

(A) **IN GENERAL.**—A fee from any entity that seeks to enter into a covered leasing agreement.

(B) **COVERED LEASING AGREEMENT.**—For purposes of subparagraph (A), a “covered leasing agreement” means a written agreement resulting from a public-private arrangement to construct, manage, and operate the nationwide public safety broadband network between the First Responder Network Authority and secondary user to permit—

(i) access to network capacity on a secondary basis for non-public safety services; and

(ii) the spectrum allocated to such entity to be used for commercial transmissions along the dark fiber of the long-haul network of such entity.

(3) **LEASE FEES RELATED TO NETWORK EQUIPMENT AND INFRASTRUCTURE.**—A fee from any entity that seeks access to or use of any equipment or infrastructure, including antennas or towers, constructed or otherwise owned by the First Responder Network Authority resulting from a public-private arrangement to construct, manage, and operate the nationwide public safety broadband network.

(b) **ESTABLISHMENT OF FEE AMOUNTS; PERMANENT SELF-FUNDING.**—The total amount of the fees assessed for each fiscal year pursuant to this section shall be sufficient, and shall not exceed the amount necessary, to recoup the total expenses of the First Responder Network Authority in carrying out its duties and responsibilities described under this subtitle for the fiscal year involved.

(c) **ANNUAL APPROVAL.**—The NTIA shall review the fees assessed under this section on an annual basis, and such fees may only be assessed if approved by the NTIA.

(d) **REQUIRED REINVESTMENT OF FUNDS.**—The First Responder Network Authority shall reinvest amounts received from the assess-

ment of fees under this section in the nationwide public safety interoperable broadband network by using such funds only for constructing, maintaining, operating, or improving the network.

**SEC. 6209. AUDIT AND REPORT.**

*(a) AUDIT.—*

*(1) IN GENERAL.—The Secretary of Commerce shall enter into a contract with an independent auditor to conduct an audit, on an annual basis, of the First Responder Network Authority in accordance with general accounting principles and procedures applicable to commercial corporate transactions. Each audit conducted under this paragraph shall be made available to the appropriate committees of Congress.*

*(2) LOCATION.—Any audit conducted under paragraph (1) shall be conducted at the place or places where accounts of the First Responder Network Authority are normally kept.*

*(3) ACCESS TO FIRST RESPONDER NETWORK AUTHORITY BOOKS AND DOCUMENTS.—*

*(A) IN GENERAL.—For purposes of an audit conducted under paragraph (1), the representatives of the independent auditor shall—*

*(i) have access to all books, accounts, records, reports, files, and all other papers, things, or property belonging to or in use by the First Responder Network Authority that pertain to the financial transactions of the First Responder Network Authority and are necessary to facilitate the audit; and*

*(ii) be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians.*

*(B) REQUIREMENT.—All books, accounts, records, reports, files, papers, and property of the First Responder Network Authority shall remain in the possession and custody of the First Responder Network Authority.*

*(b) REPORT.—*

*(1) IN GENERAL.—The independent auditor selected to conduct an audit under this section shall submit a report of each audit conducted under subsection (a) to—*

*(A) the appropriate committees of Congress;*

*(B) the President; and*

*(C) the First Responder Network Authority.*

*(2) CONTENTS.—Each report submitted under paragraph (1) shall contain—*

*(A) such comments and information as the independent auditor determines necessary to inform Congress of the financial operations and condition of the First Responder Network Authority;*

*(B) any recommendations of the independent auditor relating to the financial operations and condition of the First Responder Network Authority; and*

*(C) a description of any program, expenditure, or other financial transaction or undertaking of the First Responder Network Authority that was observed during the course of the audit, which, in the opinion of the independent auditor, has been carried on or made without the authority of law.*

**SEC. 6210. ANNUAL REPORT TO CONGRESS.**

(a) *IN GENERAL.*—Not later than 1 year after the date of enactment of this Act, and each year thereafter, the First Responder Network Authority shall submit an annual report covering the preceding fiscal year to the appropriate committees of Congress.

(b) *REQUIRED CONTENT.*—The report required under subsection (a) shall include—

(1) a comprehensive and detailed report of the operations, activities, financial condition, and accomplishments of the First Responder Network Authority under this section; and

(2) such recommendations or proposals for legislative or administrative action as the First Responder Network Authority deems appropriate.

(c) *AVAILABILITY TO TESTIFY.*—The members of the Board and employees of the First Responder Network Authority shall be available to testify before the appropriate committees of the Congress with respect to—

(1) the report required under subsection (a);

(2) the report of any audit conducted under section 6210;

or

(3) any other matter which such committees may determine appropriate.

**SEC. 6211. PUBLIC SAFETY ROAMING AND PRIORITY ACCESS.**

The Commission may adopt rules, if necessary in the public interest, to improve the ability of public safety networks to roam onto commercial networks and to gain priority access to commercial networks in an emergency if—

(1) the public safety entity equipment is technically compatible with the commercial network;

(2) the commercial network is reasonably compensated; and

(3) such access does not preempt or otherwise terminate or degrade all existing voice conversations or data sessions.

**SEC. 6212. PROHIBITION ON DIRECT OFFERING OF COMMERCIAL TELECOMMUNICATIONS SERVICE DIRECTLY TO CONSUMERS.**

(a) *IN GENERAL.*—The First Responder Network Authority shall not offer, provide, or market commercial telecommunications or information services directly to consumers.

(b) *RULE OF CONSTRUCTION.*—Nothing in this section shall be construed to prohibit the First Responder Network Authority and a secondary user from entering into a covered leasing agreement pursuant to section 6208(a)(2)(B). Nothing in this section shall be construed to limit the First Responder Network Authority from collecting lease fees related to network equipment and infrastructure pursuant to section 6208(a)(3).

**SEC. 6213. PROVISION OF TECHNICAL ASSISTANCE.**

The Commission may provide technical assistance to the First Responder Network Authority and may take any action necessary to assist the First Responder Network Authority in effectuating its duties and responsibilities under this subtitle.

**Subtitle C—Public Safety Commitments**

**SEC. 6301. STATE AND LOCAL IMPLEMENTATION FUND.**

(a) *ESTABLISHMENT.*—There is established in the Treasury of the United States a fund to be known as the State and Local Implementation Fund.

(b) *AMOUNTS AVAILABLE FOR STATE AND LOCAL IMPLEMENTATION GRANT PROGRAM.*—Any amounts borrowed under subsection (c)(1) and any amounts in the State and Local Implementation Fund that are not necessary to reimburse the general fund of the Treasury for such borrowed amounts shall be available to the Assistant Secretary to implement section 6302.

(c) *BORROWING AUTHORITY.*—

(1) *IN GENERAL.*—Prior to the end of fiscal year 2022, the Assistant Secretary may borrow from the general fund of the Treasury such sums as may be necessary, but not to exceed \$135,000,000, to implement section 6302.

(2) *REIMBURSEMENT.*—The Assistant Secretary shall reimburse the general fund of the Treasury, without interest, for any amounts borrowed under paragraph (1) as funds are deposited into the State and Local Implementation Fund.

(d) *TRANSFER OF UNUSED FUNDS.*—If there is a balance remaining in the State and Local Implementation Fund on September 30, 2022, the Secretary of the Treasury shall transfer such balance to the general fund of the Treasury, where such balance shall be dedicated for the sole purpose of deficit reduction.

**SEC. 6302. STATE AND LOCAL IMPLEMENTATION.**

(a) *ESTABLISHMENT OF STATE AND LOCAL IMPLEMENTATION GRANT PROGRAM.*—The Assistant Secretary, in consultation with the First Responder Network Authority, shall take such action as is necessary to establish a grant program to make grants to States to assist State, regional, tribal, and local jurisdictions to identify, plan, and implement the most efficient and effective way for such jurisdictions to utilize and integrate the infrastructure, equipment, and other architecture associated with the nationwide public safety broadband network to satisfy the wireless communications and data services needs of that jurisdiction, including with regards to coverage, siting, and other needs.

(b) *MATCHING REQUIREMENTS; FEDERAL SHARE.*—

(1) *IN GENERAL.*—The Federal share of the cost of any activity carried out using a grant under this section may not exceed 80 percent of the eligible costs of carrying out that activity, as determined by the Assistant Secretary, in consultation with the First Responder Network Authority.

(2) *WAIVER.*—The Assistant Secretary may waive, in whole or in part, the requirements of paragraph (1) for good cause shown if the Assistant Secretary determines that such a waiver is in the public interest.

(c) *PROGRAMMATIC REQUIREMENTS.*—Not later than 6 months after the date of enactment of this Act, the Assistant Secretary, in consultation with the First Responder Network Authority, shall establish requirements relating to the grant program to be carried out under this section, including the following:

(1) Defining eligible costs for purposes of subsection (b)(1).

(2) *Determining the scope of eligible activities for grant funding under this section.*

(3) *Prioritizing grants for activities that ensure coverage in rural as well as urban areas.*

(d) **CERTIFICATION AND DESIGNATION OF OFFICER OR GOVERNMENTAL BODY.**—*In carrying out the grant program established under this section, the Assistant Secretary shall require each State to certify in its application for grant funds that the State has designated a single officer or governmental body to serve as the coordinator of implementation of the grant funds.*

(e) **STATE NETWORK.**—

(1) **NOTICE.**—*Upon the completion of the request for proposal process conducted by the First Responder Network Authority for the construction, operation, maintenance, and improvement of the nationwide public safety broadband network, the First Responder Network Authority shall provide to the Governor of each State, or his designee—*

(A) *notice of the completion of the request for proposal process;*

(B) *details of the proposed plan for buildout of the nationwide, interoperable broadband network in such State; and*

(C) *the funding level for the State as determined by the NTIA.*

(2) **STATE DECISION.**—*Not later than 90 days after the date on which the Governor of a State receives notice under paragraph (1), the Governor shall choose whether to—*

(A) *participate in the deployment of the nationwide, interoperable broadband network as proposed by the First Responder Network Authority; or*

(B) *conduct its own deployment of a radio access network in such State.*

(3) **PROCESS.**—

(A) **IN GENERAL.**—*Upon making a decision to opt-out under paragraph (2)(B), the Governor shall notify the First Responder Network Authority, the NTIA, and the Commission of such decision.*

(B) **STATE REQUEST FOR PROPOSALS.**—*Not later than 180 days after the date on which a Governor provides notice under subparagraph (A), the Governor shall develop and complete requests for proposals for the construction, maintenance, and operation of the radio access network within the State.*

(C) **SUBMISSION AND APPROVAL OF ALTERNATIVE PLAN.**—

(i) **IN GENERAL.**—*The State shall submit an alternative plan for the construction, maintenance, operation, and improvements of the radio access network within the State to the Commission, and such plan shall demonstrate—*

(I) *that the State will be in compliance with the minimum technical interoperability requirements developed under section 6203; and*

(II) *interoperability with the nationwide public safety broadband network.*

(ii) *COMMISSION APPROVAL OR DISAPPROVAL.*—Upon submission of a State plan under clause (i), the Commission shall either approve or disapprove the plan.

(iii) *APPROVAL.*—If the Commission approves a plan under this subparagraph, the State—

(I) may apply to the NTIA for a grant to construct the radio access network within the State that includes the showing described in subparagraph (D); and

(II) shall apply to the NTIA to lease spectrum capacity from the First Responder Network Authority.

(iv) *DISAPPROVAL.*—If the Commission disapproves a plan under this subparagraph, the construction, maintenance, operation, and improvements of the network within the State shall proceed in accordance with the plan proposed by the First Responder Network Authority.

(D) *FUNDING REQUIREMENTS.*—In order to obtain grant funds and spectrum capacity leasing rights under subparagraph (C)(iii), a State shall demonstrate—

(i) that the State has—

(I) the technical capabilities to operate, and the funding to support, the State radio access network;

(II) has the ability to maintain ongoing interoperability with the nationwide public safety broadband network; and

(III) the ability to complete the project within specified comparable timelines specific to the State;

(ii) the cost-effectiveness of the State plan submitted under subparagraph (C)(i); and

(iii) comparable security, coverage, and quality of service to that of the nationwide public safety broadband network.

(f) *USER FEES.*—If a State chooses to build its own radio access network, the State shall pay any user fees associated with State use of elements of the core network.

(g) *PROHIBITION.*—

(1) *IN GENERAL.*—A State that chooses to build its own radio access network shall not provide commercial service to consumers or offer wholesale leasing capacity of the network within the State except directly through public-private partnerships for construction, maintenance, operation, and improvement of the network within the State.

(2) *RULE OF CONSTRUCTION.*—Nothing in this subsection shall be construed to prohibit the State and a secondary user from entering into a covered leasing agreement. Any revenue gained by the State from such a leasing agreement shall be used only for constructing, maintaining, operating, or improving the radio access network of the State.

(h) *JUDICIAL REVIEW.*—

(1) *IN GENERAL.*—The United States District Court for the District of Columbia shall have exclusive jurisdiction to review

a decision of the Commission made under subsection (e)(3)(C)(iv).

(2) **STANDARD OF REVIEW.**—The court shall affirm the decision of the Commission unless—

(A) the decision was procured by corruption, fraud, or undue means;

(B) there was actual partiality or corruption in the Commission; or

(C) the Commission was guilty of misconduct in refusing to hear evidence pertinent and material to the decision or of any other misbehavior by which the rights of any party have been prejudiced.

**SEC. 6303. PUBLIC SAFETY WIRELESS COMMUNICATIONS RESEARCH AND DEVELOPMENT.**

(a) **NIST DIRECTED RESEARCH AND DEVELOPMENT PROGRAM.**—From amounts made available from the Public Safety Trust Fund, the Director of NIST, in consultation with the Commission, the Secretary of Homeland Security, and the National Institute of Justice of the Department of Justice, as appropriate, shall conduct research and assist with the development of standards, technologies, and applications to advance wireless public safety communications.

(b) **REQUIRED ACTIVITIES.**—In carrying out the requirement under subsection (a), the Director of NIST, in consultation with the First Responder Network Authority and the public safety advisory committee established under section 6205(a), shall—

(1) document public safety wireless communications technical requirements;

(2) accelerate the development of the capability for communications between currently deployed public safety narrowband systems and the nationwide public safety broadband network;

(3) establish a research plan, and direct research, that addresses the wireless communications needs of public safety entities beyond what can be provided by the current generation of broadband technology;

(4) accelerate the development of mission critical voice, including device-to-device “talkaround” capability over broadband networks, public safety prioritization, authentication capabilities, and standard application programming interfaces for the nationwide public safety broadband network, if necessary and practical;

(5) accelerate the development of communications technology and equipment that can facilitate the eventual migration of public safety narrowband communications to the nationwide public safety broadband network; and

(6) convene working groups of relevant government and commercial parties to achieve the requirements in paragraphs (1) through (5).

**Subtitle D—Spectrum Auction Authority**

**SEC. 6401. DEADLINES FOR AUCTION OF CERTAIN SPECTRUM.**

(a) **CLEARING CERTAIN FEDERAL SPECTRUM.**—

(1) **IN GENERAL.**—The President shall—

(A) not later than 3 years after the date of the enactment of this Act, begin the process of withdrawing or modi-

fyng the assignment to a Federal Government station of the electromagnetic spectrum described in paragraph (2); and

(B) not later than 30 days after completing the withdrawal or modification, notify the Commission that the withdrawal or modification is complete.

(2) *SPECTRUM DESCRIBED.*—The electromagnetic spectrum described in this paragraph is the 15 megahertz of spectrum between 1675 megahertz and 1710 megahertz identified under paragraph (3).

(3) *IDENTIFICATION BY SECRETARY OF COMMERCE.*—Not later than 1 year after the date of the enactment of this Act, the Secretary of Commerce shall submit to the President a report identifying 15 megahertz of spectrum between 1675 megahertz and 1710 megahertz for reallocation from Federal use to non-Federal use.

(b) *REALLOCATION AND AUCTION.*—

(1) *IN GENERAL.*—Notwithstanding paragraph (15)(A) of section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)), not later than 3 years after the date of the enactment of this Act, the Commission shall, except as provided in paragraph (4)—

(A) allocate the spectrum described in paragraph (2) for commercial use; and

(B) through a system of competitive bidding under such section, grant new initial licenses for the use of such spectrum, subject to flexible-use service rules.

(2) *SPECTRUM DESCRIBED.*—The spectrum described in this paragraph is the following:

(A) The frequencies between 1915 megahertz and 1920 megahertz.

(B) The frequencies between 1995 megahertz and 2000 megahertz.

(C) The frequencies described in subsection (a)(2).

(D) The frequencies between 2155 megahertz and 2180 megahertz.

(E) Fifteen megahertz of contiguous spectrum to be identified by the Commission.

(3) *PROCEEDS TO COVER 110 PERCENT OF FEDERAL RELOCATION OR SHARING COSTS.*—Nothing in paragraph (1) shall be construed to relieve the Commission from the requirements of section 309(j)(16)(B) of the Communications Act of 1934 (47 U.S.C. 309(j)(16)(B)).

(4) *DETERMINATION BY COMMISSION.*—If the Commission determines that the band of frequencies described in paragraph (2)(A) or the band of frequencies described in paragraph (2)(B) cannot be used without causing harmful interference to commercial mobile service licensees in the frequencies between 1930 megahertz and 1995 megahertz, the Commission may not—

(A) allocate such band for commercial use under paragraph (1)(A); or

(B) grant licenses under paragraph (1)(B) for the use of such band.

(c) *AUCTION PROCEEDS.*—Section 309(j)(8) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)) is amended—



(1) in subparagraph (A), by striking “(D), and (E),” and inserting “(D), (E), (F), and (G),”;

(2) in subparagraph (C)(i), by striking “subparagraph (E)(ii)” and inserting “subparagraphs (D)(ii), (E)(ii), (F), and (G)”;

(3) in subparagraph (D)—

(A) by striking the heading and inserting “PROCEEDS FROM REALLOCATED FEDERAL SPECTRUM.—”;

(B) by striking “Cash” and inserting the following:

“(i) IN GENERAL.—Except as provided in clause (ii), cash”; and

(C) by adding at the end the following:

“(ii) CERTAIN OTHER PROCEEDS.—Notwithstanding subparagraph (A) and except as provided in subparagraph (B), in the case of proceeds (including deposits and upfront payments from successful bidders) attributable to the auction of eligible frequencies described in paragraph (2) of section 113(g) of the National Telecommunications and Information Administration Organization Act that are required to be auctioned by section 6401(b)(1)(B) of the Middle Class Tax Relief and Job Creation Act of 2012, such portion of such proceeds as is necessary to cover the relocation or sharing costs (as defined in paragraph (3) of such section 113(g)) of Federal entities relocated from such eligible frequencies shall be deposited in the Spectrum Relocation Fund. The remainder of such proceeds shall be deposited in the Public Safety Trust Fund established by section 6413(a)(1) of the Middle Class Tax Relief and Job Creation Act of 2012.”; and

(4) by adding at the end the following:

“(F) CERTAIN PROCEEDS DESIGNATED FOR PUBLIC SAFETY TRUST FUND.—Notwithstanding subparagraph (A) and except as provided in subparagraphs (B) and (D)(ii), the proceeds (including deposits and upfront payments from successful bidders) from the use of a system of competitive bidding under this subsection pursuant to section 6401(b)(1)(B) of the Middle Class Tax Relief and Job Creation Act of 2012 shall be deposited in the Public Safety Trust Fund established by section 6413(a)(1) of such Act.”.

#### **SEC. 6402. GENERAL AUTHORITY FOR INCENTIVE AUCTIONS.**

Section 309(j)(8) of the Communications Act of 1934, as amended by section 6401(c), is further amended by adding at the end the following:

“(G) INCENTIVE AUCTIONS.—

“(i) IN GENERAL.—Notwithstanding subparagraph (A) and except as provided in subparagraph (B), the Commission may encourage a licensee to relinquish voluntarily some or all of its licensed spectrum usage rights in order to permit the assignment of new initial licenses subject to flexible-use service rules by sharing with such licensee a portion, based on the value of the relinquished rights as determined in the reverse auction required by clause (ii)(I), of the proceeds (including deposits and upfront payments from successful bid-

ders) from the use of a competitive bidding system under this subsection.

“(ii) *LIMITATIONS.*—The Commission may not enter into an agreement for a licensee to relinquish spectrum usage rights in exchange for a share of auction proceeds under clause (i) unless—

“(I) the Commission conducts a reverse auction to determine the amount of compensation that licensees would accept in return for voluntarily relinquishing spectrum usage rights; and

“(II) at least two competing licensees participate in the reverse auction.

“(iii) *TREATMENT OF REVENUES.*—Notwithstanding subparagraph (A) and except as provided in subparagraph (B), the proceeds (including deposits and upfront payments from successful bidders) from any auction, prior to the end of fiscal year 2022, of spectrum usage rights made available under clause (i) that are not shared with licensees under such clause shall be deposited as follows:

“(I) \$1,750,000,000 of the proceeds from the incentive auction of broadcast television spectrum required by section 6403 of the Middle Class Tax Relief and Job Creation Act of 2012 shall be deposited in the TV Broadcaster Relocation Fund established by subsection (d)(1) of such section.

“(II) All other proceeds shall be deposited—

“(aa) prior to the end of fiscal year 2022, in the Public Safety Trust Fund established by section 6413(a)(1) of such Act; and

“(bb) after the end of fiscal year 2022, in the general fund of the Treasury, where such proceeds shall be dedicated for the sole purpose of deficit reduction.

“(iv) *CONGRESSIONAL NOTIFICATION.*—At least 3 months before any incentive auction conducted under this subparagraph, the Chairman of the Commission, in consultation with the Director of the Office of Management and Budget, shall notify the appropriate committees of Congress of the methodology for calculating the amounts that will be shared with licensees under clause (i).

“(v) *DEFINITION.*—In this subparagraph, the term ‘appropriate committees of Congress’ means—

“(I) the Committee on Commerce, Science, and Transportation of the Senate;

“(II) the Committee on Appropriations of the Senate;

“(III) the Committee on Energy and Commerce of the House of Representatives; and

“(IV) the Committee on Appropriations of the House of Representatives.”.

**SEC. 6403. SPECIAL REQUIREMENTS FOR INCENTIVE AUCTION OF BROADCAST TV SPECTRUM.**

(a) *REVERSE AUCTION TO IDENTIFY INCENTIVE AMOUNT.*—

(1) *IN GENERAL.*—The Commission shall conduct a reverse auction to determine the amount of compensation that each broadcast television licensee would accept in return for voluntarily relinquishing some or all of its broadcast television spectrum usage rights in order to make spectrum available for assignment through a system of competitive bidding under subparagraph (G) of section 309(j)(8) of the Communications Act of 1934, as added by section 6402.

(2) *ELIGIBLE RELINQUISHMENTS.*—A relinquishment of usage rights for purposes of paragraph (1) shall include the following:

(A) Relinquishing all usage rights with respect to a particular television channel without receiving in return any usage rights with respect to another television channel.

(B) Relinquishing all usage rights with respect to an ultra high frequency television channel in return for receiving usage rights with respect to a very high frequency television channel.

(C) Relinquishing usage rights in order to share a television channel with another licensee.

(3) *CONFIDENTIALITY.*—The Commission shall take all reasonable steps necessary to protect the confidentiality of Commission-held data of a licensee participating in the reverse auction under paragraph (1), including withholding the identity of such licensee until the reassignments and reallocations (if any) under subsection (b)(1)(B) become effective, as described in subsection (f)(2).

(4) *PROTECTION OF CARRIAGE RIGHTS OF LICENSEES SHARING A CHANNEL.*—A broadcast television station that voluntarily relinquishes spectrum usage rights under this subsection in order to share a television channel and that possessed carriage rights under section 338, 614, or 615 of the Communications Act of 1934 (47 U.S.C. 338; 534; 535) on November 30, 2010, shall have, at its shared location, the carriage rights under such section that would apply to such station at such location if it were not sharing a channel.

(b) *REORGANIZATION OF BROADCAST TV SPECTRUM.*—

(1) *IN GENERAL.*—For purposes of making available spectrum to carry out the forward auction under subsection (c)(1), the Commission—

(A) shall evaluate the broadcast television spectrum (including spectrum made available through the reverse auction under subsection (a)(1)); and

(B) may, subject to international coordination along the border with Mexico and Canada—

(i) make such reassignments of television channels as the Commission considers appropriate; and

(ii) reallocate such portions of such spectrum as the Commission determines are available for reallocation.

(2) *FACTORS FOR CONSIDERATION.*—In making any reassignments or reallocations under paragraph (1)(B), the Commission shall make all reasonable efforts to preserve, as of the date of the enactment of this Act, the coverage area and population served of each broadcast television licensee, as deter-

mined using the methodology described in OET Bulletin 69 of the Office of Engineering and Technology of the Commission.

(3) *NO INVOLUNTARY RELOCATION FROM UHF TO VHF.*—In making any reassignments under paragraph (1)(B)(i), the Commission may not involuntarily reassign a broadcast television licensee—

(A) from an ultra high frequency television channel to a very high frequency television channel; or

(B) from a television channel between the frequencies from 174 megahertz to 216 megahertz to a television channel between the frequencies from 54 megahertz to 88 megahertz.

(4) *PAYMENT OF RELOCATION COSTS.*—

(A) *IN GENERAL.*—Except as provided in subparagraph (B), from amounts made available under subsection (d)(2), the Commission shall reimburse costs reasonably incurred by—

(i) a broadcast television licensee that was reassigned under paragraph (1)(B)(i) from one ultra high frequency television channel to a different ultra high frequency television channel, from one very high frequency television channel to a different very high frequency television channel, or, in accordance with subsection (g)(1)(B), from a very high frequency television channel to an ultra high frequency television channel, in order for the licensee to relocate its television service from one channel to the other;

(ii) a multichannel video programming distributor in order to continue to carry the signal of a broadcast television licensee that—

(I) is described in clause (i);

(II) voluntarily relinquishes spectrum usage rights under subsection (a) with respect to an ultra high frequency television channel in return for receiving usage rights with respect to a very high frequency television channel; or

(III) voluntarily relinquishes spectrum usage rights under subsection (a) to share a television channel with another licensee; or

(iii) a channel 37 incumbent user, in order to relocate to other suitable spectrum, provided that all such users can be relocated and that the total relocation costs of such users do not exceed \$300,000,000. For the purpose of this section, the spectrum made available through relocation of channel 37 incumbent users shall be deemed as spectrum reclaimed through a reverse auction under section 6403(a).

(B) *REGULATORY RELIEF.*—In lieu of reimbursement for relocation costs under subparagraph (A), a broadcast television licensee may accept, and the Commission may grant as it considers appropriate, a waiver of the service rules of the Commission to permit the licensee, subject to interference protections, to make flexible use of the spectrum assigned to the licensee to provide services other than broadcast television services. Such waiver shall only remain in

*effect while the licensee provides at least 1 broadcast television program stream on such spectrum at no charge to the public.*

*(C) LIMITATION.—The Commission may not make reimbursements under subparagraph (A) for lost revenues.*

*(D) DEADLINE.—The Commission shall make all reimbursements required by subparagraph (A) not later than the date that is 3 years after the completion of the forward auction under subsection (c)(1).*

*(5) LOW-POWER TELEVISION USAGE RIGHTS.—Nothing in this subsection shall be construed to alter the spectrum usage rights of low-power television stations.*

*(c) FORWARD AUCTION.—*

*(1) AUCTION REQUIRED.—The Commission shall conduct a forward auction in which—*

*(A) the Commission assigns licenses for the use of the spectrum that the Commission reallocates under subsection (b)(1)(B)(ii); and*

*(B) the amount of the proceeds that the Commission shares under clause (i) of section 309(j)(8)(G) of the Communications Act of 1934 with each licensee whose bid the Commission accepts in the reverse auction under subsection (a)(1) is not less than the amount of such bid.*

*(2) MINIMUM PROCEEDS.—*

*(A) IN GENERAL.—If the amount of the proceeds from the forward auction under paragraph (1) is not greater than the sum described in subparagraph (B), no licenses shall be assigned through such forward auction, no reassignments or reallocations under subsection (b)(1)(B) shall become effective, and the Commission may not revoke any spectrum usage rights by reason of a bid that the Commission accepts in the reverse auction under subsection (a)(1).*

*(B) SUM DESCRIBED.—The sum described in this subparagraph is the sum of—*

*(i) the total amount of compensation that the Commission must pay successful bidders in the reverse auction under subsection (a)(1);*

*(ii) the costs of conducting such forward auction that the salaries and expenses account of the Commission is required to retain under section 309(j)(8)(B) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(B)); and*

*(iii) the estimated costs for which the Commission is required to make reimbursements under subsection (b)(4)(A).*

*(C) ADMINISTRATIVE COSTS.—The amount of the proceeds from the forward auction under paragraph (1) that the salaries and expenses account of the Commission is required to retain under section 309(j)(8)(B) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(B)) shall be sufficient to cover the costs incurred by the Commission in conducting the reverse auction under subsection (a)(1), conducting the evaluation of the broadcast television spectrum under subparagraph (A) of subsection (b)(1), and making*

any reassignments or reallocations under subparagraph (B) of such subsection, in addition to the costs incurred by the Commission in conducting such forward auction.

(3) *FACTOR FOR CONSIDERATION.*—In conducting the forward auction under paragraph (1), the Commission shall consider assigning licenses that cover geographic areas of a variety of different sizes.

(d) *TV BROADCASTER RELOCATION FUND.*—

(1) *ESTABLISHMENT.*—There is established in the Treasury of the United States a fund to be known as the TV Broadcaster Relocation Fund.

(2) *PAYMENT OF RELOCATION COSTS.*—Any amounts borrowed under paragraph (3)(A) and any amounts in the TV Broadcaster Relocation Fund that are not necessary for reimbursement of the general fund of the Treasury for such borrowed amounts shall be available to the Commission to make the payments required by subsection (b)(4)(A).

