

HELPING ENSURE ACCOUNTABILITY, LEADERSHIP, AND
TRUST IN TRIBAL HEALTHCARE ACT

DECEMBER 20, 2016.—Ordered to be printed

Mr. BRADY of Texas, from the Committee on Ways and Means,
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 5406]

The Committee on Ways and Means, to whom was referred the bill (H.R. 5406) to amend the Indian Health Care Improvement Act to improve access to tribal health care by providing for systemic Indian Health Service workforce and funding allocation reforms, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
I. SUMMARY AND BACKGROUND	13
A. Purpose and Summary	13
B. Background and Need for Legislation	13
C. Legislative History	13
II. EXPLANATION OF THE BILL	14
A. Exclusion from Gross Income for Certain Payments Made Under Indian Health Service Loan Repayment Program (sec. 201 of the bill and sec. 108(f)(4) of the Code)	14
III. VOTES OF THE COMMITTEE	15
IV. BUDGET EFFECTS OF THE BILL	16
A. Committee Estimate of Budgetary Effects	16
B. Statement Regarding New Budget Authority and Tax Expendi- tures	16
C. Cost Estimate Prepared by the Congressional Budget Office	16
V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE	16
A. Committee Oversight Findings and Recommendations	16
B. Statement of General Performance Goals and Objectives	17

C. Information Relating to Unfunded Mandates 17
 D. Applicability of House Rule XXI 5(b) 17
 E. Tax Complexity Analysis 17
 F. Congressional Earmarks, Limited Tax Benefits, and Limited
 Tariff Benefits 17
 G. Duplication of Federal Programs 18
 H. Disclosure of Directed Rule Makings 18
 VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED 18
 A. Text of Existing Law Amended or Repealed by the Bill, as
 Reported 18
 B. Changes in Existing Law Proposed by the Bill, as Reported 41
 VII. ADDITIONAL VIEWS 75

The amendment is as follows:
 Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Helping Ensure Accountability, Leadership, and Trust in Tribal Healthcare Act” or the “HEALTTH Act”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.

TITLE I—EXPANDING AUTHORITIES AND IMPROVING ACCESS TO CARE

- Sec. 101. Service hospital long-term contract pilot program.
- Sec. 102. Expanded hiring authority for the Indian Health Service.
- Sec. 103. Removal or demotion of employees.
- Sec. 104. Improving timeliness of care.

TITLE II—INDIAN HEALTH SERVICE RECRUITMENT AND WORKFORCE

- Sec. 201. Exclusion from gross income for certain payments made under Indian Health Service Loan Repayment Program.
- Sec. 202. Clarifying that certain degrees qualify individuals for eligibility in the Indian Health Service Loan Repayment Program.
- Sec. 203. Cultural competency programs.
- Sec. 204. Relocation reimbursement.
- Sec. 205. Authority to waive Indian preference laws.
- Sec. 206. Streamlining medical volunteer credentialing process.

TITLE III—PURCHASED/REFERRED CARE PROGRAM REFORMS

- Sec. 301. Codification of limitation on charges for health care professional services and non-hospital-based care source.
- Sec. 302. Allocation of Purchased/Referred Care program funds.
- Sec. 303. Purchased/referred care program backlog.
- Sec. 304. Report on financial stability of Service hospitals and facilities.

SEC. 2. FINDINGS.

Congress finds the following:

- (1) The United States Government has a treaty obligation to provide health care to American Indians and Alaska Natives.
- (2) The Indian Health Service is the Federal agency that is entrusted to carry out this obligation.
- (3) Access to high quality health care is critical for strong and vibrant tribal communities in the Great Plains Area and throughout the United States.
- (4) In 2010, the Senate Committee on Indian Affairs published a report titled “In Critical Condition: The Urgent Need to Reform the Indian Health Service’s Aberdeen Area”, which detailed deficiencies, abuses, and malfeasance within the Aberdeen Area of the Indian Health Service, now called the Great Plains Area.
- (5) In 2015 and 2016, the Centers for Medicare & Medicaid Services conducted surveys of Indian Health Service hospitals in the Great Plains Area and found serious structural deficiencies that put patients’ health and safety in immediate jeopardy.
- (6) The Indian Health Service’s failures in the Great Plains Area have resulted in a severe reduction in access to emergency care, needlessly long wait times, patient suffering, low quality of life, and several tragic deaths.
- (7) The Indian Health Service is in need of comprehensive reform that will hold its management and employees accountable, foster strong and capable agency leadership, and restore tribal members’ trust in the care it delivers.

TITLE I—EXPANDING AUTHORITIES AND IMPROVING ACCESS TO CARE

SEC. 101. SERVICE HOSPITAL LONG-TERM CONTRACT PILOT PROGRAM.

Title VIII of the Indian Health Care Improvement Act (25 U.S.C. 1671) is amended by adding at the end the following new section:

“SEC. 833. SERVICE HOSPITAL LONG-TERM CONTRACT PILOT PROGRAM.

“(a) IN GENERAL.—The Secretary, acting through the Service, shall implement a 7-year pilot program to test the viability and advisability of entering into long-term contracts for the operation of eligible Service hospitals with governance structures that include tribal input.

“(b) ELEMENTS.—Under such pilot program, subject to subsection (e), the following shall apply:

“(1) The Secretary shall select three eligible Service hospitals in rural areas to participate in the pilot program.

“(2) For each such participating hospital, the Secretary shall enter into a long-term contract.

“(3) At each such participating hospital, the Secretary, in consultation with the primary Indian tribes served by the hospital, shall install a governing board described in subsection (d), which shall be responsible for overseeing the local operation of the hospital.

“(c) ELIGIBLE SERVICE HOSPITAL.—For purposes of this section, the term ‘eligible Service hospital’ means a Service hospital that furnishes services in a rural area to direct services tribes and with respect to which the Secretary has obtained the permission of the primary Indian tribes served by the hospital for the hospital to participate under the pilot program under this section.

“(d) GOVERNANCE BOARD DESCRIBED.—For purposes of subsection (b), a governance board described in this subsection, with respect to a Service hospital participating in the pilot program, is a board that satisfies the following criteria:

“(1) COMPOSITION.—

“(A) IN GENERAL.—The governance board is composed, in accordance with the best practices specified under paragraph (3), of the following individuals:

“(i) Representatives of the Service, who shall be selected by the Secretary.

“(ii) Representatives of the Service hospital.

“(iii) Representatives of each primary Indian tribe served by the hospital, who shall be selected by the respective Indian tribe.

“(iv) Experts in health care administration and delivery, who shall—

“(I) be selected by the Secretary and respective Indian tribe; and

“(II) to the extent possible, located in the State in which the hospital is located or otherwise familiar with such State.

“(B) VOTING RIGHTS.—In determining the composition of the board with respect to voting rights on the board—

“(i) the number of voting members representing the Service shall be equal to the number of voting members representing the Indian tribes involved; and

“(ii) the number of voting members representing the hospital may not be greater than the number of voting members representing the Service or the Indian tribes involved.

“(2) DUTIES.—The governance board shall perform duties in accordance with the best practices specified under paragraph (3) and shall include developing financial and quality metrics and standards for salaries, recruitment, retention, training, and dismissal of employees of such hospital.

“(3) BEST PRACTICES.—The Secretary shall specify best practices for the governance board described in this subsection, including best practices relating to the number of members of such board, the authorities of the board, and the duties of the board.

“(e) TREATMENT OF ELIGIBLE SERVICE HOSPITALS CURRENTLY UNDER CONTRACT.—In the case of an eligible Service hospital that is under a current contract with the Secretary as of the initiation of the selection process period for the pilot program, in order for such hospital to participate in the pilot program the Secretary, with the agreement of the hospital, may—

“(1) notwithstanding any other provision of law, modify or terminate such contract and in order for such hospital to enter into a long-term contract under the pilot program; or

“(2) enter into a long-term contract under the pilot program (and begin the pilot program) beginning on the date after the last date of such current contract.

“(f) LONG-TERM CONTRACT DEFINED.—For purposes of this section, the term ‘long-term contract’ means a contract for a period of at least 5 years.

“(g) CLARIFICATION.—Nothing in this section shall be construed to inhibit a tribe’s authority to enter into a compact or contract under the Indian Self-Determination and Education Assistance Act.

“(h) REPORTS.—For each year of the pilot program, the Secretary shall submit a report to Congress on the results of the program demonstrated during the respective year. Each such report shall include the following:

“(1) Information related to the financial health of each eligible hospital participating in the pilot program.

“(2) Information on the affect the pilot program has on access to care.

“(3) Information on patient satisfaction with services provided at such hospitals.

“(4) The number of readmissions at such hospitals.

“(5) The number of hospital-acquired conditions at such hospitals.

“(6) Recommendations on the viability and advisability of the long-term contracts and hospital governance structure under such pilot program.

“(7) Any other information the Secretary considers necessary for a proper analysis of the pilot program.”.

SEC. 102. EXPANDED HIRING AUTHORITY FOR THE INDIAN HEALTH SERVICE.

Section 601(d) of the Indian Health Care Improvement Act (25 U.S.C. 1661(d)) is amended—

(1) in paragraph (1)(A), by inserting “and subject to paragraph (4)” after “paragraph (2)”; and

(2) by adding at the end the following:

“(4) EMPLOYMENT AUTHORITY.—

“(A) IN GENERAL.—The Secretary may, with respect to any employee described in subparagraph (B), provide that one or more provisions of chapter 74 of title 38, United States Code (other than subchapter V of such chapter or of regulations promulgated under such chapter other than under such subchapter), shall apply—

“(i) in lieu of any provision of title 5 of the United States Code (other than as applied pursuant to section 834); or

“(ii) notwithstanding any lack of specific authority for a matter with respect to which title 5 of the United States Code relates.

“(B) APPLICABILITY TO EMPLOYEES.—Authority under this paragraph may be exercised with respect to any employee in the Service holding a position—

“(i) to which chapter 51 of title 5 of the United States Code applies, excluding any senior executive service position; and

“(ii) which involves health care responsibilities.

“(C) DEFINITION.—For purposes of this paragraph, ‘health care’ means direct patient-care services or services incident to direct patient-care services.”.

SEC. 103. REMOVAL OR DEMOTION OF EMPLOYEES.

(a) IN GENERAL.—Title VIII of the Indian Health Care Improvement Act (25 U.S.C. 1671 et seq.), as amended by section 101, is further amended by adding at the end the following new section:

“SEC. 834. REMOVAL OR DEMOTION OF EMPLOYEES.

“(a) IN GENERAL.—The Secretary may remove or demote an individual who is an employee of the Service if the Secretary determines the performance or misconduct of the individual warrants such removal or demotion. If the Secretary so removes or demotes such an individual, the Secretary may—

“(1) remove the individual from the Service; or

“(2) demote the individual by means of—

“(A) a reduction in grade for which the individual is qualified and that the Secretary determines is appropriate; or

“(B) a reduction in annual rate of pay that the Secretary determines is appropriate.

In the case of an individual who is removed under paragraph (1) or demoted under paragraph (2), the Secretary may require such individual take unpaid administrative leave for not longer than 10 consecutive work days.

“(b) PAY OF CERTAIN DEMOTED INDIVIDUALS.—(1) Notwithstanding any other provision of law, any individual subject to a demotion under subsection (a)(2)(A) shall,

beginning on the date of such demotion, receive the annual rate of pay applicable to such grade.

“(2) An individual so demoted may not be placed on administrative leave or any other category of paid leave during the period during which an appeal (if any) under this section is ongoing, and may only receive pay if the individual reports for duty. If an individual so demoted does not report for duty, such individual shall not receive pay or other benefits pursuant to subsection (e)(5).

“(c) NOTICE TO SECRETARY.—Not later than 30 days after removing or demoting an individual under subsection (a), the Service shall submit to the Secretary notice in writing of such removal or demotion and the reason for such removal or demotion.

“(d) PROCEDURE.—(1) The procedures under section 7513(b) of title 5 and chapter 43 of such title shall not apply to a removal or demotion under this section.

“(2)(A) Subject to subparagraph (B) and subsection (e), any removal or demotion under subsection (a) may be appealed to the Merit Systems Protection Board under section 7701 of title 5.

“(B) An appeal under subparagraph (A) of a removal or demotion may only be made if such appeal is made not later than seven days after the date of such removal or demotion.

“(e) EXPEDITED REVIEW BY ADMINISTRATIVE JUDGE.—(1) Upon receipt of an appeal under subsection (d)(2)(A), the Merit Systems Protection Board shall refer such appeal to an administrative judge pursuant to section 7701(b)(1) of title 5. The administrative judge shall expedite any such appeal under such section and, in any such case, shall issue a decision not later than 45 days after the date of the appeal.

“(2) Notwithstanding any other provision of law, including section 7703 of title 5, the decision of an administrative judge under paragraph (1) shall be final and shall not be subject to any further appeal.

“(3) In any case in which the administrative judge cannot issue a decision in accordance with the 45-day requirement under paragraph (1), the removal or demotion is final. In such a case, the Merit Systems Protection Board shall, within 14 days after the date that such removal or demotion is final, submit to Congress a report that explains the reasons why a decision was not issued in accordance with such requirement.

“(4) The Merit Systems Protection Board or administrative judge may not stay any removal or demotion under this section.

“(5) During the period beginning on the date on which an individual appeals a removal from the Service under subsection (d) and ending on the date that the administrative judge issues a final decision on such appeal, such individual may not receive any pay, awards, bonuses, incentives, allowances, differentials, student loan repayments, special payments, or benefits.

“(6) To the maximum extent practicable, the Secretary shall provide to the Merit Systems Protection Board, and to any administrative judge to whom an appeal under this section is referred, such information and assistance as may be necessary to ensure an appeal under this subsection is expedited.

“(f) TERMINATION OF INVESTIGATIONS BY OFFICE OF SPECIAL COUNSEL.—Notwithstanding any other provision of law, the Special Counsel (established by section 1211 of title 5) may terminate an investigation of a prohibited personnel practice alleged by an employee or former employee of the Department after the Special Counsel provides to the employee or former employee a written statement of the reasons for the termination of the investigation. Such statement may not be admissible as evidence in any judicial or administrative proceeding without the consent of such employee or former employee.

“(g) RELATION TO TITLE 5.—The authority provided by this section is in addition to the authority provided by subchapter V of chapter 75 of title 5 and chapter 43 of such title.

“(h) DEFINITIONS.—In this section:

“(1) The term ‘individual’ means an individual occupying a position at the Service but does not include—

“(A) an individual, as that term is defined in section 713(g)(1); or

“(B) a political appointee.

“(2) The term ‘grade’ has the meaning given such term in section 7511(a) of title 5.

“(3) The term ‘misconduct’ includes neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.

“(4) The term ‘political appointee’ means an individual who is—

“(A) employed in a position described under sections 5312 through 5316 of title 5 (relating to the Executive Schedule);

“(B) a limited term appointee, limited emergency appointee, or noncareer appointee in the Senior Executive Service, as defined under paragraphs (5), (6), and (7), respectively, of section 3132(a) of title 5; or

“(C) employed in a position of a confidential or policy-determining character under schedule C of subpart C of part 213 of title 5 of the Code of Federal Regulations.”.

- (b) CONFORMING.—Section 4303(f) of title 5, United States Code, is amended—
- (1) by striking “or” at the end of paragraph (2);
 - (2) by striking the period at the end of paragraph (3) and inserting “, or”; and
 - (3) by adding at the end the following:

“(4) any removal or demotion under section 834 of the Indian Health Care Improvement Act.”.

SEC. 104. IMPROVING TIMELINESS OF CARE.

Title III of the Indian Health Care Improvement Act (25 U.S.C. 1631 et seq.) is amended by adding at the end the following new section:

“SEC. 314. STANDARDS TO IMPROVE TIMELINESS OF CARE.

- “(a) IN GENERAL.—The Secretary, acting through the Service, shall—
- “(1) establish, by regulation, standards to measure the timeliness of the provision of health care services in Service facilities; and
 - “(2) make such standards available to all Service areas and Service facilities.
- “(b) DATA COLLECTION.—The Secretary, acting through the Service, shall develop a process for Service facilities to submit to the Secretary data with respect to the standards established under subsection (a).”.