(3) *BORROWING AUTHORITY.*—

(A) *IN GENERAL.*—Beginning on the date when any reassignments or reallocations under subsection (b)(1)(B) become effective, as provided in subsection (f)(2), and ending when \$1,000,000,000 has been deposited in the TV Broadcaster Relocation Fund, the Commission may borrow from the Treasury of the United States an amount not to exceed \$1,000,000,000 to use toward the payments required by subsection (b)(4)(A).

(B) *REIMBURSEMENT.*—The Commission shall reimburse the general fund of the Treasury, without interest, for any amounts borrowed under subparagraph (A) as funds are deposited into the TV Broadcaster Relocation Fund.

(4) *TRANSFER OF UNUSED FUNDS.*—If any amounts remain in the TV Broadcaster Relocation Fund after the date that is 3 years after the completion of the forward auction under subsection (c)(1), the Secretary of the Treasury shall—

(A) prior to the end of fiscal year 2022, transfer such amounts to the Public Safety Trust Fund established by section 6413(a)(1); and

(B) after the end of fiscal year 2022, transfer such amounts to the general fund of the Treasury, where such amounts shall be dedicated for the sole purpose of deficit reduction.

(e) *NUMERICAL LIMITATION ON AUCTIONS AND REORGANIZATION.*—The Commission may not complete more than one reverse auction under subsection (a)(1) or more than one reorganization of the broadcast television spectrum under subsection (b).

(f) *TIMING.*—

(1) *CONTEMPORANEOUS AUCTIONS AND REORGANIZATION PERMITTED.*—The Commission may conduct the reverse auction under subsection (a)(1), any reassignments or reallocations under subsection (b)(1)(B), and the forward auction under subsection (c)(1) on a contemporaneous basis.

(2) *EFFECTIVENESS OF REASSIGNMENTS AND REALLOCATIONS.*—Notwithstanding paragraph (1), no reassignments or reallocations under subsection (b)(1)(B) shall become effective until the completion of the reverse auction under subsection

(a)(1) and the forward auction under subsection (c)(1), and, to the extent practicable, all such reassignments and reallocations shall become effective simultaneously.

(3) *DEADLINE.*—The Commission may not conduct the reverse auction under subsection (a)(1) or the forward auction under subsection (c)(1) after the end of fiscal year 2022.

(4) *LIMIT ON DISCRETION REGARDING AUCTION TIMING.*—Section 309(j)(15)(A) of the Communications Act of 1934 (47 U.S.C. 309(j)(15)(A)) shall not apply in the case of an auction conducted under this section.

(g) *LIMITATION ON REORGANIZATION AUTHORITY.*—

(1) *IN GENERAL.*—During the period described in paragraph (2), the Commission may not—

(A) involuntarily modify the spectrum usage rights of a broadcast television licensee or reassign such a licensee to another television channel except—

(i) in accordance with this section; or

(ii) in the case of a violation by such licensee of the terms of its license or a specific provision of a statute administered by the Commission, or a regulation of the Commission promulgated under any such provision; or

(B) reassign a broadcast television licensee from a very high frequency television channel to an ultra high frequency television channel, unless—

(i) such a reassignment will not decrease the total amount of ultra high frequency spectrum made available for reallocation under this section; or

(ii) a request from such licensee for the reassignment was pending at the Commission on May 31, 2011.

(2) *PERIOD DESCRIBED.*—The period described in this paragraph is the period beginning on the date of the enactment of this Act and ending on the earliest of—

(A) the first date when the reverse auction under subsection (a)(1), the reassignments and reallocations (if any) under subsection (b)(1)(B), and the forward auction under subsection (c)(1) have been completed;

(B) the date of a determination by the Commission that the amount of the proceeds from the forward auction under subsection (c)(1) is not greater than the sum described in subsection (c)(2)(B); or

(C) September 30, 2022.

(h) *PROTEST RIGHT INAPPLICABLE.*—The right of a licensee to protest a proposed order of modification of its license under section 316 of the Communications Act of 1934 (47 U.S.C. 316) shall not apply in the case of a modification made under this section.

(i) *COMMISSION AUTHORITY.*—Nothing in subsection (b) shall be construed to—

(1) expand or contract the authority of the Commission, except as otherwise expressly provided; or

(2) prevent the implementation of the Commission’s “White Spaces” Second Report and Order and Memorandum Opinion and Order (FCC 08–260, adopted November 4, 2008) in the spectrum that remains allocated for broadcast television use after the reorganization required by such subsection.

**SEC. 6404. CERTAIN CONDITIONS ON AUCTION PARTICIPATION PROHIBITED.**

Section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) is amended by adding at the end the following new paragraph:

“(17) CERTAIN CONDITIONS ON AUCTION PARTICIPATION PROHIBITED.—

“(A) IN GENERAL.—Notwithstanding any other provision of law, the Commission may not prevent a person from participating in a system of competitive bidding under this subsection if such person—

“(i) complies with all the auction procedures and other requirements to protect the auction process established by the Commission; and

“(ii) either—

“(I) meets the technical, financial, character, and citizenship qualifications that the Commission may require under section 303(l)(1), 308(b), or 310 to hold a license; or

“(II) would meet such license qualifications by means approved by the Commission prior to the grant of the license.

“(B) CLARIFICATION OF AUTHORITY.—Nothing in subparagraph (A) affects any authority the Commission has to adopt and enforce rules of general applicability, including rules concerning spectrum aggregation that promote competition.”.

**SEC. 6405. EXTENSION OF AUCTION AUTHORITY.**

Section 309(j)(11) of the Communications Act of 1934 (47 U.S.C. 309(j)(11)) is amended by striking “2012” and inserting “2022”.

**SEC. 6406. UNLICENSED USE IN THE 5 GHZ BAND.**

(a) MODIFICATION OF COMMISSION REGULATIONS TO ALLOW CERTAIN UNLICENSED USE.—

(1) IN GENERAL.—Subject to paragraph (2), not later than 1 year after the date of the enactment of this Act, the Commission shall begin a proceeding to modify part 15 of title 47, Code of Federal Regulations, to allow unlicensed U-NII devices to operate in the 5350–5470 MHz band.

(2) REQUIRED DETERMINATIONS.—The Commission may make the modification described in paragraph (1) only if the Commission, in consultation with the Assistant Secretary, determines that—

(A) licensed users will be protected by technical solutions, including use of existing, modified, or new spectrum-sharing technologies and solutions, such as dynamic frequency selection; and

(B) the primary mission of Federal spectrum users in the 5350–5470 MHz band will not be compromised by the introduction of unlicensed devices.

(b) STUDY BY NTIA.—

(1) IN GENERAL.—The Assistant Secretary, in consultation with the Department of Defense and other impacted agencies, shall conduct a study evaluating known and proposed spectrum-sharing technologies and the risk to Federal users if unli-



censed U-NII devices were allowed to operate in the 5350–5470 MHz band and in the 5850–5925 MHz band.

(2) *SUBMISSION.*—The Assistant Secretary shall submit to the Commission and the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate—

(A) not later than 8 months after the date of the enactment of this Act, a report on the portion of the study required by paragraph (1) with respect to the 5350–5470 MHz band; and

(B) not later than 18 months after the date of the enactment of this Act, a report on the portion of the study required by paragraph (1) with respect to the 5850–5925 MHz band.

(c) *DEFINITIONS.*—In this section:

(1) *5350–5470 MHZ BAND.*—The term “5350–5470 MHz band” means the portion of the electromagnetic spectrum between the frequencies from 5350 megahertz to 5470 megahertz.

(2) *5850–5925 MHZ BAND.*—The term “5850–5925 MHz band” means the portion of the electromagnetic spectrum between the frequencies from 5850 megahertz to 5925 megahertz.

**SEC. 6407. GUARD BANDS AND UNLICENSED USE.**

(a) *IN GENERAL.*—Nothing in subparagraph (G) of section 309(j)(8) of the Communications Act of 1934, as added by section 6402, or in section 6403 shall be construed to prevent the Commission from using relinquished or other spectrum to implement band plans with guard bands.

(b) *SIZE OF GUARD BANDS.*—Such guard bands shall be no larger than is technically reasonable to prevent harmful interference between licensed services outside the guard bands.

(c) *UNLICENSED USE IN GUARD BANDS.*—The Commission may permit the use of such guard bands for unlicensed use.

(d) *DATABASE.*—Unlicensed use shall rely on a database or subsequent methodology as determined by the Commission.

(e) *PROTECTIONS AGAINST HARMFUL INTERFERENCE.*—The Commission may not permit any use of a guard band that the Commission determines would cause harmful interference to licensed services.

**SEC. 6408. STUDY ON RECEIVER PERFORMANCE AND SPECTRUM EFFICIENCY.**

(a) *IN GENERAL.*—The Comptroller General of the United States shall conduct a study to consider efforts to ensure that each transmission system is designed and operated so that reasonable use of adjacent spectrum does not excessively impair the functioning of such system.

(b) *REQUIRED CONSIDERATIONS.*—In conducting the study required by subsection (a), the Comptroller General shall consider—

(1) the value of—

(A) improving receiver performance as it relates to increasing spectral efficiency;

(B) improving the operation of services that are located in adjacent spectrum; and

(C) narrowing the guard bands between adjacent spectrum use;

(2) the role of manufacturers, commercial licensees, and government users with respect to their transmission systems and the use of adjacent spectrum;

(3) the feasibility of industry self-compliance with respect to the design and operational requirements of transmission systems and the reasonable use of adjacent spectrum; and

(4) the value of action by the Commission and the Assistant Secretary to establish, by rule, technical requirements or standards for non-Federal and Federal use, respectively, with respect to the reasonable use of portions of the radio spectrum that are adjacent to each other.

(c) *REPORT*.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General shall submit a report on the results of the study required by subsection (a) to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(d) *TRANSMISSION SYSTEM DEFINED*.—In this section, the term “transmission system” means any telecommunications, broadcast, satellite, commercial mobile service, or other communications system that employs radio spectrum.

**SEC. 6409. WIRELESS FACILITIES DEPLOYMENT.**

(a) *FACILITY MODIFICATIONS*.—

(1) *IN GENERAL*.—Notwithstanding section 704 of the Telecommunications Act of 1996 (Public Law 104–104) or any other provision of law, a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.

(2) *ELIGIBLE FACILITIES REQUEST*.—For purposes of this subsection, the term “eligible facilities request” means any request for modification of an existing wireless tower or base station that involves—

- (A) collocation of new transmission equipment;
- (B) removal of transmission equipment; or
- (C) replacement of transmission equipment.

(3) *APPLICABILITY OF ENVIRONMENTAL LAWS*.—Nothing in paragraph (1) shall be construed to relieve the Commission from the requirements of the National Historic Preservation Act or the National Environmental Policy Act of 1969.

(b) *FEDERAL EASEMENTS AND RIGHTS-OF-WAY*.—

(1) *GRANT*.—If an executive agency, a State, a political subdivision or agency of a State, or a person, firm, or organization applies for the grant of an easement or right-of-way to, in, over, or on a building or other property owned by the Federal Government for the right to install, construct, and maintain wireless service antenna structures and equipment and backhaul transmission equipment, the executive agency having control of the building or other property may grant to the applicant, on behalf of the Federal Government, an easement or right-of-way to perform such installation, construction, and maintenance.

(2) *APPLICATION*.—The Administrator of General Services shall develop a common form for applications for easements and rights-of-way under paragraph (1) for all executive agencies

*that shall be used by applicants with respect to the buildings or other property of each such agency.*

*(3) FEE.—*

*(A) IN GENERAL.—Notwithstanding any other provision of law, the Administrator of General Services shall establish a fee for the grant of an easement or right-of-way pursuant to paragraph (1) that is based on direct cost recovery.*

*(B) EXCEPTIONS.—The Administrator of General Services may establish exceptions to the fee amount required under subparagraph (A)—*

*(i) in consideration of the public benefit provided by a grant of an easement or right-of-way; and*

*(ii) in the interest of expanding wireless and broadband coverage.*

*(4) USE OF FEES COLLECTED.—Any fee amounts collected by an executive agency pursuant to paragraph (3) may be made available, as provided in appropriations Acts, to such agency to cover the costs of granting the easement or right-of-way.*

*(c) MASTER CONTRACTS FOR WIRELESS FACILITY SITINGS.—*

*(1) IN GENERAL.—Notwithstanding section 704 of the Telecommunications Act of 1996 or any other provision of law, and not later than 60 days after the date of the enactment of this Act, the Administrator of General Services shall—*

*(A) develop 1 or more master contracts that shall govern the placement of wireless service antenna structures on buildings and other property owned by the Federal Government; and*

*(B) in developing the master contract or contracts, standardize the treatment of the placement of wireless service antenna structures on building rooftops or facades, the placement of wireless service antenna equipment on rooftops or inside buildings, the technology used in connection with wireless service antenna structures or equipment placed on Federal buildings and other property, and any other key issues the Administrator of General Services considers appropriate.*

*(2) APPLICABILITY.—The master contract or contracts developed by the Administrator of General Services under paragraph (1) shall apply to all publicly accessible buildings and other property owned by the Federal Government, unless the Administrator of General Services decides that issues with respect to the siting of a wireless service antenna structure on a specific building or other property warrant nonstandard treatment of such building or other property.*

*(3) APPLICATION.—The Administrator of General Services shall develop a common form or set of forms for wireless service antenna structure siting applications under this subsection for all executive agencies that shall be used by applicants with respect to the buildings and other property of each such agency.*

*(d) EXECUTIVE AGENCY DEFINED.—In this section, the term “executive agency” has the meaning given such term in section 102 of title 40, United States Code.*

**SEC. 6410. FUNCTIONAL RESPONSIBILITY OF NTIA TO ENSURE EFFICIENT USE OF SPECTRUM.**

Section 103(b)(2) of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 902(b)(2)) is amended by adding at the end the following:

*“(U) The responsibility to promote the best possible and most efficient use of electromagnetic spectrum resources across the Federal Government, subject to and consistent with the needs and missions of Federal agencies.”.*

**SEC. 6411. SYSTEM CERTIFICATION.**

Not later than 6 months after the date of the enactment of this Act, the Director of the Office of Management and Budget shall update and revise section 33.4 of OMB Circular A–11 to reflect the recommendations regarding such Circular made in the Commerce Spectrum Management Advisory Committee Incentive Subcommittee report, adopted January 11, 2011.

**SEC. 6412. DEPLOYMENT OF 11 GHZ, 18 GHZ, AND 23 GHZ MICROWAVE BANDS.**

(a) **FCC REPORT ON REJECTION RATE.**—Not later than 9 months after the date of the enactment of this Act, 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 on the rejection rate for the spectrum described in subsection (c).

(b) **GAO STUDY ON DEPLOYMENT.**—

(1) **IN GENERAL.**—The Comptroller General of the United States shall conduct a study to assess whether the spectrum described in subsection (c) is being deployed in such a manner that, in areas with high demand for common carrier licenses for the use of such spectrum, market forces—

(A) provide adequate incentive for the efficient use of such spectrum; and

(B) ensure that the Federal Government receives maximum revenue for such spectrum through competitive bidding under section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)).

(2) **FACTORS FOR CONSIDERATION.**—In conducting the study required by paragraph (1), the Comptroller General shall take into consideration—

(A) spectrum that is adjacent to the spectrum described in subsection (c) and that was assigned through competitive bidding under section 309(j) of the Communications Act of 1934; and

(B) the rejection rate for the spectrum described in subsection (c), current as of the time of the assessment and as projected for the future, in markets in which there is a high demand for common carrier licenses for the use of such spectrum.

(3) **REPORT.**—Not later than 9 months after the date of the enactment of this Act, the Comptroller General shall submit a report on the study required by paragraph (1) to—

(A) the Commission; and

(B) the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(c) *SPECTRUM DESCRIBED.*—The spectrum described in this subsection is the portions of the electromagnetic spectrum between the frequencies from 10,700 megahertz to 11,700 megahertz, from 17,700 megahertz to 19,700 megahertz, and from 21,200 megahertz to 23,600 megahertz.

(d) *REJECTION RATE DEFINED.*—In this section, the term “rejection rate” means the number and percent of applications (whether made to the Commission or to a third-party coordinator) for common carrier use of spectrum that were not granted because of lack of availability of such spectrum or interference concerns of existing licensees.

(e) *NO ADDITIONAL FUNDS AUTHORIZED.*—Funds necessary to carry out this section shall be derived from funds otherwise authorized to be appropriated.

**SEC. 6413. PUBLIC SAFETY TRUST FUND.**

(a) *ESTABLISHMENT OF PUBLIC SAFETY TRUST FUND.*—

(1) *IN GENERAL.*—There is established in the Treasury of the United States a trust fund to be known as the Public Safety Trust Fund.

(2) *AVAILABILITY.*—Amounts deposited in the Public Safety Trust Fund shall remain available through fiscal year 2022. Any amounts remaining in the Fund after the end of such fiscal year shall be deposited in the general fund of the Treasury, where such amounts shall be dedicated for the sole purpose of deficit reduction.

(b) *USE OF FUND.*—As amounts are deposited in the Public Safety Trust Fund, such amounts shall be used to make the following deposits or payments in the following order of priority:

(1) *REPAYMENT OF AMOUNT BORROWED FOR FIRST RESPONDER NETWORK AUTHORITY.*—An amount not to exceed \$2,000,000,000 shall be available to the NTIA to reimburse the general fund of the Treasury for any amounts borrowed under section 6207.

(2) *STATE AND LOCAL IMPLEMENTATION FUND.*—\$135,000,000 shall be deposited in the State and Local Implementation Fund established by section 6301.

(3) *BUILDOUT BY FIRST RESPONDER NETWORK AUTHORITY.*—\$7,000,000,000, reduced by the amount borrowed under section 6207, shall be deposited in the Network Construction Fund established by section 6206.

(4) *PUBLIC SAFETY RESEARCH.*—\$100,000,000 shall be available to the Director of NIST to carry out section 6303.

(5) *DEFICIT REDUCTION.*—\$20,400,000,000 shall be deposited in the general fund of the Treasury, where such amount shall be dedicated for the sole purpose of deficit reduction.

(6) *9-1-1, E9-1-1, AND NEXT GENERATION 9-1-1 IMPLEMENTATION GRANTS.*—\$115,000,000 shall be available to the Assistant Secretary and the Administrator of the National Highway Traffic Safety Administration to carry out the grant program under section 158 of the National Telecommunications and Information Administration Organization Act, as amended by section 6503 of this title.

(7) *ADDITIONAL PUBLIC SAFETY RESEARCH.*—\$200,000,000 shall be available to the Director of NIST to carry out section 6303.

(8) *ADDITIONAL DEFICIT REDUCTION.*—Any remaining amounts deposited in the Public Safety Trust Fund shall be deposited in the general fund of the Treasury, where such amounts shall be dedicated for the sole purpose of deficit reduction.

(c) *INVESTMENT.*—Amounts in the Public Safety Trust Fund shall be invested in accordance with section 9702 of title 31, United States Code, and any interest on, and proceeds from, any such investment shall be credited to, and become a part of, the Fund.

**SEC. 6414. STUDY ON EMERGENCY COMMUNICATIONS BY AMATEUR RADIO AND IMPEDIMENTS TO AMATEUR RADIO COMMUNICATIONS.**

(a) *IN GENERAL.*—Not later than 180 days after the date of the enactment of this Act, the Commission, in consultation with the Office of Emergency Communications in the Department of Homeland Security, shall—

(1) complete a study on the uses and capabilities of amateur radio service communications in emergencies and disaster relief; and

(2) 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 on the findings of such study.

(b) *CONTENTS.*—The study required by subsection (a) shall include—

(1)(A) a review of the importance of emergency amateur radio service communications relating to disasters, severe weather, and other threats to lives and property in the United States; and

(B) recommendations for—

(i) enhancements in the voluntary deployment of amateur radio operators in disaster and emergency communications and disaster relief efforts; and

(ii) improved integration of amateur radio operators in the planning and furtherance of initiatives of the Federal Government; and

(2)(A) an identification of impediments to enhanced amateur radio service communications, such as the effects of unreasonable or unnecessary private land use restrictions on residential antenna installations; and

(B) recommendations regarding the removal of such impediments.

(c) *EXPERTISE.*—In conducting the study required by subsection (a), the Commission shall use the expertise of stakeholder entities and organizations, including the amateur radio, emergency response, and disaster communications communities.

**Subtitle E—Next Generation 9–1–1 Advancement Act of 2012**

**SEC. 6501. SHORT TITLE.**

This subtitle may be cited as the “Next Generation 9–1–1 Advancement Act of 2012”.

**SEC. 6502. DEFINITIONS.**

In this subtitle, the following definitions shall apply:

(1) *9-1-1 SERVICES AND E9-1-1 SERVICES.*—The terms “9-1-1 services” and “E9-1-1 services” shall have the meaning given those terms in section 158 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 942), as amended by this subtitle.

(2) *MULTI-LINE TELEPHONE SYSTEM.*—The term “multi-line telephone system” or “MLTS” means a system comprised of common control units, telephone sets, control hardware and software and adjunct systems, including network and premises based systems, such as Centrex and VoIP, as well as PBX, Hybrid, and Key Telephone Systems (as classified by the Commission under part 68 of title 47, Code of Federal Regulations), and includes systems owned or leased by governmental agencies and non-profit entities, as well as for profit businesses.

(3) *OFFICE.*—The term “Office” means the 9-1-1 Implementation Coordination Office established under section 158 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 942), as amended by this subtitle.

**SEC. 6503. COORDINATION OF 9-1-1 IMPLEMENTATION.**

Section 158 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 942) is amended to read as follows:

**“SEC. 158. COORDINATION OF 9-1-1, E9-1-1, AND NEXT GENERATION 9-1-1 IMPLEMENTATION.**

**“(a) 9-1-1 IMPLEMENTATION COORDINATION OFFICE.—**

**“(1) ESTABLISHMENT AND CONTINUATION.—**The Assistant Secretary and the Administrator of the National Highway Traffic Safety Administration shall—

**“(A)** establish and further a program to facilitate coordination and communication between Federal, State, and local emergency communications systems, emergency personnel, public safety organizations, telecommunications carriers, and telecommunications equipment manufacturers and vendors involved in the implementation of 9-1-1 services; and

**“(B)** establish a 9-1-1 Implementation Coordination Office to implement the provisions of this section.

**“(2) MANAGEMENT PLAN.—**

**“(A) DEVELOPMENT.—**The Assistant Secretary and the Administrator shall develop a management plan for the grant program established under this section, including by developing—

**“(i)** plans related to the organizational structure of such program; and

**“(ii)** funding profiles for each fiscal year of the duration of such program.

**“(B) SUBMISSION TO CONGRESS.—**Not later than 90 days after the date of enactment of the Next Generation 9-1-1 Advancement Act of 2012, the Assistant Secretary and the Administrator shall submit the management plan developed under subparagraph (A) to—

**“(i)** the Committees on Commerce, Science, and Transportation and Appropriations of the Senate; and

*“(ii) the Committees on Energy and Commerce and Appropriations of the House of Representatives.*

*“(3) PURPOSE OF OFFICE.—The Office shall—*

*“(A) take actions, in concert with coordinators designated in accordance with subsection (b)(3)(A)(ii), to improve coordination and communication with respect to the implementation of 9–1–1 services, E9–1–1 services, and Next Generation 9–1–1 services;*

*“(B) develop, collect, and disseminate information concerning practices, procedures, and technology used in the implementation of 9–1–1 services, E9–1–1 services, and Next Generation 9–1–1 services;*

*“(C) advise and assist eligible entities in the preparation of implementation plans required under subsection (b)(3)(A)(iii);*

*“(D) receive, review, and recommend the approval or disapproval of applications for grants under subsection (b); and*

*“(E) oversee the use of funds provided by such grants in fulfilling such implementation plans.*

*“(4) REPORTS.—The Assistant Secretary and the Administrator shall provide an annual report to Congress by the first day of October of each year on the activities of the Office to improve coordination and communication with respect to the implementation of 9–1–1 services, E9–1–1 services, and Next Generation 9–1–1 services.*

*“(b) 9–1–1, E9–1–1, AND NEXT GENERATION 9–1–1 IMPLEMENTATION GRANTS.—*

*“(1) MATCHING GRANTS.—The Assistant Secretary and the Administrator, acting through the Office, shall provide grants to eligible entities for—*

*“(A) the implementation and operation of 9–1–1 services, E9–1–1 services, migration to an IP-enabled emergency network, and adoption and operation of Next Generation 9–1–1 services and applications;*

*“(B) the implementation of IP-enabled emergency services and applications enabled by Next Generation 9–1–1 services, including the establishment of IP backbone networks and the application layer software infrastructure needed to interconnect the multitude of emergency response organizations; and*

*“(C) training public safety personnel, including call-takers, first responders, and other individuals and organizations who are part of the emergency response chain in 9–1–1 services.*

*“(2) MATCHING REQUIREMENT.—The Federal share of the cost of a project eligible for a grant under this section shall not exceed 60 percent.*

*“(3) COORDINATION REQUIRED.—In providing grants under paragraph (1), the Assistant Secretary and the Administrator shall require an eligible entity to certify in its application that—*

*“(A) in the case of an eligible entity that is a State government, the entity—*



*“(i) has coordinated its application with the public safety answering points located within the jurisdiction of such entity;*

*“(ii) has designated a single officer or governmental body of the entity to serve as the coordinator of implementation of 9–1–1 services, except that such designation need not vest such coordinator with direct legal authority to implement 9–1–1 services, E9–1–1 services, or Next Generation 9–1–1 services or to manage emergency communications operations;*

*“(iii) has established a plan for the coordination and implementation of 9–1–1 services, E9–1–1 services, and Next Generation 9–1–1 services; and*

*“(iv) has integrated telecommunications services involved in the implementation and delivery of 9–1–1 services, E9–1–1 services, and Next Generation 9–1–1 services; or*

*“(B) in the case of an eligible entity that is not a State, the entity has complied with clauses (i), (iii), and (iv) of subparagraph (A), and the State in which it is located has complied with clause (ii) of such subparagraph.*

*“(4) CRITERIA.—Not later than 120 days after the date of enactment of the Next Generation 9–1–1 Advancement Act of 2012, the Assistant Secretary and the Administrator shall issue regulations, after providing the public with notice and an opportunity to comment, prescribing the criteria for selection for grants under this section. The criteria shall include performance requirements and a timeline for completion of any project to be financed by a grant under this section. The Assistant Secretary and the Administrator shall update such regulations as necessary.*

*“(c) DIVERSION OF 9–1–1 CHARGES.—*

*“(1) DESIGNATED 9–1–1 CHARGES.—For the purposes of this subsection, the term ‘designated 9–1–1 charges’ means any taxes, fees, or other charges imposed by a State or other taxing jurisdiction that are designated or presented as dedicated to deliver or improve 9–1–1 services, E9–1–1 services, or Next Generation 9–1–1 services.*

*“(2) CERTIFICATION.—Each applicant for a matching grant under this section shall certify to the Assistant Secretary and the Administrator at the time of application, and each applicant that receives such a grant shall certify to the Assistant Secretary and the Administrator annually thereafter during any period of time during which the funds from the grant are available to the applicant, that no portion of any designated 9–1–1 charges imposed by a State or other taxing jurisdiction within which the applicant is located are being obligated or expended for any purpose other than the purposes for which such charges are designated or presented during the period beginning 180 days immediately preceding the date of the application and continuing through the period of time during which the funds from the grant are available to the applicant.*

*“(3) CONDITION OF GRANT.—Each applicant for a grant under this section shall agree, as a condition of receipt of the grant, that if the State or other taxing jurisdiction within which*

*the applicant is located, during any period of time during which the funds from the grant are available to the applicant, obligates or expends designated 9–1–1 charges for any purpose other than the purposes for which such charges are designated or presented, eliminates such charges, or redesignates such charges for purposes other than the implementation or operation of 9–1–1 services, E9–1–1 services, or Next Generation 9–1–1 services, all of the funds from such grant shall be returned to the Office.*

*“(4) PENALTY FOR PROVIDING FALSE INFORMATION.—Any applicant that provides a certification under paragraph (2) knowing that the information provided in the certification was false shall—*

*“(A) not be eligible to receive the grant under subsection (b);*

*“(B) return any grant awarded under subsection (b) during the time that the certification was not valid; and*

*“(C) not be eligible to receive any subsequent grants under subsection (b).*

*“(d) FUNDING AND TERMINATION.—*

*“(1) IN GENERAL.—From the amounts made available to the Assistant Secretary and the Administrator under section 6413(b)(6) of the Middle Class Tax Relief and Job Creation Act of 2012, the Assistant Secretary and the Administrator are authorized to provide grants under this section through the end of fiscal year 2022. Not more than 5 percent of such amounts may be obligated or expended to cover the administrative costs of carrying out this section.*

*“(2) TERMINATION.—Effective on October 1, 2022, the authority provided by this section terminates and this section shall have no effect.*

*“(e) DEFINITIONS.—In this section, the following definitions shall apply:*

*“(1) 9–1–1 SERVICES.—The term ‘9–1–1 services’ includes both E9–1–1 services and Next Generation 9–1–1 services.*

*“(2) E9–1–1 SERVICES.—The term ‘E9–1–1 services’ means both phase I and phase II enhanced 9–1–1 services, as described in section 20.18 of the Commission’s regulations (47 C.F.R. 20.18), as in effect on the date of enactment of the Next Generation 9–1–1 Advancement Act of 2012, or as subsequently revised by the Commission.*

*“(3) ELIGIBLE ENTITY.—*

*“(A) IN GENERAL.—The term ‘eligible entity’ means a State or local government or a tribal organization (as defined in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(l))).*

*“(B) INSTRUMENTALITIES.—The term ‘eligible entity’ includes public authorities, boards, commissions, and similar bodies created by one or more eligible entities described in subparagraph (A) to provide 9–1–1 services, E9–1–1 services, or Next Generation 9–1–1 services.*

*“(C) EXCEPTION.—The term ‘eligible entity’ does not include any entity that has failed to submit the most recently required certification under subsection (c) within 30 days after the date on which such certification is due.*

“(4) *EMERGENCY CALL.*—The term ‘emergency call’ refers to any real-time communication with a public safety answering point or other emergency management or response agency, including—

“(A) through voice, text, or video and related data; and

“(B) nonhuman-initiated automatic event alerts, such as alarms, telematics, or sensor data, which may also include real-time voice, text, or video communications.

“(5) *NEXT GENERATION 9-1-1 SERVICES.*—The term ‘Next Generation 9-1-1 services’ means an IP-based system comprised of hardware, software, data, and operational policies and procedures that—

“(A) provides standardized interfaces from emergency call and message services to support emergency communications;

“(B) processes all types of emergency calls, including voice, data, and multimedia information;

“(C) acquires and integrates additional emergency call data useful to call routing and handling;

“(D) delivers the emergency calls, messages, and data to the appropriate public safety answering point and other appropriate emergency entities;

“(E) supports data or video communications needs for coordinated incident response and management; and

“(F) provides broadband service to public safety answering points or other first responder entities.

“(6) *OFFICE.*—The term ‘Office’ means the 9-1-1 Implementation Coordination Office.

“(7) *PUBLIC SAFETY ANSWERING POINT.*—The term ‘public safety answering point’ has the meaning given the term in section 222 of the Communications Act of 1934 (47 U.S.C. 222).

“(8) *STATE.*—The term ‘State’ means any State of the United States, the District of Columbia, Puerto Rico, American Samoa, Guam, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession of the United States.”.

#### **SEC. 6504. REQUIREMENTS FOR MULTI-LINE TELEPHONE SYSTEMS.**

(a) *IN GENERAL.*—Not later than 270 days after the date of the enactment of this Act, the Administrator of General Services, in conjunction with the Office, shall issue a report to Congress identifying the 9-1-1 capabilities of the multi-line telephone system in use by all Federal agencies in all Federal buildings and properties.

(b) *COMMISSION ACTION.*—

(1) *IN GENERAL.*—Not later than 90 days after the date of the enactment of this Act, the Commission shall issue a public notice seeking comment on the feasibility of MLTS manufacturers including within all such systems manufactured or sold after a date certain, to be determined by the Commission, one or more mechanisms to provide a sufficiently precise indication of a 9-1-1 caller’s location, while avoiding the imposition of undue burdens on MLTS manufacturers, providers, and operators.

(2) *SPECIFIC REQUIREMENT.*—The public notice under paragraph (1) shall seek comment on the National Emergency Number Association’s “Technical Requirements Document On Model

*Legislation E9-1-1 for Multi-Line Telephone Systems” (NENA 06-750, Version 2).*

**SEC. 6505. GAO STUDY OF STATE AND LOCAL USE OF 9-1-1 SERVICE CHARGES.**

(a) *IN GENERAL.*—Not later than 60 days after the date of the enactment of this Act, the Comptroller General of the United States shall initiate a study of—

(1) *the imposition of taxes, fees, or other charges imposed by States or political subdivisions of States that are designated or presented as dedicated to improve emergency communications services, including 9-1-1 services or enhanced 9-1-1 services, or related to emergency communications services operations or improvements; and*

(2) *the use of revenues derived from such taxes, fees, or charges.*

(b) *REPORT.*—Not later than 18 months after initiating the study required by subsection (a), the Comptroller General shall prepare and submit a report on the results of the study to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives setting forth the findings, conclusions, and recommendations, if any, of the study, including—

(1) *the identity of each State or political subdivision that imposes such taxes, fees, or other charges; and*

(2) *the amount of revenues obligated or expended by that State or political subdivision for any purpose other than the purposes for which such taxes, fees, or charges were designated or presented.*

**SEC. 6506. PARITY OF PROTECTION FOR PROVISION OR USE OF NEXT GENERATION 9-1-1 SERVICES.**

(a) *IMMUNITY.*—A provider or user of Next Generation 9-1-1 services, a public safety answering point, and the officers, directors, employees, vendors, agents, and authorizing government entity (if any) of such provider, user, or public safety answering point, shall have immunity and protection from liability under Federal and State law to the extent provided in subsection (b) with respect to—

(1) *the release of subscriber information related to emergency calls or emergency services;*

(2) *the use or provision of 9-1-1 services, E9-1-1 services, or Next Generation 9-1-1 services; and*

(3) *other matters related to 9-1-1 services, E9-1-1 services, or Next Generation 9-1-1 services.*

(b) *SCOPE OF IMMUNITY AND PROTECTION FROM LIABILITY.*—The scope and extent of the immunity and protection from liability afforded under subsection (a) shall be the same as that provided under section 4 of the Wireless Communications and Public Safety Act of 1999 (47 U.S.C. 615a) to wireless carriers, public safety answering points, and users of wireless 9-1-1 service (as defined in paragraphs (4), (3), and (6), respectively, of section 6 of that Act (47 U.S.C. 615b)) with respect to such release, use, and other matters.

**SEC. 6507. COMMISSION PROCEEDING ON AUTODIALING.**

(a) *IN GENERAL.*—Not later than 90 days after the date of the enactment of this Act, the Commission shall initiate a proceeding to

create a specialized Do-Not-Call registry for public safety answering points.

(b) *FEATURES OF THE REGISTRY.*—The Commission shall issue regulations, after providing the public with notice and an opportunity to comment, that—

(1) permit verified public safety answering point administrators or managers to register the telephone numbers of all 9–1–1 trunks and other lines used for the provision of emergency services to the public or for communications between public safety agencies;

(2) provide a process for verifying, no less frequently than once every 7 years, that registered numbers should continue to appear upon the registry;

(3) provide a process for granting and tracking access to the registry by the operators of automatic dialing equipment;

(4) protect the list of registered numbers from disclosure or dissemination by parties granted access to the registry; and

(5) prohibit the use of automatic dialing or “robocall” equipment to establish contact with registered numbers.

(c) *ENFORCEMENT.*—The Commission shall—

(1) establish monetary penalties for violations of the protective regulations established pursuant to subsection (b)(4) of not less than \$100,000 per incident nor more than \$1,000,000 per incident;

(2) establish monetary penalties for violations of the prohibition on automatically dialing registered numbers established pursuant to subsection (b)(5) of not less than \$10,000 per call nor more than \$100,000 per call; and

(3) provide for the imposition of fines under paragraphs (1) or (2) that vary depending upon whether the conduct leading to the violation was negligent, grossly negligent, reckless, or willful, and depending on whether the violation was a first or subsequent offence.

**SEC. 6508. REPORT ON COSTS FOR REQUIREMENTS AND SPECIFICATIONS OF NEXT GENERATION 9–1–1 SERVICES.**

(a) *IN GENERAL.*—Not later than 1 year after the date of the enactment of this Act, the Office, in consultation with the Administrator of the National Highway Traffic Safety Administration, the Commission, and the Secretary of Homeland Security, shall prepare and submit a report to Congress that analyzes and determines detailed costs for specific Next Generation 9–1–1 service requirements and specifications.

(b) *PURPOSE OF REPORT.*—The purpose of the report required under subsection (a) is to serve as a resource for Congress as it considers creating a coordinated, long-term funding mechanism for the deployment and operation, accessibility, application development, equipment procurement, and training of personnel for Next Generation 9–1–1 services.

(c) *REQUIRED INCLUSIONS.*—The report required under subsection (a) shall include the following:

(1) How costs would be broken out geographically and allocated among public safety answering points, broadband service providers, and third-party providers of Next Generation 9–1–1 services.

(2) *An assessment of the current state of Next Generation 9–1–1 service readiness among public safety answering points.*

(3) *How differences in public safety answering points’ access to broadband across the United States may affect costs.*

(4) *A technical analysis and cost study of different delivery platforms, such as wireline, wireless, and satellite.*

(5) *An assessment of the architectural characteristics, feasibility, and limitations of Next Generation 9–1–1 service delivery.*

(6) *An analysis of the needs for Next Generation 9–1–1 services of persons with disabilities.*

(7) *Standards and protocols for Next Generation 9–1–1 services and for incorporating Voice over Internet Protocol and “Real-Time Text” standards.*

**SEC. 6509. COMMISSION RECOMMENDATIONS FOR LEGAL AND STATUTORY FRAMEWORK FOR NEXT GENERATION 9–1–1 SERVICES.**

*Not later than 1 year after the date of the enactment of this Act, the Commission, in coordination with the Secretary of Homeland Security, the Administrator of the National Highway Traffic Safety Administration, and the Office, shall prepare and submit a report to Congress that contains recommendations for the legal and statutory framework for Next Generation 9–1–1 services, consistent with recommendations in the National Broadband Plan developed by the Commission pursuant to the American Recovery and Reinvestment Act of 2009, including the following:*

(1) *A legal and regulatory framework for the development of Next Generation 9–1–1 services and the transition from legacy 9–1–1 to Next Generation 9–1–1 networks.*

(2) *Legal mechanisms to ensure efficient and accurate transmission of 9–1–1 caller information to emergency response agencies.*

(3) *Recommendations for removing jurisdictional barriers and inconsistent legacy regulations including—*

(A) *proposals that would require States to remove regulatory roadblocks to Next Generation 9–1–1 services development, while recognizing existing State authority over 9–1–1 services;*

(B) *eliminating outdated 9–1–1 regulations at the Federal level; and*

(C) *preempting inconsistent State regulations.*

**Subtitle F—Telecommunications Development Fund**

**SEC. 6601. NO ADDITIONAL FEDERAL FUNDS.**

*Section 309(j)(8)(C)(iii) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(C)(iii)) is amended to read as follows:*

*“(iii) the interest accrued to the account shall be deposited in the general fund of the Treasury, where such amount shall be dedicated for the sole purpose of deficit reduction.”.*

**SEC. 6602. INDEPENDENCE OF THE FUND.**

*Section 714 of the Communications Act of 1934 (47 U.S.C. 614) is amended—*

(1) *by striking subsection (c) and inserting the following:*

“(c) **INDEPENDENT BOARD OF DIRECTORS.**—*The Fund shall have a Board of Directors consisting of 5 people with experience in areas including finance, investment banking, government banking, communications law and administrative practice, and public policy. The Board of Directors shall select annually a Chair from among the directors. A nominating committee, comprised of the Chair and 2 other directors selected by the Chair, shall appoint additional directors. The Fund’s bylaws shall regulate the other aspects of the Board of Directors, including provisions relating to meetings, quorums, committees, and other matters, all as typically contained in the bylaws of a similar private investment fund.*”;

(2) in subsection (d)—

(A) by striking “(after consultation with the Commission and the Secretary of the Treasury)”;

(B) by striking paragraph (1); and

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

(3) in subsection (g), by striking “subsection (d)(2)” and inserting “subsection (d)(1)”.

### **Subtitle G—Federal Spectrum Relocation**

#### **SEC. 6701. RELOCATION OF AND SPECTRUM SHARING BY FEDERAL GOVERNMENT STATIONS.**

(a) **IN GENERAL.**—Section 113 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 923) is amended—

(1) in subsection (g)—

(A) by striking the heading and inserting “**RELOCATION OF AND SPECTRUM SHARING BY FEDERAL GOVERNMENT STATIONS.**—”;

(B) by amending paragraph (1) to read as follows:

“(1) **ELIGIBLE FEDERAL ENTITIES.**—Any Federal entity that operates a Federal Government station authorized to use a band of eligible frequencies described in paragraph (2) and that incurs relocation or sharing costs because of planning for an auction of spectrum frequencies or the reallocation of spectrum frequencies from Federal use to exclusive non-Federal use or to shared use shall receive payment for such relocation or sharing costs from the Spectrum Relocation Fund, in accordance with this section and section 118. For purposes of this paragraph, Federal power agencies exempted under subsection (c)(4) that choose to relocate from the frequencies identified for reallocation pursuant to subsection (a) are eligible to receive payment under this paragraph.”;

(C) by amending paragraph (2)(B) to read as follows:

“(B) any other band of frequencies reallocated from Federal use to non-Federal use or to shared use after January 1, 2003, that is assigned by competitive bidding pursuant to section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)).”;

(D) by amending paragraph (3) to read as follows:

“(3) **RELOCATION OR SHARING COSTS DEFINED.**—

“(A) **IN GENERAL.**—For purposes of this section and section 118, the term ‘relocation or sharing costs’ means the costs incurred by a Federal entity in connection with the

*auction of spectrum frequencies previously assigned to such entity or the sharing of spectrum frequencies assigned to such entity (including the auction or a planned auction of the rights to use spectrum frequencies on a shared basis with such entity) in order to achieve comparable capability of systems as before the relocation or sharing arrangement. Such term includes, with respect to relocation or sharing, as the case may be—*

*“(i) the costs of any modification or replacement of equipment, spares, associated ancillary equipment, software, facilities, operating manuals, training, or compliance with regulations that are attributable to relocation or sharing;*

*“(ii) the costs of all engineering, equipment, software, site acquisition, and construction, as well as any legitimate and prudent transaction expense, including term-limited Federal civil servant and contractor staff necessary to carry out the relocation or sharing activities of a Federal entity, and reasonable additional costs incurred by the Federal entity that are attributable to relocation or sharing, including increased recurring costs associated with the replacement of facilities;*

*“(iii) the costs of research, engineering studies, economic analyses, or other expenses reasonably incurred in connection with—*

*“(I) calculating the estimated relocation or sharing costs that are provided to the Commission pursuant to paragraph (4)(A);*

*“(II) determining the technical or operational feasibility of relocation to 1 or more potential relocation bands; or*

*“(III) planning for or managing a relocation or sharing arrangement (including spectrum coordination with auction winners);*

*“(iv) the one-time costs of any modification of equipment reasonably necessary—*

*“(I) to accommodate non-Federal use of shared frequencies; or*

*“(II) in the case of eligible frequencies reallocated for exclusive non-Federal use and assigned through a system of competitive bidding under section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) but with respect to which a Federal entity retains primary allocation or protected status for a period of time after the completion of the competitive bidding process, to accommodate shared Federal and non-Federal use of such frequencies for such period; and*

*“(v) the costs associated with the accelerated replacement of systems and equipment if the acceleration is necessary to ensure the timely relocation of systems to a new frequency assignment or the timely accommodation of sharing of Federal frequencies.*



“(B) COMPARABLE CAPABILITY OF SYSTEMS.—For purposes of subparagraph (A), comparable capability of systems—

“(i) may be achieved by relocating a Federal Government station to a new frequency assignment, by relocating a Federal Government station to a different geographic location, by modifying Federal Government equipment to mitigate interference or use less spectrum, in terms of bandwidth, geography, or time, and thereby permitting spectrum sharing (including sharing among relocated Federal entities and incumbents to make spectrum available for non-Federal use) or relocation, or by utilizing an alternative technology; and

“(ii) includes the acquisition of state-of-the-art replacement systems intended to meet comparable operational scope, which may include incidental increases in functionality.”;

(E) in paragraph (4)—

(i) in the heading, by striking “RELOCATIONS COSTS” and inserting “RELOCATION OR SHARING COSTS”;

(ii) by striking “relocation costs” each place it appears and inserting “relocation or sharing costs”; and

(iii) in subparagraph (A), by inserting “or sharing” after “such relocation”;

(F) in paragraph (5)—

(i) by striking “relocation costs” and inserting “relocation or sharing costs”; and

(ii) by inserting “or sharing” after “for relocation”; and

(G) by amending paragraph (6) to read as follows:

“(6) IMPLEMENTATION OF PROCEDURES.—The NTIA shall take such actions as necessary to ensure the timely relocation of Federal entities’ spectrum-related operations from frequencies described in paragraph (2) to frequencies or facilities of comparable capability and to ensure the timely implementation of arrangements for the sharing of frequencies described in such paragraph. Upon a finding by the NTIA that a Federal entity has achieved comparable capability of systems, the NTIA shall terminate or limit the entity’s authorization and notify the Commission that the entity’s relocation has been completed or sharing arrangement has been implemented. The NTIA shall also terminate such entity’s authorization if the NTIA determines that the entity has unreasonably failed to comply with the timeline for relocation or sharing submitted by the Director of the Office of Management and Budget under section 118(d)(2)(C).”;

(2) by redesignating subsections (h) and (i) as subsections (k) and (l), respectively; and

(3) by inserting after subsection (g) the following:

“(h) DEVELOPMENT AND PUBLICATION OF RELOCATION OR SHARING TRANSITION PLANS.—

“(1) DEVELOPMENT OF TRANSITION PLAN BY FEDERAL ENTITY.—Not later than 240 days before the commencement of any auction of eligible frequencies described in subsection (g)(2), a

*Federal entity authorized to use any such frequency shall submit to the NTIA and to the Technical Panel established by paragraph (3) a transition plan for the implementation by such entity of the relocation or sharing arrangement. The NTIA shall specify, after public input, a common format for all Federal entities to follow in preparing transition plans under this paragraph.*

*“(2) CONTENTS OF TRANSITION PLAN.—The transition plan required by paragraph (1) shall include the following information:*

*“(A) The use by the Federal entity of the eligible frequencies to be auctioned, current as of the date of the submission of the plan.*

*“(B) The geographic location of the facilities or systems of the Federal entity that use such frequencies.*

*“(C) The frequency bands used by such facilities or systems, described by geographic location.*

*“(D) The steps to be taken by the Federal entity to relocate its spectrum use from such frequencies or to share such frequencies, including timelines for specific geographic locations in sufficient detail to indicate when use of such frequencies at such locations will be discontinued by the Federal entity or shared between the Federal entity and non-Federal users.*

*“(E) The specific interactions between the eligible Federal entity and the NTIA needed to implement the transition plan.*

*“(F) The name of the officer or employee of the Federal entity who is responsible for the relocation or sharing efforts of the entity and who is authorized to meet and negotiate with non-Federal users regarding the transition.*

*“(G) The plans and timelines of the Federal entity for—*

*“(i) using funds received from the Spectrum Relocation Fund established by section 118;*

*“(ii) procuring new equipment and additional personnel needed for relocation or sharing;*

*“(iii) field-testing and deploying new equipment needed for relocation or sharing; and*

*“(iv) hiring and relying on contract personnel, if any, needed for relocation or sharing.*

*“(H) Factors that could hinder fulfillment of the transition plan by the Federal entity.*

*“(3) TECHNICAL PANEL.—*

*“(A) ESTABLISHMENT.—There is established within the NTIA a panel to be known as the Technical Panel.*

*“(B) MEMBERSHIP.—*

*“(i) NUMBER AND APPOINTMENT.—The Technical Panel shall be composed of 3 members, to be appointed as follows:*

*“(I) One member to be appointed by the Director of the Office of Management and Budget (in this subsection referred to as ‘OMB’).*

*“(II) One member to be appointed by the Assistant Secretary.*

*“(III) One member to be appointed by the Chairman of the Commission.*

*“(ii) QUALIFICATIONS.—Each member of the Technical Panel shall be a radio engineer or a technical expert.*

*“(iii) INITIAL APPOINTMENT.—The initial members of the Technical Panel shall be appointed not later than 180 days after the date of the enactment of the Middle Class Tax Relief and Job Creation Act of 2012.*

*“(iv) TERMS.—The term of a member of the Technical Panel shall be 18 months, and no individual may serve more than 1 consecutive term.*

*“(v) VACANCIES.—Any member appointed to fill a vacancy occurring before 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 taken office. A vacancy shall be filled in the manner in which the original appointment was made.*

*“(vi) NO COMPENSATION.—The members of the Technical Panel shall not receive any compensation for service on the Technical Panel. If any such member is an employee of the agency of the official that appointed such member to the Technical Panel, compensation in the member’s capacity as such an employee shall not be considered compensation under this clause.*

*“(C) ADMINISTRATIVE SUPPORT.—The NTIA shall provide the Technical Panel with the administrative support services necessary to carry out its duties under this subsection and subsection (i).*

*“(D) REGULATIONS.—Not later than 180 days after the date of the enactment of the Middle Class Tax Relief and Job Creation Act of 2012, the NTIA shall, after public notice and comment and subject to approval by the Director of OMB, adopt regulations to govern the workings of the Technical Panel.*

*“(E) CERTAIN REQUIREMENTS INAPPLICABLE.—The Federal Advisory Committee Act (5 U.S.C. App.) and sections 552 and 552b of title 5, United States Code, shall not apply to the Technical Panel.*

*“(4) REVIEW OF PLAN BY TECHNICAL PANEL.—*

*“(A) IN GENERAL.—Not later than 30 days after the submission of the plan under paragraph (1), the Technical Panel shall submit to the NTIA and to the Federal entity a report on the sufficiency of the plan, including whether the plan includes the information required by paragraph (2) and an assessment of the reasonableness of the proposed timelines and estimated relocation or sharing costs, including the costs of any proposed expansion of the capabilities of a Federal system in connection with relocation or sharing.*

*“(B) INSUFFICIENCY OF PLAN.—If the Technical Panel finds the plan insufficient, the Federal entity shall, not later than 90 days after the submission of the report by the*

*Technical panel under subparagraph (A), submit to the Technical Panel a revised plan. Such revised plan shall be treated as a plan submitted under paragraph (1).*

*“(5) PUBLICATION OF TRANSITION PLAN.—Not later than 120 days before the commencement of the auction described in paragraph (1), the NTIA shall make the transition plan publicly available on its website.*

*“(6) UPDATES OF TRANSITION PLAN.—As the Federal entity implements the transition plan, it shall periodically update the plan to reflect any changed circumstances, including changes in estimated relocation or sharing costs or the timeline for relocation or sharing. The NTIA shall make the updates available on its website.*

*“(7) CLASSIFIED AND OTHER SENSITIVE INFORMATION.—*

*“(A) CLASSIFIED INFORMATION.—If any of the information required to be included in the transition plan of a Federal entity is classified information (as defined in section 798(b) of title 18, United States Code), the entity shall—*

*“(i) include in the plan—*

*“(I) an explanation of the exclusion of any such information, which shall be as specific as possible; and*

*“(II) all relevant non-classified information that is available; and*

*“(ii) discuss as a factor under paragraph (2)(H) the extent of the classified information and the effect of such information on the implementation of the relocation or sharing arrangement.*

*“(B) REGULATIONS.—Not later than 180 days after the date of the enactment of the Middle Class Tax Relief and Job Creation Act of 2012, the NTIA, in consultation with the Director of OMB and the Secretary of Defense, shall adopt regulations to ensure that the information publicly released under paragraph (5) or (6) does not contain classified information or other sensitive information.*

*“(i) DISPUTE RESOLUTION PROCESS.—*

*“(1) IN GENERAL.—If a dispute arises between a Federal entity and a non-Federal user regarding the execution, timing, or cost of the transition plan submitted by the Federal entity under subsection (h)(1), the Federal entity or the non-Federal user may request that the NTIA establish a dispute resolution board to resolve the dispute.*

*“(2) ESTABLISHMENT OF BOARD.—*

*“(A) IN GENERAL.—If the NTIA receives a request under paragraph (1), it shall establish a dispute resolution board.*

*“(B) MEMBERSHIP AND APPOINTMENT.—The dispute resolution board shall be composed of 3 members, as follows:*

*“(i) A representative of the Office of Management and Budget (in this subsection referred to as ‘OMB’), to be appointed by the Director of OMB.*

*“(ii) A representative of the NTIA, to be appointed by the Assistant Secretary.*

*“(iii) A representative of the Commission, to be appointed by the Chairman of the Commission.*

*“(C) CHAIR.—The representative of OMB shall be the Chair of the dispute resolution board.”*

*“(D) VACANCIES.—Any vacancy in the dispute resolution board shall be filled in the manner in which the original appointment was made.”*

*“(E) NO COMPENSATION.—The members of the dispute resolution board shall not receive any compensation for service on the board. If any such member is an employee of the agency of the official that appointed such member to the board, compensation in the member’s capacity as such an employee shall not be considered compensation under this subparagraph.”*

*“(F) TERMINATION OF BOARD.—The dispute resolution board shall be terminated after it rules on the dispute that it was established to resolve and the time for appeal of its decision under paragraph (7) has expired, unless an appeal has been taken under such paragraph. If such an appeal has been taken, the board shall continue to exist until the appeal process has been exhausted and the board has completed any action required by a court hearing the appeal.”*

*“(3) PROCEDURES.—The dispute resolution board shall meet simultaneously with representatives of the Federal entity and the non-Federal user to discuss the dispute. The dispute resolution board may require the parties to make written submissions to it.”*

*“(4) DEADLINE FOR DECISION.—The dispute resolution board shall rule on the dispute not later than 30 days after the request was made to the NTIA under paragraph (1).”*

*“(5) ASSISTANCE FROM TECHNICAL PANEL.—The Technical Panel established under subsection (h)(3) shall provide the dispute resolution board with such technical assistance as the board requests.”*

*“(6) ADMINISTRATIVE SUPPORT.—The NTIA shall provide the dispute resolution board with the administrative support services necessary to carry out its duties under this subsection.”*

*“(7) APPEALS.—A decision of the dispute resolution board may be appealed to the United States Court of Appeals for the District of Columbia Circuit by filing a notice of appeal with that court not later than 30 days after the date of such decision. Each party shall bear its own costs and expenses, including attorneys’ fees, for any appeal under this paragraph.”*

*“(8) REGULATIONS.—Not later than 180 days after the date of the enactment of the Middle Class Tax Relief and Job Creation Act of 2012, the NTIA shall, after public notice and comment and subject to approval by OMB, adopt regulations to govern the working of any dispute resolution boards established under paragraph (2)(A) and the role of the Technical Panel in assisting any such board.”*

*“(9) CERTAIN REQUIREMENTS INAPPLICABLE.—The Federal Advisory Committee Act (5 U.S.C. App.) and sections 552 and 552b of title 5, United States Code, shall not apply to a dispute resolution board established under paragraph (2)(A).”*

*“(j) RELOCATION PRIORITIZED OVER SHARING.—*

*“(1) IN GENERAL.—In evaluating a band of frequencies for possible reallocation for exclusive non-Federal use or shared*

*use, the NTIA shall give priority to options involving reallocation of the band for exclusive non-Federal use and shall choose options involving shared use only when it determines, in consultation with the Director of the Office of Management and Budget, that relocation of a Federal entity from the band is not feasible because of technical or cost constraints.*

*“(2) NOTIFICATION OF CONGRESS WHEN SHARING CHOSEN.—If the NTIA determines under paragraph (1) that relocation of a Federal entity from the band is not feasible, the NTIA shall notify the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives of the determination, including the specific technical or cost constraints on which the determination is based.”.*

*(b) CONFORMING AMENDMENT.—Section 309(j) of the Communications Act of 1934 is further amended by striking “relocation costs” each place it appears and inserting “relocation or sharing costs”.*

**SEC. 6702. SPECTRUM RELOCATION FUND.**

*Section 118 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 928) is amended—*

*(1) by striking “relocation costs” each place it appears and inserting “relocation or sharing costs”;*

*(2) by amending subsection (c) to read as follows:*

*“(c) USE OF FUNDS.—The amounts in the Fund from auctions of eligible frequencies are authorized to be used to pay relocation or sharing costs of an eligible Federal entity incurring such costs with respect to relocation from or sharing of those frequencies.”;*

*(3) in subsection (d)—*

*(A) in paragraph (2)—*

*(i) in subparagraph (A), by inserting “or sharing” before the semicolon;*

*(ii) in subparagraph (B), by inserting “or sharing” before the period at the end;*

*(iii) by redesignating subparagraphs (A) and (B) as subparagraphs (B) and (C), respectively; and*

*(iv) by inserting before subparagraph (B), as so redesignated, the following:*

*“(A) unless the eligible Federal entity has submitted a transition plan to the NTIA as required by paragraph (1) of section 113(h), the Technical Panel has found such plan sufficient under paragraph (4) of such section, and the NTIA has made available such plan on its website as required by paragraph (5) of such section;”;*

*(B) by striking paragraph (3); and*

*(C) by adding at the end the following:*

*“(3) TRANSFERS FOR PRE-AUCTION COSTS.—*

*“(A) IN GENERAL.—Subject to subparagraph (B), the Director of OMB may transfer to an eligible Federal entity, at any time (including prior to a scheduled auction), such sums as may be available in the Fund to pay relocation or sharing costs related to pre-auction estimates or research, as such costs are described in section 113(g)(3)(A)(iii).*

*“(B) NOTIFICATION.—No funds may be transferred pursuant to subparagraph (A) unless—*

“(i) the notification provided under paragraph (2)(C) includes a certification from the Director of OMB that—

“(I) funds transferred before an auction will likely allow for timely implementation of relocation or sharing, thereby increasing net expected auction proceeds by an amount not less than the time value of the amount of funds transferred; and

“(II) the auction is intended to occur not later than 5 years after transfer of funds; and

“(ii) the transition plan submitted by the eligible Federal entity under section 113(h)(1) provides—

“(I) to the fullest extent possible, for sharing and coordination of eligible frequencies with non-Federal users, including reasonable accommodation by the eligible Federal entity for the use of eligible frequencies by non-Federal users during the period that the entity is relocating its spectrum uses (in this clause referred to as the ‘transition period’);

“(II) for non-Federal users to be able to use eligible frequencies during the transition period in geographic areas where the eligible Federal entity does not use such frequencies;

“(III) that the eligible Federal entity will, during the transition period, make itself available for negotiation and discussion with non-Federal users not later than 30 days after a written request therefor; and

“(IV) that the eligible Federal entity will, during the transition period, make available to a non-Federal user with appropriate security clearances any classified information (as defined in section 798(b) of title 18, United States Code) regarding the relocation process, on a need-to-know basis, to assist the non-Federal user in the relocation process with such eligible Federal entity or other eligible Federal entities.

“(C) APPLICABILITY TO CERTAIN COSTS.—

“(i) IN GENERAL.—The Director of OMB may transfer under subparagraph (A) not more than \$10,000,000 for costs incurred after June 28, 2010, but before the date of the enactment of the Middle Class Tax Relief and Job Creation Act of 2012.