TITLE II—INDIAN HEALTH SERVICE RECRUITMENT AND WORKFORCE

SEC. 201. EXCLUSION FROM GROSS INCOME FOR CERTAIN PAYMENTS MADE UNDER INDIAN HEALTH SERVICE LOAN REPAYMENT PROGRAM.

(a) IN GENERAL.—Section 108(f)(4) of the Internal Revenue Code of 1986 is amended to read as follows:

“(4) PAYMENTS UNDER NATIONAL HEALTH SERVICE CORPS LOAN REPAYMENT PROGRAM, INDIAN HEALTH SERVICE LOAN REPAYMENT PROGRAM, AND CERTAIN STATE LOAN REPAYMENT PROGRAMS.—In the case of an individual, gross income shall not include any amount received—

“(A) under section 338B(g) of the Public Health Service Act (but only if such amount is received with respect to the type of health profession or specialty for which an individual would have been eligible for participation in the program under section 338B of such Act as such program was in effect on January 1, 2016),

“(B) under a State program described in section 338I of such Act,

“(C) under section 108 of the Indian Health Care Improvement Act (but only in the case of a health profession or specialty described in subparagraph (A)), or

“(D) under any other State loan repayment or loan forgiveness program that is intended to provide for the increased availability of health care services in underserved or health professional shortage areas (as determined by such State).”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts received in taxable years beginning after December 31, 2016.

SEC. 202. CLARIFYING THAT CERTAIN DEGREES QUALIFY INDIVIDUALS FOR ELIGIBILITY IN THE INDIAN HEALTH SERVICE LOAN REPAYMENT PROGRAM.

Section 108 of the Indian Health Care Improvement Act (25 U.S.C. 1616a) is amended—

(1) in subsection (b)(1)(B)—

(A) in clause (i), by inserting “(including a degree business administration with an emphasis in health care management, as defined by the Secretary, or a degree in health administration, hospital administration, or public health)” before the semicolon; and

(B) in clause (ii), by inserting “or a license or certification to practice in the field of health administration, hospital administration, business administration, or public health, as applicable, in a State” before the semicolon;

(2) in subsection (f)(1)(B)(iii), by striking “2 years or such longer period as the individual may agree to serve in the full-time clinical practice of such individual’s profession” and inserting “2 years or such longer period as the individual

may agree to serve in the full-time practice of such individual's profession (or 4 years or such longer period as the individual may agree to serve in the half-time practice of such individual's profession)"; and

(3) in subsection (g)(2)(A), in the first sentence—

(A) by inserting “, in the case of an individual agreeing to serve in the full-time practice of such individual's profession,” before “up to \$35,000”; and

(B) by inserting “(or, in the case of an individual agreeing to serve in the half-time practice of such individual's profession, up to \$17,500)” before “on behalf of”.

SEC. 203. CULTURAL COMPETENCY PROGRAMS.

Title I of the Indian Health Care Improvement Act (25 U.S.C. 1611 et seq.) is amended by adding at the end the following new section:

“SEC. 125. CULTURAL COMPETENCY PROGRAMS.

“(a) **IN GENERAL.**—The Secretary, acting through the Service, shall, not later than one year after the date of the enactment of this section and for each Service area, develop and implement training programs for cultural competency for employees of the Service, locum tenens medical providers, and other contracted employees who work at Service hospitals or other Service facilities and whose employment requires regular direct patient access.

“(b) **REQUIRED PARTICIPATION.**—Notwithstanding any other provision of law, beginning with years beginning after (and for contracts entered into on or after) the date of implementation of the training programs under subsection (a), annual participation in such a program shall be a condition of employment (or of providing services in the capacity as a locum tenens medical provider or of the terms of the contracted employment, as applicable), and continued employment (or provision of such services in such capacity or contracted employment, as applicable), for each employee of the Service, locum tenens medical provider, and contracted employee described in such subsection. For purposes of the previous sentence, an individual shall not be considered as participating in such a program, with respect to a year, unless such individual satisfies such requirements, including testing, included in such program for such year, as specified by the Secretary.

“(c) **CONSULTATION.**—In developing a training program under subsection (a) for a Service area, the Secretary shall consult with representatives of each Indian tribe served in such area.”.

SEC. 204. RELOCATION REIMBURSEMENT.

Title I of the Indian Health Care Improvement Act (25 U.S.C. 1611 et seq.), as amended by section 203, is further amended by adding at the end the following new section:

“SEC. 126. RELOCATION REIMBURSEMENT.

“(a) **IN GENERAL.**—In the case of an employee of the Service who relocates to serve in a different capacity or position as an employee of the Service, the Secretary shall, subject to subsection (b), offer such employee reimbursement for reasonable costs associated with such relocation, as determined by the Secretary, incurred by such employee if—

“(1) such relocation is to fill a position that—

“(A) is at a Service facility that is located in a rural area or medically underserved area; and

“(B) had not been filled by a full-time non-contractor for a period of at least 6 months; or

“(2) such relocation is to fill a position that is for hospital management or administration, as determined by the Secretary.

“(b) **AMOUNT FOR RELOCATION.**—

“(1) **IN GENERAL.**—The amount of reimbursement to an employee under subsection (a) shall be in an amount that is at least 50 percent, but not more than 75 percent, of the specified pay amount (as described in paragraph (2)) of the employee.

“(2) **SPECIFIED PAY AMOUNT.**—For purposes of paragraph (1), the specified pay amount, with respect to an employee, is the annual rate of basic pay of the employee in effect at the beginning of the service period of such employee multiplied by the number of years (including fractions of a year) in the service period, not to exceed 4 years.

“(c) **CLARIFICATION.**—Nothing in this section shall be construed as limiting the authority of the Secretary, as in existence before the enactment of this section, to offer reimbursement for travel or relocation.”.

SEC. 205. AUTHORITY TO WAIVE INDIAN PREFERENCE LAWS.

Title VI of the Indian Health Care Improvement Act (25 U.S.C. 1611 et seq.) is amended by adding at the end the following new section:

“SEC. 605. AUTHORITY TO WAIVE INDIAN PREFERENCE LAWS.

“To enhance recruitment and retention of employees of the Service, the Secretary may waive the requirements of the Indian preference laws (as defined in section 2(e) of Public Law 96–135 (25 U.S.C. 472a(e))) with respect to a personnel action with respect to a Service unit with the written request or resolution of an Indian tribe located within the applicable Service unit—

“(1) if such personnel action is with respect to a facility that has a personnel vacancy rate of at least 20 percent; or

“(2) in the case such personnel action is with respect to a former employee of the Service or former tribal employee who was removed from such former employment or demoted for misconduct that occurred during the five years prior to the date of such personnel action.”.

SEC. 206. STREAMLINING MEDICAL VOLUNTEER CREDENTIALING PROCESS.

Title I of the Indian Health Care Improvement Act (25 U.S.C. 1611 et seq.), as amended by sections 203 and 204, is further amended by adding at the end the following new section:

“SEC. 128. STREAMLINING MEDICAL VOLUNTEER CREDENTIALING PROCESS.

“(a) IN GENERAL.—The Secretary, acting through the Service, shall, in accordance with subsection (b), implement a Service-wide centralized credentialing system to credential licensed health professionals who seek to volunteer at a Service facility.

“(b) REQUIREMENTS.—The credentialing system implemented under subsection (a) shall be in accordance with the following:

“(1) Credentialing of licensed health professionals who seek to volunteer at a Service facility shall occur at the Service level.

“(2) Credentialing procedures under such system shall be uniform throughout the Service.

“(3) Under such system, in the case that such a licensed health professional has successfully completed the credentialing procedures under such system, such professional shall be authorized to treat patients at any Service facility or other facility within a Service area.

“(c) REGULATIONS.—The Secretary may promulgate regulations to implement this section.

“(d) CONSULTATION.—The Secretary may consult with public and private associations of medical providers in the development of the credentialing system under this section.

“(e) APPLICATION.—The credentialing system under this section shall apply with respect to licensed health professionals seeking to volunteer with respect to—

“(1) providing direct health care services at a Service facility; and

“(2) providing services at facilities operated or contracted by a tribe, tribal organization, or urban Indian organization under the Indian Self-Determination and Education Assistance Act.

“(f) CLARIFICATION.—Nothing in this section shall be construed to inhibit a tribe’s authority to enter into a compact or contract under the Indian Self-Determination and Education Assistance Act.”.

TITLE III—PURCHASED/REFERRED CARE PROGRAM REFORMS

SEC. 301. CODIFICATION OF LIMITATION ON CHARGES FOR HEALTH CARE PROFESSIONAL SERVICES AND NON-HOSPITAL-BASED CARE SOURCE.

(a) APPLICABILITY.—The requirements of this section shall apply to—

(1) health programs operated by the Indian Health Service;

(2) health programs operated by an urban Indian organization through a contract or grant under title V of the Indian Health Care Improvement Act, Public Law 94–437, as amended; and

(3) health programs operated by an Indian tribe or tribal organization pursuant to a contract or compact with the Indian Health Service under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), provided that the Indian tribe or tribal organization has agreed in such contract or compact to be bound by this section pursuant to section 108 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450l) and section 517(e) of such Act (25 U.S.C. 458aaa–16(e)), as applicable.

(b) DEFINITIONS.—For purposes of this section, the following definitions apply:

(1) The term “notification of a claim” means, the submission of a claim, with respect to services for an individual, that meets the requirements of section 136.24 of title 42, Code of Federal Regulations, in accordance with the following:

(A) Such claim is submitted within the applicable period specified under such section 136.24, or if applicable, section 406 of the Indian Health Care Improvement Act (25 U.S.C. 1646), and includes information necessary to determine the relative medical need for the services and the individual’s eligibility.

(B) The information submitted with the claim is sufficient to—

(i) identify the individual as eligible for Indian Health Service services (such as name, address, home or referring service unit, tribal affiliation);

(ii) identify the medical care provided (such as the date of service and description of services); and

(iii) verify prior authorization by the Indian Health Service for services provided (such as the IHS purchase order number or medical referral form) or exemption from prior authorization (such as copies of pertinent clinical information for emergency care that was not prior-authorized).

(C) To be considered sufficient notification of a claim, a claim submitted by a provider or supplier for payment shall be in a format that complies with the format required for submission of claims under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) or recognized under section 1175 of such Act (42 U.S.C. 1320d–4).

(2) The term “provider” means a provider of services not governed by or subject to subpart D of part 136 of title 42, Code of Federal Regulations, and may include a skilled nursing facility, comprehensive outpatient rehabilitation facility, home health agency, or hospice program.

(3) The term “referral” means an authorization for medical care by the appropriate ordering official in accordance with subpart C of part 136 of title 42, Code of Federal Regulations.

(4) The term “repricing agent” means an entity that offers the Indian Health Service or a tribe, tribal organization, or urban Indian organization discounted rates from public and private providers that are not the Indian Health Service or a tribe, tribal organization, or urban Indian organization as a result of existing contracts that the public or private provider other than the Indian Health Service or a tribe, tribal organization, or urban Indian organization may have within the commercial health care industry.

(5) The term “supplier” means a physician or other practitioner, a facility, or other entity (other than a provider) not already governed by or subject to subpart D of part 136 of title 42, Code of Federal Regulations, that furnishes items or services under this section.

(c) PAYMENT FOR PROVIDER AND SUPPLIER SERVICES PURCHASED BY INDIAN HEALTH PROGRAMS.—

(1) IN GENERAL.—Payment to providers and suppliers for any level of care authorized under subpart C of part 136 of title 42, Code of Federal Regulations, by a Purchased/Referred Care program of the Indian Health Service, authorized by a tribe or tribal organization carrying out such a program of the Indian Health Service under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), authorized for purchase under section 136.31 of such title 42, Code of Federal Regulations, by an urban Indian organization (as that term is defined in 25 U.S.C. 1603(h)) (hereafter collectively referred to as the “I/T/U”), shall, subject to subsection (e), be determined based on one of the methods described in the following subparagraphs, as applicable:

(A) MFC RATE METHOD.—

(i) IN GENERAL.—The method described in this subparagraph is that, subject to clause (ii), in the case a specific amount for an item or service has been negotiated with a specific provider or supplier or its agent by the I/T/U, the I/T/U shall pay that amount for such item or service.

(ii) LIMITATION.—The amount applied under clause (i) for an item or service shall be an amount that is at least the amount of the provider’s or supplier’s most favored customer rate, as defined by the Secretary of Health and Human Services, for an item or service, as evidenced by commercial price lists or paid invoices and other related pricing and discount data to ensure that the I/T/U is receiving a fair and reasonable price. The limitation under the previous sentence shall not apply with respect to an item or service if—

(I) the amount offered to the I/T/U under the negotiation under clause (i) is fair and reasonable, as determined by the I/T/U, even though comparable discounts were not negotiated; and

(II) the amount is otherwise in the best interest of the I/T/U, as determined by the I/T/U.

(B) **MEDICARE RATES.**—The method described in this subparagraph is that, in the case that an amount for an item or service has not been negotiated in accordance with subparagraph (A), the I/T/U will pay the lowest of the following amounts for the item or service:

(i) The amount that is the applicable payment amount under the Medicare program under title XVIII of the Social Security Act for such item or service, including payment according to a fee schedule, a prospective payment system or based on reasonable cost for the period in which the service was provided, or in the event of a Medicare waiver, the payment amount will be calculated in accordance with such waiver. For purposes of this paragraph, the amount described in this clause shall be referred to as the “Medicare rate”.

(ii) An amount negotiated by a repricing agent if the provider or supplier is participating within the repricing agent’s network and the I/T/U has a pricing arrangement or contract with that repricing agent.

(iii) An amount not to exceed the provider or supplier’s most favored customer rate described in subparagraph (A)(ii) for such item or service, as evidenced by commercial price lists or paid invoices and other related pricing and discount data to ensure that the I/T/U is receiving a fair and reasonable price, but only to the extent such evidence is reasonably accessible and available to the I/T/U.

(C) **OTHER.**—The method described in this subparagraph is that, in the case that a Medicare rate does not exist for an item or service, and no other method described in a previous subparagraph is accessible or available, the amount shall be deemed to be 65 percent of authorized charges for such item or service.

(2) **COORDINATION OF BENEFITS AND LIMITATION ON RECOVERY.**—If an I/T/U has authorized payment for items and services provided to an individual who is eligible for benefits under title XVIII of the Social Security Act, title XIX of such Act, or another third-party payer, the following shall apply:

(A) The I/T/U shall be the payer of last resort under section 2901(b) of the Patient Protection and Affordable Care Act (25 U.S.C. 1623(b)).

(B) If there are any third-party payers, the I/T/U shall pay the amount for which the patient is being held responsible after the provider or supplier of services has coordinated benefits and all other alternate resources have been considered and paid, including applicable copayments, deductibles, and coinsurance that are owed by the patient.

(C) The maximum payment by the I/T/U shall be only the portion of the payment amount determined under this section not covered by any other payer.

(D) The I/T/U payment may not exceed the rate calculated in accordance with paragraph (1) of this section (plus applicable cost sharing).

(E) In the case payment is made under such title XIX for an item or service such payment shall be considered payment in full and there shall be no additional payment made by the I/T/U for such item or service.

(3) **AUTHORIZED SERVICES.**—Payment shall be made only for those items and services authorized by an I/T/U consistent with this section or section 503(a) of the Indian Health Care Improvement Act (25 U.S.C. 1653(a)).

(4) **NO ADDITIONAL CHARGES.**—

(A) If an amount has not been negotiated under paragraph (1)(A) for an item or service, the provider or supplier shall be deemed to have accepted the applicable payment amount under paragraph (1)(B) for such item or service as payment in full if—

(i) the item or service was provided based on a referral;

(ii) the provider or supplier submits a notification of a claim for payment to the I/T/U; or

(iii) the provider or supplier accepts payment for the provision of such item or service from the I/T/U.

(B) A payment made and accepted in accordance with this section shall constitute payment in full and the provider or its agent, or supplier or its agent, may not impose any additional charge—

(i) on the individual for I/T/U authorized items and services; or

(ii) for information requested by the I/T/U or its agent or fiscal intermediary for the purposes of payment determinations or quality assurance.