“(ii) SUPPLEMENT NOT SUPPLANT.—Any amounts transferred by the Director of OMB pursuant to clause (i) shall be in addition to any amounts that the Director of OMB may transfer for costs incurred on or after the date of the enactment of the Middle Class Tax Relief and Job Creation Act of 2012.

“(4) REVERSION OF UNUSED FUNDS.—Any amounts in the Fund that are remaining after the payment of the relocation or sharing costs that are payable from the Fund shall revert to and be deposited in the general fund of the Treasury, for the sole purpose of deficit reduction, not later than 8 years after the

date of the deposit of such proceeds to the Fund, unless within 60 days in advance of the reversion of such funds, the Director of OMB, in consultation with the NTIA, notifies the congressional committees described in paragraph (2)(C) that such funds are needed to complete or to implement current or future relocation or sharing arrangements.”;

(4) in subsection (e)—

(A) in paragraph (1)(B)—

(i) in clause (i), by striking “subsection (d)(2)(A)” and inserting “subsection (d)(2)(B)”; and

(ii) in clause (ii), by striking “subsection (d)(2)(B)” and inserting “subsection (d)(2)(C)”; and

(B) in paragraph (2)—

(i) by striking “entity’s relocation” and inserting “relocation of the entity or implementation of the sharing arrangement by the entity”;

(ii) by inserting “or the implementation of such arrangement” after “such relocation”; and

(iii) by striking “subsection (d)(2)(A)” and inserting “subsection (d)(2)(B)”; and

(5) by adding at the end the following:

“(f) **ADDITIONAL PAYMENTS FROM FUND.**—

“(1) **AMOUNTS AVAILABLE.**—Notwithstanding subsections (c) through (e), after the date of the enactment of the Middle Class Tax Relief and Job Creation Act of 2012, there are appropriated from the Fund and available to the Director of OMB for use in accordance with paragraph (2) not more than 10 percent of the amounts deposited in the Fund from auctions occurring after such date of enactment of licenses for the use of spectrum vacated by eligible Federal entities.

“(2) **USE OF AMOUNTS.**—

“(A) **IN GENERAL.**—The Director of OMB, in consultation with the NTIA, may use amounts made available under paragraph (1) to make payments to eligible Federal entities that are implementing a transition plan submitted under section 113(h)(1) in order to encourage such entities to complete the implementation more quickly, thereby encouraging timely access to the eligible frequencies that are being reallocated for exclusive non-Federal use or shared use.

“(B) **CONDITIONS.**—In the case of any payment by the Director of OMB under subparagraph (A)—

“(i) such payment shall be based on the market value of the eligible frequencies, the timeliness with which the eligible Federal entity clears its use of such frequencies, and the need for such frequencies in order for the entity to conduct its essential missions;

“(ii) the eligible Federal entity shall use such payment for the purposes specified in clauses (i) through (v) of section 113(g)(3)(A) to achieve comparable capability of systems affected by the reallocation of eligible frequencies from Federal use to exclusive non-Federal use or to shared use;

“(iii) such payment may not be made if the amount remaining in the Fund after such payment will be less



than 10 percent of the winning bids in the auction of the spectrum with respect to which the Federal entity is incurring relocation or sharing costs; and

“(iv) such payment may not be made until 30 days after the Director of OMB has notified the congressional committees described in subsection (d)(2)(C).

“(g) **RESTRICTION ON USE OF FUNDS.**—No amounts in the Fund on the day before the date of the enactment of the Middle Class Tax Relief and Job Creation Act of 2012 may be used for any purpose except—

“(1) to pay the relocation or sharing costs incurred by eligible Federal entities in order to relocate from the frequencies the auction of which generated such amounts; or

“(2) to pay relocation or sharing costs related to pre-auction estimates or research, in accordance with subsection (d)(3).”.

**SEC. 6703. NATIONAL SECURITY AND OTHER SENSITIVE INFORMATION.**

Part B of title I of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 921 et seq.) is amended by adding at the end the following:

**“SEC. 119. NATIONAL SECURITY AND OTHER SENSITIVE INFORMATION.**

“(a) **DETERMINATION.**—If the head of an Executive agency (as defined in section 105 of title 5, United States Code) determines that public disclosure of any information contained in a notification or report required by section 113 or 118 would reveal classified national security information, or other information for which there is a legal basis for nondisclosure and the public disclosure of which would be detrimental to national security, homeland security, or public safety or would jeopardize a law enforcement investigation, the head of the Executive agency shall notify the Assistant Secretary of that determination prior to the release of such information.

“(b) **INCLUSION IN ANNEX.**—The head of the Executive agency shall place the information with respect to which a determination was made under subsection (a) in a separate annex to the notification or report required by section 113 or 118. The annex shall be provided to the subcommittee of primary jurisdiction of the congressional committee of primary jurisdiction in accordance with appropriate national security stipulations but shall not be disclosed to the public or provided to any unauthorized person through any means.”.

**TITLE VII—MISCELLANEOUS PROVISIONS**

**SEC. 7001. REPEAL OF CERTAIN SHIFTS IN THE TIMING OF CORPORATE ESTIMATED TAX PAYMENTS.**

The following provisions of law (and any modification of any such provision which is contained in any other provision of law) shall not apply with respect to any installment of corporate estimated tax:

(1) Section 201(b) of the Corporate Estimated Tax Shift Act of 2009.

(2) Section 561 of the Hiring Incentives to Restore Employment Act.

(3) Section 505 of the United States-Korea Free Trade Agreement Implementation Act.

(4) *Section 603 of the United States-Colombia Trade Promotion Agreement Implementation Act.*

(5) *Section 502 of the United State-Panama Trade Promotion Agreement Implementation Act.*

**SEC. 7002. REPEAL OF REQUIREMENT RELATING TO TIME FOR REMITTING CERTAIN MERCHANDISE PROCESSING FEES.**

(a) *REPEAL.*—*The Trade Adjustment Assistance Extension Act of 2011 (title II of Public Law 112–40; 125 Stat. 402) is amended by striking section 263.*

(b) *CLERICAL AMENDMENT.*—*The table of contents for such Act is amended by striking the item relating to section 263.*

**SEC. 7003. TREATMENT FOR PAYGO PURPOSES.**

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

And the Senate agree to the same.

That the Senate recede from its amendment to the title of the bill.

DAVE CAMP,  
FRED UPTON,  
KEVIN BRADY,  
GREG WALDEN,  
TOM PRICE,  
TOM REED,  
RENEE L. ELLMERS,  
NAN A.S. HAYWORTH,  
SANDER M. LEVIN,  
XAVIER BECERRA,  
CHRIS VAN HOLLEN,  
ALLYSON Y. SCHWARTZ,  
HENRY A. WAXMAN,

*Managers on the Part of the House.*

MAX BAUCUS,  
JACK REED,  
BENJAMIN L. CARDIN,  
ROBERT P. CASEY, Jr.,

*Managers on the Part of the Senate.*

## JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3630), to provide incentives for the creation of jobs, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate to the text with an amendment that is a substitute for the House bill and the Senate amendment. The Senate recedes from its amendment to the title. The committee of the conference met on February 16, 2012 (the House chairing) and resolved their differences. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

### TITLE

#### *House bill*

“Middle Class Tax Relief and Job Creation Act of 2011”

#### *Senate bill*

“Temporary Payroll Tax Cut Continuation Act of 2011”

#### *Conference substitute*

“Middle Class Tax Relief and Job Creation Act of 2012”

### TITLE I—JOB CREATION INCENTIVES

#### SUBTITLE B—EPA REGULATORY RELIEF

H1102,1103,1104,1105/S—

#### *Current law*

Section 112 of the Clean Air Act (42 U.S.C. 7412) requires the Environmental Protection Agency (EPA) to promulgate Maximum Achievable Control Technology (MACT) standards for “major” sources of emissions of 187 hazardous air pollutants (HAPs) and Generally Available Control Technology (GACT) standards for smaller (“area”) sources of HAP emissions. Section 129 of the act (42 U.S.C. 7429) requires EPA to promulgate MACT standards for solid waste combustion units. Under the act, existing boilers would

be required to comply with the applicable emission standards within 3 years of the effective date of promulgated regulations, with a possibility of a one-year extension for individual sources if necessary for the installation of controls. Existing solid waste incinerators would be required to meet the standards no later than 5 years after promulgation. On March 21, 2011, EPA finalized four related rules applicable to boilers and commercial and industrial solid waste incinerator (CISWI) units. Three rules established applicable MACT and GACT standards for boilers and MACT standards for CISWI units. The fourth rule (established under authority of the Resource Conservation and Recovery Act) clarified when materials used as fuel in a combustion unit would be defined as “solid waste” (a definition necessary to determine whether a combustion unit would be subject to the CISWI standards rather than the less stringent standards for boilers). EPA stayed the effective date of its major sources and CISWI emission standards pending reconsideration. EPA expects to complete the reconsideration by April 2012. On January 9, 2012, a district court vacated EPA’s stay of the major sources and CISWI rules.

*House bill*

Sections 1102–1105 apply to EPA’s four March 2011 rules. Each rule would be revoked and EPA required to promulgate new standards 15 months after the date of enactment (Section 1102). In establishing the relevant emission standards, the Administrator would be required to choose the “least burdensome” regulatory alternatives. Further, EPA would be required to establish standards that can be met under actual operating conditions consistently and concurrently with other standards (Section 1105). The compliance date for the air emission standards would be no earlier than 5 years after the date of the new regulation and could take feasibility, cost, and other factors into account in setting the compliance date (Section 1103). In promulgating new rules defining materials that are solid waste when used as a fuel, EPA would be required to adopt the definition of terms promulgated by the agency in a December 2000 CISWI rule (Section 1104).

*Senate bill*

No provision.

*Conference substitute*

No provision.

## TITLE II—EXTENSION OF CERTAIN EXPIRING PROVISIONS AND RELATED MEASURES

### SUBTITLE B—UNEMPLOYMENT COMPENSATION

#### PART 1—REFORMS OF UNEMPLOYMENT COMPENSATION TO PROMOTE WORK AND JOB CREATION

H2121,2122,2123,2124,2125,2126,2127/S—

#### *Current law*

Federal unemployment law does not contain explicit job search requirements for the receipt of regular state unemployment compensation (UC). Through interpretation of the framework of the Federal unemployment laws contained within the Social Security Act (SSA) and in the Federal Unemployment Tax Act (FUTA), it is generally understood that workers must have lost their jobs through no fault of their own and must be able, available, and willing to work. Variations exist in state law requirements concerning ability and availability to work. All states have work search requirements in state law or regulation in order for an individual to receive regular UC benefits. Most state laws require evidence of ability to work through the filing of claims and registration for work at a public employment office. Availability for work is often translated to mean being ready, willing, and able to work. Meeting the requirement of registration for work at a public employment office may be considered as evidence of availability in some states. There are often particular requirements and/or exceptions for those workers on temporary layoff and for workers that find employment through union hiring halls. Section 202(c)(A)(ii) of the Federal-State Extended Unemployment Compensation Act of 1970 (P.L. 97-373), as amended, does explicitly require active job search. However, the method of determining active job search is left to the determination of the States.

Federal law does not require minimum educational standards as a condition of benefit receipt. Section 303(a)(10) of the SSA requires any claimant who has been referred to reemployment services pursuant to the profiling system under Section 303(j)(1)(B) to participate in such services or in similar services unless the state agency charged with the administration of the state law determines (1) such claimant has completed such services; or (2) there is justifiable cause for such claimant's failure to participate in such services. Section 303(j) requires the state use a system of profiling all new claimants for regular compensation. The profiling system must: (1) identify which claimants will be likely to exhaust regular compensation and will need job search assistance services to make a successful transition to new employment; and (2) refer the identified claimants to reemployment services (including job search assistance services) that are available under any state or Federal law. Section 3304(a)(8) of the Internal Revenue Code (IRC) requires, as a condition for employers in a state to receive normal credit against the Federal tax, that a state's unemployment benefits laws provide that compensation shall not be denied to an individual for any week because he is in training with the approval of the state agency (or because of the application, to any such week

in training, of state law provisions relating to availability for work, active search for work, or refusal to accept work). A recent Training and Employment Guidance Letter (TEGL) No. 21-08, among other items, strongly encouraged states to broaden their definition of approved training for UC beneficiaries during economic downturns.

Section 3304(a)(4) of the IRC and Section 303(a)(5) of the SSA set the withdrawal standards for States to use funds within the State account in the Unemployment Trust Fund (UTF). All funds withdrawn from the unemployment fund of the state shall be used solely in the payment of unemployment compensation, exclusive of expenses of administration. Few exceptions exist; these include, for instance, withholding for tax purposes, for child support payments, to repay UI overpayments or covered unemployment compensation debt, and for benefits for the Self-Employment Assistance program and the Short-Time Compensation program. Section 303(a)(1) requires that the state UC program personnel be merit employees.

Section 3306(t) of the Federal Unemployment Tax Act (FUTA) defines the Self-Employment Assistance (SEA) program. Section 303(a)(5) of the Social Security Act permits the use of expenditures from the Unemployment Trust Fund (UTF) for SEA. The regular UC program generally requires unemployed workers to be actively seeking work and to be available for wage and salary jobs as a condition of eligibility for UC benefits. In states that have opted to create SEA programs under current law, SEA provides allowances in the same amount as regular UC benefits to individuals who (1) would otherwise be eligible for regular UC and (2) have been identified as likely to exhaust regular UC benefits. Under SEA a participating individual is not subject to worker search requirements so long as the individual is participating in entrepreneurial training or other activities.

Section 303(g)(1) of the Social Security Act and Section 3304(a)(4)(D) of the Internal Revenue Code (IRC) allow states but do not require states to offset UC payments by non-fraud overpayments. States may opt in state law to waive deductions if it would be contrary to equity and good conscience.

There are no specific federal laws or regulations related to uniform data elements for improved data matching in the Federal-state unemployment compensation program. Section 303(a)(6) of the SSA requires states to make reports of information and data as required by the U.S. Labor Secretary. But current Federal law contains no precise requirements regarding codes or identifiers attached to UC, Emergency Unemployment Compensation (EUC08), or Extended Benefit (EB) program data or any other data standards.

Federal law does not specifically authorize drug testing of applicants as a condition of UC benefit eligibility. No state currently requires drug tests as a condition of eligibility for unemployment benefits. There are states that do, however, have state law provisions related to disqualification for previously failed drug tests/use of illegal drugs during prior employment.

*House bill*

Section 2121 would add new federal law requirements for state UC eligibility related to being “able, available, and actively seeking work”—with the latter specifically defined under federal law, including at least (1) registering for employment services within 10 days after initial filing for UC benefits; (2) posting a resume, record, or other application for employment through a state agency database; and (3) applying for work under state requirements [effective for weeks beginning after end of first state legislative session after enactment]. No new funds would be provided for such activities. There would be no exceptions for those on temporary lay-off with expectation of recall, union members, or for those who are striking.

Section 2122 would add new federal law requirements for state UC eligibility: (1) UC claimants must meet minimum education requirements: either earn HS diploma, attain GED, or enroll/make satisfactory progress in classes leading to HS diploma or GED (states would be allowed to waive this educational requirement if state law deems it unduly burdensome); and (2) UC claimants referred to reemployment services must participate. Additionally, the proposal would add a new federal law provision to stipulate that UC may not be denied to an individual enrolled/making satisfactory progress in education or state-approved job training [effective for weeks beginning after end of first state legislative session after enactment].

Section 2123 would authorize under federal law up to 10 state UC demonstration projects a year (lasting up to 3 years). Demonstration projects would test and evaluate measures designed to expedite the reemployment of individuals who establish initial eligibility for regular UC or to improve the effectiveness of state reemployment efforts. States would provide a general description of the proposed demonstration project. The description would include: (1) a description of the proposed project, its authority under State law, and the period during which the project would be conducted; (2) the specifics of any waiver to Federal law and the reason for such waiver; (3) a description of the goals and expected outcomes of the project; (4) assurances and supporting analysis that the project would not result in a net increase cost to the state’s Unemployment Trust Fund (UTF); (5) a description of the impact evaluation; and (6) assurances of reports required by the U.S. Labor Secretary. Section 2123 would allow the U.S. Labor Secretary to waive the withdrawal standard and/or merit employee requirements if requested by the state (state UTF funds would be allowed to be used for purposes other than paying unemployment benefits). Authority ends 5 years after date of enactment of the section. Administrative grants to the states for administration of the regular UC program may be used for an approved project.

Section 2124 would require the U.S. Department of Labor (U.S. DOL) to develop and maintain model language for states to use in enacting SEA programs for regular UC claimants (as authorized under current federal law); this model language would be developed through U.S. DOL consultation with employers, labor organizations, state UC agencies, and other relevant program experts; would require U.S. DOL to provide technical assistance and guid-

ance to states in enacting, improving, and administering SEA programs; would require U.S. DOL to establish reporting requirements for state SEA programs, including reporting (1) on the number of jobs and businesses created by SEA programs and (2) the federal and state tax revenues collected from such businesses and their employees; and would require U.S. DOL to coordinate with the Small Business Administration to ensure adequate funding for the entrepreneurial training of SEA participants in states with SEA programs.

Section 2125 would require states to recover 100% of any erroneous overpayment by reducing up to 100% of the UC benefit in each week until the overpayment is fully recovered. The proposal would not allow states to waive such deduction if it would be contrary to equity and good conscience. Section 2125 also would create authority for states to recover Federal Additional Compensation (FAC) overpayments through deductions to regular unemployment compensation.

Section 2126 would require that the U.S. Labor Secretary designate standard data elements for any information required under title III or title IX of the SSA. This section would require the standard data elements incorporate interoperable standards that have been developed and used by an international standards body (as established by the Office of Management and Budget (OMB) and the U.S. Labor Secretary); intergovernmental partnerships; and Federal entities with contracting and financial assistance authority. In addition, Section 106(a) of this proposal would require the U.S. Labor Secretary, in consultation with an OMB interagency working group and States, to designate standard data elements that, to the extent practicable: (1) Make use of a widely-accepted, non-proprietary, digital, searchable format; (2) Are consistent with and use relevant accounting principles; (3) Are able to be upgraded on a continual basis; and (4) Incorporate non-proprietary standards (such as the eXtensible Business Reporting Language).

Section 2127 would clarify federal law to allow (but would not require) drug testing of UC applicants.

#### *Senate bill*

No provision.

#### *Conference substitute*

The conference agreement follows the House bill with regard to specifying new federal minimum standards for state unemployment compensation eligibility related to being “able, available, and actively seek work.” (See also part 3 of this section with regard to job search requirements related to Federal unemployment benefits.)

The conference agreement follows the House bill with regard to State flexibility (i.e. new waiver authority), but with the following modifications:

- (1) Permits a total of no more than 10 States to receive waivers;
- (2) Specifies that waivers may only be used to operate programs providing subsidies for employer-provided training or for direct disbursements (such as wage subsidies) to employers who hire individuals receiving UC benefits, not to exceed the



weekly benefit amount, to cover part of the cost of their wages, and provided that the overall wage is greater than the unemployment benefit the individual had been receiving;

(3) Limits the operation of State waiver programs to no more than 3 years, and specifies that the waiver programs cannot be extended;

(4) Requires the state to evaluate their waiver programs; and

(5) Requires States to provide assurances that any employment meets the State's suitable work requirement and requirements of section 3304(a)(5) of the Internal Revenue Code and that the waiver programs end by December 31, 2015.

The conference agreement follows the House bill and incorporates S. 1826 with regard to the Self-Employment Assistance Program, while also authorizing States to operate SEA programs to assist individuals eligible for benefits under the Emergency Unemployment Compensation (EUC) and Extended Benefit (EB) programs, and providing funds to assist States with the administration of such programs.

The conference agreement includes a new provision based on S. 1333 authorizing work sharing programs and providing program and administrative funding for that purpose.

The conference agreement follows the House bill with regard to requiring States to offset current State benefits to recover prior overpayments of State, other States', or Federal unemployment benefits. With regard to efforts to recover overpayments owed to other States and the Federal government, the conference agreement requires each State to apply hardship exceptions and related terms that follow State practice used to recover overpayments of its own State benefit funds.

The conference agreement follows the House bill with regard to the data standardization provisions.

The conference agreement follows the House bill with regard to drug testing provisions, with the modification that drug screening and testing is permitted in any State, but only in cases in which the individual applying for unemployment benefits either (1) was terminated from their prior employment because of unlawful drug use (2) is applying for work for which passing a drug test is a standard eligibility requirement.

#### PART 2—PROVISIONS RELATING TO EXTENDED BENEFITS

H2142,2143,2144/S201,202

##### *Current law*

Under P.L. 110–252, as amended, the authorization of the EUC08 program expires the week ending on or before March 6, 2012. Individuals receiving benefits in any tier of EUC08 would be able to finish out that tier of benefits only (grandfathering for current tier only). No EUC08 benefits—regardless of tier—are payable for any week after August 15, 2012. The current structure of unemployment benefits available through the EUC08 program is: Tier I: up to 20 weeks of unemployment benefits (available in all states); Tier II: up to 14 weeks (available in all states); Tier III: up to 13 weeks (available in states with a total unemployment rate (TUR)

of at least 6% or an insured unemployment rate (IUR) of at least 4%); Tier IV: up to 6 weeks (available in states with a TUR of at least 8.5% or an IUR of at least 6%). Section 4001(e) of P.L. 110–252, as amended allows states the option to pay EUC08 before EB.

Under permanent law (P.L. 97–373), EB benefits are financed 50% by the federal government (through federal unemployment taxes; i.e., FUTA) and states fund the other half (50%) of EB benefit costs through their state unemployment taxes (SUTA). ARRA (P.L. 111–5, as amended) temporarily changed the federal-state funding arrangement for the EB program. Currently, the FUTA finances 100% of sharable EB benefits through March 7, 2012. P.L. 111–312 made some temporary technical changes to certain triggers in the EB program, which allow states to temporarily use lookback calculations based on three years of unemployment rate data (rather than the permanent law lookback of two years of data) as part of their EB triggers if states would otherwise trigger off or not be on a period of EB benefits. This temporary option to use three-year EB trigger lookback expires the week ending on or before February 29, 2012.

P.L. 111–5, as amended, temporarily increased the duration of extended unemployment benefits for railroad workers. Railroad workers who previously were not eligible for extended unemployment benefits because they did not have 10 years of service may be eligible for benefits of up to 65 days within an extended period consisting of seven consecutive two-week registration periods. Railroad workers who previously were eligible for extended unemployment benefits of up to 65 days (because they had 10 years of service) may now be eligible for benefits of up to 130 days within an extended period consisting of 13 consecutive two-week registration periods. P.L. 111–312 extended the ARRA provisions by one year to June 30, 2011. Under P.L. 111–312, the special extended unemployment benefit period could begin no later than December 31, 2011. P.L. 112–78 extended the temporary extended railroad unemployment benefit (authorized under ARRA (P.L. 111–5), as amended) for two months through February 29, 2012, to be financed with funds still available under P.L. 111–312.

#### *House bill*

Section 2142 would extend the authorization of Tiers I and III of EUC08 until the week ending on or before January 31, 2013. The duration and conditions for availability of Tier II would be altered. There would be no benefits payable after that date. (There would be no grandfathering of benefits.) Tier I would continue to offer up to 20 weeks in all states, Tier II would offer up to 13 weeks (rather than 14) and would be available in states with at least 6.0% TUR or an IUR of at least 4% (rather than in all states). Tiers III and IV would not be reauthorized. Note: Included in this subsection was an intent to require states to pay EUC08 before any EB entitlement. However, the version passed by the House would require states to pay EB before EUC08 and will need correction to reflect the intended ordering of benefits. (At the time of House passage, the authorization for all EUC08 tiers would have expired on the week ending on or before January 3, 2012 and no EUC08 benefit would have been payable for any week after June 9, 2012.)

Section 2143 would extend the 100% federal financing of EB through January 31, 2013, as well as the option for states to use three-year lookback in their EB triggers until the week ending on or before January 31, 2013. (At the time of House passage, the FUTA financed 100% of sharable EB benefits through January 4, 2012 and the three-year lookback would have expired on the week ending on or before December 31, 2011.)

Section 2144 would extend the temporary extended railroad unemployment benefit (authorized under ARRA (P.L. 111–5), as amended) for 13 months through January 31, 2013, to be financed with funds still available under P.L. 111–312. (At the time of House passage, the special extended unemployment benefit period could begin no later than December 31, 2011.)

#### *Senate bill*

Section 201 would extend the authorization for the EUC08 program (as structured under current law) until the week ending on or before March 6, 2012. No EUC08 benefits—regardless of tier—would be payable for any week after August 15, 2012. (At the time of Senate passage, the authorization for all EUC08 tiers would have expired on the week ending on or before January 3, 2012 and no EUC08 benefit would have been payable for any week after June 9, 2012.) This section would extend the 100% federal financing of EB through March 7, 2012. This section would also extend the option for states to use the three-year lookback in their EB triggers until the week ending on or before February 29, 2012. (At the time of Senate passage, the FUTA financed 100% of sharable EB benefits through January 4, 2012 and the three-year lookback would have expired on the week ending on or before December 31, 2011.)

Section 202 would extend the temporary extended railroad unemployment benefit (authorized under ARRA (P.L. 111–5), as amended) for two months through February 29, 2012, to be financed with funds still available under P.L. 111–312. (At the time of Senate passage, the special extended unemployment benefit period could begin no later than December 31, 2011.)

#### *Conference substitute*

The conference agreement follows the House bill in continuing the operation of the Federal Emergency Unemployment Compensation (EUC) program beyond its current expiration at the end of February 2012, with the following modifications:

- (1) The authorization of the EUC program is extended through the end of December 2012;
- (2) The EUC program will not continue to provide benefits after December 2012 (i.e. there will be no “phase-out” of benefits beyond December 2012);
- (3) EUC benefits would continue to be payable in up to four tiers as under current law. However, as the table below reflects, in the case of tiers two through four, higher total unemployment rate (TUR) “triggers” will apply from June through December 2012, as follows:

EUC Tier	March through May 2012	June through August 2012	September through December 2012
1 ..	20 weeks in all states .....	20 weeks in all states .....	14 weeks in all states
2 ..	14 weeks in all states .....	14 weeks in 6% or higher states .....	14 weeks in 6% or higher states
3 ..	13 weeks in 6% or higher states .....	13 weeks in 7% or higher states .....	9 weeks in 7% or higher states
4 ..	6 weeks in 8.5% or higher states (16 weeks if not on EB).	6 weeks in 9% or higher states .....	10 weeks in 9% or higher states

(4) Through May 2012 only, individuals who have not already received up to 20 weeks of EB program benefits due to the application of that program's "3-year lookback" would be eligible to receive up to an additional 10 weeks of benefits under Tier 4 of the EUC program (that is, in addition to the six weeks otherwise available), provided they are in a State with an unemployment rate above 8.5%, and with the condition that no such individual could receive a total of more than 99 weeks of benefits from all sources (counting State, EUC and EB programs).

(5) As the table above reflects, weeks of benefits payable in tiers 1, 3 and 4 in September through December 2012 would be adjusted, with tier 1 dropping from 20 to 14 weeks, tier 3 dropping from 13 to 9 weeks, and tier 4 rising from 6 to 10 weeks. In all, these changes will result in the maximum weeks of benefits payable under the EUC program falling from 53 weeks under current law (in the case of States with unemployment rates today at or above 8.5%) to a maximum of up to 47 weeks (in the case of States with an unemployment rate of 9% or higher) from September through December 2012. In each period, an individual's eligibility for a tier of benefits will be determined according to the State's unemployment rate in that period. For example, individuals exhausting tier 2 of benefits will be eligible to begin tier 3 of benefits in the spring only if their State has an unemployment rate of at least 6%, while those exhausting tier 2 in the summer and fall months can qualify for tier 3 benefits only if they are in a State with an unemployment rate of at least 7%.

The conference agreement specifies that States are required to pay EUC benefits before any benefits under the EB program.

The conference agreement follows the House bill in terms of extending the current temporary 100% Federal financing of EB as well as the three-year lookback used to determine State eligibility for EB, with the modification that in each case the extension would apply through December 2012.

The conference agreement follows the House bill and Senate amendment with regard to the temporary extended railroad unemployment benefit program, with the modification that the extension would apply through December 2012.

#### PART 3—IMPROVING REEMPLOYMENT STRATEGIES UNDER THE EMERGENCY UNEMPLOYMENT COMPENSATION PROGRAM

H2161,2162,2163,2164,2165/S—

#### *Current law*

Federal unemployment law does not contain explicit job search requirements for the receipt of EUC08 benefits. Federal unemploy-

ment law does not require states to have work search requirements in the regular UC program. However, all states have work search requirements in state law or regulation in order for an individual to receive regular UC benefits. Section 202(a)(3)(A)(ii) of the Federal-State Extended Unemployment Compensation Act of 1970 (P.L. 97-373), as amended, explicitly requires active job search for receipt of Extended Benefits (EB). However, the method of determining active job search is left to the determination of the states.

Federal law does not require minimum educational standards or reemployment service participation as a condition of EUC08 benefit receipt.

P.L. 110-252, as amended, requires that all EUC08 benefits be paid directly to the unemployed who have exhausted entitlement to all regular UC benefits. There is no provision for demonstration projects.

Section 4005(c)(1) of P.L. 110-252, as amended allows states but does not require states to offset EUC08 payments by non-fraud overpayments. Any offset under current law may not be more than 50% of total EUC08 benefit.

Section 4001(g) of the Supplemental Appropriations Act of 2008 (P.L. 110-252), as amended, prevents states from decreasing the average weekly benefit amount of regular UC payments. That is, a state is not permitted to pay an average weekly UC benefit that is less than what would have been paid under state law prior to what was in effect on June 2, 2010. This “nonreduction rule” is a condition of the EUC08 Federal-State agreement of P.L. 110-252, as amended.