(5) NOTIFICATION OF CLAIM.—The Indian Health Service shall not adjudicate a notification of a claim that does not contain the information described in subsection (b)(1) with an approval or denial, except that the Service may request further information from the individual, or as applicable, the provider or supplier, necessary to make a decision. A notification of a claim meeting the requirements specified herein does not guarantee payment.

(6) RATE AUTHORIZED.—No service shall be authorized and no payment shall be issued under this section in excess of the rate authorized by this section.

(d) AUTHORIZATION BY AN URBAN INDIAN ORGANIZATION.—An urban Indian organization may authorize for purchase items and services for an eligible urban Indian as those terms are defined in section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603) according to section 503 of such Act (25 U.S.C. 1653) and applicable regulations. Services and items furnished by physicians and other health care professionals and non-hospital-based entities shall be subject to the payment methodology set forth in this section.

(e) EXCEPTION.—In the case of a payment described in subsection (c) that is with respect to a rare specialty service, as specified by the Secretary of Health and Human Services, or a service furnished in highly rural and medically underserved areas, as specified by the Secretary, the Indian Health Service or tribe or tribal organization involved may negotiate an amount for such payment for such service that is greater than the payment amount that would be recognized under title XVIII of the Social Security for such service.

(f) REPORT.—Not later than two years after the date of the enactment of this Act, the Secretary of Health and Human Services, acting through the Director of the Indian Health Service, shall submit to Congress a report on the impact of this section on access to care under the Purchased/Referred Care program, including recommendations for such legislative actions as the Secretary determines appropriate.

SEC. 302. ALLOCATION OF PURCHASED/REFERRED CARE PROGRAM FUNDS.

(a) IN GENERAL.—Title II of the Indian Health Care Improvement Act is amended by inserting after section 226 (25 U.S.C. 1621y) the following new section:

“SEC. 227. PURCHASED/REFERRED CARE PROGRAM DISBURSEMENT FORMULA.

“(a) IN GENERAL.—The Secretary shall, with respect to the Purchased/Referred Care program (formerly referred to as the ‘contract health services program’) funded by the Indian Health Service and operated by the Indian Health Service, an Indian tribe, or tribal organization, review the distribution of funds pursuant to the program and initiate procedures under subchapter III of chapter 5 of title 5, United States Code, to negotiate or promulgate regulations to develop and implement a revised distribution formula in accordance with the subsequent subsections of this section.

“(b) CONSIDERATIONS.—In developing the revised distribution formula under subsection (a), the Secretary shall consider—

“(1) the extent to which services are available at a Service hospital or facility of the Service rather than the mere existence of such a hospital or facility;

“(2) population growth and the potential for population growth;

“(3) the socioeconomic makeup of the population of each contract health service delivery area;

“(4) the geographic makeup of each contract health service delivery area;

“(5) the size of the hospital or facility;

“(6) the relative regional cost of purchasing services;

“(7) actual counts of Purchased/Referred Care users; and

“(8) accreditation problems at the Service hospital or facility of the Service.

“(c) IMPLEMENTATION DEADLINE.—The revised distribution formula under subsection (a) shall be implemented not later than the date that is 3 years after the first October 1 following the date of the enactment of this Act.

“(d) TRANSITION.—

“(1) IN GENERAL.—Notwithstanding any other provision of law, for the period beginning on the first October 1 following the date of the enactment of this section and ending the day before the implementation date of the revised distribution formula under subsection (a), the Secretary shall provide for the distribution of funds, with respect to direct health care services provided by a Service facility, pursuant to the Purchased/Referred Care program (and with respect to services provided by any other facility under such program, at the option of such facility) be consistent with the following:

“(A) During any portion of such period for which a Service area has been designated as a high IHS level area under paragraph (2)(B), such area shall

not receive any funds pursuant to such program in addition to the base allotment determined under the distribution formula under the program for 2016 with respect to such area.

“(B) In the case that during such period the amount of funds made available to the Service for such distribution under such program is in excess of the total amounts of base allotments for distribution under such program for 2016, the Secretary shall distribute such excess amount, in accordance with a methodology specified by the Secretary, to Service areas which for an applicable portion of such period of excess funding have been designated as a low IHS level area under paragraph (2)(A).

“(2) AREA DESIGNATIONS.—For purposes of paragraph (1), the Secretary shall, with respect to each contract health service delivery area—

“(A) review the services provided in the area to determine the IHS medical priority level pursuant to section 136.23(e) of title 42, Code of Federal Regulations, of such services; and

“(B) in the case majority, as specified by the Secretary, of the services so provided in the area were determined to have—

“(i) such a priority level of a I or II, designate such area as a low IHS level area; and

“(ii) any other priority level, designate such area as a high IHS level area.

“(e) APPLICATION OF REDUCTION CLAUSE.—In the case of a facility that, as of the date of the enactment of this section, is under contract with the Secretary with respect to the Purchased/Referred Care program and such contract applies to a period to which subsection (d) or the revised distribution formula under subsection (a) applies, if application of subsection (d) or the revised distribution formula results in the distribution of an amount of funds to such facility during such period that is less than the amount of funds that would be provided during such period to such facility under such contract with respect to the Purchased/Referred Care program before application of such subsection (d) or such revised distribution formula, respectively, the Secretary may under section 106(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j–1(b)) reduce such amount accordingly to be consistent with such subsection (d) or revised distribution formula, respectively.

“(f) CLARIFICATION.—Nothing in this section shall be construed to supersede a Tribe’s self-governance contract under the Indian Self-Determination and Education Assistance Act.

“(g) UPDATE.—The Secretary shall periodically, but not more frequently than once every 3 years and not less frequently than once every five years, review and, as necessary, update the formula implemented under subsection (a).

“(h) CONSULTATION.—In developing the formula under subsection (a) and reviewing and making updates to such formula under subsection (f), the Secretary shall consult with Indian tribes, including such tribes consulted for purposes of carrying out section 226.

“(i) REPORTS.—Not later than one year after the date of the enactment of this section, and annually thereafter, the Secretary shall submit to Congress a report on the implementation of this section. Each such report shall include information, with respect to the period for such report, on—

“(1) the distribution of funds for such period pursuant to the Purchased/Referred Care program among the contract health service delivery area, tribes, tribal organizations, and urban Indian organizations;

“(2) whether during such period any contract health service delivery area, tribe, tribal organization, or urban Indian organization had a shortfall in such funding and, if so, the amount of such shortfall; and

“(3) recommendations for such legislative action as the Secretary deems appropriate.”

(b) CONFORMING AMENDMENTS.—Section 226 of the Indian Health Care Improvement Act (25 U.S.C. 1621y) is amended—

(1) in subsection (a)—

(A) by striking “As soon as practicable after the date of enactment of the Indian Health Care Improvement Reauthorization and Extension Act of 2009” and inserting “Not later than 2 years after the date of the enactment of section 227”;

(B) by striking “the study” and inserting “a study”; and

(C) by striking “as requested by Congress in March 2009, or pursuant to section 830” and inserting “, including as amended pursuant to section 227”;

(2) in subsection (b)—

(A) in the matter preceding paragraph (1), by inserting “, and submit, not later than one year after the date of the enactment of section 227 and annually thereafter, to Congress a report on” after “pursuant to the program”;

(B) in paragraph (3), by striking at the end “and”;

(C) by redesignating paragraph (4) as paragraph (5);

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

“(4) to determine whether during the period of the report any contract health service delivery area, tribe, tribal organization, or urban Indian organization had a shortfall in such funding and, if so, the amount of such shortfall; and

“(5) recommendations for such legislative action as the Secretary deems appropriate.”; and

(E) in paragraph (5), as redesignated by subparagraph (C), by inserting “, including recommendations for such legislative actions as the Secretary determines appropriate” before the period at the end; and

(3) by striking subsection (c).

SEC. 303. PURCHASED/REFERRED CARE PROGRAM BACKLOG.

Title II of the Indian Health Care Improvement Act (25 U.S.C. 1621), as amended by section 302, is further amended by adding at the end the following new section:

“SEC. 228. PURCHASED/REFERRED CARE PROGRAM BACKLOG.

“Not later than one year after the date of the enactment of this section, the Secretary shall develop and implement a system to prioritize any backlog of unpaid balances under the Purchased/Referred Care program for each Service area. In developing such system, the Secretary shall consider—

“(1) the monetary amount of each such unpaid balance; and

“(2) how long such balance has remained unpaid.”

SEC. 304. REPORT ON FINANCIAL STABILITY OF SERVICE HOSPITALS AND FACILITIES.

Not later than one year after the date of the enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on issues related to the financial stability of hospitals and facilities of the Indian Health Service that have experienced sanction or threat of sanction by the Centers for Medicare & Medicaid Services. Such report shall focus on the effects of any revenues lost as a result of the sanction or threat of sanction and shall include recommendations for legislative action.

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

Section 201 of the bill, H.R. 5406, as reported by the Committee on Ways and Means, excludes from gross income certain amounts received under the Indian Health Service loan repayment program and related to health professions or specialties for which an individual would be eligible for participation in the National Health Service loan repayment program (as in effect on January 1, 2016).

B. BACKGROUND AND NEED FOR LEGISLATION

While the Committee continues to work on comprehensive tax reform as a critical means of promoting economic growth and job creation, the Committee believes it is important to provide immediate relief from unfair taxes. The Committee believes that this exclusion from gross income for certain student loan repayments under the Indian Health Service loan repayment program will eliminate an unfair tax burden.

C. LEGISLATIVE HISTORY

Background

H.R. 5406 was introduced on June 8, 2016, and was referred to the Committee on Ways and Means, the Committee on Natural Resources, and the Committee on Energy and Commerce.

Committee action

The Committee on Ways and Means marked up section 201 of H.R. 5406, the Helping Ensure Accountability, Leadership, and Trust in Tribal Healthcare Act, on September 21, 2016, and ordered the bill, as amended, favorably reported (with a quorum being present).

Committee hearings

Reforms to the tax treatment of student debt were discussed at a Subcommittee on Tax Policy Member Day Hearing on Tax Legislation on May 12, 2016.

II. EXPLANATION OF THE BILL

A. EXCLUSION FROM GROSS INCOME FOR CERTAIN PAYMENTS MADE UNDER INDIAN HEALTH SERVICE LOAN REPAYMENT PROGRAM

(SEC. 201 OF THE BILL AND SEC. 108(F)(4) OF THE CODE)

PRESENT LAW

Gross income generally includes the discharge of indebtedness of the taxpayer. Under an exception to this general rule, gross income does not include any amount from the forgiveness (in whole or in part) of certain student loans, provided that the forgiveness is contingent on the student's working for a certain period of time in certain professions for any of a broad class of employers.¹

Student loans eligible for this special rule must be made to an individual to assist the individual in attending an educational institution that normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of students in attendance at the place where its education activities are regularly carried on. Loan proceeds may be used not only for tuition and required fees, but also to cover room and board expenses. The loan must be made by (1) the United States (or an instrumentality or agency thereof), (2) a State (or any political subdivision thereof), (3) certain tax-exempt public benefit corporations that control a State, county, or municipal hospital and whose employees have been deemed to be public employees under State law, or (4) an educational organization that originally received the funds from which the loan was made from the United States, a State, or a tax-exempt public benefit corporation.

An individual's gross income does not include amounts from the forgiveness of loans made by educational organizations (and certain tax-exempt organizations in the case of refinancing loans) out of private, nongovernmental funds if the proceeds of such loans are used to pay costs of attendance at an educational institution or to refinance any outstanding student loans (not just loans made by educational organizations) and the student is not employed by the lender organization. In the case of such loans made or refinanced by educational organizations (or refinancing loans made by certain tax-exempt organizations), cancellation of the student loan must be contingent upon the student working in an occupation or area with unmet needs and such work must be performed for, or under the

¹ Sec. 108(f).

direction of, a tax-exempt charitable organization or a governmental entity.

In addition, an individual's gross income does not include any loan repayment amount received under the National Health Service Corps loan repayment program, certain State loan repayment programs, or any amount received by an individual under any State loan repayment or loan forgiveness program that is intended to provide for the increased availability of health care services in underserved or health professional shortage areas (as determined by the State).

REASONS FOR CHANGE

The Committee believes it is important to provide an incentive for individuals to pursue certain health professions on Indian reservations and in service to Native Americans, and to ensure that there is a sufficient supply of such trained health professionals. Recognizing that the National Health Service Corps offers a similar program that qualifies for certain tax benefits, the Committee believes it is appropriate to align the treatment of Indian Health Service student loan repayments with the treatment of those made by the National Health Service Corps.

EXPLANATION OF PROVISION

The provision modifies the gross income exclusion for amounts received under the National Health Service Corps loan repayment program or certain State loan repayment programs to apply to amounts received by individuals under the Indian Health Service loan repayment program.² The exclusion as modified applies only with respect to those individuals whose type of health profession or specialty would have qualified an individual to participate in the National Health Service Corps loan repayment program as of January 1, 2016.

EFFECTIVE DATE

The provision is effective for amounts received in taxable years beginning after December 31, 2016.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means in its consideration of section 201 of H.R. 5406, the "Helping Ensure Accountability, Leadership, and Trust in Tribal Healthcare Act," on September 21, 2016.

The bill, H.R. 5406, as amended, was ordered favorably reported to the House of Representatives by a voice vote (with a quorum being present).

²Section 108 of the Indian Health Care Improvement Act established the Indian Health Service loan repayment program to assure a sufficient supply of trained health professionals needed to provide health care services to Indians. Pub. L. No. 94-437, as amended by Pub. L. No. 100-713, sec. 108, and Pub. L. No. 102-573, sec. 106, and as amended, and permanently reauthorized by Pub. L. No. 111-148, sec. 10221.

IV. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the bill, section 201 of H.R. 5406, as reported.

The bill, as reported, is estimated to have the following effect on Federal fiscal year budget receipts for the period 2017–2026:

FISCAL YEARS											
[millions of dollars]											
2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2017–21	2017–26
-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-16	-32

NOTE: Details do not add to totals due to rounding.

Pursuant to clause 8 of rule XIII of the Rules of the House of Representatives, the following statement is made by the Joint Committee on Taxation with respect to the provisions of the bill amending the Internal Revenue Code of 1986: The gross budgetary effect (before incorporating macroeconomic effects) in any fiscal year is less than 0.25 percent of the current projected gross domestic product of the United States for that fiscal year; therefore, the bill is not “major legislation” for purposes of requiring that the estimate include the budgetary effects of changes in economic output, employment, capital stock and other macroeconomic variables.

B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that section 201 of the bill involves no new or increased budget authority. The Committee further states that the revenue-reducing provisions of section 201 of the bill involve increased tax expenditures. See amounts shown in the table in Part IV.A above.

C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE

With regard to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, an estimate prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 was not submitted to the Committee before the filing of the report.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was as a result of the Committee’s review of section 201 of H.R. 5406 that the Committee concluded that it is

appropriate to report the bill, as amended, favorably to the House of Representatives with the recommendation that the bill do pass.

B. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that section 201 of the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

C. INFORMATION RELATING TO UNFUNDED MANDATES

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104-4).

The Committee has determined that section 201 of the bill does not contain Federal mandates on the private sector. The Committee has determined that section 201 of the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

D. APPLICABILITY OF HOUSE RULE XXI 5(b)

Rule XXI 5(b) of the Rules of the House of Representatives provides, in part, that “A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present.” The Committee has carefully reviewed section 201 of the bill and states that section 201 of the bill does not involve any Federal income tax rate increases within the meaning of the rule.

E. TAX COMPLEXITY ANALYSIS

Section 4022(b) of the Internal Revenue Service Restructuring and Reform Act of 1998 (“IRS Reform Act”) requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Treasury Department) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code of 1986 and has widespread applicability to individuals or small businesses.

Pursuant to clause 3(h)(1) of rule XIII of the Rules of the House of Representatives, the staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because section 201 of the bill contains no provisions that amend the Internal Revenue Code of 1986 and that have “widespread applicability” to individuals or small businesses, within the meaning of the rule.

F. CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed section

201 of the bill and states that section 201 of the bill does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

G. DUPLICATION OF FEDERAL PROGRAMS

In compliance with Sec. 3(g)(2) of H. Res. 5 (114th Congress), the Committee states that section 201 of the bill does not establish or reauthorize: (1) a program of the Federal Government known to be duplicative of another Federal program, (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169).

H. DISCLOSURE OF DIRECTED RULE MAKINGS

In compliance with Sec. 3(i) of H. Res. 5 (114th Congress), the following statement is made concerning directed rule makings: The Committee estimates that section 201 of the bill requires no directed rule makings within the meaning of such section.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

A. TEXT OF EXISTING LAW AMENDED OR REPEALED BY THE BILL, AS REPORTED

In compliance with clause 3(e)(1)(A) of rule XIII of the Rules of the House of Representatives, the text of each section proposed to be amended or repealed by the bill, as reported, is shown below:

TEXT OF EXISTING LAW AMENDED OR REPEALED BY THE BILL, AS REPORTED

In compliance with clause 3(e)(1)(A) of rule XIII of the Rules of the House of Representatives, the text of each section proposed to be amended or repealed by the bill, as reported, is shown below:

INDIAN HEALTH CARE IMPROVEMENT ACT

* * * * *

TITLE I—INDIAN HEALTH MANPOWER

* * * * *

INDIAN HEALTH SERVICE LOAN REPAYMENT C PROGRAM

SEC. 108. (a)(1) The Secretary, acting through the Service, shall establish a program to be known as the Indian Health Service Loan Repayment Program (hereinafter referred to as the “Loan Repayment Program”) in order to assure an adequate supply of trained health professionals necessary to maintain accreditation of, and provide health care services to Indians through, Indian health programs.

(2) For the purposes of this section—

(A) the term “Indian health program” means any health program or facility funded, in whole or part, by the Service for the benefit of Indians and administered—

(i) directly by the Service;

(ii) by any Indian tribe or tribal or Indian organization pursuant to a contract under—

(I) the Indian Self-Determination Act, or

(II) section 23 of the Act of April 30, 1908 (25 U.S.C. 47), popularly known as the “Buy-Indian” Act; or

(iii) by an urban Indian organization pursuant to title V of this Act; and

(B) the term “State” has the same meaning given such term in section 331(i)(4) of the Public Health Service Act.

(b) To be eligible to participate in the Loan Repayment Program, an individual must—

(1)(A) be enrolled—

(i) in a course of study or program in an accredited institution, as determined by the Secretary, within any State and be scheduled to complete such course of study in the same year such individual applies to participate in such program; or

(ii) in an approved graduate training program in a health profession; or

(B) have—

(i) a degree in a health profession; and

(ii) a license to practice a health profession in a State;

(2)(A) be eligible for, or hold, an appointment as a commissioned officer in the Regular or Reserve Corps of the Public Health Service;

(B) be eligible for selection for civilian service in the Regular or Reserve Corps of the Public Health Service;

(C) meet the professional standards for civil service employment in the Indian Health Service; or

(D) be employed in an Indian health program without a service obligation; and

(3) submit to the Secretary an application for a contract described in subsection (f).

(c)(1) In disseminating application forms and contract forms to individuals desiring to participate in the Loan Repayment Program, the Secretary shall include with such forms a fair summary of the rights and liabilities of an individual whose application is approved (and whose contract is accepted) by the Secretary, including in the summary a clear explanation of the damages to which the United States is entitled under subsection (l) in the case of the individual’s breach of the contract. The Secretary shall provide such individuals with sufficient information regarding the advantages and disadvantages of service as a commissioned officer in the Regular or Reserve Corps of the Public Health Service or a civilian employee of the Indian Health Service to enable the individual to make a decision on an informed basis.

(2) The application form, contract form, and all other information furnished by the Secretary under this section shall be written in a manner calculated to be understood by the average individual applying to participate in the Loan Repayment Program.

(3) The Secretary shall make such application forms, contract forms, and other information available to individuals desiring to participate in the Loan Repayment Program on a date sufficiently early to ensure that such individuals have adequate time to carefully review and evaluate such forms and information.

(d)(1) Consistent with paragraph (3), the Secretary, acting through the Service and in accordance with subsection (k), shall annually—

(A) identify the positions in each Indian health program for which there is a need or a vacancy, and

(B) rank those positions in order of priority.

(2) Consistent with the priority determined under paragraph (1), the Secretary, in determining which applications under the Loan Repayment Program to approve (and which contracts to accept), shall give priority to applications made by—

(A) Indians; and

(B) individuals recruited through the efforts of Indian tribes or tribal or Indian organizations.

(3)(A) Subject to subparagraph (B), of the total amounts appropriated for each of the fiscal years 1993, 1994, and 1995 for loan repayment contracts under this section, the Secretary shall provide that—

(i) not less than 25 percent be provided to applicants who are nurses, nurse practitioners, or nurse midwives; and

(ii) not less than 10 percent be provided to applicants who are mental health professionals (other than applicants described in clause (i)).

(B) The requirements specified in clause (i) or clause (ii) of subparagraph (A) shall not apply if the Secretary does not receive the number of applications from the individuals described in clause (i) or clause (ii), respectively, necessary to meet such requirements.

(e)(1) An individual becomes a participant in the Loan Repayment Program only upon the Secretary and the individual entering into a written contract described in subsection (f).

(2) The Secretary shall provide written notice to an individual promptly on—

(A) the Secretary's approving, under paragraph (1), of the individual's participation in the Loan Repayment Program, including extensions resulting in an aggregate period of obligated service in excess of 4 years; or

(B) the Secretary's disapproving an individual's participation in such Program.

(f) The written contract referred to in this section between the Secretary and an individual shall contain—

(1) an agreement under which—

(A) subject to paragraph (3), the Secretary agrees—

(i) to pay loans on behalf of the individual in accordance with the provisions of this section, and

(ii) to accept (subject to the availability of appropriated funds for carrying out this section) the individual into the Service or place the individual with a tribe or Indian organization as provided in subparagraph (B)(iii), and

(B) subject to paragraph (3), the individual agrees—

(i) to accept loan payments on behalf of the individual;

(ii) in the case of an individual described in subsection (b)(1)—

(I) to maintain enrollment in a course of study or training described in subsection (b)(1)(A) until the individual completes the course of study or training, and

(II) while enrolled in such course of study or training, to maintain an acceptable level of academic standing (as determined under regulations of the Secretary by the educational institution offering such course of study or training);

(iii) to serve for a time period (hereinafter in this section referred to as the “period of obligated service”) equal to 2 years or such longer period as the individual may agree to serve in the full-time clinical practice of such individual’s profession in an Indian health program to which the individual may be assigned by the Secretary;

(2) a provision permitting the Secretary to extend for such longer additional periods, as the individual may agree to, the period of obligated service agreed to by the individual under paragraph (1)(B)(iii);

(3) a provision that any financial obligation of the United States arising out of a contract entered into under this section and any obligation of the individual which is conditioned thereon is contingent upon funds being appropriated for loan repayments under this section;

(4) a statement of the damages to which the United States is entitled under subsection (1) for the individual’s breach of the contract; and

(5) such other statements of the rights and liabilities of the Secretary and of the individual, not inconsistent with this section.

(g)(1) A loan repayment provided for an individual under a written contract under the Loan Repayment Program shall consist of payment, in accordance with paragraph (2), on behalf of the individual of the principal, interest, and related expenses on government and commercial loans received by the individual regarding the undergraduate or graduate education of the individual (or both), which loans were made for—

(A) tuition expenses;

(B) all other reasonable educational expenses, including fees, books, and laboratory expenses, incurred by the individual; and

(C) reasonable living expenses as determined by the Secretary.

(2)(A) For each year of obligated service that an individual contracts to serve under subsection (f) the Secretary may pay up to \$35,000 (or an amount equal to the amount specified in section 338B(g)(2)(A) of the Public Health Service Act) on behalf of the individual for loans described in paragraph (1). In making a determination of the amount to pay for a year of such service by an indi-

vidual, the Secretary shall consider the extent to which each such determination—

(i) affects the ability of the Secretary to maximize the number of contracts that can be provided under the Loan Repayment Program from the amounts appropriated for such contracts;

(ii) provides an incentive to serve in Indian health programs with the greatest shortages of health professionals; and

(iii) provides an incentive with respect to the health professional involved remaining in an Indian health program with such a health professional shortage, and continuing to provide primary health services, after the completion of the period of obligated service under the Loan Repayment Program.

(B) Any arrangement made by the Secretary for the making of loan repayments in accordance with this subsection shall provide that any repayments for a year of obligated service shall be made no later than the end of the fiscal year in which the individual completes such year of service.

(3) For the purpose of providing reimbursements for tax liability resulting from payments under paragraph (2) on behalf of an individual, the Secretary—

(A) in addition to such payments, may make payments to the individual in an amount not less than 20 percent and not more than 39 percent of the total amount of loan repayments made for the taxable year involved; and

(B) may make such additional payments as the Secretary determines to be appropriate with respect to such purpose.

(4) The Secretary may enter into an agreement with the holder of any loan for which payments are made under the Loan Repayment Program to establish a schedule for the making of such payments.

(h) Notwithstanding any other provision of law, individuals who have entered into written contracts with the Secretary under this section, while undergoing academic training, shall not be counted against any employment ceiling affecting the Department of Health and Human Services.

(i) The Secretary shall conduct recruiting programs for the Loan Repayment Program and other health professional programs of the Service at educational institutions training health professionals or specialists identified in subsection (a).

(j) Section 214 of the Public Health Service Act (42 U.S.C. 215) shall not apply to individuals during their period of obligated service under the Loan Repayment Program.

(k) The Secretary, in assigning individuals to serve in Indian health programs pursuant to contracts entered into under this section, shall—

(1) ensure that the staffing needs of Indian health programs administered by an Indian tribe or tribal or health organization receive consideration on an equal basis with programs that are administered directly by the Service; and

(2) give priority to assigning individuals to Indian health programs that have a need for health professionals to provide health care services as a result of individuals having breached contracts entered into under this section.

(1)(1) An individual who has entered into a written contract with the Secretary under this section and who—

(A) is enrolled in the final year of a course of study and who—

(i) fails to maintain an acceptable level of academic standing in the educational institution in which he is enrolled (such level determined by the educational institution under regulations of the Secretary);

(ii) voluntarily terminates such enrollment; or

(iii) is dismissed from such educational institution before completion of such course of study; or

(B) is enrolled in a graduate training program, fails to complete such training program, and does not receive a waiver from the Secretary under subsection (b)(1)(B)(ii),

shall be liable, in lieu of any service obligation arising under such contract, to the United States for the amount which has been paid on such individual's behalf under the contract.

(2) If, for any reason not specified in paragraph (1), an individual breaches his written contract under this section by failing either to begin, or complete, such individual's period of obligated service in accordance with subsection (f), the United States shall be entitled to recover from such individual an amount to be determined in accordance with the following formula:

$$A=3Z(t-s/t)$$

in which—

(A) "A" is the amount the United States is entitled to recover;

(B) "Z" is the sum of the amounts paid under this section to, or on behalf of, the individual and the interest on such amounts which would be payable if, at the time the amounts were paid, they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States;

(C) "t" is the total number of months in the individual's period of obligated service in accordance with subsection (f); and

(D) "s" is the number of months of such period served by such individual in accordance with this section.

Amounts not paid within such period shall be subject to collection through deductions in Medicare payments pursuant to section 1892 of the Social Security Act.

(3)(A) Any amount of damages which the United States is entitled to recover under this subsection shall be paid to the United States within the 1-year period beginning on the date of the breach or such longer period beginning on such date as shall be specified by the Secretary.

(B) If damages described in subparagraph (A) are delinquent for 3 months, the Secretary shall, for the purpose of recovering such damages—

(i) utilize collection agencies contracted with by the Administrator of the General Services Administration; or

(ii) enter into contracts for the recovery of such damages with collection agencies selected by the Secretary.

(C) Each contract for recovering damages pursuant to this subsection shall provide that the contractor will, not less than once each 6 months, submit to the Secretary a status report on the success of the contractor in collecting such damages. Section 3718 of title 31, United States Code, shall apply to any such contract to the extent not inconsistent with this subsection.

(m)(1) Any obligation of an individual under the Loan Repayment Program for service or payment of damages shall be canceled upon the death of the individual.

(2) The Secretary shall by regulation provide for the partial or total waiver or suspension of any obligation of service or payment by an individual under the Loan Repayment Program whenever compliance by the individual is impossible or would involve extreme hardship to the individual and if enforcement of such obligation with respect to any individual would be unconscionable.

(3) The Secretary may waive, in whole or in part, the rights of the United States to recover amounts under this section in any case of extreme hardship or other good cause shown, as determined by the Secretary.

(4) Any obligation of an individual under the Loan Repayment Program for payment of damages may be released by a discharge in bankruptcy under title 11 of the United States Code only if such discharge is granted after the expiration of the 5-year period beginning on the first date that payment of such damages is required, and only if the bankruptcy court finds that nondischarge of the obligation would be unconscionable.

(n) The Secretary shall submit to the President, for inclusion in each report required to be submitted to the Congress under section 801, a report concerning the previous fiscal year which sets forth—

(1) the health professional positions maintained by the Service or by tribal or Indian organizations for which recruitment or retention is difficult;

(2) the number of Loan Repayment Program applications filed with respect to each type of health profession;

(3) the number of contracts described in subsection (f) that are entered into with respect to each health profession;

(4) the amount of loan payments made under this section, in total and by health profession;

(5) the number of scholarship grants that are provided under section 104 with respect to each health profession;

(6) the amount of scholarship grants provided under section 104, in total and by health profession;

(7) the number of providers of health care that will be needed by Indian health programs, by location and profession, during the three fiscal years beginning after the date the report is filed; and

(8) the measures the Secretary plans to take to fill the health professional positions maintained by the Service or by tribes or tribal or Indian organizations for which recruitment or retention is difficult.

* * * * *

TITLE II—HEALTH SERVICES

* * * * *

SEC. 226. CONTRACT HEALTH SERVICE ADMINISTRATION AND DISBURSEMENT FORMULA.

(a) **SUBMISSION OF REPORT.**—As soon as practicable after the date of enactment of the Indian Health Care Improvement Reauthorization and Extension Act of 2009, the Comptroller General of the United States shall submit to the Secretary, the Committee on Indian Affairs of the Senate, and the Committee on Natural Resources of the House of Representatives, and make available to each Indian tribe, a report describing the results of the study of the Comptroller General regarding the funding of the contract health service program (including historic funding levels and a recommendation of the funding level needed for the program) and the administration of the contract health service program (including the distribution of funds pursuant to the program), as requested by Congress in March 2009, or pursuant to section 830.

(b) **CONSULTATION WITH TRIBES.**—On receipt of the report under subsection (a), the Secretary shall consult with Indian tribes regarding the contract health service program, including the distribution of funds pursuant to the program—

(1) to determine whether the current distribution formula would require modification if the contract health service program were funded at the level recommended by the Comptroller General;

(2) to identify any inequities in the current distribution formula under the current funding level or inequitable results for any Indian tribe under the funding level recommended by the Comptroller General;

(3) to identify any areas of program administration that may result in the inefficient or ineffective management of the program; and

(4) to identify any other issues and recommendations to improve the administration of the contract health services program and correct any unfair results or funding disparities identified under paragraph (2).

[(c) **SUBSEQUENT ACTION BY SECRETARY.**—If, after consultation with Indian tribes under subsection (b), the Secretary determines that any issue described in subsection (b)(2) exists, the Secretary may initiate procedures under subchapter III of chapter 5 of title 5, United States Code, to negotiate or promulgate regulations to establish a disbursement formula for the contract health service program funding.]

* * * * *

TITLE VI—ORGANIZATIONAL IMPROVEMENTS

SEC. 601. ESTABLISHMENT OF THE INDIAN HEALTH SERVICE AS AN AGENCY OF THE PUBLIC HEALTH SERVICE.

(a) **ESTABLISHMENT.**—

(1) **IN GENERAL.**—In order to more effectively and efficiently carry out the responsibilities, authorities, and functions of the United States to provide health care services to Indians and Indian tribes, as are or may be hereafter provided by Federal statute or treaties, there is established within the Public Health Service of the Department the Indian Health Service.

(2) **DIRECTOR.**—The Service shall be administered by a Director, who shall be appointed by the President, by and with the

advice and consent of the Senate. The Director shall report to the Secretary. Effective with respect to an individual appointed by the President, by and with the advice and consent of the Senate, after January 1, 2008, the term of service of the Director shall be 4 years. A Director may serve more than 1 term.