#### *House bill*

Section 2161 would require active work search for EUC08 entitlement where active work search must require at least the following: individuals to register with reemployment services within 30 days, individuals post a resume, record, or other application for employment on a database required by the state, and individuals apply for work in such a manner as required by the state.

Section 2162 would require EUC08 beneficiaries (1) to participate in reemployment services if referred and (2) to actively search for work, effective on or after 30 days of enactment for those individuals who enter a tier of EUC08. This section would require individuals to meet the minimum educational requirements (high school degree, GED, or enrolled in program) created earlier in Section 2122 of the proposal (amending Section 303(a)(10)(B) of the SSA). The participation requirement for reemployment services would be waived if individuals have already completed this requirement or if there is “justifiable cause” as specified by guidance to be issued by the U.S. DOL Secretary within 30 days. This section would authorize up to \$5 of an individual’s EUC08 benefit each week to be diverted (at state option) to fund these reemployment services and activities.

Section 2163 would allow for up to 20% of all EUC08 recipients in each state to be diverted into demonstration projects. The demonstration projects would need to be designed to expedite reemployment. Allowable demonstration activities would include: subsidies for employer provided training; work sharing or Short-Time Com-

pensation; enhanced employment strategies and services; SEA programs; services that enhance skills that would assist in obtaining reemployment; direct reimbursements to employers who hire individuals that were receiving EUC08; and other innovative activities not otherwise described. Authority for demonstration projects would end when EUC08 ceases to be payable. Demonstration projects would be required to provide appropriate reemployment services and assurances of no net increase in cost to the EUC08 program. This section would require states to provide information on demonstration projects for reporting and evaluation purposes.

Section 2164 would require states to offset an individual's EUC08 benefit if they received an unemployment benefit overpayment. States would be required to offset by at least 50% of the EUC08 benefit in any week.

Section 2165 would repeal the "nonreduction rule" in terms of the regular UC benefit amount. This would give states the option to decrease average weekly benefit amounts without invalidating their EUC08 Federal-state agreements.

*Senate bill*

No provision.

*Conference substitute*

The conference agreement follows the House bill with regard to explicit job search requirements, with several modifications designed to closely align the work search requirements between the EUC and EB programs. In order to be eligible for benefits in any week, the state agency shall find that the individual is able to work, available to work, and making reasonable efforts to secure suitable work.

For purposes of this provision, the term "making reasonable efforts to secure suitable work" means, with respect to an individual, that such individual: (1) Is registered for employment services in such manner and to such extent as prescribed by the state agency; (2) Has engaged in an active search for employment that is appropriate in light of the individual's skills, capabilities and work history, and includes a number of employer contacts that is consistent with reasonable standards communicated to the individual by the state; (3) Has maintained a record of such work search, including employers contacted, method of contact and date contacted; and (4) When requested, has provided such work search record to the state agency. The Secretary of Labor shall prescribe to each state a minimum number of claims for which work search records must be audited on a random basis in any given week.

The conference agreement follows the House bill with regard to the requirement that EUC recipients participate in reemployment services if referred and as well as actively search for work. The conference agreement follows the Senate amendment with regards to there being no minimum education requirements for individuals receiving EUC benefits.

The conference agreement follows the House bill with regard to the requirement that States provide reemployment services and reemployment and eligibility assessment activities to long-term unemployed individuals who begin receiving EUC benefits and

throughout their time collecting EUC benefits. The conference agreement follows the Senate amendment with regard to no State authority to reduce EUC benefits to support the cost of such reemployment services and activities. In its place, the conference agreement provides new one-time funding to States to support the cost of such reemployment services and activities.

The conference agreement follows the Senate amendment with respect to no additional State flexibility to assist the long-term unemployed with improved reemployment services using EUC funds.

The conference agreement follows the House bill with regard to requiring States to offset current Federal benefits to recover prior overpayments of State, other States', or Federal unemployment benefits. With regard to efforts to recover such overpayments owed to other States and the Federal government, the conference agreement requires each State to apply hardship exceptions and related terms that follow State practice used to recover overpayments of its own State benefit funds.

The conference agreement modifies the House bill with regard to effect of the current "nonreduction rule," which generally blocks the payment of Federal EUC funds to States that have reduced State unemployment benefits. Several States, in order to address solvency have passed laws to reduce future State benefit amounts, and others may be considering doing the same. Thus, the continued application of the "nonreduction rule" (if not adjusted) would bar such States from receiving EUC funds otherwise provided under this legislation. For this reason, the conference agreement changes the effective date of the non-reduction rule to March 1, 2012 in order to allow for changes states have made (i.e. both those that have already enacted laws changing benefit amounts, as well as those with legislation pending that would do so)," this permits States to adjust benefits as they have planned, while remaining eligible for Federal EUC funds throughout CY 2012.

#### SUBTITLE D—TANF EXTENSION

##### H2302/S312

##### *Current law*

The Temporary Payroll Tax Cut Continuation Act of 2011 (P.L. 112–78) provided program authorization and funding for most Temporary Assistance for Needy Families (TANF) grants through February 29, 2012. It provided authority and funding for state family assistance grants (the basic block grant), healthy marriage and responsible fatherhood grants, mandatory child care grants, tribal work program grants, matching grants for the territories, and research funds. Grants are funded at the same level as in FY2011, and paid on a pro-rated quarterly basis. No funding was provided for TANF supplemental grants. The TANF contingency fund was provided an FY2012 appropriation in legislation enacted in 2010, P.L. 111–242.

##### *House bill*

Section 2302 provides FY2012 appropriations for TANF state family assistance grants, healthy marriage and responsible father-

hood grants, mandatory child care grants, tribal TANF work programs, matching grants for the territories, and research funds. FY2012 grants are provided at the same level as were provided in FY2011.

*Senate bill*

Section 312 extends program authorization and funding for TANF through February 29, 2012. Grants are funded at the same level as in FY2011, and paid on a pro-rated quarterly basis. (Provision is the same as current law. It is identical to that subsequently enacted in P.L. 112–78.)

*Conference substitute*

The conference agreement follows the House bill with technical corrections to ensure the provisions operate as intended. Section 2302(c)(1) is revised by changing the year to 2013 instead of 2012 to correct a drafting error. Section 2302(c)(2)(A) is revised by changing the year to 2012 instead of 2011 to correct a drafting error. Section 2302(i) is revised by striking “or section 403(b) of the Social Security Act” to reflect the intent that TANF contingency funds are not affected by this bill and that they continue as previously authorized and appropriated for FY2012, and also to update the provision to add a reference the Temporary Payroll Tax Cut Continuation Act of 2011 which extended TANF through February 29, 2012.

H2303,2304,2305/S—

*Current law*

States are required to report case- and individual-level demographic, monthly financial and monthly work participation information to the Department of Health and Human Services (HHS) on a quarterly basis.

There are no relevant provisions in current law regarding Section 2304 of the House bill.

*House bill*

Section 2303 requires HHS to issue a rule designating standard data elements for any category of information required to be reported under TANF. The rule would be developed by HHS in consultation with an interagency workgroup established by the Office of Management and Budget (OMB) and with consideration of state and tribal perspectives. To the extent practicable, the standard data elements required by the rule would be non-proprietary and incorporate the interoperable standards developed and maintained by other recognized bodies. To the extent practicable, the data reporting standards required by the rule would incorporate a widely-accepted, nonproprietary, searchable, computer-readable format; be consistent with and implement applicable accounting principles; be capable of being continually upgraded as necessary; and incorporate existing nonproprietary standards, such as the “eXtensible Business Reporting Language.” The data standardization requirement would take effect on October 1, 2012.



Section 2304 requires states to maintain policies and practices to prohibit TANF assistance from being used in any transaction in liquor stores, casinos and gaming establishments, and strip clubs. States have up to 2 years after enactment to implement such policies and practices. States that fail to report actions they have taken are at risk of being penalized by up to a 5% reduction in their block grant.

Section 2305 makes technical corrections to the TANF statute.

*Senate bill*

No provision.

*Conference substitute*

The conference agreement follows the House bill with the following technical modifications to Section 2303: Section 2303(a) is modified to clarify that the goal of the provision is to standardize the data exchange processes, not standardize data elements. Section 2303(b) is modified to require that the Department of Health and Human Services issue proposed rules for this section within 12 months of the enactment of this section, and that the agency finalize these regulations within 24 months of the enactment of this section.

The conference agreement follows the House bill with the following technical modifications to Section 2304: Section 2304(a)(12)(A) is modified to clarify that States are required to block access to TANF funds provided on electronic benefit transfer cards at ATMs and point-of-sale devices in specified locations. Section 2304(a)(12)(B) is modified by adding a definition of electronic benefit transfer transactions. Section 2304(b)(16)(A) is modified to clarify that each State must provide a report to the Secretary of Health and Human Services regarding their implementation of this provision.

### TITLE III—FLOOD INSURANCE REFORM

#### REFORM OF PREMIUM RATE STRUCTURE

H3005(a),3005(b),3005(c),3005(d),3005(e)/S—

*Current law*

The Federal Emergency Management Agency (FEMA) is authorized to increase chargeable risk premium rates for flood insurance for any properties within any single risk classification 10% annually. 42 U.S.C. 4015 (e)

Full actuarial rates begin on the effective date of a revised Flood Hazard Boundary Map or Flood Insurance Rate Map for a community. § 61.11

FEMA is authorized to establish risk premium rates for flood insurance coverage. The agency is also authorized to offer “chargeable” (subsidized) premium rates for pre-FIRM buildings. Post-FIRM structures (i.e., buildings constructed on or after December 31, 1974) and the effective date of the FIRM, whichever is later, must pay the full actuarial risk premium rates. § 61.8

Pre-FIRM structures continue to receive subsidized premium rates after the lapsed policy provided the policyholder pays the appropriate premium to reinstate the policy.

FEMA is authorized to determine whether a community has made adequate progress on the construction of a flood protection system involving federal funds. Adequate progress means the community has provided FEMA with necessary information to determine that 100% of the cost has been authorized, 60% has been appropriated or 50% has been expended. § 61.12

*House bill*

Section 3005(a) would increase the annual cap on premium increases from 10% to 20%.

Section 3005(b) would clarify that newly mapped properties are phased-in to full actuarial, flood insurance rates at a consistent rate of 20% per year over 5 years and requires that newly mapped property owners pay 100% of actuarial rates at the end of the 5 year phase-in period. For areas eligible for the lower-cost Preferred Risk Policy (PRP) rates, the phase-in begins after the expiration of their PRP rates. For all properties, the phase-in of rates only applies to residential properties occupied by their owner or a bona fide tenant as a primary residence.

Section 3005(c) would require that, beginning one year after enactment, the premium rate subsidies (pre-FIRM discounts) for certain properties in the following categories be phased-out, with annual rate increases limited by a 20 percent annual cap. This would apply to commercial properties, second and vacation homes (i.e., residential properties not occupied by an individual as a primary residence), homes sold to new owners, homes damaged or improved (substantial flood damage exceeding 50 percent or substantial improvement exceeding 30 percent of the fair market value of the property), and properties with multiple flood claims (i.e., statutorily defined severe repetitive loss properties.)

Section 3005(d) would remove the eligibility of property owners who allow their policies to lapse by choice to receive discounted rates on those properties.

Section 3005(e) would update the standards by which FEMA evaluates a community's eligibility for special flood insurance rates by considering state and local funding, in addition to federal funding, of flood control projects.

*Senate bill*

No provision.

*Conference substitute*

No provision.

MANDATORY PURCHASE REQUIREMENTS

H3003(b)(3),3003(c),3004(a),3007(e),3014,3017,3018/S—

*Current law*

There are no relevant provisions in current law regarding Section 3003(b)(3) of the House bill.

FEMA is authorized to enter into arrangements with individual private sector property insurance companies or other insurers, such as public entity risk sharing organizations. Under this Write-Your-Own company arrangement, such companies may offer flood insurance coverage under the program to eligible applicants. § 62.23

The NFIP requires the purchase of flood insurance on and after March 2, 1974, as a condition of receiving any form of federal or federally-related financial assistance for acquisition or construction purposes with respect to insurable buildings and mobile homes within an identified special flood, mudslide, or flood-related erosion hazard area that is located within any community participating in the NFIP. § 59.2 The mandatory purchase of insurance is required in areas identified as being within designated Zones A, A1-30, AE, A99, AO, AH, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, V1-30, VE, V, VO, M, and E. § 64.3

When FEMA has provided a notice of final flood elevations for one or more special flood hazard areas (SFHA) on the community's FIRM, the community shall require that all new construction and substantial improvements of residential structures within Zones A1-30, AE and AH zones on the community's FIRM have the lowest flood (including basement) elevation to or above the base flood level, unless the community is granted an exception by FEMA for the allowance of basements. § 60.3(a) Structures in SFHAs that receive any form of federal or federally-related financial assistance are required to purchase flood insurance. § 59.2(a)

FEMA is required to provide notice of final base flood elevations within Zones A1-30 and/or AE on the community's FIRM that is available for public viewing by homeowners in SFHAs. § 60.3(e) Structures located in these zones are classified as SFHA and are, therefore, required to purchase flood insurance. § 59.2(a)

The NFIP was established to provide flood insurance protection to property owners in flood-prone areas. However, flood insurance is only available in communities that participate in the NFIP. § 59.2 To qualify for flood insurance availability a community must apply for the entire area within its jurisdiction and shall submit copies of legislative and executive actions indicating a local need for flood insurance and an explicit desire to participate in the NFIP. § 59.22

There are no relevant provisions in current law regarding Section 3018 of the House bill.

#### *House bill*

Section 3003(b)(3) would require lenders or servicing companies to terminate policies purchased on behalf of the homeowner to satisfy the mandatory purchase requirement within 30 days of being notified that the homeowner has purchased another policy. Lenders would be required to refund any premium payments and fees made by the homeowner for the time when both policies were in effect. Moreover, the declaration page in the insurance policy would be considered sufficient to demonstrate having met the mandatory insurance purchase requirements.

Section 3003(c) would require lenders to accept flood insurance from a private company if the policy fulfills all federal requirements for flood insurance.

Section 3004(a) would authorize the Administrator of FEMA to delay mandatory purchase requirement for owners of properties in newly designated special flood hazard areas. The delay would not be longer in duration than 12 months with the possibility of two 12 month extensions at the discretion of FEMA. Eligible areas defined as an area that meets the following three requirements: (1) area with no history of special flood hazards; (2) area with a flood protection system under improvement; or (3) area has filed an appeal of the designation of the area as having special flood hazards. Upon a request submitted from a local government authority, FEMA could suspend the mandatory purchase for a possible fourth and fifth year for certain communities that are making more than adequate progress in their construction of their flood protection systems.

Section 3007(e) would clarify that mandatory purchase requirement would not apply to a property located in an area designated as having a special flood hazard if the owner of such property submits to FEMA an elevation certificate showing that the lowest level of the primary residence is at an elevation that is at least three feet higher than the elevation of the 100-year flood plain. FEMA would be required to accept as conclusive each elevation certificate unless the Administrator conducts a subsequent elevation survey and determines that the lowest level of the primary residence in question is not at an elevation that is at least three feet higher than the elevation of the 100-year flood plain. This section would require FEMA to expedite any requests made by an owner of a property showing that the property is not located within the area having special flood hazards. FEMA would be prohibited from charging a fee for reviewing the flood hazard data with respect to the expedited request and requiring the owner to provide any additional elevation data.

Section 3014 would require the Administrator of FEMA, in consultation with affected communities, to notify annually residents in areas having special flood hazards that they reside in such an area, the geographic boundaries of such areas, the requirements to purchase flood insurance coverage and the estimated cost of flood insurance coverage.

Section 3017 would amend the Real Estate Settlement Procedures Act of 1974 (RESPA) to require mortgage lenders to include specific information about the availability of flood insurance in each good-faith estimate.

Section 3018 would amend RESPA to explicitly state that the escrowing of flood insurance payments is required for many types of loans.

*Senate bill*

No provision.

*Conference substitute*

No provision.

## REFORM OF COVERAGE TERMS

H3004(a),3004(b),3004(d),3004(e),3015,3016,3021/S—

*Current law*

There are no relevant provisions in current law regarding Section 3004(a) of the House bill.

The maximum amount of coverage for a single family residential structure is \$250,000 and \$100,000 for personal contents. The limit for nonresidential building structures is \$500,000 and \$500,000 for contents. § 61.6

Insurance coverage under the NFIP is available only for property structures and personal contents. § 61.3

Payment of full policyholder premium must be made at the time of application or renewal. § 61.5

There are no relevant provisions in current law regarding Section 3015 of the House bill.

FEMA is authorized to enter into arrangements with individual private insurers to offer flood coverage to policyholders. § 62.23

The Standard Flood Insurance Policy issued under the NFIP excludes coverage for hot tubs and spas that are not bathroom fixtures, and swimming pools, and their equipment, such as, but not limited to, heaters, filters, pumps, and pipes, wherever located. Appendix A(1) to Part 62

*House bill*

Section 3004(a) would set the minimum deductible levels at \$1,000 for properties with full-risk rates and \$2,000 for properties with discounted rates. The section would also establish that maximum coverage limits be indexed for inflation, starting in 2012.

Section 3004(b) would authorize insurance coverage under policies issued by the NFIP to be adjusted for inflation since September 30, 1994. This section would clarify that insured or applicants for residential insurance coverage under the NFIP would receive up to an “aggregate liability” of \$250,000 per claim rather than a “total amount” of \$250,000. Nonresidential property owners would be insured for a total of \$500,000 aggregate liability for structure and \$500,000 aggregate liability for content. These amounts would be adjusted or indexed for inflation using the percentage change over the period beginning on September 30, 1994 through the date of enactment of the law.

Section 3004(d) would authorize the Administrator of FEMA to offer optional coverage for additional living expenses, up to a maximum of \$5,000, as well as to offer optional coverage for the interruption of business operations up to a maximum of \$20,000, provided that FEMA: (1) charges full-risk rates for such coverage; (2) makes a finding that a competitive private market for such coverage does not exist; and (3) certifies that the NFIP has the capacity to offer such coverage without the need to borrow additional funds from the U.S. Treasury.

Section 3004(e) would authorize the Administrator of FEMA to offer policyholders the option of paying their premiums for one-year policies in installments, and authorizes FEMA to impose higher

rates or surcharges, or to deny future access to NFIP coverage, if property owners attempt to limit their coverage to coincide only with the annual storm season by neglecting to pay their premiums on schedule.

Section 3015 would require the Administrator of FEMA to notify tenants of a property located in areas having special flood hazard, that flood insurance coverage is available under the NFIP for contents of the unit or structure leased by the tenant, the maximum amount of such coverage for contents, and how to obtain information regarding how to obtain such coverage.

Section 3016 would require the Administrator of FEMA to notify the holders of direct policies managed by FEMA that they could purchase flood insurance directly from an insurance company licensed by FEMA to administer NFIP policies. The coverage provided or the premiums charged to holders of flood insurance policies that are administered by an insurance company are no different from those directly managed by FEMA.

Section 3021 would require under the NFIP that the presence of an enclosed swimming pool located at ground level or in the space below the lowest flood of a building after November 30, and before June 1 of any year, would have no effect on the terms of coverage or the ability to receive coverage for such building if the pool is enclosed with non-supporting breakaway walls.

*Senate bill*

No provision.

*Conference substitute*

No provision.

FINANCIAL AND BORROWING AUTHORITY

H3011,3025,3033/S—

*Current law*

FEMA is authorized to carry out a program to provide financial assistance to states and communities, using amounts made available from the National Flood Mitigation Fund for planning and carrying out activities designed to reduce the risk of flood damage to structures. Such assistance shall be made available to states and communities in the form of grants to carry out mitigation activities. 44 U.S.C. 4104c(a)

FEMA is authorized to issue notes or other obligations to the Secretary of the Treasury, without the approval of the President, to finance the flood insurance program. All funds borrowed under this authority shall be deposited in the National Flood Insurance Fund. 42 U.S.C. §4016(a)

FEMA is authorized to borrow from the U.S. Treasury. Borrowed funds must be repaid with interest. 42 U.S.C. §4017 (a)(3)

*House bill*

Section 3011 would streamline and reauthorize the Flood Mitigation Assistance Program, the Repetitive Flood Claims Program and the Severe Repetitive Loss Program in order to improve their effectiveness and efficiency. Financial assistance would be made

available to states and communities in the form of grants for carrying out mitigation activities, especially with respect to severe repetitive loss structures, repetitive loss structures, and to property owners in the form of direct grants. This section would expand eligibility for mitigation assistance grants from mitigating flood risk to mitigating multiple hazards. Amounts provided could be used only for mitigation activities that are consistent with mitigation plans approved by FEMA. FEMA Administrator could approve only mitigation activities that are determined to be technically feasible, cost-effective, and result in savings to the NFIF. This section would expand eligibility to include mitigation activities for the elevation, relocation, and flood-proofing of utilities (including equipment that serve structures). The FEMA Administrator is required to consider demolition and rebuilding of properties as eligible activities under the mitigation grant programs. This section establishes a matching requirement for severe repetitive loss structures of up to 100% of all eligible costs and up to 90% for repetitive loss structures. Other mitigation activities would be in an amount up to 75% of all eligible costs. Failure to award a grant within 5 years of receiving a grant application would be considered to be a denial of the application and any funding amounts allocated for such grant applications would remain in the National Flood Mitigation fund. This section authorizes \$40 million in grants to States and communities for mitigation activities, \$40 million in grants to States and communities for mitigation activities for severe repetitive loss structures, and \$10 million in grants to property owners for mitigation activities for repetitive loss structures. This section would eliminate the Grants Program for Repetitive Insurance Claims Properties. (Sec. 3011(b))

Section 3025 would establish a reserve fund requirement to meet the expected future obligations of the National Flood Insurance Program. This section contains phase-in requirements similar to H.R. 3121. For example, this section requires the Fund to maintain a balance equal to 1% of the sum of the total potential loss exposure of all outstanding flood insurance policies in force in the prior fiscal year, or a higher percentage as the Administrator determines to be appropriate. FEMA has the discretion to set the amount of aggregate annual insurance premiums to be collected for any fiscal year necessary to maintain the reserve ratio, subject to any provisions relating to chargeable premium rates and annual increases of such rates.

Section 3033 would require FEMA to submit a report to Congress not later than 6 months after enactment of this Act setting forth a plan for repayment within 10 years on the amounts borrowed from the U.S. Treasury under the NFIP.

*Senate bill*

No provision.

*Conference substitute*

No provision.

## POLICY CLAIMS AND WRITE-YOUR-OWN INSURERS

H3004,3022,3023,3028,3032/S—

*Current law*

The “Exclusions” section “V” of the Standard Flood Insurance Policy stipulates that “We do not insure a loss directly or indirectly caused by a flood that is already in progress at the time and date: (1) the policy term begins; or (2) coverage is added at your request. Appendix A(1) to Part 61. Coverage for a new contract for flood insurance coverage shall become effective upon the expiration of the 30-day period beginning on the date that all obligations for such coverage are satisfactorily completed. § 61.11; 42 U.S.C. 4013(c)

There are no relevant provisions in current law regarding Section 3022 of the House bill.

There are no relevant provisions in current law regarding Section 3023 of the House bill.

There are no relevant provisions in current law regarding Section 3028 of the House bill.

*House bill*

Sections 3004 and 3032 would clarify the effective date of insurance policies covering properties affected by floods in progress. Property experiencing a flood during the 30-day waiting period following the purchase of insurance would be covered for damage to the property that occurs after the 30-day period has expired, but only if the property has not suffered damage or loss as a result of such flood before the expiration of such 30-day period. These sections would require FEMA to review the processes and procedures for determining that a flood event has commenced or is in progress for purposes of flood insurance coverage and report to Congress within 6 months.

Section 3022 would require FEMA to grant policy holders the right to request engineering reports and other documents relied on by the Administrator and/or participating WYO companies in determining whether the damage was caused by flood or any other peril (e.g., wind). FEMA would also be required to provide the information to the insured within 30 days of the request for information.

Section 3023 would authorize FEMA to refuse to accept future transfers of policies to the NFIP Direct program.

Section 3028 would require FEMA to submit a report to Congress describing procedures and policies for limiting the number of flood insurance policies that are directly managed by the Agency to not more than 10% of the total number of flood insurance policies in force. After submitting the report to Congress, the Administrator would have 12 months to reduce the number of policies directly managed by the Agency, or by the Agency’s direct servicing contractor that is not an insurer, to not more than 10% of the total number of flood insurance policies in force.

*Senate bill*

No provision.



*Conference substitute*

No provision.

## FLOOD RISK ASSESSMENT AND MAPPING

H3006,3007,3008,3013,3014,3018,3020,3024,3026, 3030/S—

*Current law*

There are no relevant provisions in current law regarding Section 3006 of the House bill.

FEMA is authorized to identify and publish information with respect to all areas within the United States having special flood, mudslide, and flood-related erosion hazards. § 65.1

FEMA will only recognize in its flood hazard and risk mapping effort those levee systems that meet, and continue to meet, minimum design, operation, and maintenance standards that are consistent with the level of protection sought through the comprehensive floodplain management regulations. § 65.10

There are no relevant provisions in current law regarding Section 3013 of the House bill.

FEMA publishes in the Federal Registry a notice of the proposed flood elevation determination sent to the Chief Executive Officer of the community. The agency also publishes a copy of the community's appeal or a copy of its decision not to appeal the proposed flood elevation determination. § 67.3

A Standard Flood Insurance policyholder whose property has become the subject of a Letter of Map Amendment may cancel the policy within the current policy year and receive a premium refund. § 70.8 The policy could be canceled provided (1) the policyholder was required to purchase flood insurance; and (2) the property was located in a SFHA as represented on an effective FIRM when the financial assistance was provided. If no claim under the policy has been paid or is pending, the full premium shall be refunded for the current policy year, and for an additional policy year where the insured had been required to renew the policy. § 62.5

FEMA publishes a notice of the community's proposed flood elevation determination in a prominent local newspaper at least twice during the ten day period immediately following the notification of the CEO. § 67.4

FEMA publishes a notice of the community's proposed flood elevation determination in a prominent local newspaper at least twice during the ten day period immediately following the notification of the CEO. § 67.4 Any owner or lessee of real property, within a community where a proposed flood elevation determination has been made who believes his property rights to be adversely affected by the proposed base flood determination may file a written appeal of such determination with the CEO within 90 days of the second newspaper publication of the FEMA proposed determination. § 67.5

There are no relevant provisions in current law regarding Section 3026 of the House bill.

The NFIP participating community must provide written assurance that they have complied with the appropriate minimum floodplain management regulation. § 60.3

*House bill*

Section 3006 would establish the Technical Mapping Advisory Council (Council) to develop and recommend new mapping standards for FIRMs. The Council would include representatives from FEMA, the U.S. Geological Survey (USGS), the U.S. Army Corps of Engineers (USACE), other federal agencies, state and local governments, as well as experts from private stakeholder groups. This section would require that there is adequate number of representatives from the states with coastlines or the Gulf of Mexico and other states containing areas at high-risk for floods or special flood hazard areas. The Council would submit the new mapping standards for 100-year flood insurance rate maps to FEMA and the Congress within 12 months of enactment and would continue to review those standards for four additional years, at which time the Council would be terminated. This section would place a moratorium on the issuance of any updated flood insurance rate maps from the date of enactment until the Council submits to FEMA and Congress the proposed new mapping standards. This section would allow for the revision, update and change of rate maps only pursuant to a letter of map change.

Section 3007 would direct FEMA to establish new standards for FIRMs beginning six months after the Technical Mapping Advisory Council issues its initial set of recommendations. The new standards would delineate all areas located within the 100-year flood plain and areas subject to gradual and other risk levels, as well as ensure the standards reflect the level of protection levees confer. The standard must also differentiate between a property that is located in a flood zone and a structure located on such property that is not at the same risk level for flooding as such property due to the elevation of the structure and provide that such rate maps are developed on a watershed basis. This section would require FEMA to submit a report to Congress specifying which Council recommendations were not implemented and explaining the reasons such recommendations were not adopted. FEMA would have 10 years to update all FIRMs in accordance with the new standards subject to the availability of appropriated funds. This section would eliminate requirements to more broadly map areas considered to be residual risk.

Section 3008 would prohibit the Administrator of FEMA from issuing flood insurance maps, or make effective updated flood insurance maps, that omit or disregard the actual protection afforded by an existing levee, floodwall, pump or other flood protection feature, regardless of the accreditation status of such feature.

Section 3013 would require the Administrator of FEMA, upon any revision or update of any floodplain area or flood-risk zone and the issuance of a preliminary flood map, to notify in writing the Senators of each state affected and each Member of Congress for each congressional district affected by the flood map revision or update.

Section 3014 would require the Administrator of FEMA to establish projected flood elevations and to notify the chief executive officer of each community affected by the proposed elevation a notice of the elevations, including a copy of the maps for the ele-

vations and a statement explaining the process to appeal for changes in such elevations.

Section 3018 would require the Administrator of FEMA to reimburse owners of any property, or a community in which such property is located, for the reasonable costs involved in obtaining a Letter of Map Amendment (LOMA) and Letter of Map Revision (LOMR) if the change was due to a bona fide error on the part of FEMA. The Administrator would be authorized to determine a reasonable amount of costs to be reimbursed except that such costs would not include legal or attorney fees. The reasonable cost would consider the actual costs to the owner of utilizing the services of an engineer, surveyor or similar services. This section would require FEMA to issue regulation pertaining to the reimbursements.

Section 3020 would require FEMA to provide to a property owner newly included in a revised or updated proposed flood map a copy of the proposed FIRM and information regarding the appeals process at the time the proposed map is issued.

Section 3024 would require FEMA to notify a prominent local television and radio station of projected and proposed changes to flood maps for communities. This section would authorize FEMA to grant an additional 90 days for property owners or a community to appeal proposed flood maps, beyond the original 90 day appeal period, so long as community leaders certify they believe there are property owners unaware of the proposed flood maps and appeal period, and community leaders would use the additional 90 day appeal period to educate property owners on the proposed flood maps and appeal process.