(3) INCUMBENT.—The individual serving in the position of Director of the Service on the day before the date of enactment of the Indian Health Care Improvement Reauthorization and Extension Act of 2009 shall serve as Director.

(4) ADVOCACY AND CONSULTATION.—The position of Director is established to, in a manner consistent with the government-to-government relationship between the United States and Indian Tribes—

(A) facilitate advocacy for the development of appropriate Indian health policy; and

(B) promote consultation on matters relating to Indian health.

(b) AGENCY.—The Service shall be an agency within the Public Health Service of the Department, and shall not be an office, component, or unit of any other agency of the Department.

(c) DUTIES.—The Director shall—

(1) perform all functions that were, on the day before the date of enactment of the Indian Health Care Improvement Reauthorization and Extension Act of 2009, carried out by or under the direction of the individual serving as Director of the Service on that day;

(2) perform all functions of the Secretary relating to the maintenance and operation of hospital and health facilities for Indians and the planning for, and provision and utilization of, health services for Indians, including by ensuring that all agency directors, managers, and chief executive officers have appropriate and adequate training, experience, skill levels, knowledge, abilities, and education (including continuing training requirements) to competently fulfill the duties of the positions and the mission of the Service;

(3) administer all health programs under which health care is provided to Indians based upon their status as Indians which are administered by the Secretary, including programs under—

(A) this Act;

(B) the Act of November 2, 1921 (25 U.S.C. 13);

(C) the Act of August 5, 1954 (42 U.S.C. 2001 et seq.);

(D) the Act of August 16, 1957 (42 U.S.C. 2005 et seq.);

and

(E) the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.);

(4) administer all scholarship and loan functions carried out under title I;

(5) directly advise the Secretary concerning the development of all policy- and budget-related matters affecting Indian health;

(6) collaborate with the Assistant Secretary for Health concerning appropriate matters of Indian health that affect the agencies of the Public Health Service;

(7) advise each Assistant Secretary of the Department concerning matters of Indian health with respect to which that Assistant Secretary has authority and responsibility;

(8) advise the heads of other agencies and programs of the Department concerning matters of Indian health with respect to which those heads have authority and responsibility;

(9) coordinate the activities of the Department concerning matters of Indian health; and

(10) perform such other functions as the Secretary may designate.

(d) AUTHORITY.—

(1) IN GENERAL.—The Secretary, acting through the Director, shall have the authority—

(A) except to the extent provided for in paragraph (2), to appoint and compensate employees for the Service in accordance with title 5, United States Code;

(B) to enter into contracts for the procurement of goods and services to carry out the functions of the Service; and

(C) to manage, expend, and obligate all funds appropriated for the Service.

(2) PERSONNEL ACTIONS.—Notwithstanding any other provision of law, the provisions of section 12 of the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 472), shall apply to all personnel actions taken with respect to new positions created within the Service as a result of its establishment under subsection (a).

* * * * *

TITLE 5, UNITED STATES CODE

* * * * *

PART III—EMPLOYEES

* * * * *

SUBPART C—EMPLOYEE PERFORMANCE

* * * * *

CHAPTER 43—PERFORMANCE APPRAISAL

SUBCHAPTER I—GENERAL PROVISIONS

* * * * *

§ 4303. Actions based on unacceptable performance

(a) Subject to the provisions of this section, an agency may reduce in grade or remove an employee for unacceptable performance.

(b)(1) An employee whose reduction in grade or removal is proposed under this section is entitled to—

(A) 30 days' advance written notice of the proposed action which identifies—

(i) specific instances of unacceptable performance by the employee on which the proposed action is based; and

- (ii) the critical elements of the employee's position involved in each instance of unacceptable performance;
- (B) be represented by an attorney or other representative;
- (C) a reasonable time to answer orally and in writing; and
- (D) a written decision which—

- (i) in the case of a reduction in grade or removal under this section, specifies the instances of unacceptable performance by the employee on which the reduction in grade or removal is based, and

- (ii) unless proposed by the head of the agency, has been concurred in by an employee who is in a higher position than the employee who proposed the action.

(2) An agency may, under regulations prescribed by the head of such agency, extend the notice period under subsection (b)(1)(A) of this section for not more than 30 days. An agency may extend the notice period for more than 30 days only in accordance with regulations issued by the Office of Personnel Management.

(c) The decision to retain, reduce in grade, or remove an employee—

- (1) shall be made within 30 days after the date of expiration of the notice period, and

- (2) in the case of a reduction in grade or removal, may be based only on those instances of unacceptable performance by the employee—

- (A) which occurred during the 1-year period ending on the date of the notice under subsection (b)(1)(A) of this section in connection with the decision; and

- (B) for which the notice and other requirements of this section are complied with.

(d) If, because of performance improvement by the employee during the notice period, the employee is not reduced in grade or removed, and the employee's performance continues to be acceptable for 1 year from the date of the advance written notice provided under subsection (b)(1)(A) of this section, any entry or other notation of the unacceptable performance for which the action was proposed under this section shall be removed from any agency record relating to the employee.

(e) Any employee who is—

- (1) a preference eligible;

- (2) in the competitive service; or

- (3) in the excepted service and covered by subchapter II of chapter 75,

and who has been reduced in grade or removed under this section is entitled to appeal the action to the Merit Systems Protection Board under section 7701.

(f) This section does not apply to—

- (1) the reduction to the grade previously held of a supervisor or manager who has not completed the probationary period under section 3321(a)(2) of this title,

- (2) the reduction in grade or removal of an employee in the competitive service who is serving a probationary or trial period under an initial appointment or who has not completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less, or

(3) the reduction in grade or removal of an employee in the excepted service who has not completed 1 year of current continuous employment in the same or similar positions.

* * * * *

INTERNAL REVENUE CODE OF 1986

* * * * *

Subtitle A—Income Taxes

* * * * *

CHAPTER 1—NORMAL TAXES AND SURTAXES

* * * * *

Subchapter B—Computation of Taxable Income

* * * * *

PART III—ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

* * * * *

SEC. 108. INCOME FROM DISCHARGE OF INDEBTEDNESS.

(a) EXCLUSION FROM GROSS INCOME.—

(1) **IN GENERAL.**—Gross income does not include any amount which (but for this subsection) would be includible in gross income by reason of the discharge (in whole or in part) of indebtedness of the taxpayer if—

(A) the discharge occurs in a title 11 case,

(B) the discharge occurs when the taxpayer is insolvent,

(C) the indebtedness discharged is qualified farm indebtedness,

(D) in the case of a taxpayer other than a C corporation, the indebtedness discharged is qualified real property business indebtedness, or

(E) the indebtedness discharged is qualified principal residence indebtedness which is discharged—

(i) before January 1, 2017, or ii) subject to an arrangement that is entered into and evidenced in writing before January 1, 2017.

(2) COORDINATION OF EXCLUSIONS.—

(A) **TITLE 11 EXCLUSION TAKES PRECEDENCE.**—Subparagraphs (B), (C), (D), and (E) of paragraph (1) shall not apply to a discharge which occurs in a title 11 case.

(B) **INSOLVENCY EXCLUSION TAKES PRECEDENCE OVER QUALIFIED FARM EXCLUSION AND QUALIFIED REAL PROPERTY BUSINESS EXCLUSION.**—Subparagraphs (C) and (D) of paragraph (1) shall not apply to a discharge to the extent the taxpayer is insolvent.

(C) PRINCIPAL RESIDENCE EXCLUSION TAKES PRECEDENCE OVER INSOLVENCY EXCLUSION UNLESS ELECTED OTHERWISE.—Paragraph (1)(B) shall not apply to a discharge to which paragraph (1)(E) applies unless the taxpayer elects to apply paragraph (1)(B) in lieu of paragraph (1)(E).

(3) INSOLVENCY EXCLUSION LIMITED TO AMOUNT OF INSOLVENCY.—In the case of a discharge to which paragraph (1)(B) applies, the amount excluded under paragraph (1)(B) shall not exceed the amount by which the taxpayer is insolvent.

(b) REDUCTION OF TAX ATTRIBUTES.—

(1) IN GENERAL.—The amount excluded from gross income under subparagraph (A), (B), or (C) of subsection (a)(1) shall be applied to reduce the tax attributes of the taxpayer as provided in paragraph (2).

(2) TAX ATTRIBUTES AFFECTED; ORDER OF REDUCTION.—Except as provided in paragraph (5), the reduction referred to in paragraph (1) shall be made in the following tax attributes in the following order:

(A) NOL.—Any net operating loss for the taxable year of the discharge, and any net operating loss carryover to such taxable year.

(B) GENERAL BUSINESS CREDIT.—Any carryover to or from the taxable year of a discharge of an amount for purposes for determining the amount allowable as a credit under section 38 (relating to general business credit).

(C) MINIMUM TAX CREDIT.—The amount of the minimum tax credit available under section 53(b) as of the beginning of the taxable year immediately following the taxable year of the discharge.

(D) CAPITAL LOSS CARRYOVERS.—Any net capital loss for the taxable year of the discharge, and any capital loss carryover to such taxable year under section 1212.

(E) BASIS REDUCTION.—

(i) IN GENERAL.—The basis of the property of the taxpayer.

(ii) CROSS REFERENCE.—For provisions for making the reduction described in clause (i), see section 1017.

(F) PASSIVE ACTIVITY LOSS AND CREDIT CARRYOVERS.—Any passive activity loss or credit carryover of the taxpayer under section 469(b) from the taxable year of the discharge.

(G) FOREIGN TAX CREDIT CARRYOVERS.—Any carryover to or from the taxable year of the discharge for purposes of determining the amount of the credit allowable under section 27.

(3) AMOUNT OF REDUCTION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the reductions described in paragraph (2) shall be one dollar for each dollar excluded by subsection (a).

(B) CREDIT CARRYOVER REDUCTION.—The reductions described in subparagraphs (B), (C), and (G) shall be 33 1/3 cents for each dollar excluded by subsection (a). The reduction described in subparagraph (F) in any passive activity credit carryover shall be 33 1/3 cents for each dollar excluded by subsection (a).

(4) ORDERING RULES.—

(A) REDUCTIONS MADE AFTER DETERMINATION OF TAX FOR YEAR.—The reductions described in paragraph (2) shall be made after the determination of the tax imposed by this chapter for the taxable year of the discharge.

(B) REDUCTIONS UNDER SUBPARAGRAPH (A) OR (D) OF PARAGRAPH (2).—The reductions described in subparagraph (A) or (D) of paragraph (2) (as the case may be) shall be made first in the loss for the taxable year of the discharge and then in the carryovers to such taxable year in the order of the taxable years from which each such carryover arose.

(C) REDUCTIONS UNDER SUBPARAGRAPHS (B) AND (G) OF PARAGRAPH (2).—The reductions described in subparagraphs (B) and (G) of paragraph (2) shall be made in the order in which carryovers are taken into account under this chapter for the taxable year of the discharge.

(5) ELECTION TO APPLY REDUCTION FIRST AGAINST DEPRECIABLE PROPERTY.—

(A) IN GENERAL.—The taxpayer may elect to apply any portion of the reduction referred to in paragraph (1) to the reduction under section 1017 of the basis of the depreciable property of the taxpayer.

(B) LIMITATION.—The amount to which an election under subparagraph (A) applies shall not exceed the aggregate adjusted bases of the depreciable property held by the taxpayer as of the beginning of the taxable year following the taxable year in which the discharge occurs.

(C) OTHER TAX ATTRIBUTES NOT REDUCED.—Paragraph (2) shall not apply to any amount to which an election under this paragraph applies.

(c) TREATMENT OF DISCHARGE OF QUALIFIED REAL PROPERTY BUSINESS INDEBTEDNESS.—

(1) BASIS REDUCTION.—

(A) IN GENERAL.—The amount excluded from gross income under subparagraph (D) of subsection (a)(1) shall be applied to reduce the basis of the depreciable real property of the taxpayer.

(B) CROSS REFERENCE.—For provisions making the reduction described in subparagraph (A), see section 1017.

(2) LIMITATIONS.—

(A) INDEBTEDNESS IN EXCESS OF VALUE.—The amount excluded under subparagraph (D) of subsection (a)(1) with respect to any qualified real property business indebtedness shall not exceed the excess (if any) of—

(i) the outstanding principal amount of such indebtedness (immediately before the discharge), over

(ii) the fair market value of the real property described in paragraph (3)(A) (as of such time), reduced by the outstanding principal amount of any other qualified real property business indebtedness secured by such property (as of such time).

(B) OVERALL LIMITATION.—The amount excluded under subparagraph (D) of subsection (a)(1) shall not exceed the aggregate adjusted bases of depreciable real property (de-

terminated after any reductions under subsections (b) and (g)) held by the taxpayer immediately before the discharge (other than depreciable real property acquired in contemplation of such discharge).

(3) QUALIFIED REAL PROPERTY BUSINESS INDEBTEDNESS.—The term “qualified real property business indebtedness” means indebtedness which—

(A) was incurred or assumed by the taxpayer in connection with real property used in a trade or business and is secured by such real property,

(B) was incurred or assumed before January 1, 1993, or if incurred or assumed on or after such date, is qualified acquisition indebtedness, and

(C) with respect to which such taxpayer makes an election to have this paragraph apply.

Such term shall not include qualified farm indebtedness. Indebtedness under subparagraph (B) shall include indebtedness resulting from the refinancing of indebtedness under subparagraph (B) (or this sentence), but only to the extent it does not exceed the amount of the indebtedness being refinanced.

(4) QUALIFIED ACQUISITION INDEBTEDNESS.—For purposes of paragraph (3)(B), the term “qualified acquisition indebtedness” means, with respect to any real property described in paragraph (3)(A), indebtedness incurred or assumed to acquire, construct, reconstruct, or substantially improve such property.

(5) REGULATIONS.—The Secretary shall issue such regulations as are necessary to carry out this subsection, including regulations preventing the abuse of this subsection through cross-collateralization or other means.

(d) MEANING OF TERMS; SPECIAL RULES RELATING TO CERTAIN PROVISIONS.—

(1) INDEBTEDNESS OF TAXPAYER.—For purposes of this section, the term “indebtedness of the taxpayer” means any indebtedness—

(A) for which the taxpayer is liable, or

(B) subject to which the taxpayer holds property.

(2) TITLE 11 CASE.—For purposes of this section, the term “title 11 case” means a case under title 11 of the United States Code (relating to bankruptcy), but only if the taxpayer is under the jurisdiction of the court in such case and the discharge of indebtedness is granted by the court or is pursuant to a plan approved by the court.

(3) INSOLVENT.—For purposes of this section, the term “insolvent” means the excess of liabilities over the fair market value of assets. With respect to any discharge, whether or not the taxpayer is insolvent, and the amount by which the taxpayer is insolvent, shall be determined on the basis of the taxpayer’s assets and liabilities immediately before the discharge.

(5) DEPRECIABLE PROPERTY.—The term “depreciable property” has the same meaning as when used in section 1017.

(6) CERTAIN PROVISIONS TO BE APPLIED AT PARTNER LEVEL.—In the case of a partnership, subsections (a), (b), (c), and (g) shall be applied at the partner level.

(7) SPECIAL RULES FOR S CORPORATION.—

(A) CERTAIN PROVISIONS TO BE APPLIED AT CORPORATE LEVEL.—In the case of an S corporation, subsections (a), (b), (c), and (g) shall be applied at the corporate level, including by not taking into account under section 1366(a) any amount excluded under subsection (a) of this section.

(B) REDUCTION IN CARRYOVER OF DISALLOWED LOSSES AND DEDUCTIONS.—In the case of an S corporation, for purposes of subparagraph (A) of subsection (b)(2), any loss or deduction which is disallowed for the taxable year of the discharge under section 1366(d)(1) shall be treated as a net operating loss for such taxable year. The preceding sentence shall not apply to any discharge to the extent that subsection (a)(1)(D) applies to such discharge.

(C) COORDINATION WITH BASIS ADJUSTMENTS UNDER SECTION 1367(B)(2).—For purposes of subsection (e)(6), a shareholder's adjusted basis in indebtedness of an S corporation shall be determined without regard to any adjustments made under section 1367(b)(2).

(8) REDUCTIONS OF TAX ATTRIBUTES IN TITLE 11 CASES OF INDIVIDUALS TO BE MADE BY ESTATE.—In any case under chapter 7 or 11 of title 11 of the United States Code to which section 1398 applies, for purposes of paragraphs (1) and (5) of subsection (b) the estate (and not the individual) shall be treated as the taxpayer. The preceding sentence shall not apply for purposes of applying section 1017 to property transferred by the estate to the individual.

(9) TIME FOR MAKING ELECTION, ETC.—

(A) TIME.—An election under paragraph (5) of subsection (b) or under paragraph (3)(C) of subsection (c) shall be made on the taxpayer's return for the taxable year in which the discharge occurs or at such other time as may be permitted in regulations prescribed by the Secretary.

(B) REVOCATION ONLY WITH CONSENT.—An election referred to in subparagraph (A), once made, may be revoked only with the consent of the Secretary.

(C) MANNER.—An election referred to in subparagraph (A) shall be made in such manner as the Secretary may by regulations prescribe.

(10) CROSS REFERENCE.—For provision that no reduction is to be made in the basis of exempt property of an individual debtor, see section 1017(c)(1).

(e) GENERAL RULES FOR DISCHARGE OF INDEBTEDNESS (INCLUDING DISCHARGES NOT IN TITLE 11 CASES OR INSOLVENCY).—For purposes of this title—

(1) NO OTHER INSOLVENCY EXCEPTION.—Except as otherwise provided in this section, there shall be no insolvency exception from the general rule that gross income includes income from the discharge of indebtedness.

(2) INCOME NOT REALIZED TO EXTENT OF LOST DEDUCTIONS.—No income shall be realized from the discharge of indebtedness to the extent that payment of the liability would have given rise to a deduction.

(3) ADJUSTMENTS FOR UNAMORTIZED PREMIUM AND DISCOUNT.—The amount taken into account with respect to any discharge shall be properly adjusted for unamortized premium

and unamortized discount with respect to the indebtedness discharged.

(4) ACQUISITION OF INDEBTEDNESS BY PERSON RELATED TO DEBTOR.—

(A) TREATED AS ACQUISITION BY DEBTOR.—For purposes of determining income of the debtor from discharge of indebtedness, to the extent provided in regulations prescribed by the Secretary, the acquisition of outstanding indebtedness by a person bearing a relationship to the debtor or specified in section 267(b) or 707(b)(1) from a person who does not bear such a relationship to the debtor shall be treated as the acquisition of such indebtedness by the debtor. Such regulations shall provide for such adjustments in the treatment of any subsequent transactions involving the indebtedness as may be appropriate by reason of the application of the preceding sentence.

(B) MEMBERS OF FAMILY.—For purposes of this paragraph, sections 267(b) and 707(b)(1) shall be applied as if section 267(c)(4) provided that the family of an individual consists of the individual's spouse, the individual's children, grandchildren, and parents, and any spouse of the individual's children or grandchildren.

(C) ENTITIES UNDER COMMON CONTROL TREATED AS RELATED.—For purposes of this paragraph, two entities which are treated as a single employer under subsection (b) or (c) of section 414 shall be treated as bearing a relationship to each other which is described in section 267(b).

(5) PURCHASE-MONEY DEBT REDUCTION FOR SOLVENT DEBTOR TREATED AS PRICE REDUCTION.—If—

(A) the debt of a purchaser of property to the seller of such property which arose out of the purchase of such property is reduced,

(B) such reduction does not occur—

(i) in a title 11 case, or

(ii) when the purchaser is insolvent, and

(C) but for this paragraph, such reduction would be treated as income to the purchaser from the discharge of indebtedness,

then such reduction shall be treated as a purchase price adjustment.

(6) INDEBTEDNESS CONTRIBUTED TO CAPITAL.—Except as provided in regulations, for purposes of determining income of the debtor from discharge of indebtedness, if a debtor corporation acquires its indebtedness from a shareholder as a contribution to capital—

(A) section 118 shall not apply, but

(B) such corporation shall be treated as having satisfied the indebtedness with an amount of money equal to the shareholder's adjusted basis in the indebtedness.

(7) RECAPTURE OF GAIN ON SUBSEQUENT SALE OF STOCK.—

(A) IN GENERAL.—If a creditor acquires stock of a debtor corporation in satisfaction of such corporation's indebtedness, for purposes of section 1245—

(i) such stock (and any other property the basis of which is determined in whole or in part by reference

to the adjusted basis of such stock) shall be treated as section 1245 property,

(ii) the aggregate amount allowed to the creditor—

(I) as deductions under subsection (a) or (b) of section 166 (by reason of the worthlessness or partial worthlessness of the indebtedness), or

(II) as an ordinary loss on the exchange, shall be treated as an amount allowed as a deduction for depreciation, and

(iii) an exchange of such stock qualifying under section 354(a), 355(a), or 356(a) shall be treated as an exchange to which section 1245(b)(3) applies.

The amount determined under clause (ii) shall be reduced by the amount (if any) included in the creditor's gross income on the exchange.

(B) SPECIAL RULE FOR CASH BASIS TAXPAYERS.—In the case of any creditor who computes his taxable income under the cash receipts and disbursements method, proper adjustment shall be made in the amount taken into account under clause (ii) of subparagraph (A) for any amount which was not included in the creditor's gross income but which would have been included in such gross income if such indebtedness had been satisfied in full.

(C) STOCK OF PARENT CORPORATION.—For purposes of this paragraph, stock of a corporation in control (within the meaning of section 368(c)) of the debtor corporation shall be treated as stock of the debtor corporation.

(D) TREATMENT OF SUCCESSOR CORPORATION.—For purposes of this paragraph, the term "debtor corporation" includes a successor corporation.

(E) PARTNERSHIP RULE.—Under regulations prescribed by the Secretary, rules similar to the rules of the foregoing subparagraphs of this paragraph shall apply with respect to the indebtedness of a partnership.

(8) INDEBTEDNESS SATISFIED BY CORPORATE STOCK OR PARTNERSHIP INTEREST.—For purposes of determining income of a debtor from discharge of indebtedness, if—

(A) a debtor corporation transfers stock, or

(B) a debtor partnership transfers a capital or profits interest in such partnership,

to a creditor in satisfaction of its recourse or nonrecourse indebtedness, such corporation or partnership shall be treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the stock or interest. In the case of any partnership, any discharge of indebtedness income recognized under this paragraph shall be included in the distributive shares of taxpayers which were the partners in the partnership immediately before such discharge.

(9) DISCHARGE OF INDEBTEDNESS INCOME NOT TAKEN INTO ACCOUNT IN DETERMINING WHETHER ENTITY MEETS REIT QUALIFICATIONS.—Any amount included in gross income by reason of the discharge of indebtedness shall not be taken into account for purposes of paragraphs (2) and (3) of section 856(c).

(10) INDEBTEDNESS SATISFIED BY ISSUANCE OF DEBT INSTRUMENT.—

(A) IN GENERAL.—For purposes of determining income of a debtor from discharge of indebtedness, if a debtor issues a debt instrument in satisfaction of indebtedness, such debtor shall be treated as having satisfied the indebtedness with an amount of money equal to the issue price of such debt instrument.

(B) ISSUE PRICE.—For purposes of subparagraph (A), the issue price of any debt instrument shall be determined under sections 1273 and 1274. For purposes of the preceding sentence, section 1273(b)(4) shall be applied by reducing the stated redemption price of any instrument by the portion of such stated redemption price which is treated as interest for purposes of this chapter.

(f) STUDENT LOANS.—

(1) IN GENERAL.—In the case of an individual, gross income does not include any amount which (but for this subsection) would be includible in gross income by reason of the discharge (in whole or in part) of any student loan if such discharge was pursuant to a provision of such loan under which all or part of the indebtedness of the individual would be discharged if the individual worked for a certain period of time in certain professions for any of a broad class of employers.

(2) STUDENT LOAN.—For purposes of this subsection, the term “student loan” means any loan to an individual to assist the individual in attending an educational organization described in section 170(b)(1)(A)(ii) made by—

(A) the United States, or an instrumentality or agency thereof,

(B) a State, territory, or possession of the United States, or the District of Columbia, or any political subdivision thereof,

(C) a public benefit corporation—

(i) which is exempt from taxation under section 501(c)(3),

(ii) which has assumed control over a State, county, or municipal hospital, and

(iii) whose employees have been deemed to be public employees under State law, or

(D) any educational organization described in section 170(b)(1)(A)(ii) if such loan is made—

(i) pursuant to an agreement with any entity described in subparagraph (A), (B), or (C) under which the funds from which the loan was made were provided to such educational organization, or

(ii) pursuant to a program of such educational organization which is designed to encourage its students to serve in occupations with unmet needs or in areas with unmet needs and under which the services provided by the students (or former students) are for or under the direction of a governmental unit or an organization described in section 501(c)(3) and exempt from tax under section 501(a).

The term “student loan” includes any loan made by an educational organization described in section 170(b)(1)(A)(ii) or by an organization exempt from tax under section 501(a) to refi-

nance a loan to an individual to assist the individual in attending any such educational organization but only if the refinancing loan is pursuant to a program of the refinancing organization which is designed as described in subparagraph (D)(ii).

(3) EXCEPTION FOR DISCHARGES ON ACCOUNT OF SERVICES PERFORMED FOR CERTAIN LENDERS.—Paragraph (1) shall not apply to the discharge of a loan made by an organization described in paragraph (2)(D) if the discharge is on account of services performed for either such organization.

(4) PAYMENTS UNDER NATIONAL HEALTH SERVICE CORPS LOAN REPAYMENT PROGRAM AND CERTAIN STATE LOAN REPAYMENT PROGRAMS.—In the case of an individual, gross income shall not include any amount received under section 338B(g) of the Public Health Service Act, under a State program described in section 338I of such Act, or under any other State loan repayment or loan forgiveness program that is intended to provide for the increased availability of health care services in underserved or health professional shortage areas (as determined by such State).

(g) SPECIAL RULES FOR DISCHARGE OF QUALIFIED FARM INDEBTEDNESS.—

(1) DISCHARGE MUST BE BY QUALIFIED PERSON.—

(A) IN GENERAL.—Subparagraph (C) of subsection (a)(1) shall apply only if the discharge is by a qualified person.

(B) QUALIFIED PERSON.—For purposes of subparagraph (A), the term “qualified person” has the meaning given to such term by section 49(a)(1)(D)(iv); except that such term shall include any Federal, State, or local government or agency or instrumentality thereof.

(2) QUALIFIED FARM INDEBTEDNESS.—For purposes of this section, indebtedness of a taxpayer shall be treated as qualified farm indebtedness if—

(A) such indebtedness was incurred directly in connection with the operation by the taxpayer of the trade or business of farming, and

(B) 50 percent or more of the aggregate gross receipts of the taxpayer for the 3 taxable years preceding the taxable year in which the discharge of such indebtedness occurs is attributable to the trade or business of farming.

(3) AMOUNT EXCLUDED CANNOT EXCEED SUM OF TAX ATTRIBUTES AND BUSINESS AND INVESTMENT ASSETS.—

(A) IN GENERAL.—The amount excluded under subparagraph (C) of subsection (a)(1) shall not exceed the sum of—

(i) the adjusted tax attributes of the taxpayer, and

(ii) the aggregate adjusted bases of qualified property held by the taxpayer as of the beginning of the taxable year following the taxable year in which the discharge occurs.

(B) ADJUSTED TAX ATTRIBUTES.—For purposes of subparagraph (A), the term “adjusted tax attributes” means the sum of the tax attributes described in subparagraphs (A), (B), (C), (D), (F), and (G) of subsection (b)(2) determined by taking into account \$3 for each \$1 of the attributes described in subparagraphs (B), (C), and (G) of

subsection (b)(2) and the attribute described in subparagraph (F) of subsection (b)(2) to the extent attributable to any passive activity credit carryover.

(C) QUALIFIED PROPERTY.—For purposes of this paragraph, the term “qualified property” means any property which is used or is held for use in a trade or business or for the production of income.

(D) COORDINATION WITH INSOLVENCY EXCLUSION.—For purposes of this paragraph, the adjusted basis of any qualified property and the amount of the adjusted tax attributes shall be determined after any reduction under subsection (b) by reason of amounts excluded from gross income under subsection (a)(1)(B).

(h) SPECIAL RULES RELATING TO QUALIFIED PRINCIPAL RESIDENCE INDEBTEDNESS.—

(1) BASIS REDUCTION.—The amount excluded from gross income by reason of subsection (a)(1)(E) shall be applied to reduce (but not below zero) the basis of the principal residence of the taxpayer.

(2) QUALIFIED PRINCIPAL RESIDENCE INDEBTEDNESS.—For purposes of this section, the term “qualified principal residence indebtedness” means acquisition indebtedness (within the meaning of section 163(h)(3)(B), applied by substituting “\$2,000,000 (\$1,000,000)” for “\$1,000,000 (\$500,000)” in clause (ii) thereof) with respect to the principal residence of the taxpayer.

(3) EXCEPTION FOR CERTAIN DISCHARGES NOT RELATED TO TAXPAYER’S FINANCIAL CONDITION.—Subsection (a)(1)(E) shall not apply to the discharge of a loan if the discharge is on account of services performed for the lender or any other factor not directly related to a decline in the value of the residence or to the financial condition of the taxpayer.

(4) ORDERING RULE.—If any loan is discharged, in whole or in part, and only a portion of such loan is qualified principal residence indebtedness, subsection (a)(1)(E) shall apply only to so much of the amount discharged as exceeds the amount of the loan (as determined immediately before such discharge) which is not qualified principal residence indebtedness.

(5) PRINCIPAL RESIDENCE.—For purposes of this subsection, the term “principal residence” has the same meaning as when used in section 121.

(i) DEFERRAL AND RATABLE INCLUSION OF INCOME ARISING FROM BUSINESS INDEBTEDNESS DISCHARGED BY THE REACQUISITION OF A DEBT INSTRUMENT.—

(1) IN GENERAL.—At the election of the taxpayer, income from the discharge of indebtedness in connection with the reacquisition after December 31, 2008, and before January 1, 2011, of an applicable debt instrument shall be includible in gross income ratably over the 5-taxable-year period beginning with—

(A) in the case of a reacquisition occurring in 2009, the fifth taxable year following the taxable year in which the reacquisition occurs, and

(B) in the case of a reacquisition occurring in 2010, the fourth taxable year following the taxable year in which the reacquisition occurs.

(2) DEFERRAL OF DEDUCTION FOR ORIGINAL ISSUE DISCOUNT IN DEBT FOR DEBT EXCHANGES.—

(A) IN GENERAL.—If, as part of a reacquisition to which paragraph (1) applies, any debt instrument is issued for the applicable debt instrument being reacquired (or is treated as so issued under subsection (e)(4) and the regulations thereunder) and there is any original issue discount determined under subpart A of part V of subchapter P of this chapter with respect to the debt instrument so issued—

(i) except as provided in clause (ii), no deduction otherwise allowable under this chapter shall be allowed to the issuer of such debt instrument with respect to the portion of such original issue discount which—

(I) accrues before the 1st taxable year in the 5-taxable-year period in which income from the discharge of indebtedness attributable to the reacquisition of the debt instrument is includible under paragraph (1), and

(II) does not exceed the income from the discharge of indebtedness with respect to the debt instrument being reacquired, and

(ii) the aggregate amount of deductions disallowed under clause (i) shall be allowed as a deduction ratably over the 5-taxable-year period described in clause (i)(I).

If the amount of the original issue discount accruing before such 1st taxable year exceeds the income from the discharge of indebtedness with respect to the applicable debt instrument being reacquired, the deductions shall be disallowed in the order in which the original issue discount is accrued.

(B) DEEMED DEBT FOR DEBT EXCHANGES.—For purposes of subparagraph (A), if any debt instrument is issued by an issuer and the proceeds of such debt instrument are used directly or indirectly by the issuer to reacquire an applicable debt instrument of the issuer, the debt instrument so issued shall be treated as issued for the debt instrument being reacquired. If only a portion of the proceeds from a debt instrument are so used, the rules of subparagraph (A) shall apply to the portion of any original issue discount on the newly issued debt instrument which is equal to the portion of the proceeds from such instrument used to reacquire the outstanding instrument.