Section 3026 would authorize the use of Community Development Block Grants to supplement state and local funding for local building code enforcement departments and flood program outreach.

Under Section 3030, the Administrator of FEMA would be required to conduct a study regarding the impact, effectiveness, and feasibility of including widely used and nationally recognized building codes as part of FEMA's floodplain management criteria and submit a report to the House Committee on Financial Services and Senate Banking, Housing, and Urban Affairs Committee. The study would assess the regulatory, financial, and economic impacts of such building code requirement on homeowners, states and local communities, local land use policies, and FEMA.

*Senate bill*

No provision.

*Conference substitute*

No provision.

STUDIES AND REPORTS FOR CONGRESS

H3009(a),3009(b),3009(c),3009(d),3010,3025,3029,3031/S—

*Current law*

There are no relevant provisions in current law regarding Section 3009(a) of the House bill.

FEMA is authorized to encourage insurance companies and other insurers to form, associate, or otherwise join together in a pool to provide the flood insurance coverage authorized under the NFIP. 44 U.S.C. § 4051(a)

FEMA is authorized to take such action as may be necessary in order to make available reinsurance for losses which are in excess of losses assumed by private industry flood insurance pools. 42 U.S.C. § 4055(a)

There are no relevant provisions in current law regarding Section 3009(d) of the House bill.

There are no relevant provisions in current law regarding Section 3010 of the House bill.

There are no relevant provisions in current law regarding Section 3025 of the House bill.

There are no relevant provisions in current law regarding Section 3029 of the House bill.

There are no relevant provisions in current law regarding Section 3031 of the House bill.

#### *House bill*

Section 3009(a) would require the Administrator of FEMA and the Comptroller General of the United States to conduct separate studies to assess a broad range of options, methods, and strategies for privatizing the NFIP. FEMA and GAO would submit reports (within 18 months of the date of the enactment of this Act) to the House Committee on Financial Services and the Senate Banking, Housing, and Urban Affairs Committee that make recommendations for the best manner to accomplish privatization of the NFIP.

Section 3009(b) would authorize the Administrator of FEMA to carry out private risk-management initiatives to determine the capacity of private insurers, reinsurers, and financial markets to assist communities, on a voluntary basis only, in managing the full range of financial risk associated with flooding. The Administrator would assess the capacity of the private reinsurance, capital, and financial markets by seeking proposals to assume a portion of the program's insurance risk and submit to Congress a report describing the response to such request for proposals and the results of such assessment. The Administrator would be required to develop a protocol to provide for the release of data sufficient to conduct the assessment of the insurance capacity of the private sector.

Under Section 3009(c), the Administrator of FEMA would be authorized to secure reinsurance coverage from private market insurance, reinsurance, and capital market sources in an amount sufficient to maintain the ability of the program to pay claims and that minimizes the likelihood of having to borrow from the U.S. Treasury.

Under Section 3009(d), the Administrator would be required to conduct an assessment of the claims-paying ability of the NFIP, including the program's utilization of private sector reinsurance and reinsurance equivalents, with and without reliance on borrowing authority.

Section 3010 would require the Administrator of FEMA to submit an annual report to the Congress on the financial status of the

NFIP, including current and projected levels of claims, premium receipts, expenses, and borrowing under the program.

Under Section 3025, the Administrator of FEMA would be required to conduct a study regarding the impact, effectiveness, and feasibility of including widely used and nationally recognized building codes as part of FEMA's floodplain management criteria and submit a report to the House Committee on Financial Services and Senate Banking, Housing, and Urban Affairs Committee. The study would assess the regulatory, financial, and economic impacts of such building code requirements on homeowners, states and local communities, local land use policies, and FEMA.

Section 3029 would require the Administrator of FEMA and the Comptroller General of the United States to conduct separate studies to assess options, methods, and strategies for offering voluntary community-based flood insurance under the NFIP. The studies would consider and analyze how the policy options would affect communities having varying economic bases, geographic locations, flood hazard characteristics or classification, and flood management approaches. The report and recommendations would be submitted within 18 months after the enactment of this Act to the House Committee on Financial Services and the Senate Banking, Housing, and Urban Affairs Committee.

Section 3031 would require the National Academy of Sciences (NAS) to conduct a study of methods for understanding graduated risk behind levees and the associated land development, insurance, and risk communication dimensions. The NAS would submit a report with recommendations within 12 months of the date of enactment of this Act to the House Committee on Financial Services and Senate Banking, Housing, and Urban Affairs Committee.

*Senate bill*

No provision.

*Conference substitute*

No provision.

MISCELLANEOUS PROVISIONS

H3035/S—

*Current law*

There are no relevant provisions in current law regarding Section 3035 of the House bill.

*House bill*

Section 3035 would allow state and local governments to use the Army Corps of Engineers to evaluate locally operated levee systems which were either built or designed by the Corps, and which are being reaccredited as part of a NFIP remapping. All costs associated with evaluations would continue to be covered by the state or local government requesting the evaluation.

*Senate bill*

No provision.

*Conference substitute*

No provision.

TITLE IV—JUMPSTARTING OPPORTUNITY WITH  
BROADBAND SPECTRUM ACT OF 2011

SUBTITLE A—SPECTRUM AUCTION AUTHORITY

H4005,4101,4102,4103,4104,4105,4106,4107/S—

*Current law*

There are no relevant provisions in current law regarding Section 4005 of the House bill.

Current law provides for auction of electro-magnetic spectrum assigned for federal use but does not establish deadlines for specified frequencies. Current law provides for a Spectrum Relocation Fund. It requires that spectrum license proceeds be paid to the General Fund except in the case of auctions of federal spectrum being reallocated for commercial use in which case unexpended proceeds are held for 8 years before being deposited in the Treasury.

Current law requires that 24 MHz of spectrum licenses in 700 MHz band be assigned for use by public safety agencies. FCC regulations have designated 12 MHz for use by narrowband radios carrying primarily voice communications and 2 MHz as guard bands to mitigate radio interference. Licenses are administered by state and local authorities. Current law requires that auction proceeds be deposited in the General Fund.

The FCC has broad regulatory powers that might permit it to reallocate TV broadcasting spectrum. Current law requires that auction proceeds be deposited in the General Fund.

There are no relevant provisions in current law regarding Section 4104 of the House bill.

The law requires the FCC to set rules regarding participation in spectrum licenses auctions and for spectrum use (service rules).

Authority of FCC to use competitive bidding systems to assign licenses for the use of designated portions of electro-magnetic spectrum expires September 30, 2012.

There are no relevant provisions in current law regarding Section 4107 of the House bill.

*House bill*

Under Section 4005, payments of funds to and access to spectrum license auctions would be prohibited for any person who is barred by a federal agency for reasons of national security.

Section 4101 would set requirements for commercial auctions of electro-magnetic spectrum currently assigned for federal use as described by the bill. With exceptions, process of preparing auctions would begin within three years of enactment. Spectrum license auction proceeds would be distributed to the Spectrum Relocation Fund, which would receive an amount equal to 110% of projected federal agency relocation costs, with the balance deposited with the Public Safety Trust Fund.

Section 4102 would require that these spectrum licenses be released for commercial auction within five years of a decision by a federally appointed Administrator. The decision would be triggered by a declaration by the Administrator that technology was available that would allow the migration of voice communications from the 700 MHz narrowband networks to the 700 MHz broadband network, thereby freeing up the narrowband spectrum for auction to the commercial sector. Would allocate \$1 billion of auction proceeds to a new grant program for states to acquire radio equipment.

Section 4103 would provide the FCC with the authority to establish incentive auctions for television broadcasters, within specified limits. It would create a TV Broadcaster Relocation Fund as a means for broadcasters to receive up to \$3 billion of auction revenue to cover relocation costs and for other purposes. Proceeds above that amount would go to the Public Safety Trust Fund through FY2021, after which funds are to be deposited in the General Fund.

Section 4104 would establish procedures for the FCC to follow in reallocating television broadcasting spectrum licenses for commercial auction.

Section 4105 would set limitations on FCC auction and service rules for future auctions. Would prohibit auction rules that placed new conditions on prospective bidders (spectrum caps). Would prohibit service rules that restrict licensee's ability to manage network traffic (net neutrality) or that would require providing network access on a wholesale basis.

Section 4106 would extend the FCC's auction authority through FY 2021.

Section 4107 would lay the groundwork to expand commercial use of unlicensed spectrum within the federally managed 5GHz band of wireless spectrum by requiring the FCC to commence a proceeding as described in the bill.

#### *Senate bill*

No provision.

### SUBTITLE B—ADVANCED PUBLIC SAFETY COMMUNICATIONS

#### PART 1—NATIONAL IMPLEMENTATION

H4201,4202,4203,4204,4205/S—

#### *Current law*

The FCC is empowered to manage public safety use and assign access to spectrum. FCC has assigned a single, nationwide license for 10 MHz of public safety broadband spectrum, which it regulates. The law requires that the D Block be auctioned for commercial purposes, with proceeds deposited in the General Fund.

The Office of Emergency Communications (OEC) within the Department of Homeland Security, as required by law, has prepared a National Emergency Communications Plan. The law also requires the OEC to work with other federal agencies in developing appropriate standards for interoperability, among other requirements. The FCC has used its regulatory authority to create re-

quirements for the use of public safety spectrum at 700 MHz, including interoperability and standard-setting.

Law has required that each state, in order to receive federal funding for certain grants for public safety, must establish a State Communications Interoperability Plan (SCIP) and designate plan administrators at the state or local level. OEC is charged with assisting and overseeing these plans. Each state has submitted a SCIP to the OEC. Law also required the creation of Regional Emergency Communications Centers to facilitate regional planning for interoperability at the regional level.

There are no relevant provisions in current law regarding Section 4204 of the House bill.

#### *House bill*

Section 4201 would assign a total of 20 MHz of 700 MHz spectrum designated for public safety use to an Administrator, competitively chosen by the NTIA. The Administrator would manage the distribution of spectrum capacity to individual states and enforce requirements established in the bill. Specifically, provisions would reallocate 10 MHz (the D Block) from commercial use to public safety use.

Section 4202 would establish requirements for the FCC to create a Public Safety Communications Planning Board. The Board would prepare, and submit to the FCC for approval, a National Public Safety Communications Plan. The Plan would include requirements for interoperability and standards, among other provisions.

Section 4203 would require the NTIA to request proposals for the administration of the Plan. Would establish the duties of the Administrator in working with State Public Safety Broadband Offices to build interoperable networks within each state.

Section 4204 would provide borrowing authority of up to \$40 million for the creation and initial operation of the Administrator's office, to be repaid from auction revenue received by the Public Safety Trust Fund.

Section 4205 would require the OEC to submit to Congress a study that would: review the importance of amateur radio in responding to disasters; make recommendations for how to enhance the use of amateur radio federally; and to identify impediments to amateur radio such as private land use restrictions on antennas.

#### *Senate bill*

No provision.

#### PART 2—STATE IMPLEMENTATION

H4221,4222,4223,4224,4225/S—

#### *Current law*

FCC has promulgated regulations and requirements for public safety broadband access.

There are no relevant provisions in current law regarding Section 4222 of the House bill.

There are no relevant provisions in current law regarding Section 4223 of the House bill.



There are no relevant provisions in current law regarding Section 4224 of the House bill.

State and local governments have right to apply zoning law procedures for requests to modify existing cell towers.

*House bill*

Section 4221 would require each state seeking to establish a public safety broadband network, using 700 MHz public safety broadband spectrum, to create a Public Safety Broadband Office. Each office would prepare proposals for building networks based on the requirements established through the National Public Safety Communications Plan, including for requests for proposal. The Administrator would work with each state office in preparing and carrying out the plans. In general, states would be required to sign a contract with a commercial mobile provider to build the network to specifications as provided in the bill and in accordance with requirements established by the Public Safety Communications Planning Board and by the Administrator.

Section 4222 would establish a matching grant program to assist state Public Safety Broadband Offices.

Section 4223 would create a State Implementation Fund for the State Implementation Grant Program. The fund would receive up to \$100 million in auction revenue as specified in the bill. Funds remaining at the end of 2021 would be deposited in the General Fund.

Section 4224 would provide grants to states for payments under contracts entered into with the approval of the Administrator.

Section 4225 would require approval of requests for modification of cell towers. This section would provide for federal agencies to grant easements for the placement of antennas on federal property. This section would require the General Services Administration (GSA) to provide a common request form for easements and rights-of-way and to establish fees for this service, based on direct cost recovery. This section would require the GSA to develop one or more contracts for antenna placement and other specifications.

*Senate bill*

No provision.

PART 3—PUBLIC SAFETY TRUST FUND

H4241/S—

*Current law*

There are no relevant provisions in current law regarding Section 4241 of the House bill.

*House bill*

Section 4241 would create a fund to receive, hold and disburse all auction proceeds as provided in the bill except for \$3 billion to be directed to the TV Broadcaster Relocation Fund. Designated uses are: State and Local Implementation, \$100 million; Public Safety Administrator, \$40 million; Public Safety Broadband Network Deployment, \$4.96 billion plus 10% of any remaining

amounts deposited in the fund up to \$1.5 billion; Deficit Reduction, \$20.4 billion from fund and balances upon expiration in FY 2021, plus at least 90% of any additional auction revenue.

*Senate bill*

No provision.

PART 4—NEXT GENERATION 9–1–1 ADVANCEMENT ACT

H4265,4266,4267,4268,4269,4270,4271/S—

*Current law*

Similar provisions were in effect through statutes that expired at the end of FY2009. Provisions included requirements for a grant program and for planning for the eventual transition to Next Generation 9–1–1.

There are no relevant provisions in current law regarding Section 4266 of the House bill.

Law Requires FCC to study 9–1–1 fee collection and use and issue a report annually.

Law extends similar protection for existing 9–1–1 services.

There are no relevant provisions in current law regarding Section 4269 of the House bill.

There are no relevant provisions in current law regarding Section 4270 of the House bill.

*House bill*

Section 4265 would establish a federal 9–1–1 Coordination Office to advance planning for next-generation 9–1–1 systems and to fund a grant program with an authorization of \$250 million. This section would direct the Assistant Secretary (NTIA) and the Administrator of the National Highway Traffic Safety Administration (NHTSA) to establish a 9–1–1 Implementation Coordination Office to reestablish and extend matching grants, through October 1, 2021, to eligible state or local governments or tribal organizations for the implementation, operation, and migration of various 9–1–1, E9–1–1 (wireless telephone location), Next Generation 9–1–1 (voice, text, video), and IP-enabled emergency services and public safety personnel training. This section would provide immunity and liability protection, to the extent consistent with specified provisions of the Wireless Communications and Public Safety Act of 1999, to various users and providers of Next Generation 9–1–1 and related services, including for the release of subscriber information.

Section 4266 would require GAO to prepare a report on 9–1–1 capabilities of multi-line telephone systems in federal facilities, and would require the FCC to seek comment on the feasibility of improving 9–1–1 identification for calls placed through multi-line telephone systems.

Section 4267 requires GAO to study how states assess fees on 9–1–1 services and how those fees are used.

Section 4268 would provide immunity and liability protection, to the extent consistent with specified provisions of the Wireless Communications and Public Safety Act of 1999, to various users and providers of Next Generation 9–1–1 and related services, including for the release of subscriber information.

Section 4269 would direct the FCC to: (1) initiate a proceeding to create a specialized Do-Not-Call registry for public safety answering points, and (2) establish penalties and fines for autodialing (robocalls) and related violations.

Section 4270 requires an analysis of costs and assessments and analyses of technical uses.

Section 4271 would require the FCC to assess the legal and regulatory environment for development of NG9-1-1 and barriers to that development, including state regulatory roadblocks.

*Senate bill*

No provision.

SUBTITLE C—FEDERAL SPECTRUM RELOCATIONS

H4301,4302,4303/S—

*Current law*

Law provides conditions of use and relinquishment of spectrum, and related actions, by federal agencies. Federal agencies that are relocating to new spectrum allocations in order to accommodate commercial users for other uses may be reimbursed for certain costs of relocation from the Spectrum Relocation Fund, established for that purpose.

Spectrum Relocation Fund created by the Commercial Spectrum Enhancement Act of 2004 (P.L. 108-494, Title II).

There are no relevant provisions in current law regarding Section 4303 of the House bill.

*House bill*

Section 4301 would include shared use as an eligible action and expenditures for planning would be newly included among those costs eligible for reimbursement from the Spectrum Relocation Fund. This section would establish a Technical Panel to review a transition plan that the NTIA would be required to prepare in accordance with provisions in the bill. This section would require that the NTIA give priority to options that would reallocate spectrum for exclusive, nonfederal uses assigned through auction.

Section 4302 would address uses of the Fund, as described in Sec. 4301, and would establish requirements regarding transfers of funds in advance of auctions and reversion of unused funds.

Section 4303 would establish provisions under which non-disclosure of information regarding federal spectrum use would be determined.

*Senate bill*

No provision.

SUBTITLE D—TELECOMMUNICATIONS DEVELOPMENT FUND

H4401,4402/S—

*Current law*

The Telecommunications Development Fund (TDF) was created to provide funding for new ventures in telecommunications.

One source of funds comes from the requirement that interest from certain escrow accounts overseen by the FCC be transferred to the TDF.

The law that created TDF requires board members to consult with the FCC and the Treasury before finalizing decisions.

*House bill*

Section 4401 would require that interest accrued in specified accounts be deposited in the General Fund.

Section 4402 eliminates the role of federal agencies in oversight of board activities.

*Senate bill*

No provision.

*Conference substitute*

Title VI—Public Safety Communications and Electromagnetic Spectrum Auctions. The public safety and spectrum provisions of this legislation advance wireless broadband service by clearing spectrum for commercial auction, promoting billions of dollars in private investment, and creating tens of thousands of jobs. These provisions also deliver on one of the last outstanding recommendations of the 9/11 Commission by creating a nationwide interoperable broadband communications network for first responders and generating billions of dollars of Federal revenue.

## TITLE V—OFFSETS

### SUBTITLE A—GUARANTEE FEES

H5001/S401,402

*Current law*

Similar provisions were enacted in Title IV of P.L. 112–78.

*House bill*

Section 5001 increases guarantee fees to reflect risk of loss and cost of capital as if enterprises were fully private regulated institutions. This section requires a minimum increase of 10 basis points (0.10%) greater than average 2011 guarantee fees. To the extent that amounts are received from fee increases imposed under this section that are necessary to comply with the minimum increase required by this subsection, such amounts shall be deposited directly into the United States Treasury, and shall be available only to the extent provided in subsequent appropriations Acts. Such fees shall not be considered a reimbursement to the Federal Government for the costs or subsidy provided to an enterprise. This section provides for a two-year phase-in at discretion of Director of FHFA. This section requires all lenders to be charged a uniform guarantee fee. This section requires an annual FHFA Report to Congress to include information on up-front and annual guarantee fee increases, and changes in riskiness of new mortgages. This section applies to mortgages closed after the date of enactment. This section expires October 1, 2021.

*Senate bill*

Sections 401 and 402 increase guarantee fees to reflect risk of loss and cost of capital as if enterprises were fully private regulated institutions. This section requires a minimum increase of 10 basis points (0.10%) greater than average 2011 guarantee fees. Amounts received from fee increases imposed under this section shall be deposited directly into the United States Treasury, and shall be available only to the extent provided in subsequent appropriations Acts. The fees charged pursuant to this section shall not be considered a reimbursement to the Federal Government for the costs or subsidy provided to an enterprise. This section provides for a two-year phase-in at discretion of Director of FHFA. This section requires all lenders to be charged a uniform guarantee fee. This section requires an annual FHFA Report to Congress to include information on up-front and annual guarantee fee increases, and changes in riskiness of new mortgages. This section applies to mortgages closed after the date of enactment. This section expires October 1, 2021. This section increases guarantee fees on FHA-insured mortgages by 10 basis points (0.10%) with phase-in over two years.

*Conference substitute*

No provision.

## TITLE VI—MISCELLANEOUS PROVISIONS

H6002,6003(a),6003(b),6004/S511,512

*Current law*

Section 263 of the Trade Adjustment Assistance Extension Act of 2011 (P.L. 112–40) requires any fees for processing merchandise entered between October 1 and November 12, 2012, to be paid no later than September 25, 2012, in an amount equivalent to the amount of such fees paid with respect to merchandise entered between October 1 and November 12, 2011. The section requires the Secretary of the Treasury to refund with interest any overpayment of such fees. The section prohibits any assessment of interest for any underpayments based on the amount of fees paid for merchandise entered between October 1 and November 12, 2012.

Section 601(c) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (26 U.S.C. 1401 note) specifies the calendar year in which the payroll tax holiday period applies. There is no Senate point of order against the consideration of legislation that would amend this section of the law.

Section 251 of the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA), as amended by the Budget Control Act of 2011 (BCA), establishes enforceable statutory limits on discretionary spending for each fiscal year covering FY2012–FY2021. Section 251(b)(2)(A)(i) of the BBEDCA provides for these limits to be adjusted to accommodate discretionary spending designated as emergency requirements in statute (i.e., effectively exempting such spending from the limits). Section 314 of the Congressional Budget Act of 1974, as amended by the BCA, allows the chairs of the budget committees in each chamber to make similar adjustments for

purposes of congressional enforcement of these and other spending limits during the consideration of spending legislation. The existing Senate point of order against an emergency designation (Section 403 of S. Con. Res. 13, 111th Congress, the FY2010 budget resolution) does not apply to an emergency designation pursuant to the BBEDCA; therefore, there is no current Senate point of order against such a designation.

Under the Statutory Pay-As-You-Go Act of 2010 (Title I of P.L. 111–139), the five-year and 10-year budgetary effects of direct spending and revenue legislation enacted during a session are placed on respective scorecards. At the end of a session of Congress, if either scorecard shows an increase in the deficit, a sequestration of non-exempt budgetary resources is required to eliminate such deficit. Under the law, off-budget effects and discretionary spending effects are not counted.

#### *House bill*

Section 6002 repeals a requirement that importers pre-pay certain fees authorized under the Consolidated Omnibus Budget Reconciliation Act of 1985.

Section 6003(a) creates a Senate point of order against the consideration of any measure that “extends the dates referenced in section 601(c) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010.” Provides that a two-thirds affirmative vote would be required to waive the point of order.

Section 6003(b) amends the Budget Act to create a point of order against an emergency designation pursuant to the BBEDCA included in any measure. The new point of order is similar to the existing Senate emergency designation point of order: (1) if point of order is made, emergency designation is stricken from the measure; and (2) a three-fifths affirmative vote is required to waive the point of order and to sustain an appeal of the ruling of the chair.

Section 6004 provides that the budgetary effects of H.R. 3630 are not placed on either PAYGO scorecard, as long as the legislation does not increase the deficit over the FY2013–FY2021 period. Also provides that off-budget effects, changes to the statutory discretionary spending limits, and changes in net income to the National Flood Insurance Program are to be counted in determining the budgetary effects of the legislation.

#### *Senate bill*

The Senate bill does not contain a provision regarding the repeal of a requirement relating to time for remitting certain merchandise processing fees.

Section 511 amends the Budget Act to create a point of order against an emergency designation pursuant to the BBEDCA included in any measure. The new point of order is similar to the existing Senate emergency designation point of order: (1) if point of order is made, emergency designation is stricken from the measure; and (2) a three-fifths affirmative vote is required to waive the point of order and to sustain an appeal of the ruling of the chair.

Section 512 provides that the budgetary effects of H.R. 3630 are not placed on either PAYGO scorecard. Senate provision makes

no modifications to the conventional budget scoring of the legislation.

*Conference substitute*

Section 7002. Repeal of Requirement Relating to Time for Remitting Certain Merchandise Processing Fees: Repeals a requirement that importers pre-pay certain fees authorized under the Consolidated Omnibus Budget Reconciliation Act of 1985. The provision is identical to that contained in Section 6002 of the House bill.

Section 7003. Points of Order in the Senate: Includes two Senate points of order related to (1) protecting the Social Security Trust Fund and (2) emergency spending. The provision is identical to that contained in Section 6003 of the House bill.

Section 7004. PAYGO Scorecard Estimates: Provides that the budgetary effects of the bill shall not be entered on the statutory PAYGO scorecards provided that the bill is deficit neutral over 10 years. The provision is identical to that contained in Section 6004 of the House bill.

FEDERAL CIVILIAN EMPLOYEES PROVISIONS

*Current law*

*Pay Freeze:* The Continuing Resolution of December of 2010 included a two-year freeze on all across-the-board, annual pay adjustments for federal civilian employees, January 1, 2011 through December 31, 2012.

*Federal Employee Pensions:* Most federal civilian employees are participants in the Federal Employees Retirement System (FERS), under which they make a contribution toward a defined benefit pension equal to 0.8 percent of basic pay. Their employing agency covers the remainder of the pension cost. At normal retirement age, an employee is entitled to a pension equal to 1 percent (or 1.1 percent for those retiring at age 62 with 20 years of service) of the average of the employee's highest three years' compensation times the employee's years of service. Certain FERS participants retiring prior to age 62 are entitled to the FERS annuity supplement. This benefit is paid in addition to their defined benefit annuity, and equals the Social Security benefit they would receive for their FERS civilian service from the Social Security Administration if eligible to receive Social Security on their date of retirement. Most employees who first entered federal government service before 1987 are covered by the Civil Service Retirement System (CSRS), under which they contribute 7 percent of their pay toward their defined benefit pension. CSRS employees are not covered by Social Security, so, unlike FERS employees, they are not subject to the 6.2 percent Social Security contribution. Under both FERS and CSRS, employee contributions and benefits for special occupational groups and Members of Congress are higher. Separate but comparable retirement systems exist for Foreign Service and CIA employees.

*House bill*

*Pay Freeze:* The House bill would extend the current freeze on across-the-board statutory pay adjustments for federal civilian employees and Members of Congress through December 31, 2013.

*Federal Employee Pensions:* The House bill would increase the employee contribution for both CSRS and FERS employees by 0.5 percentage points each year for three years, beginning in 2013. Corresponding changes would be made to the Foreign Service, CIA, and TVA retirement systems. The House bill would establish new retirement rules for federal employees hired after December 31, 2012, with less than 5 years of service. Their contribution to FERS would increase by 3.2 percentage points. The FERS pension formula salary base for new employees would change to the highest-five years' average salary instead of highest three years. The FERS pension formula multiplier for most new employees would be reduced to 0.7 percent per year of service, instead of 1 percent (or 1.1 percent for those retiring at age 62 with 20 or more years of service). Employees in special occupational groups are subject to a proportional adjustment to the multiplier (0.3 percentage points lower than current law). Finally, the House bill would eliminate the FERS Annuity Supplement for individuals not subject to mandatory retirement, beginning January 1, 2013. Individuals subject to mandatory retirement include certain categories of employees such as law enforcement, fire fighters, air traffic controllers, and nuclear materials couriers.

*Senate bill*

No provision.

*Conference substitute*

*Pay Freeze:* No provision.

*Federal Employee Pension:* The Conference Agreement would increase by 2.3 percent the employee pension contribution for federal employees entering service after December 31, 2012, who have less than 5 years of creditable civilian service. Corresponding increases in employee contributions would be made for individuals entering the CIA and Foreign Service pension systems. Members of Congress and congressional employees entering service after December 31, 2012 who have less than 5 years of creditable civilian service would be subject to the same contribution rate and annuity calculation as other federal employees.

#### MEDICARE AND OTHER HEALTH PROVISIONS

##### Extension of MMA Section 508 Reclassifications

*Current law*

Under Medicare's Inpatient Prospective Payment System (PPS), payments are adjusted by a wage index that is intended to reflect the cost of labor in the area where the services are furnished compared to a national average. Hospitals in areas with higher wage costs have higher wage indices and therefore receive higher PPS payments; hospitals in lower wage areas have lower wage indices and receive lower payments.

Recognizing that the indices are not always accurate, Congress in 1989 established a process whereby hospitals could apply to "re-classify" to a nearby area, and receive the higher wage index of that area. While a significant number of hospitals (nearly 40%)



have a reclassified wage index, other hospitals have not been able to meet the established criteria.

Section 508 of the Medicare Modernization Act of 2003 (MMA) directed the Centers for Medicare and Medicaid Services (CMS) to develop new criteria that would allow additional hospitals to qualify for a one-time, three-year reclassification.

According to CMS, there were 89 hospitals receiving Section 508 reclassification payments in FY 2011.

*House bill*

No provision.

*Senate bill*

Section 302 extended the Section 508 reclassification payments for two months (October and November 2011).

*Conference substitute*

Section 3001 extends Section 508 reclassification payments through March 31, 2012.

**Extension of Outpatient Hold Harmless Payments**

*Current law*

In 2000, Medicare implemented a PPS for hospital outpatient services; prior to this time hospitals received cost-based payments. For certain hospitals, primarily those located in rural areas, the outpatient PPS payments were lower than the payments they had received under the prior cost-based system. The Balanced Budget Refinement Act of 1999 (BBRA) mandated that rural hospitals with fewer than 100 beds receive 100% of the difference between OPPS payments and what these hospitals would have received under the cost-based system (thus the name “hold harmless” payments). Over time, Congress has lowered the payment percentage (it currently is 85%) and has expanded the policy to sole community hospitals (SCHs), hospitals that are further than 35 miles from another hospital.

*House bill*

No provision.

*Senate bill*

Section 308 extended the hold harmless payment to all eligible hospitals for two months (January and February 2012).

*Conference substitute*

Section 3002 extends the outpatient hold harmless payments through December 31, 2012, except for SCHs with more than 100 beds. The provision requires a study by the Department of Health and Human Services (HHS) by July 1, 2012, on which types of hospitals should continue to receive hold harmless payments in order to maintain adequate beneficiary access to outpatient services.