(3) APPLICABLE DEBT INSTRUMENT.—For purposes of this subsection—

(A) APPLICABLE DEBT INSTRUMENT.—The term “applicable debt instrument” means any debt instrument which was issued by—

(i) a C corporation, or

(ii) any other person in connection with the conduct of a trade or business by such person.

(B) DEBT INSTRUMENT.—The term “debt instrument” means a bond, debenture, note, certificate, or any other in-

strument or contractual arrangement constituting indebtedness (within the meaning of section 1275(a)(1)).

(4) REACQUISITION.—For purposes of this subsection—

(A) IN GENERAL.—The term “reacquisition” means, with respect to any applicable debt instrument, any acquisition of the debt instrument by—

(i) the debtor which issued (or is otherwise the obligor under) the debt instrument, or

(ii) a related person to such debtor.

(B) ACQUISITION.—The term “acquisition” shall, with respect to any applicable debt instrument, include an acquisition of the debt instrument for cash, the exchange of the debt instrument for another debt instrument (including an exchange resulting from a modification of the debt instrument), the exchange of the debt instrument for corporate stock or a partnership interest, and the contribution of the debt instrument to capital. Such term shall also include the complete forgiveness of the indebtedness by the holder of the debt instrument.

(5) OTHER DEFINITIONS AND RULES.—For purposes of this subsection—

(A) RELATED PERSON.—The determination of whether a person is related to another person shall be made in the same manner as under subsection (e)(4).

(B) ELECTION.—

(i) IN GENERAL.—An election under this subsection with respect to any applicable debt instrument shall be made by including with the return of tax imposed by chapter 1 for the taxable year in which the reacquisition of the debt instrument occurs a statement which—

(I) clearly identifies such instrument, and

(II) includes the amount of income to which paragraph (1) applies and such other information as the Secretary may prescribe.

(ii) ELECTION IRREVOCABLE.—Such election, once made, is irrevocable.

(iii) PASS-THRU ENTITIES.—In the case of a partnership, S corporation, or other pass-thru entity, the election under this subsection shall be made by the partnership, the S corporation, or other entity involved.

(C) COORDINATION WITH OTHER EXCLUSIONS.—If a taxpayer elects to have this subsection apply to an applicable debt instrument, subparagraphs (A), (B), (C), and (D) of subsection (a)(1) shall not apply to the income from the discharge of such indebtedness for the taxable year of the election or any subsequent taxable year.

(D) ACCELERATION OF DEFERRED ITEMS.—

(i) IN GENERAL.—In the case of the death of the taxpayer, the liquidation or sale of substantially all the assets of the taxpayer (including in a title 11 or similar case), the cessation of business by the taxpayer, or similar circumstances, any item of income or deduction which is deferred under this subsection (and has not previously been taken into account) shall be taken

into account in the taxable year in which such event occurs (or in the case of a title 11 or similar case, the day before the petition is filed).

(ii) SPECIAL RULE FOR PASS-THRU ENTITIES.—The rule of clause (i) shall also apply in the case of the sale or exchange or redemption of an interest in a partnership, S corporation, or other pass-thru entity by a partner, shareholder, or other person holding an ownership interest in such entity.

(6) SPECIAL RULE FOR PARTNERSHIPS.—In the case of a partnership, any income deferred under this subsection shall be allocated to the partners in the partnership immediately before the discharge in the manner such amounts would have been included in the distributive shares of such partners under section 704 if such income were recognized at such time. Any decrease in a partner's share of partnership liabilities as a result of such discharge shall not be taken into account for purposes of section 752 at the time of the discharge to the extent it would cause the partner to recognize gain under section 731. Any decrease in partnership liabilities deferred under the preceding sentence shall be taken into account by such partner at the same time, and to the extent remaining in the same amount, as income deferred under this subsection is recognized.

(7) SECRETARIAL AUTHORITY.—The Secretary may prescribe such regulations, rules, or other guidance as may be necessary or appropriate for purposes of applying this subsection, including—

(A) extending the application of the rules of paragraph (5)(D) to other circumstances where appropriate,

(B) requiring reporting of the election (and such other information as the Secretary may require) on returns of tax for subsequent taxable years, and

(C) rules for the application of this subsection to partnerships, S corporations, and other pass-thru entities, including for the allocation of deferred deductions.

* * * * *

B. CHANGES IN EXISTING LAW PROPOSED BY THE BILL, AS REPORTED

In compliance with clause 3(e)(1)(B) of rule XIII of the Rules of the House of Representatives, changes in existing law proposed by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e)(1)(B) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

INDIAN HEALTH CARE IMPROVEMENT ACT

* * * * *

TITLE I—INDIAN HEALTH MANPOWER

* * * * *

INDIAN HEALTH SERVICE LOAN REPAYMENT C PROGRAM

SEC. 108. (a)(1) The Secretary, acting through the Service, shall establish a program to be known as the Indian Health Service Loan Repayment Program (hereinafter referred to as the “Loan Repayment Program”) in order to assure an adequate supply of trained health professionals necessary to maintain accreditation of, and provide health care services to Indians through, Indian health programs.

(2) For the purposes of this section—

(A) the term “Indian health program” means any health program or facility funded, in whole or part, by the Service for the benefit of Indians and administered—

(i) directly by the Service;

(ii) by any Indian tribe or tribal or Indian organization pursuant to a contract under—

(I) the Indian Self-Determination Act, or

(II) section 23 of the Act of April 30, 1908 (25 U.S.C. 47), popularly known as the “Buy-Indian” Act; or

(iii) by an urban Indian organization pursuant to title V of this Act; and

(B) the term “State” has the same meaning given such term in section 331(i)(4) of the Public Health Service Act.

(b) To be eligible to participate in the Loan Repayment Program, an individual must—

(1)(A) be enrolled—

(i) in a course of study or program in an accredited institution, as determined by the Secretary, within any State and be scheduled to complete such course of study in the same year such individual applies to participate in such program; or

(ii) in an approved graduate training program in a health profession; or

(B) have—

(i) a degree in a health profession (*including a degree business administration with an emphasis in health care management, as defined by the Secretary, or a degree in health administration, hospital administration, or public health*); and

(ii) a license to practice a health profession in a State or a license or certification to practice in the field of health administration, hospital administration, business administration, or public health, as applicable, in a State;

(2)(A) be eligible for, or hold, an appointment as a commissioned officer in the Regular or Reserve Corps of the Public Health Service;

(B) be eligible for selection for civilian service in the Regular or Reserve Corps of the Public Health Service;

(C) meet the professional standards for civil service employment in the Indian Health Service; or

(D) be employed in an Indian health program without a service obligation; and

(3) submit to the Secretary an application for a contract described in subsection (f).

(c)(1) In disseminating application forms and contract forms to individuals desiring to participate in the Loan Repayment Program, the Secretary shall include with such forms a fair summary of the rights and liabilities of an individual whose application is approved (and whose contract is accepted) by the Secretary, including in the summary a clear explanation of the damages to which the United States is entitled under subsection (l) in the case of the individual's breach of the contract. The Secretary shall provide such individuals with sufficient information regarding the advantages and disadvantages of service as a commissioned officer in the Regular or Reserve Corps of the Public Health Service or a civilian employee of the Indian Health Service to enable the individual to make a decision on an informed basis.

(2) The application form, contract form, and all other information furnished by the Secretary under this section shall be written in a manner calculated to be understood by the average individual applying to participate in the Loan Repayment Program.

(3) The Secretary shall make such application forms, contract forms, and other information available to individuals desiring to participate in the Loan Repayment Program on a date sufficiently early to ensure that such individuals have adequate time to carefully review and evaluate such forms and information.

(d)(1) Consistent with paragraph (3), the Secretary, acting through the Service and in accordance with subsection (k), shall annually—

(A) identify the positions in each Indian health program for which there is a need or a vacancy, and

(B) rank those positions in order of priority.

(2) Consistent with the priority determined under paragraph (1), the Secretary, in determining which applications under the Loan Repayment Program to approve (and which contracts to accept), shall give priority to applications made by—

(A) Indians; and

(B) individuals recruited through the efforts of Indian tribes or tribal or Indian organizations.

(3)(A) Subject to subparagraph (B), of the total amounts appropriated for each of the fiscal years 1993, 1994, and 1995 for loan repayment contracts under this section, the Secretary shall provide that—

(i) not less than 25 percent be provided to applicants who are nurses, nurse practitioners, or nurse midwives; and

(ii) not less than 10 percent be provided to applicants who are mental health professionals (other than applicants described in clause (i)).

(B) The requirements specified in clause (i) or clause (ii) of subparagraph (A) shall not apply if the Secretary does not receive the number of applications from the individuals described

in clause (i) or clause (ii), respectively, necessary to meet such requirements.

(e)(1) An individual becomes a participant in the Loan Repayment Program only upon the Secretary and the individual entering into a written contract described in subsection (f).

(2) The Secretary shall provide written notice to an individual promptly on—

(A) the Secretary's approving, under paragraph (1), of the individual's participation in the Loan Repayment Program, including extensions resulting in an aggregate period of obligated service in excess of 4 years; or

(B) the Secretary's disapproving an individual's participation in such Program.

(f) The written contract referred to in this section between the Secretary and an individual shall contain—

(1) an agreement under which—

(A) subject to paragraph (3), the Secretary agrees—

(i) to pay loans on behalf of the individual in accordance with the provisions of this section, and

(ii) to accept (subject to the availability of appropriated funds for carrying out this section) the individual into the Service or place the individual with a tribe or Indian organization as provided in subparagraph (B)(iii), and

(B) subject to paragraph (3), the individual agrees—

(i) to accept loan payments on behalf of the individual;

(ii) in the case of an individual described in subsection (b)(1)—

(I) to maintain enrollment in a course of study or training described in subsection (b)(1)(A) until the individual completes the course of study or training, and

(II) while enrolled in such course of study or training, to maintain an acceptable level of academic standing (as determined under regulations of the Secretary by the educational institution offering such course of study or training);

(iii) to serve for a time period (hereinafter in this section referred to as the "period of obligated service") equal to **2 years** or such longer period as the individual may agree to serve in the full-time clinical practice of such individual's profession *2 years or such longer period as the individual may agree to serve in the full-time practice of such individual's profession (or 4 years or such longer period as the individual may agree to serve in the half-time practice of such individual's profession)* in an Indian health program to which the individual may be assigned by the Secretary;

(2) a provision permitting the Secretary to extend for such longer additional periods, as the individual may agree to, the period of obligated service agreed to by the individual under paragraph (1)(B)(iii);

(3) a provision that any financial obligation of the United States arising out of a contract entered into under this section

and any obligation of the individual which is conditioned thereon is contingent upon funds being appropriated for loan repayments under this section;

(4) a statement of the damages to which the United States is entitled under subsection (1) for the individual's breach of the contract; and

(5) such other statements of the rights and liabilities of the Secretary and of the individual, not inconsistent with this section.

(g)(1) A loan repayment provided for an individual under a written contract under the Loan Repayment Program shall consist of payment, in accordance with paragraph (2), on behalf of the individual of the principal, interest, and related expenses on government and commercial loans received by the individual regarding the undergraduate or graduate education of the individual (or both), which loans were made for—

(A) tuition expenses;

(B) all other reasonable educational expenses, including fees, books, and laboratory expenses, incurred by the individual; and

(C) reasonable living expenses as determined by the Secretary.

(2)(A) For each year of obligated service that an individual contracts to serve under subsection (f) the Secretary may pay, *in the case of an individual agreeing to serve in the full-time practice of such individual's profession, up to \$35,000 (or an amount equal to the amount specified in section 338B(g)(2)(A) of the Public Health Service Act) (or, in the case of an individual agreeing to serve in the half-time practice of such individual's profession, up to \$17,500)* on behalf of the individual for loans described in paragraph (1). In making a determination of the amount to pay for a year of such service by an individual, the Secretary shall consider the extent to which each such determination—

(i) affects the ability of the Secretary to maximize the number of contracts that can be provided under the Loan Repayment Program from the amounts appropriated for such contracts;

(ii) provides an incentive to serve in Indian health programs with the greatest shortages of health professionals; and

(iii) provides an incentive with respect to the health professional involved remaining in an Indian health program with such a health professional shortage, and continuing to provide primary health services, after the completion of the period of obligated service under the Loan Repayment Program.

(B) Any arrangement made by the Secretary for the making of loan repayments in accordance with this subsection shall provide that any repayments for a year of obligated service shall be made no later than the end of the fiscal year in which the individual completes such year of service.

(3) For the purpose of providing reimbursements for tax liability resulting from payments under paragraph (2) on behalf of an individual, the Secretary—

(A) in addition to such payments, may make payments to the individual in an amount not less than 20 percent and not more than 39 percent of the total amount of loan repayments made for the taxable year involved; and

(B) may make such additional payments as the Secretary determines to be appropriate with respect to such purpose.

(4) The Secretary may enter into an agreement with the holder of any loan for which payments are made under the Loan Repayment Program to establish a schedule for the making of such payments.

(h) Notwithstanding any other provision of law, individuals who have entered into written contracts with the Secretary under this section, while undergoing academic training, shall not be counted against any employment ceiling affecting the Department of Health and Human Services.

(i) The Secretary shall conduct recruiting programs for the Loan Repayment Program and other health professional programs of the Service at educational institutions training health professionals or specialists identified in subsection (a).

(j) Section 214 of the Public Health Service Act (42 U.S.C. 215) shall not apply to individuals during their period of obligated service under the Loan Repayment Program.

(k) The Secretary, in assigning individuals to serve in Indian health programs pursuant to contracts entered into under this section, shall—

(1) ensure that the staffing needs of Indian health programs administered by an Indian tribe or tribal or health organization receive consideration on an equal basis with programs that are administered directly by the Service; and

(2) give priority to assigning individuals to Indian health programs that have a need for health professionals to provide health care services as a result of individuals having breached contracts entered into under this section.

(1)(1) An individual who has entered into a written contract with the Secretary under this section and who—

(A) is enrolled in the final year of a course of study and who—

(i) fails to maintain an acceptable level of academic standing in the educational institution in which he is enrolled (such level determined by the educational institution under regulations of the Secretary);

(ii) voluntarily terminates such enrollment; or

(iii) is dismissed from such educational institution before completion of such course of study; or

(B) is enrolled in a graduate training program, fails to complete such training program, and does not receive a waiver from the Secretary under subsection (b)(1)(B)(ii),

shall be liable, in lieu of any service obligation arising under such contract, to the United States for the amount which has been paid on such individual's behalf under the contract.

(2) If, for any reason not specified in paragraph (1), an individual breaches his written contract under this section by failing either to begin, or complete, such individual's period of obligated service in accordance with subsection (f), the United States shall be entitled to recover from such individual an amount to be determined in accordance with the following formula:

$$A=3Z(t-s/t)$$

in which—

(A) “A” is the amount the United States is entitled to recover;

(B) “Z” is the sum of the amounts paid under this section to, or on behalf of, the individual and the interest on such amounts which would be payable if, at the time the amounts were paid, they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States;

(C) “t” is the total number of months in the individual’s period of obligated service in accordance with subsection (f); and

(D) “s” is the number of months of such period served by such individual in accordance with this section.

Amounts not paid within such period shall be subject to collection through deductions in Medicare payments pursuant to section 1892 of the Social Security Act.

(3)(A) Any amount of damages which the United States is entitled to recover under this subsection shall be paid to the United States within the 1-year period beginning on the date of the breach or such longer period beginning on such date as shall be specified by the Secretary.

(B) If damages described in subparagraph (A) are delinquent for 3 months, the Secretary shall, for the purpose of recovering such damages—

(i) utilize collection agencies contracted with by the Administrator of the General Services Administration; or

(ii) enter into contracts for the recovery of such damages with collection agencies selected by the Secretary.

(C) Each contract for recovering damages pursuant to this subsection shall provide that the contractor will, not less than once each 6 months, submit to the Secretary a status report on the success of the contractor in collecting such damages. Section 3718 of title 31, United States Code, shall apply to any such contract to the extent not inconsistent with this subsection.

(m)(1) Any obligation of an individual under the Loan Repayment Program for service or payment of damages shall be canceled upon the death of the individual.