## Physician Payment Update

### *Current law*

The Sustainable Growth Rate (SGR) formula system was established by the Balanced Budget Act of 1997 (BBA) as the mechanism to determine the update to Medicare physician payments beginning in 1999. The formula allows spending to grow at the rate of the economy, adjusted for other factors such as the number of beneficiaries in Medicare fee-for-service. The tally of actual and target expenditures is cumulative in that it is maintained on an ongoing basis since the formula's inception. The update adjustment that results from the SGR system is made through the conversion factor. If spending exceeds the target, the adjustment to the conversion factor is negative (physicians payments get reduced). If spending is below the target, the adjustment is positive (physician payments are increased). Physician spending has routinely exceeded the target such that the SGR formula has specified negative updates since 2002. Congress has intervened 13 times to avert the cuts since 2003. The SGR currently calls for a 27.4 percent across-the-board rate cut for physicians to take effect on March 1, 2012.

### *House bill*

Section 2201 replaced the 27.4 percent cut with a 1 percent rate increase in 2012 and another 1 percent increase in 2013. This section also required reports from the: Medicare Payment Advisory Commission (MedPAC) on aligning private sector initiatives to reward quality, efficiency, and practice improvements with Medicare performance-based initiatives; Government Accountability Office (GAO) on examining private sector initiatives that base or adjust physician payments for quality, efficiency, or care delivery improvement; and Secretary of HHS on options for bundling payments for common physician services. It also required the committees of jurisdiction to provide information to Congress to assist in the development of a long-term replacement to the current Medicare physician payment system.

### *Senate bill*

Section 301 froze physician payment rates at their 2011 level for two months (January and February 2012).

### *Conference substitute*

Section 3003 freezes physician payment rates at their current levels until December 31, 2012, averting a 27.4 percent reduction. The provision also requires reports from the Secretary of HHS, due January 1, 2013, that examines bundled or episode-based payments to cover physicians' services for one or more prevalent chronic conditions or major procedures. It also requires a GAO report, due January 1, 2013, that examines private sector initiatives that base or adjust physician payment rates for quality, efficiency, and care delivery improvement, such as adherence to evidence-based guidelines.

## Work Geographic Adjustment

### *Current law*

Medicare payment for each physician service is made up of three components: 1) physician work (the time, skill and intensity for a physician to provide a service), 2) practice expense (associated overhead costs), and 3) physician liability insurance. Each of these components is adjusted based on the relative costs associated with the geographic area in which the physician practices. Medicare makes these adjustments, known as Geographic Practice Cost Indices (GPCIs), in each of its designated 89 geographic areas. The national average work adjustment is set at a value of 1.0. Thus, geographic areas with an adjustment value greater than 1.0 receive higher work payments than the areas with an adjustment below that threshold. Current law maintains a work adjustment floor—set at the national average value of 1.0—that increases work payments to physicians in the areas that have a value below the national average. This floor increases payments in 54 of 89 geographic areas. The MMA established this policy starting in 2004 and Congress subsequently extended it five times.

### *House bill*

Section 2204 extended the work GPCI floor through December 31, 2012 and required that MedPAC submit a report by June 1, 2012 that assesses whether any work geographic adjustment is needed, if so, at what level it should be applied, and the impact of the floor on beneficiary access to care.

### *Senate bill*

Section 303 extended the 1.0 GPCI floor for two months (January and February 2012).

### *Conference substitute*

Section 3004 extends the 1.0 work GPCI floor through December 31, 2012. It also requires MedPAC to report by June 15, 2013, assessing whether any work geographic adjustment is needed and, if so, at what level it should be applied, and the impact of the floor on beneficiary access to care.

## Payment for Outpatient Therapy Services

### *Current law*

The BBA imposed two annual per beneficiary payment limits for all outpatient therapy services delivered by non-hospital providers. For 2012, the annual limit on the allowed amount for outpatient physical therapy (PT) and speech-language pathology (SLP) combined is \$1,880. There is a separate \$1,880 limit for occupational therapy (OT). Enforcement of the caps has been blocked by legislation every year since 2000, with the exception of three months in 2003. The Deficit Reduction Act of 2006 (DRA) required the HHS Secretary to implement an exceptions process in 2006 for cases in which the provision of additional therapy services above the cap was determined to be medically necessary. Congress has extended this exceptions process several times.

*House bill*

Section 2203 extended the exceptions process through December 31, 2013, and made specific refinements to the exceptions process to ensure that medical necessity is documented and appropriately reviewed. Specifically, the HHS Secretary was required to ensure, through claims processing edits, that appropriate modifiers are on the claims indicating that the responsible providers have documented medical necessity for services paid above the therapy cap threshold. In addition, all Medicare claims for therapy services were required to include the national provider identifier (NPI) for the physician or practitioner (not the therapist rendering services) who periodically reviews the therapy plan of care. The spending cap was permanently expanded to include spending for therapy services provided in hospital outpatient departments. Starting on July 1, 2012, when a beneficiary's annual spending for therapy services furnished in calendar year 2012 reaches \$3,700 in PT and SLP, or \$3,700 in OT, any additional services would be subject to a manual medical review process.

By January 1, 2013, the Secretary was required to collect detailed data on therapy patient conditions and outcomes that could assist in reforming the current therapy payment system. In addition, MedPAC was required to submit a report to the committees of jurisdiction, making recommendations on how to reform the payment system so that the benefit is better designed to reflect individual acuity, condition, and therapy needs of the patient. GAO was required to submit a study to the committees of jurisdiction, examining CMS implementation of the manual review process.

*Senate bill*

Section 304 extended the exceptions process for Medicare outpatient therapy caps for two months (January and February 2012).

*Conference substitute*

Section 3005 extends the therapy caps exceptions process through December 31, 2012. Starting with services provided on or after October 1, 2012, the Secretary is required to ensure that appropriate modifiers and NPIs are on the Medicare claims and implement a manual medical review process for beneficiaries whose annual spending for therapy services furnished in calendar year 2012 reaches \$3,700 in PT and SLP, or \$3,700 in OT. The spending caps are temporarily expanded (through December 31, 2012) to include spending for therapy services provided in hospital outpatient departments. The conference agreement also requires the Secretary to collect detailed data to assist in refining the therapy payment system and also requires reports from GAO and MedPAC.

Payment for Technical Component of Certain Physician Pathology Services

*Current law*

Medicare pays for the preparation of pathology lab samples (the "technical component") as well as the physician interpretation and diagnosis associated with those samples ("professional component"). Prior to 1999, independent labs that performed the tech-

nical component (TC) of pathology lab services for hospitals could bill Medicare directly for the TC payment. In 1999, CMS implemented a new rule that prohibited independent laboratories from billing for these services, with the rationale that Medicare payment was already included in the bundled payment to the hospital. Hospitals that had in-house labs were unaffected. Hospitals that had been utilizing independent labs as of July 22, 1999, however, were “grandfathered” in the Benefits Improvement and Protection Act (BIPA) of 2000, allowing them to continue billing Medicare directly.

*House bill*

No provision.

*Senate bill*

Section 305 extended the TC grandfather policy for two months (January and February 2012).

*Conference substitute*

Section 3006 extends the TC grandfather policy until June 30, 2012.

**Ambulance Add-On Payments**

*Current law*

In 2002, a fee schedule was established for ground and air ambulance services; it was fully implemented in 2006. Currently, all ground ambulance services receive some type of add-on: 2 percent for urban ground ambulance trips, 3 percent for rural ground ambulance trips, and 22.6 percent for ground ambulance trips that originate in “super rural” areas (those in the lowest quartile in terms of population density).

Under the air ambulance fee schedule, rural providers receive a 50% add-on. In 2006, the Office of Management and Budget (OMB) changed the designation of a number of areas from rural to urban, based on updated Census data, which would have ended the rural add-on for air ambulances originating in the affected areas. The Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) allowed these affected areas to continue to be considered rural so that air ambulances could continue to receive the rural add-on.

*House bill*

Section 2202 extended the payment add-ons for ground ambulance services until December 31, 2012.

Additionally, the House bill required GAO to update their 2007 report detailing current ambulance costs. The House bill also required MedPAC to submit a report on the appropriateness of the ambulance fee schedule and whether there is a need to reform the ambulance fee schedule.

*Senate bill*

Section 306 extended the add-ons for ground ambulance services and continued the rural designation for certain air ambulance services for two months (January and February 2012).

*Conference substitute*

Section 3007 extends payment add-ons for ground ambulance services and continued the rural designation for certain air ambulance services until December 31, 2012. This provision requires GAO to update its 2007 report by October 1, 2012, to reflect current costs for ambulance providers and requires MedPAC to submit a report by June 15, 2013, on the appropriateness of the ambulance add-on payments and whether there is a need to reform the ambulance fee schedule.

## Qualifying Individual Program

*Current law*

The Qualifying Individual (QI) program is a Medicare savings program for certain low-income Medicare beneficiaries, who are fully eligible for Medicare and receive Medicaid assistance with their Medicare Part B premiums. Unlike full benefit dually-eligible beneficiaries who are fully eligible for both Medicare and Medicaid (known as qualified Medicare beneficiaries (QMBs), or those with incomes below 100 percent of poverty) and specified low-income Medicare beneficiaries (SLMBs, or those with incomes between 100 and 120 percent of poverty), QI is a block grant to states that must be reauthorized each year. Enrollment in QI is limited by federal appropriations, and applications are approved on a first-come, first-served basis. QI beneficiaries must have incomes between 120 and 135 percent of poverty (\$13,404 to \$15,079 for an individual in 2012).

*House bill*

Section 2211 extended the QI program through December 31, 2012.

*Senate bill*

Section 310 extended the QI program for two months (January and February 2012).

*Conference substitute*

Section 3101 extended the QI program through December 31, 2012.

## Transitional Medical Assistance

*Current law*

Congress expanded the Transitional Medical Assistance (TMA) program in 1988 as part of welfare-to-work programs, requiring states to provide TMA to families who lose Medicaid eligibility for work-related reasons for at least six, and up to twelve, months. During the first six months of TMA, states must provide the same benefits the family was receiving or pay for costs of similar employer-based coverage. The second six months of TMA is available for families who continue to have a dependent child at home, meet reporting requirements, and have average gross monthly earnings below 185% of poverty.

Congress created an additional work-related TMA option in the American Recovery and Reinvestment Act of 2009 (ARRA). Under the ARRA option, states may choose to provide work-related TMA for a full twelve-month period rather than two six-month periods. These changes were informed by GAO work that found the reporting requirements to be a substantial paperwork barrier that caused significant numbers of eligible families to lose coverage to which they were entitled. Thirteen states have taken up the ARRA option: Alaska, Colorado, Connecticut, Florida, Idaho, Maryland, Montana, New Mexico, New York, Ohio, Oregon, South Dakota, and Wisconsin.

*House bill*

Section 2212 extended TMA, through December 31, 2012. In addition, this provision contained new income reporting requirements for any month of TMA coverage and limited TMA to only those individuals with incomes below 185 percent of poverty.

*Senate bill*

Section 311 extended TMA for two months (January and February 2012).

*Conference substitute*

Section 3102 provides for an extension of TMA through December 31, 2012.

*Modification to Requirements for Qualifying for Exception to Medicare Prohibition on Certain Physician Referrals for Hospitals*

*Current law*

Physicians are generally prohibited from referring Medicare patients to a health care facility in which they, or an immediate family member, have a financial stake. However, physician-owned hospitals have operated under an exception to anti-trust laws, known as the “whole hospital exception.”

The Affordable Care Act (ACA) amended the “whole hospital exception” by requiring that all hospitals with physician-ownership have a Medicare provider number by December 31, 2010. Any hospital without a Medicare provider number is not permitted to bill Medicare for services provided to beneficiaries under the “whole hospital exception.” Grandfathered physician-owned hospitals, those with Medicare provider numbers by December 31, 2010, may continue to operate. However, they may not alter the proportion of physician-ownership in the hospital. Under current law, a grandfathered hospital may apply to expand the number of operating rooms, procedure rooms and/or beds if it meets five criteria.

*House bill*

Section 2213 allowed physician-owned hospitals that were under construction but without a Medicare provider number on December 31, 2010, to open and operate under the “whole hospital exception.” The provision would also allow a grandfathered hospital the ability to utilize the existing expansion process if it certifies

that it does not discriminate against beneficiaries in federal health care programs.

*Senate bill*

No provision.

*Conference substitute*

No provision.

Extending Minimum Payment for Bone Mass Measurement

*Current law*

Dual energy X-ray absorptiometry (DXA) machines are used to measure bone mass to identify individuals who may have or be at risk of having osteoporosis. For those individuals who are eligible, Medicare will pay for a bone density study once every two years, or more frequently if the procedure is determined to be medically necessary. The DRA capped reimbursement of the technical component for x-ray and imaging services as the lesser rate of the hospital outpatient rate or the physician fee schedule. Additionally, CMS implemented a new methodology for determining resource-based practice expense payments for all services contributed to the reduction in the technical component reimbursement. The ACA set DXA payments at 70 percent of the 2006 reimbursement rates for these services in 2010 and 2011.

*House bill*

No provision.

*Senate bill*

Section 309 extended the 70 percent of the 2006 payment rate for two months (January and February 2012).

*Conference substitute*

No provision.

Extension of Physician Fee Schedule Mental Health Add-on Payment

*Current law*

Medicare pays for mental health services under the physician fee schedule. MIPPA increased the fee schedule amount for certain mental health service by 5 percent beginning on July 1, 2008. Subsequent legislation extended this add-on.

*House bill*

No provision.

*Senate bill*

Section 307 extended the 5 percent payment add-on for two months (January and February 2012).

*Conference substitute*

No provision.



## Reduction of Bad Debt Treated as an Allowable Cost

### *Current law*

Medicare reimburses providers for beneficiaries' unpaid coinsurance and deductible amounts after reasonable collection efforts. Medicare currently reimburses 70 percent of beneficiary bad debts in acute care hospitals. Medicare reimburses skilled nursing facilities 100 percent of the allowable bad debt costs for Medicare beneficiaries who are eligible for Medicaid (dual eligibles) and 70 percent of the allowable costs for all other beneficiaries. Medicare reimburses 100 percent of allowable bad debt in critical access hospitals, rural health clinics, federally qualified health clinics, community mental health clinics, health maintenance organizations reimbursed on a cost basis, competitive medical plans, and health care prepayment plans. Medicare also reimburses end stage renal disease facilities 100 percent of allowable bad debt claims, with such payments capped at the facilities' unrecovered costs.

### *House bill*

Section 2224 gradually reduced the bad debt reimbursement, beginning in 2013 and over a period of three years, for all providers to 55 percent.

### *Senate bill*

No provision.

### *Conference substitute*

Section 3201 will reduce bad debt reimbursement for all providers to 65 percent. Providers paid at 100 percent would have a three-year transition of 88 percent in 2013, 76 percent in 2014, and 65 percent in 2015. Providers paid at 70 percent would be reduced to 65 percent in 2013.

## Rebase Medicare Clinical Laboratory Payment Rates

### *Current law*

Medicare pays for clinical laboratory services under carrier-specific fee schedules subject to national payment limits. Most lab services receive payment at the national limit amount.

### *House bill*

No provision.

### *Senate bill*

No provision.

### *Conference substitute*

Section 3202 resets clinical lab base payment rates by 2 percent in 2013.

## Rebasing State DSH Allotments for Fiscal Year 2021

### *Current law*

Medicaid Disproportionate Share Hospital (DSH) payments provide additional funding to hospitals that serve a disproportionate number of low-income patients. States receive an annual DSH allotment to cover the costs of DSH hospitals that provide care to low-income, uninsured patients. This annual allotment is calculated by law and includes requirements to ensure that the DSH payments to individual hospitals are not higher than actual uncompensated care costs. Each state's federal allotment is capped based on either the prior year's allotment plus inflation or twelve percent of the state's total Medicaid benefits payments for the year. Once a state receives its federal allotment, the state has discretion to distribute the funding to hospitals, as long as the state's methodology is based on the Medicaid inpatient utilization rate (exceeding one standard deviation above the mean for all hospitals in the state) or a low-income utilization rate exceeding 25 percent.

The ACA reduced DSH payments between 2014 and 2020, based on a formula that the Secretary of HHS will develop through future regulation.

### *House bill*

Section 2225 would rebase the DSH allotments for FY2021 and determine future allotments from the rebased level using current law methodology.

### *Senate bill*

No provision.

### *Conference substitute*

Section 3203 extends the ACA Medicaid DSH payment reductions in 2021.

## Technical Correction to the Disaster Recovery FMAP Provision

### *Current law*

The ACA included a provision known as the 'disaster-recovery FMAP' designed to help states adjust to drastic changes in FMAP following a statewide disaster. Once triggered, the policy would provide assistance for as many as seven years following the disaster, as long as the state continued to experience an FMAP drop of more than three percentage points.

During the first year, a state would receive an FMAP increase equal to 50 percent of the difference between the regular FMAP and the artificially lower FMAP. In the second and succeeding years, the FMAP increase would be 25 percent of the difference between the regular FMAP and the adjusted FMAP from the previous year. However, there is an error in the statute for the second and succeeding years. Instead of creating a glide path downward, so that the affected state could adjust to its new, lower FMAP, the 25 percent bump is added to the higher, adjusted FMAP of the previous year rather than the lower, base FMAP. This results in increasing FMAPs for each year of the disaster-recovery period,

compounding over time. It also makes it easier for the state to continue to qualify each year because it is easier for there to be a three percentage point difference between the artificially high FMAP and the base FMAP.

*House bill*

No provision.

*Senate bill*

No provision.

*Conference substitute*

Section 3204 would address the error by instituting a lower FMAP in the second and subsequent years.

Prevention and Public Health Fund

*Current law*

The ACA established a Prevention and Public Health Trust Fund to help shift the focus of the health care system to prevention rather than treatment. The fund provides increasing mandatory direct spending from \$500 million in 2010 to \$2 billion in 2015 and each year thereafter.

*House bill*

Section 2222 reduced trust fund dollars beginning in FY2013, saving \$8 billion.

*Senate bill*

No provision.

*Conference substitute*

Section 3205 reduces trust fund dollars beginning in FY2013, saving \$5 billion.

Parity in Medicare Payments for Hospital Outpatient Department  
Evaluation and Management Services

*Current law*

When a physician treats a beneficiary in a hospital outpatient department, the physician's services are reimbursed under Medicare's physician fee schedule and the hospital receives a facility payment from Medicare under the outpatient prospective payment system (OPPS). Because of the facility payment, the total payment generally exceeds payments for the same services provided in a physician office.

*House bill*

Section 2223 would reduce hospital facility fee payments for evaluation and management services provided in a hospital outpatient department so that payment for the service in aggregate would not exceed the amount under the Medicare physician fee schedule beginning in 2012. These lower payments would not be

considered in the review of different components of Medicare's OPPS to ensure that annual adjustments are budget neutral.

*Senate bill*

No provision.

*Conference substitute*

No provision.

**Increase in Medicare Part B and Part D Premiums for High-Income Beneficiaries**

*Current law*

The MMA of 2003 established that high-income beneficiaries enrolled in Part B would pay a higher premium. The ACA expanded this provision to the Part D program. Currently, high-income beneficiaries are required to pay a greater share of the Medicare Part B and Part D premiums (35 percent, 50 percent, 65 percent, or 80 percent) depending on their income. For 2012, the income thresholds for those premium shares are \$85,000, \$107,000, \$160,000, and \$214,000, respectively for single filers. For married couples, the corresponding income thresholds are twice those values. Because of a provision in the ACA, the income thresholds for both Medicare Part B and Part D are frozen through 2019.

*House bill*

Sections 5601 and 5602 would increase the applicable premium percentage higher income beneficiaries would pay by 15 percent such that the levels would become 40.25 percent, 57.5 percent, 74.75 percent, and 90 percent in 2017. This provision would also reduce the income thresholds in 2017, to \$80,000, \$100,000, \$150,000 and \$200,000 for single filers (and twice those values for married couples) and extend the freeze of the income thresholds beyond 2019, until 25 percent of all beneficiaries are paying higher income premiums.

*Senate bill*

No provision.

*Conference substitute*

No provision.

**TAX PROVISIONS**

- A. Extension of Payroll Tax Reduction (sec. 2001 of the House bill, sec. 101 of the Senate amendment, and sec. 1001 of the conference agreement)

**PRESENT LAW**

*Federal Insurance Contributions Act ("FICA") tax*

The FICA tax applies to employers based on the amount of covered wages paid to an employee during the year.<sup>1</sup> Generally, cov-

<sup>1</sup>Sec. 3111.

ered wages means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash.<sup>2</sup> Certain exceptions from covered wages are also provided. The tax imposed is composed of two parts: (1) the old age, survivors, and disability insurance (“OASDI”) tax equal to 6.2 percent of covered wages up to the taxable wage base (\$106,800 for 2011 and \$110,100 for 2012); and (2) the Medicare hospital insurance (“HI”) tax amount equal to 1.45 percent of covered wages.

In addition to the tax on employers, each employee is generally subject to FICA taxes equal to the amount of tax imposed on the employer (the “employee portion”).<sup>3</sup> The employee portion of FICA taxes generally must be withheld and remitted to the Federal government by the employer.

#### *Self-Employment Contributions Act (“SECA”) Tax*

As a parallel to FICA taxes, the SECA tax applies to the self-employment income of self-employed individuals.<sup>4</sup> The rate of the OASDI portion of SECA taxes is generally 12.4 percent, which is equal to the combined employee and employer OASDI FICA tax rates, and applies to self-employment income up to the FICA taxable wage base. Similarly, the rate of the HI portion of SECA tax is 2.9 percent, the same as the combined employer and employee HI rates under the FICA tax, and there is no cap on the amount of self-employment income to which the rate applies.<sup>5</sup>

An individual may deduct, in determining net earnings from self-employment under the SECA tax, the amount of the net earnings from self-employment (determined without regard to this deduction) for the taxable year multiplied by one half of the combined OASDI and HI rates.<sup>6</sup>

Additionally, a deduction, for purposes of computing the income tax of an individual, is allowed for one-half of the amount of the SECA tax imposed on the individual’s self-employment income for the taxable year.<sup>7</sup>

#### *Railroad retirement tax*

Instead of FICA taxes, railroad employers and employees are subject, under the Railroad Retirement Tax Act (“RRTA”), to taxes equivalent to the OASDI and HI taxes under FICA.<sup>8</sup> The employee portion of RRTA taxes generally must be withheld and remitted to the Federal government by the employer.

#### *Temporary reduced OASDI rates*

Under the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010,<sup>9</sup> for 2011, the OASDI rate for the employee portion of the FICA tax, and the equivalent employee portion of the RRTA tax, is reduced by two percentage points to 4.2

<sup>2</sup>Sec. 3121(a).

<sup>3</sup>Sec. 3101. For taxable years beginning after 2012, an additional HI tax applies to certain employees.

<sup>4</sup>Sec. 1401.

<sup>5</sup>For taxable years beginning after 2012, an additional HI tax applies to certain self-employed individuals.

<sup>6</sup>Sec. 1402(a)(12).

<sup>7</sup>Sec. 164(f).

<sup>8</sup>Secs. 3201(a) and 3211(a).

<sup>9</sup>Pub. L. No. 111–312.

percent. Similarly, for taxable years beginning in 2011, the OASDI rate for a self-employed individual is reduced by two percentage points to 10.4 percent.

Special rules coordinate the SECA tax rate reduction with a self-employed individual's deduction in determining net earnings from self-employment under the SECA tax and the income tax deduction for one-half of the SECA tax. The rate reduction is not taken into account in determining the SECA tax deduction allowed for determining the amount of the net earnings from self-employment for the taxable year. The income tax deduction allowed for the SECA tax for taxable years beginning in 2011 is 59.6 percent of the OASDI portion of the SECA tax imposed for the taxable year plus one-half of the HI portion of the SECA tax imposed for the taxable year.<sup>10</sup>

The Federal Old-Age and Survivors Trust Fund, the Federal Disability Insurance Trust Fund and the Social Security Equivalent Benefit Account established under the Railroad Retirement Act of 1974<sup>11</sup> receive transfers from the General Fund of the United States Treasury equal to any reduction in payroll taxes attributable to the rate reduction for 2011. The amounts are transferred from the General Fund at such times and in such a manner as to replicate to the extent possible the transfers which would have occurred to the Trust Funds or Benefit Account had the provision not been enacted.

For purposes of applying any provision of Federal law other than the provisions of the Internal Revenue Code of 1986, the employee rate of OASDI tax is determined without regard to the reduced rate for 2011.

Under the Temporary Payroll Tax Cut Continuation Act of 2011,<sup>12</sup> the reduced employee OASDI tax rate of 4.2 percent under the FICA tax, and the equivalent employee portion of the RRTA tax, is extended to apply to covered wages paid in the first two months of 2012. A recapture applies for any benefit a taxpayer may have received from the reduction in the OASDI tax rate, and the equivalent employee portion of the RRTA tax, for remuneration received during the first two months of 2012 in excess of \$18,350.<sup>13</sup> The recapture is accomplished by a tax equal to two percent of the amount of wages (and railroad compensation) received during the first two months of 2012 that exceed \$18,350. The Secretary of the Treasury (or the Secretary's delegate) is to prescribe regulations or other guidance that is necessary and appropriate to carry out this provision.

In addition, for taxable years beginning in 2012, the OASDI rate for a self-employed individual is reduced to 10.4 percent, for self-employment income of up to \$18,350 (reduced by wages subject to the lower OASDI rate for 2012). Related rules for 2011 concerning coordination of a self-employed individual's deductions in

<sup>10</sup>This percentage replaces the rate of one half (50 percent) otherwise allowed for this portion of the deduction. The percentage is necessary to allow the self-employed individual to deduct the full amount of the employer portion of SECA taxes. The employer OASDI tax rate remains at 6.2 percent, while the employee portion falls to 4.2 percent. Thus, the employer share of total OASDI taxes is 6.2 divided by 10.4, or 59.6 percent of the OASDI portion of SECA taxes.

<sup>11</sup>45 U.S.C. 231n-1(a).

<sup>12</sup>Pub. L. No. 112-78, enacted after passage of H.R. 3630 by the House of Representatives and the Senate.

<sup>13</sup>\$18,350 is  $\frac{1}{6}$  of the 2012 taxable wage base of \$110,100.

determining net earnings from self-employment and income tax also apply for 2012, except that the income tax deduction allowed for the OASDI portion of SECA tax imposed for taxable years beginning in 2012 is computed at the rate of 59.6 percent<sup>14</sup> of the OASDI portion of the SECA tax imposed on self-employment income of up to \$18,350. For self-employment income in excess of this amount, the deduction is equal to half of the OASDI portion of the SECA tax.

Rules related to the OASDI rate reduction for 2011 concerning (1) transfers to the Federal Old-Age and Survivors Trust Fund, the Federal Disability Insurance Trust Fund and the Social Security Equivalent Benefit Account established under the Railroad Retirement Act of 1974, and (2) determining the employee rate of OASDI tax in applying provisions of Federal law other than the Code also apply for 2012.

#### HOUSE BILL <sup>15</sup>

Under the House bill, the reduced employee OASDI tax rate of 4.2 percent under the FICA tax, and the equivalent portion of the RRTA tax, is extended to apply for 2012. Similarly, a reduced OASDI tax rate of 10.4 percent under the SECA tax, is extended to apply for taxable years beginning in 2012.

Related rules concerning (1) coordination of a self-employed individual's deductions in determining net earnings from self-employment and income tax, (2) transfers to the Federal Old-Age and Survivors Trust Fund, the Federal Disability Insurance Trust Fund and the Social Security Equivalent Benefit Account established under the Railroad Retirement Act of 1974, and (3) determining the employee rate of OASDI tax in applying provisions of Federal law other than the Code also apply for 2012.

*Effective date.*—The provision applies to remuneration received, and taxable years beginning, after December 31, 2011.

#### SENATE AMENDMENT <sup>16</sup>

Under the Senate amendment, the reduced employee OASDI tax rate of 4.2 percent under the FICA tax, and the equivalent employee portion of the RRTA tax, applies to covered wages paid up to \$18,350 in the first two months of 2012.<sup>17</sup>

In addition, for taxable years beginning in 2012, the Senate amendment provides that the OASDI rate for a self-employed individual is reduced to 10.4 percent, for self-employment income of up to \$18,350 (reduced by wages subject to the lower OASDI rate for 2012). Related rules for 2011 concerning coordination of a self-employed individual's deductions in determining net earnings from self-employment and income tax also apply for 2012, except that

<sup>14</sup>This percentage used with respect to the first \$18,350 of self-employment income is necessary to continue to allow the self-employed taxpayer to deduct the full amount of the employer portion of SECA taxes. The employer OASDI tax rate remains at 6.2 percent, while the employee portion falls to a 4.2 percent rate for the first \$18,350 of self-employment income. Thus, the employer share of total OASDI taxes is 6.2 divided by 10.4, or 59.6 percent of the OASDI portion of SECA taxes, for the first \$18,350 of self-employment income.

<sup>15</sup>The House bill passed prior to the enactment of the "Temporary Payroll Tax Cut Continuation Act of 2011", Pub. L. No. 112–78, described above.

<sup>16</sup>The Senate amendment passed prior to the enactment of the "Temporary Payroll Tax Cut Continuation Act of 2011", Pub. L. No. 112–78, described above.

<sup>17</sup>\$18,350 is  $\frac{1}{6}$  of the 2012 taxable wage base of \$110,100.

the income tax deduction allowed for the OASDI portion of SECA tax imposed for taxable years beginning in 2012 is computed at the rate of 59.6 percent<sup>18</sup> of the OASDI portion of the SECA tax imposed on self-employment income of up to \$18,350. For self-employment income in excess of this amount, the deduction is equal to half of the OASDI portion of the SECA tax.

The Senate amendment also contains rules related to the OASDI rate reduction for 2011 concerning (1) transfers to the Federal Old-Age and Survivors Trust Fund, the Federal Disability Insurance Trust Fund and the Social Security Equivalent Benefit Account established under the Railroad Retirement Act of 1974, and (2) determining the employee rate of OASDI tax in applying provisions of Federal law other than the Code also apply for 2012.

*Effective date.*—The provision applies to remuneration received, and taxable years beginning, after December 31, 2011.

#### CONFERENCE AGREEMENT

The conference agreement follows the House bill, providing for a reduced employee OASDI tax rate of 4.2 percent under the FICA tax, and the equivalent portion of the RRTA tax, through 2012. Similarly, a reduced OASDI tax rate of 10.4 percent under the SECA tax applies for taxable years beginning in 2012.

As in the House bill and Senate amendment, related rules concerning (1) coordination of a self-employed individual's deductions in determining net earnings from self-employment and income tax, (2) transfers to the Federal Old-Age and Survivors Trust Fund, the Federal Disability Insurance Trust Fund and the Social Security Equivalent Benefit Account established under the Railroad Retirement Act of 1974, and (3) determining the employee rate of OASDI tax in applying provisions of Federal law other than the Code also apply for 2012.

The conference agreement repeals the present-law recapture provision applicable to a taxpayer who receives the reduced OASDI rate with respect to more than \$18,350 of wages (or railroad compensation) received during the first two months of 2012, and removes the \$18,350 limitation on self-employment income subject to the lower rate for taxable years beginning in 2012.

*Effective date.*—The provision applies to remuneration received, and taxable years beginning, after December 31, 2011.

B. Repeal of Certain Shifts in the Timing of Corporate Estimated Tax Payments (sec. 6001 of the House bill and sec. 7001 of the conference agreement)

#### PRESENT LAW

In general, corporations are required to make quarterly estimated tax payments of their income tax liability.<sup>19</sup> For a corporate whose taxable year is a calendar year, these estimated payments must be made by April 15, June 15, September 15, and December 15. In the case of a corporation with assets of at least \$1 billion (determined as of the end of the preceding taxable year):

<sup>18</sup> See footnote 14.

<sup>19</sup> Sec. 6655.



(i) payments due in July, August or September, 2012, are increased to 100.5 percent of the payment otherwise due;<sup>20</sup>

(ii) payments due in July, August, or September, 2014, are increased to 174.25 percent of the payment otherwise due;<sup>21</sup>

(iii) payments due in July, August or September, 2015, are increased to 163.75 percent of the payment otherwise due;<sup>22</sup>

(iv) payments due in July, August, or September 2016 are increased to 103.5 percent of the payment otherwise due; and<sup>23</sup>

(v) payments due in July, August or September, 2019, are increased to 106.50 percent of the payment otherwise due.<sup>24</sup>

#### HOUSE BILL

The House bill reduces the applicable percentage for 2012 (100.5 percent), 2014 (174.25 percent), 2015 (163.75 percent), 2016 (103.5 percent), and 2019 (106.5 percent) to 100 percent. Thus corporations will make estimated tax payments in 2012, 2014, 2015, 2016, and 2019 as if the prior legislation had never been enacted or amended.

*Effective date.*—The provision is effective on the date of enactment.

#### SENATE PROVISION

No provision.

#### CONFERENCE AGREEMENT

The conference agreement follows the House bill, providing reductions in the applicable percentages for 2012 (100.5 percent), 2014 (174.25 percent), 2015 (163.75 percent), 2016 (103.5 percent), and 2019 (106.5 percent) to 100 percent. Thus corporations will be required to make estimated tax payments in 2012, 2014, 2015, 2016, and 2019 as if the prior legislation had never been enacted or amended.

<sup>20</sup>United States-Korea Free Trade Agreement Implementation Act, Pub. L. No. 112–41, sec. 505, and United States-Panama Trade Promotion Agreement Implementation Act of 2011, Pub. L. No. 112–43, sec. 502.

<sup>21</sup>Haiti Economic Lift Program of 2010, Pub. L. No. 111–171, sec. 12(a); Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111–152, sec. 1410; Hiring Incentives to Restore Employment Act, Pub. L. No. 111–147, sec. 561(1); Act to extend the Generalized System of Preferences and the Andean Trade Preference Act, and for other purposes, Pub. L. No. 111–124, sec. 4; Worker, Homeownership, and Business Assistance Act of 2009, Pub. L. No. 111–92, sec. 18; Joint resolution approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003, and for other purposes, Pub. L. No. 111–42, sec. 202(b)(1).

<sup>22</sup>Omnibus Trade Act of 2010, Pub. L. No. 111–344, sec. 10002; Small Business Jobs Act of 2010, Pub. L. No. 111–240, sec. 2131; Firearms Excise Tax Improvements Act of 2010, Pub. L. No. 111–237, sec. 4(a); United States Manufacturing Enhancement Act of 2010, Pub. L. No. 111–227, sec. 4002; Joint resolution approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003, and for other purposes, No. 111–210, sec. 3; Haiti Economic Lift Program of 2010, Pub. L. No. 111–171, sec. 12(b); Hiring Incentives to Restore Employment Act, Pub. L. No. 111–147, sec. 561(2).

<sup>23</sup>United States-Korea Free Trade Agreement Implementation Act, Pub. L. No. 112–41, sec. 505; United States-Columbia Trade Promotion Agreement Implementation Act, Pub. L. No. 112–42, sec. 603; and United States-Panama Trade Promotion Agreement Implementation Act, Pub. L. No. 112–43, sec. 502.

<sup>24</sup>Hiring Incentives to Restore Employment Act, Pub. L. No. 111–147, sec. 561(3).

C. Extension of 100 Percent Bonus Depreciation (sec. 1201(a) of the House bill and secs. 168(k)(5) and 460(c)(6) 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 between January 1, 2008 and September 8, 2010 or between January 1, 2012 and January 1, 2013 (January 1, 2014 for certain longer-lived and transportation property).<sup>25</sup> An additional first-year depreciation deduction is allowed equal to 100 percent of the adjusted basis of qualified property if it meets the requirements for the additional first-year depreciation and also meets the following requirements. First, the taxpayer must acquire the property after September 8, 2010 and before January 1, 2012. Second, the taxpayer must place the property in service after September 8, 2010 and before January 1, 2012 (before January 1, 2013 in the case of certain longer-lived and transportation property). Third, the original use of the property must commence with the taxpayer after September 8, 2010.<sup>26</sup>

The additional first-year depreciation deduction is allowed for both regular tax and alternative minimum tax purposes, but is not allowed for purposes of computing earnings and profits. 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 2009, a taxpayer purchased new depreciable property and placed it in service.<sup>27</sup> 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 depreciable under the rules applicable to five-year property. Thus, 20 percent, or \$100, is also allowed as a depreciation deduction in 2009. The total depreciation deduction with respect to the property for 2009 is \$600. The remaining \$400 adjusted basis of the property generally is recovered through otherwise applicable depreciation rules.

Property qualifying for the additional first-year depreciation deduction 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 prop-

<sup>25</sup> Sec. 168(k). The additional first-year depreciation deduction is subject to the general rules regarding whether an item must be capitalized under section 263 or section 263A.

<sup>26</sup> See Rev. Proc. 2011-26, 2011-16 I.R.B. 664 (Apr. 18, 2011) for guidance regarding additional first-year depreciation.

<sup>27</sup> Assume that the cost of the property is not eligible for expensing under section 179.

erty (as defined in section 168(e)(5)); (3) computer software other than computer software covered by section 197; or (4) qualified leasehold improvement property (as defined in section 168(k)(3)).<sup>28</sup> Second, the original use<sup>29</sup> of the property must commence with the taxpayer after December 31, 2007.<sup>30</sup> Third, the taxpayer must acquire the property within the applicable time period (as described below). Finally, the property must be placed in service before January 1, 2013. An extension of the placed-in-service date of one year (i.e., January 1, 2014) is provided for certain property with a recovery period of 10 years or longer and certain transportation property.<sup>31</sup> Transportation property generally is defined as tangible personal property used in the trade or business of transporting persons or property.<sup>32</sup>

To qualify, property must be acquired (1) after December 31, 2007, and before January 1, 2013, 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, 2013.<sup>33</sup> 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, 2013. 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 Jan-

<sup>28</sup> The additional first-year depreciation deduction is not available for any property that is required to be depreciated under the alternative depreciation system of MACRS. The additional first-year depreciation deduction is also not available for qualified New York Liberty Zone leasehold improvement property as defined in section 1400L(c)(2).

<sup>29</sup> 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).

<sup>30</sup> 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, 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.

<sup>31</sup> Property qualifying for the extended placed-in-service date must have an estimated production period exceeding one year and a cost exceeding \$1 million.

<sup>32</sup> Certain aircraft which is not transportation property, other than for agricultural or fire-fighting uses, also qualifies for the extended placed-in-service date, if at the time of the contract for purchase, the purchaser made a nonrefundable deposit of the lesser of 10 percent of the cost or \$100,000, and which has an estimated production period exceeding four months and a cost exceeding \$200,000.

<sup>33</sup> 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.

uary 1, 2013 (“progress expenditures”) is eligible for the additional first-year depreciation deduction.<sup>34</sup>

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 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 under section 280F on the amount of depreciation deductions allowed with respect to certain passenger automobiles is increased in the first year by \$8,000 for automobiles that qualify (and for which the taxpayer does not elect out of the additional first-year deduction). The \$8,000 increase is not indexed for inflation.

#### *Percentage-of-completion method*

In general, in the case of a long-term contract, the taxable income from the contract is determined under the percentage-of-completion method. Solely for purposes of determining the percentage of completion under section 460(b)(1)(A), the cost of qualified property with a MACRS recovery period of seven years or less is taken into account as a cost allocated to the contract as if bonus depreciation had not been enacted for property placed in service after December 31, 2009 and before January 1, 2011 (January 1, 2012, for certain longer-lived and transportation property). Bonus depreciation is taken into account in determining taxable income under the percentage-of-completion method for property placed in service after December 31, 2010.

#### HOUSE BILL

The House bill increases the additional first-year depreciation deduction from 50 percent to 100 percent of the adjusted basis of qualified property placed in service after December 31, 2011, and before January 1, 2013 (January 1, 2014, for certain longer-lived and transportation property).

The provision provides that solely for purposes of determining the percentage of completion under section 460(b)(1)(A), the cost of qualified property with a MACRS recovery period of seven years or less which is placed in service after December 31, 2011, and before January 1, 2013 (January 1, 2014, for certain longer-lived and

<sup>34</sup>For purposes of determining the amount of eligible progress expenditures, it is intended that rules similar to section 46(d)(3) as in effect prior to the Tax Reform Act of 1986, Pub. L. No. 99-514, apply.

transportation property) is taken into account as a cost allocated to the contract as if bonus depreciation had not been enacted.

*Effective date.*—The provision applies to property placed in service after December 31, 2011.

#### SENATE AMENDMENT

No provision.

#### CONFERENCE AGREEMENT

The conference agreement does not include the provision from the House bill.

D. Expansion of Election to Accelerate AMT Credits in Lieu of Bonus Depreciation (sec. 1201(b) of the House bill and sec. 168(k)(4) of the Code)

#### PRESENT LAW

A corporation may elect to claim additional alternative minimum tax (“AMT”) credits in lieu of claiming additional first year depreciation (“bonus depreciation”) on eligible qualified property<sup>35</sup> placed in service after December 31, 2010, and before January 1, 2013 (January 1, 2014, in the case of certain longer-lived property and transportation property).<sup>36</sup> A corporation making the election (i) forgoes bonus depreciation for eligible qualified property, (ii) uses the straight-line method of depreciation for eligible qualified property, and (iii) increases the limitation on the allowance of AMT credit by the bonus depreciation amount.<sup>37</sup> The increase in the allowable AMT credit by reason of the election is treated as refundable.

The bonus depreciation amount is 20 percent of the difference between (i) the aggregate amount of depreciation for all eligible qualified property placed in service by the corporation that would be allowed if bonus depreciation 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 allowed if bonus depreciation did not apply using the same method and life for each property.

The bonus depreciation amount for any taxable year is limited to the lesser of (i) \$30 million, or (ii) six percent of the AMT credit for the year attributable to the adjusted net minimum tax for taxable years beginning before January 1, 2006 (determined by treating credits as allowed on a first-in, first-out basis), reduced by the sum of certain bonus depreciation amounts for prior taxable years.

In the case of an electing corporation that is a partner in a partnership, the corporation’s distributive share of partnership items is determined without regard to bonus depreciation and by using the straight-line method of depreciation. No partnership

<sup>35</sup> The term “eligible qualified property” means property eligible for bonus depreciation, with minor effective date differences.

<sup>36</sup> Sec. 168(k)(4).

<sup>37</sup> Sec. 53(c) otherwise limits the allowable AMT credit for a taxable year to the excess of the regular tax liability (reduced by certain credits) over the tentative minimum tax for the taxable year.

property is taken into account in determining a corporation's bonus depreciation amount.

Generally an election under this provision for a taxable year applies to subsequent taxable years.

All corporations treated as a single employer under section 52(a) are treated as one taxpayer for purposes of the provision and are treated as having made an election under this provision if any of the corporations so elects.

#### HOUSE BILL

The House bill revises the provision allowing a corporation to elect to claim additional AMT credits in lieu of bonus depreciation.<sup>38</sup> The House bill provision follows the substance of present law with the following changes:

Under the House bill, the bonus depreciation amount for any taxable year is limited to the lesser of (i) the AMT credit for the year attributable to the adjusted net minimum tax for taxable years ending before January 1, 2012 (determined by treating credits as allowed on a first-in, first-out basis), or (ii) 50 percent of the AMT credit for the first taxable year ending after December 31, 2011.

In the case of a partnership in which more than 50 percent of the capital and profits interests are owned (directly or indirectly) by one corporation (or by corporations treated as one taxpayer for purposes of this provision), the bonus depreciation amount is computed by treating each partner as having an amount equal to that partner's allocable share of the eligible property for the taxable year (as determined under regulations prescribed by the Secretary).

A corporation may make a separate election for each taxable year.

*Effective date.*—The provision applies to taxable years ending after December 31, 2011.

For a taxable year which begins before January 1, 2012, and ends after December 31, 2011, the bonus depreciation amount is the sum of the amounts computed separately for each portion of the taxable year by treating each portion as a separate taxable year taking into account property placed in service by the corporation during that portion of the taxable year.

#### SENATE AMENDMENT

No provision.

#### CONFERENCE AGREEMENT

The conference agreement does not include the provision from the House bill.

<sup>38</sup>The House bill rewrites section 168(k)(4) in order to delete a substantial amount of "dead-wood" from the language of present law.

E. Adjustments to Maximum Thresholds for Recapturing Overpayments Resulting From Certain Federally-subsidized Health Insurance (sec. 2221 of the House bill and sec. 36B of the Code)

PRESENT LAW

*Premium assistance credit*

For taxable years ending after December 31, 2013, section 36B provides a refundable tax credit (the “premium assistance credit”) for eligible individuals and families who purchase health insurance through an American Health Benefit Exchange. The premium assistance credit, which is refundable and payable in advance directly to the insurer, subsidizes the purchase of certain health insurance plans through an American Health Benefit Exchange.

The premium assistance credit is available for individuals (single or joint filers) with household incomes between 100 and 400 percent of the Federal poverty level (“FPL”) for the family size involved who do not receive health insurance through an employer or a spouse’s employer.<sup>39</sup> Household income is defined as the sum of: (1) the taxpayer’s modified adjusted gross income, plus (2) the aggregate modified adjusted gross incomes of all other individuals taken into account in determining that taxpayer’s family size (but only if such individuals are required to file a tax return for the taxable year). Modified adjusted gross income is defined as adjusted gross income increased by: (1) any amount excluded by section 911 (the exclusion from gross income for citizens or residents living abroad), (2) any tax-exempt interest received or accrued during the tax year, and (3) an amount equal to the portion of the taxpayer’s social security benefits (as defined in section 86(d)) that is excluded from income under section 86 (that is, the amount of the taxpayer’s Social Security benefits that are excluded from gross income).<sup>40</sup> To be eligible for the premium assistance credit, taxpayers who are married (within the meaning of section 7703) must file a joint return. Individuals who are listed as dependents on a return are ineligible for the premium assistance credit.

As described in Table 1 below, premium assistance credits are available on a sliding scale basis for individuals and families with household incomes between 100 and 400 percent of FPL to help offset the cost of private health insurance premiums. The premium assistance credit amount is determined based on the percentage of income the cost of premiums represents, rising from two percent of income for those at 100 percent of FPL for the family size involved to 9.5 percent of income for those at 400 percent of FPL for the family size involved. After 2014, the percentages of income are indexed to the excess of premium growth over income growth for the preceding calendar year. After 2018, if the aggregate amount of

<sup>39</sup> Individuals who are lawfully present in the United States but are not eligible for Medicaid because of their immigration status are treated as having a household income equal to 100 percent of FPL (and thus eligible for the premium assistance credit) as long as their household income does not actually exceed 100 percent of FPL.

<sup>40</sup> The definition of modified adjusted gross income used in section 36B is incorporated by reference for purposes of determining eligibility to participate in certain other healthcare-related programs, such as reduced cost-sharing (section 1402 of PPACA)), Medicaid for the nonelderly (section 1902(e) of the Social Security Act (42 U.S.C. 1396a(e)) as modified by section 2002(a) of PPACA) and the Children’s Health Insurance Program (section 2102(b)(1)(B) of the Social Security Act (42 U.S.C. 1397bb(b)(1)(B)) as modified by section 2101(d) of PPACA).

premium assistance credits and cost-sharing reductions<sup>41</sup> exceeds 0.504 percent of the gross domestic product for that year, the percentage of income is also adjusted to reflect the excess (if any) of premium growth over the rate of growth in the consumer price index for the preceding calendar year. For purposes of calculating family size, individuals who are in the country illegally are not included.

TABLE 1.—THE PREMIUM ASSISTANCE CREDIT PHASE-OUT

Household income (expressed as a percent of FPL)	Initial premium (percentage)	Final premium (percentage)
100% up to 133% .....	2.0	2.0
133% up to 150% .....	3.0	4.0
150% up to 200% .....	4.0	6.3
200% up to 250% .....	6.3	8.05
250% up to 300% .....	8.05	9.5
300% up to 400% .....	9.5	9.5

*Minimum essential coverage and employer offer of health insurance coverage*

Generally, if an employee is offered minimum essential coverage<sup>42</sup> in the group market, including employer-provided health insurance coverage, the individual is ineligible for the premium assistance credit for health insurance purchased through an exchange.

If an employee is offered unaffordable coverage by his or her employer or the plan's share of total allowed cost of provided benefits is less than 60 percent of such costs, the employee can be eligible for the premium assistance credit, but only if the employee declines to enroll in the coverage and satisfies the conditions for receiving a premium assistance credit through an American Health Benefit Exchange. Unaffordable coverage, as defined by Federal law, is coverage with a premium required to be paid by the employee that is more than 9.5 percent of the employee's household income, based on self-only coverage.<sup>43</sup>

*Reconciliation*

If the premium assistance credit received through advance payment exceeds the amount of premium assistance credit to which the taxpayer is entitled for the taxable year, the liability for the overpayment must be reflected on the taxpayer's income tax return for the taxable year subject to a limitation on the amount of such liability. For persons with household income below 400 percent of FPL, the liability for the overpayment for a taxable year is limited to a specific dollar amount (the "applicable dollar amount") as shown in Table 2 below (one-half of the applicable dollar amount shown in Table 2 for unmarried individuals who are not surviving spouses or filing as heads of households).<sup>44</sup>

<sup>41</sup> As described in section 1402 of PPACA.

<sup>42</sup> As defined in section 5000A(f).

<sup>43</sup> The 9.5 percent amount is indexed for calendar years beginning after 2014 to reflect the excess of premium growth over income growth.

<sup>44</sup> Section 36B(f)(2), as amended by section 208 of the Medicare and Medicaid Extenders Act of 2010, Pub. L. No. 111-309 and section 4 of the Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011, Pub. L. No. 112-9.



TABLE 2.—RECONCILIATION

Household income (expressed as a percent of FPL)	Applicable dollar amount
Less than 100% .....	\$600
At least 200% but less than 300% .....	1,500
At least 300% but less than 400% .....	2,500

If the premium assistance credit for a taxable year received through advance payment is less than the amount of the credit to which the taxpayer is entitled for the year, the shortfall in the credit is also reflected on the taxpayer's tax return for the year.

## HOUSE BILL

The House bill changes the applicable dollar amount, as shown in Table 3 below (one-half of the applicable dollar amount shown in Table 3 for unmarried individuals who are not surviving spouses or filing as heads of households).

TABLE 3.—ADJUSTED RECONCILIATION

Household income (expressed as a percent of FPL)	Applicable dollar amount
Less than 100% .....	\$600
At least 100% but less than 150% .....	800
At least 150% but less than 200% .....	1,000
At least 200% but less than 250% .....	1,500
At least 250% but less than 300% .....	2,200
At least 300% but less than 350% .....	2,500
At least 350% but less than 400% .....	3,200

*Effective date.*—The provision is effective on the date of enactment.

## SENATE AMENDMENT

No provision.

## CONFERENCE AGREEMENT

The conference agreement does not include the provision from the House bill.

**F. Information for Administration of Social Security Provisions Related to Noncovered Employment (sec. 5101 of the House bill and secs. 6047 and 6103(1) of the Code)**

## PRESENT LAW

The administrator of an employer-sponsored retirement plan, including a plan maintained by a State or local government, is required to comply with reporting requirements prescribed by the IRS.<sup>45</sup> In the case of a distribution to a participant or beneficiary, the amount of the distribution and other required information must be reported to the IRS and the participant or beneficiary on the Form 1099-R.

<sup>45</sup> Sec. 6047(d).

Tax returns and return information (including information returns) received by the IRS are subject to confidentiality protections and cannot be disclosed, including to another Federal agency, unless specifically authorized.<sup>46</sup> Disclosure of certain returns and return information to the Social Security Administration for specific purposes is so authorized.<sup>47</sup>

## HOUSE BILL

The House bill amends the reporting requirements applicable to employer-sponsored retirement plans of State and local governments to require the identification of any distribution based in whole or in part on earnings for service in the employ of the State or local government, to the extent such information is known or should be known.<sup>48</sup> The House bill authorizes disclosure of this information by the IRS to the Social Security Administration for purposes of its administration of the Social Security Act.

*Effective date.*—The provision applies to distributions and disclosures made after December 31, 2012.

## SENATE AMENDMENT

No provision.

## CONFERENCE AGREEMENT

The conference agreement does not include the provision from the House bill.

G. Social Security Number Required To Claim the Refundable Portion of the Child Tax Credit (sec. 5201 of the House bill 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 maximum amount of the credit per child is \$1,000 through 2012 and \$500 thereafter. A child who is not a citizen, national, or resident of the United States cannot be a qualifying child. If the child tax credit exceeds the taxpayer's tax liability, the taxpayer may be eligible for a refundable credit.

No credit is allowed to any taxpayer with respect to any qualifying child unless the taxpayer includes the name and the taxpayer identification number of the qualifying child on the return of tax for the taxable year. For individual filers, a taxpayer identification number may be either a Social Security number ("SSN"), an IRS individual taxpayer identification number ("ITIN"), or an IRS adoption taxpayer identification number ("ATIN").

## HOUSE BILL

The House bill adds a requirement that the refundable portion of the child tax credit is allowable only if the tax return includes

<sup>46</sup>Sec. 6103.

<sup>47</sup>Sec. 6103(h)(5), (l)(1), (l)(5).

<sup>48</sup>For this purpose, State includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa.

the taxpayer's SSN (or in the case of a joint return, the SSN of either spouse).

*Effective date.*—The provision applies to taxable years beginning after the date of enactment.

#### SENATE AMENDMENT

No provision.

#### CONFERENCE AGREEMENT

The conference agreement does not include the provision from the House bill.

H. Excise Tax on Unemployment Compensation Benefits of High-Income Individuals (sec. 5301 of the House bill and new sec. 5895 of the Code)

#### PRESENT LAW

Gross income includes any unemployment compensation benefits received under the laws of the United States or any State, and is taxed at the applicable individual income tax rate.<sup>49</sup>

#### HOUSE BILL

The House bill imposes an excise tax equal to 100 percent on unemployment compensation benefits received by individuals with adjusted gross income above certain thresholds. The adjusted gross income threshold is \$750,000 (\$1,500,000 for married individuals filing joint returns). The excise tax is phased-in ratably over a \$250,000 range (\$500,000 for married individuals filing joint returns). Therefore unemployment compensation benefits are taxed at a 100 percent rate for individuals with \$1,000,000 or more of adjusted gross income (\$2,000,000 or more of adjusted gross income for married individuals filing joint returns).

The excise tax is not deductible in computing the taxpayer's taxable income.

*Effective date.*—The provision applies to taxable years beginning after December 31, 2011.

#### SENATE AMENDMENT

No provision.

#### CONFERENCE AGREEMENT

The conference agreement does not include the provision from the House bill.

#### TAX COMPLEXITY ANALYSES

The following tax complexity analysis is provided pursuant to section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998, which requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service ("IRS") and the Treasury Department) to provide a complexity analysis of tax legislation reported by the House Committee

<sup>49</sup> Sec. 85.

on Ways and Means, the Senate Committee on Finance, or a Conference Report containing tax provisions. The complexity analysis is required to report on the complexity and administrative issues raised by provisions that directly or indirectly amend the Internal Revenue Code and that have 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 the Treasury Department regarding each of the provisions included in the complexity analysis, including a discussion of the likely effect on IRS forms and any expected impact on the IRS.

#### 1. EXTENSION OF THE PAYROLL TAX REDUCTION (SEC. 1001 OF THE CONFERENCE AGREEMENT)

##### *Summary description of provision*

The conference agreement provides for a reduced employee OASDI tax rate of 4.2 percent under the FICA tax, and the equivalent portion of the RRTA tax, through 2012. Similarly, the reduced OASDI tax rate of 10.4 percent under the SECA tax, is extended to apply for taxable years of self-employed individuals that begin in 2012.

Related rules concerning (1) coordination of a self-employed individual's deductions in determining net earnings from self-employment and income tax, (2) transfers to the Federal Old-Age and Survivors Trust Fund, the Federal Disability Insurance Trust Fund and the Social Security Equivalent Benefit Account established under the Railroad Retirement Act of 1974, and (3) determining the employee rate of OASDI tax in applying provisions of Federal law other than the Code also apply for 2012.

The conference agreement repeals the present-law recapture provision applicable to a taxpayer who receives the reduced OASDI rate with respect to more than \$18,350 of wages received during the first two months of 2012.

The bill is effective after the date of enactment.

##### *Number of affected taxpayers*

It is estimated that the provision will affect more than 10 percent of individual taxpayers and small businesses.

##### *Discussion*

It is not anticipated that taxpayers and small businesses will need to keep additional records due to this provision. Extensive additional regulatory guidance will not be necessary to effectively implement the provision. It is not anticipated that the provision will result in an increase in disputes between small businesses and the IRS.

The provision likely will not increase the tax preparation costs for most individuals and small businesses. Affected individuals and

small businesses will not be required to perform additional and complex calculations to comply with the provision.

It is anticipated that the Secretary of the Treasury will have to make appropriate revisions to several types of tax forms and instructions.

DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE,  
*Washington, DC, February 15, 2012.*

THOMAS A. BARTHOLD,  
*Chief of Staff, Joint Committee on Taxation,*  
*Washington, DC*

DEAR MR. BARTHOLD: I am responding to your letter dated February 14, 2012, in which you requested a complexity analysis related to the extension of the payroll tax holiday enacted under section 101 of the Temporary Payroll Tax Cut Continuation Act of 2011.

Enclosed are the combined comments of the Internal Revenue Service and the Treasury Department for inclusion in the complexity analysis in the Conference Report on H.R. 3630.

Our comments are based on the description of the provision provided in your letter. The analysis does not include administrative cost estimates for the changes that would be required. Due to the short turnaround time, our comments are provisional and subject to change upon a more complete and in-depth analysis of the provision. The analysis does not cover any other provisions of the bill.

Sincerely,

DOUGLAS H. SHULMAN.

Enclosure.

# COMPLEXITY ANALYSIS OF CONFERENCE AGREEMENT ON H.R. 3630

## EXTENSION OF THE PAYROLL TAX HOLIDAY

The conference agreement provides for a reduced employee OASDI tax rate of 4.2 percent under the FICA tax, and the equivalent portion of the RRTA tax, through 2012. Similarly, the reduced OASDI tax rate of 10.4 percent under the SECA tax is extended for taxable years of self-employed individuals that begin in 2012.

The agreement provides related rules concerning (1) coordination of a self-employed individual's deductions in determining net earnings from self-employment and income tax, (2) transfers to the Federal Old-Age and Survivors Trust Fund, the Federal Disability Insurance Trust Fund and the Social Security Equivalent Benefit Account established under the Railroad Retirement Act of 1974, and (3) determining the employee rate of OASDI tax in applying provisions of Federal law other than the Code that also apply for 2012.

The conference agreement repeals the present-law recapture provision applicable to a taxpayer who receives the reduced OASDI rate with respect to more than \$18,350 of wages received during the first two months of 2012.

## IRS AND TREASURY COMMENTS

- This provision is an extension of current law (except for the repeal of the recapture of excess benefit) and should not add significant burden to taxpayers and the public in general.

- IRS has taken measures to prepare in case the Temporary Payroll Tax Cut is not extended, including revising forms and instructions and programming systems. If this provision is enacted, the IRS will have to adjust its forms and systems to reflect the extension. Computer software providers and large employers may also have programmed their systems for current law and would need to make similar adjustments.

- No new guidance would be required.

- IRS will have to make small modifications to certain notices to, and publications for, employers.

- There will be minimal impact on IRS training and the Internal Revenue Manual.

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, no provision in this conference report or joint explanatory statement includes a congressional earmark, limited tax benefit, or limited tariff benefit.

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KEVIN BRADY,  
GREG WALDEN,  
TOM PRICE,  
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