(2) The Secretary shall by regulation provide for the partial or total waiver or suspension of any obligation of service or payment by an individual under the Loan Repayment Program whenever compliance by the individual is impossible or would involve extreme hardship to the individual and if enforcement of such obligation with respect to any individual would be unconscionable.

(3) The Secretary may waive, in whole or in part, the rights of the United States to recover amounts under this section in any case of extreme hardship or other good cause shown, as determined by the Secretary.

(4) Any obligation of an individual under the Loan Repayment Program for payment of damages may be released by a discharge in bankruptcy under title 11 of the United States Code only if such discharge is granted after the expiration of the 5-year period beginning on the first date that payment of such damages is required,

and only if the bankruptcy court finds that nondischarge of the obligation would be unconscionable.

(n) The Secretary shall submit to the President, for inclusion in each report required to be submitted to the Congress under section 801, a report concerning the previous fiscal year which sets forth—

(1) the health professional positions maintained by the Service or by tribal or Indian organizations for which recruitment or retention is difficult;

(2) the number of Loan Repayment Program applications filed with respect to each type of health profession;

(3) the number of contracts described in subsection (f) that are entered into with respect to each health profession;

(4) the amount of loan payments made under this section, in total and by health profession;

(5) the number of scholarship grants that are provided under section 104 with respect to each health profession;

(6) the amount of scholarship grants provided under section 104, in total and by health profession;

(7) the number of providers of health care that will be needed by Indian health programs, by location and profession, during the three fiscal years beginning after the date the report is filed; and

(8) the measures the Secretary plans to take to fill the health professional positions maintained by the Service or by tribes or tribal or Indian organizations for which recruitment or retention is difficult.

* * * * *

SEC. 125. CULTURAL COMPETENCY PROGRAMS.

(a) *IN GENERAL.*—The Secretary, acting through the Service, shall, not later than one year after the date of the enactment of this section and for each Service area, develop and implement training programs for cultural competency for employees of the Service, locum tenens medical providers, and other contracted employees who work at Service hospitals or other Service facilities and whose employment requires regular direct patient access.

(b) *REQUIRED PARTICIPATION.*—Notwithstanding any other provision of law, beginning with years beginning after (and for contracts entered into on or after) the date of implementation of the training programs under subsection (a), annual participation in such a program shall be a condition of employment (or of providing services in the capacity as a locum tenen medical provider or of the terms of the contracted employment, as applicable), and continued employment (or provision of such services in such capacity or contracted employment, as applicable), for each employee of the Service, locum tenens medical provider, and contracted employee described in such subsection. For purposes of the previous sentence, an individual shall not be considered as participating in such a program, with respect to a year, unless such individual satisfies such requirements, including testing, included in such program for such year, as specified by the Secretary.

(c) *CONSULTATION.*—In developing a training program under subsection (a) for a Service area, the Secretary shall consult with representatives of each Indian tribe served in such area.

SEC. 126. RELOCATION REIMBURSEMENT.

(a) *IN GENERAL.*—In the case of an employee of the Service who relocates to serve in a different capacity or position as an employee of the Service, the Secretary shall, subject to subsection (b), offer such employee reimbursement for reasonable costs associated with such relocation, as determined by the Secretary, incurred by such employee if—

(1) such relocation is to fill a position that—

(A) is at a Service facility that is located in a rural area or medically underserved area; and

(B) had not been filled by a full-time non-contractor for a period of at least 6 months; or

(2) such relocation is to fill a position that is for hospital management or administration, as determined by the Secretary.

(b) *AMOUNT FOR RELOCATION.*—

(1) *IN GENERAL.*—The amount of reimbursement to an employee under subsection (a) shall be in an amount that is at least 50 percent, but not more than 75 percent, of the specified pay amount (as described in paragraph (2)) of the employee.

(2) *SPECIFIED PAY AMOUNT.*—For purposes of paragraph (1), the specified pay amount, with respect to an employee, is the annual rate of basic pay of the employee in effect at the beginning of the service period of such employee multiplied by the number of years (including fractions of a year) in the service period, not to exceed 4 years.

(c) *CLARIFICATION.*—Nothing in this section shall be construed as limiting the authority of the Secretary, as in existence before the enactment of this section, to offer reimbursement for travel or relocation.

SEC. 128. STREAMLINING MEDICAL VOLUNTEER CREDENTIALING PROCESS.

(a) *IN GENERAL.*—The Secretary, acting through the Service, shall, in accordance with subsection (b), implement a Service-wide centralized credentialing system to credential licensed health professionals who seek to volunteer at a Service facility.

(b) *REQUIREMENTS.*—The credentialing system implemented under subsection (a) shall be in accordance with the following:

(1) Credentialing of licensed health professionals who seek to volunteer at a Service facility shall occur at the Service level.

(2) Credentialing procedures under such system shall be uniform throughout the Service.

(3) Under such system, in the case that such a licensed health professional has successfully completed the credentialing procedures under such system, such professional shall be authorized to treat patients at any Service facility or other facility within a Service area.

(c) *REGULATIONS.*—The Secretary may promulgate regulations to implement this section.

(d) *CONSULTATION.*—The Secretary may consult with public and private associations of medical providers in the development of the credentialing system under this section.

(e) *APPLICATION.*—The credentialing system under this section shall apply with respect to licensed health professionals seeking to volunteer with respect to—

(1) providing direct health care services at a Service facility;
and

(2) providing services at facilities operated or contracted by a tribe, tribal organization, or urban Indian organization under the Indian Self-Determination and Education Assistance Act.

(f) CLARIFICATION.—Nothing in this section shall be construed to inhibit a tribe's authority to enter into a compact or contract under the Indian Self-Determination and Education Assistance Act.

TITLE II—HEALTH SERVICES

* * * * *

SEC. 226. CONTRACT HEALTH SERVICE ADMINISTRATION AND DISBURSEMENT FORMULA.

(a) SUBMISSION OF REPORT.—[As soon as practicable after the date of enactment of the Indian Health Care Improvement Reauthorization and Extension Act of 2009] *Not later than 2 years after the date of the enactment of section 227*, the Comptroller General of the United States shall submit to the Secretary, the Committee on Indian Affairs of the Senate, and the Committee on Natural Resources of the House of Representatives, and make available to each Indian tribe, a report describing the results of [the study] *a study* of the Comptroller General regarding the funding of the contract health service program (including historic funding levels and a recommendation of the funding level needed for the program) and the administration of the contract health service program (including the distribution of funds pursuant to the program), [as requested by Congress in March 2009, or pursuant to section 830], *including as amended pursuant to section 227*.

(b) CONSULTATION WITH TRIBES.—On receipt of the report under subsection (a), the Secretary shall consult with Indian tribes regarding the contract health service program, including the distribution of funds pursuant to the program, *and submit, not later than one year after the date of the enactment of section 227 and annually thereafter, to Congress a report on—*

(1) to determine whether the current distribution formula would require modification if the contract health service program were funded at the level recommended by the Comptroller General;

(2) to identify any inequities in the current distribution formula under the current funding level or inequitable results for any Indian tribe under the funding level recommended by the Comptroller General;

(3) to identify any areas of program administration that may result in the inefficient or ineffective management of the program; [and]

(4) *to determine whether during the period of the report any contract health service delivery area, tribe, tribal organization, or urban Indian organization had a shortfall in such funding and, if so, the amount of such shortfall; and*

(5) *recommendations for such legislative action as the Secretary deems appropriate.*

[(4)] (5) to identify any other issues and recommendations to improve the administration of the contract health services program and correct any unfair results or funding disparities

identified under paragraph (2), *including recommendations for such legislative actions as the Secretary determines appropriate.*

[(c) **SUBSEQUENT ACTION BY SECRETARY.**—If, after consultation with Indian tribes under subsection (b), the Secretary determines that any issue described in subsection (b)(2) exists, the Secretary may initiate procedures under subchapter III of chapter 5 of title 5, United States Code, to negotiate or promulgate regulations to establish a disbursement formula for the contract health service program funding.]

SEC. 227. PURCHASED/REFERRED CARE PROGRAM DISBURSEMENT FORMULA.

(a) **IN GENERAL.**—*The Secretary shall, with respect to the Purchased/Referred Care program (formerly referred to as the “contract health services program”) funded by the Indian Health Service and operated by the Indian Health Service, an Indian tribe, or tribal organization, review the distribution of funds pursuant to the program and initiate procedures under subchapter III of chapter 5 of title 5, United States Code, to negotiate or promulgate regulations to develop and implement a revised distribution formula in accordance with the subsequent subsections of this section.*

(b) **CONSIDERATIONS.**—*In developing the revised distribution formula under subsection (a), the Secretary shall consider—*

(1) *the extent to which services are available at a Service hospital or facility of the Service rather than the mere existence of such a hospital or facility;*

(2) *population growth and the potential for population growth;*

(3) *the socioeconomic makeup of the population of each contract health service delivery area;*

(4) *the geographic makeup of each contract health service delivery area;*

(5) *the size of the hospital or facility;*

(6) *the relative regional cost of purchasing services;*

(7) *actual counts of Purchased/Referred Care users; and*

(8) *accreditation problems at the Service hospital or facility of the Service.*

(c) **IMPLEMENTATION DEADLINE.**—*The revised distribution formula under subsection (a) shall be implemented not later than the date that is 3 years after the first October 1 following the date of the enactment of this Act.*

(d) **TRANSITION.**—

(1) **IN GENERAL.**—*Notwithstanding any other provision of law, for the period beginning on the first October 1 following the date of the enactment of this section and ending the day before the implementation date of the revised distribution formula under subsection (a), the Secretary shall provide for the distribution of funds, with respect to direct health care services provided by a Service facility, pursuant to the Purchased/Referred Care program (and with respect to services provided by any other facility under such program, at the option of such facility) be consistent with the following:*

(A) *During any portion of such period for which a Service area has been designated as a high IHS level area under paragraph (2)(B), such area shall not receive any funds pursuant to such program in addition to the base allotment*

determined under the distribution formula under the program for 2016 with respect to such area.

(B) In the case that during such period the amount of funds made available to the Service for such distribution under such program is in excess of the total amounts of base allotments for distribution under such program for 2016, the Secretary shall distribute such excess amount, in accordance with a methodology specified by the Secretary, to Service areas which for an applicable portion of such period of excess funding have been designated as a low IHS level area under paragraph (2)(A).

(2) AREA DESIGNATIONS.—For purposes of paragraph (1), the Secretary shall, with respect to each contract health service delivery area—

(A) review the services provided in the area to determine the IHS medical priority level pursuant to section 136.23(e) of title 42, Code of Federal Regulations, of such services; and

(B) in the case majority, as specified by the Secretary, of the services so provided in the area were determined to have—

(i) such a priority level of a I or II, designate such area as a low IHS level area; and

(ii) any other priority level, designate such area as a high IHS level area.

(e) APPLICATION OF REDUCTION CLAUSE.—In the case of a facility that, as of the date of the enactment of this section, is under contract with the Secretary with respect to the Purchased/Referred Care program and such contract applies to a period to which subsection (d) or the revised distribution formula under subsection (a) applies, if application of subsection (d) or the revised distribution formula results in the distribution of an amount of funds to such facility during such period that is less than the amount of funds that would be provided during such period to such facility under such contract with respect to the Purchased/Referred Care program before application of such subsection (d) or such revised distribution formula, respectively, the Secretary may under section 106(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j-1(b)) reduce such amount accordingly to be consistent with such subsection (d) or revised distribution formula, respectively.

(f) CLARIFICATION.—Nothing in this section shall be construed to supersede a Tribe's self-governance contract under the Indian Self-Determination and Education Assistance Act.

(g) UPDATE.—The Secretary shall periodically, but not more frequently than once every 3 years and not less frequently than once every five years, review and, as necessary, update the formula implemented under subsection (a).

(h) CONSULTATION.—In developing the formula under subsection (a) and reviewing and making updates to such formula under subsection (f), the Secretary shall consult with Indian tribes, including such tribes consulted for purposes of carrying out section 226.

(i) REPORTS.—Not later than one year after the date of the enactment of this section, and annually thereafter, the Secretary shall submit to Congress a report on the implementation of this section.

Each such report shall include information, with respect to the period for such report, on—

(1) the distribution of funds for such period pursuant to the Purchased/Referred Care program among the contract health service delivery area, tribes, tribal organizations, and urban Indian organizations;

(2) whether during such period any contract health service delivery area, tribe, tribal organization, or urban Indian organization had a shortfall in such funding and, if so, the amount of such shortfall; and

(3) recommendations for such legislative action as the Secretary deems appropriate.

SEC. 228. PURCHASED/REFERRED CARE PROGRAM BACKLOG.

Not later than one year after the date of the enactment of this section, the Secretary shall develop and implement a system to prioritize any backlog of unpaid balances under the Purchased/Referred Care program for each Service area. In developing such system, the Secretary shall consider—

(1) the monetary amount of each such unpaid balance; and

(2) how long such balance has remained unpaid.

TITLE III—HEALTH FACILITIES

* * * * *

SEC. 314. STANDARDS TO IMPROVE TIMELINESS OF CARE.

(a) *IN GENERAL.*—The Secretary, acting through the Service, shall—

(1) establish, by regulation, standards to measure the timeliness of the provision of health care services in Service facilities; and

(2) make such standards available to all Service areas and Service facilities.

(b) *DATA COLLECTION.*—The Secretary, acting through the Service, shall develop a process for Service facilities to submit to the Secretary data with respect to the standards established under subsection (a).

* * * * *

TITLE VI—ORGANIZATIONAL IMPROVEMENTS

SEC. 601. ESTABLISHMENT OF THE INDIAN HEALTH SERVICE AS AN AGENCY OF THE PUBLIC HEALTH SERVICE.

(a) *ESTABLISHMENT.*—

(1) *IN GENERAL.*—In order to more effectively and efficiently carry out the responsibilities, authorities, and functions of the United States to provide health care services to Indians and Indian tribes, as are or may be hereafter provided by Federal statute or treaties, there is established within the Public Health Service of the Department the Indian Health Service.

(2) *DIRECTOR.*—The Service shall be administered by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall report to the Secretary. Effective with respect to an individual appointed by the President, by and with the advice and consent of the

Senate, after January 1, 2008, the term of service of the Director shall be 4 years. A Director may serve more than 1 term.

(3) INCUMBENT.—The individual serving in the position of Director of the Service on the day before the date of enactment of the Indian Health Care Improvement Reauthorization and Extension Act of 2009 shall serve as Director.

(4) ADVOCACY AND CONSULTATION.—The position of Director is established to, in a manner consistent with the government-to-government relationship between the United States and Indian Tribes—

(A) facilitate advocacy for the development of appropriate Indian health policy; and

(B) promote consultation on matters relating to Indian health.

(b) AGENCY.—The Service shall be an agency within the Public Health Service of the Department, and shall not be an office, component, or unit of any other agency of the Department.

(c) DUTIES.—The Director shall—

(1) perform all functions that were, on the day before the date of enactment of the Indian Health Care Improvement Reauthorization and Extension Act of 2009, carried out by or under the direction of the individual serving as Director of the Service on that day;

(2) perform all functions of the Secretary relating to the maintenance and operation of hospital and health facilities for Indians and the planning for, and provision and utilization of, health services for Indians, including by ensuring that all agency directors, managers, and chief executive officers have appropriate and adequate training, experience, skill levels, knowledge, abilities, and education (including continuing training requirements) to competently fulfill the duties of the positions and the mission of the Service;

(3) administer all health programs under which health care is provided to Indians based upon their status as Indians which are administered by the Secretary, including programs under—

(A) this Act;

(B) the Act of November 2, 1921 (25 U.S.C. 13);

(C) the Act of August 5, 1954 (42 U.S.C. 2001 et seq.);

(D) the Act of August 16, 1957 (42 U.S.C. 2005 et seq.);

and

(E) the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.);

(4) administer all scholarship and loan functions carried out under title I;

(5) directly advise the Secretary concerning the development of all policy- and budget-related matters affecting Indian health;

(6) collaborate with the Assistant Secretary for Health concerning appropriate matters of Indian health that affect the agencies of the Public Health Service;

(7) advise each Assistant Secretary of the Department concerning matters of Indian health with respect to which that Assistant Secretary has authority and responsibility;

(8) advise the heads of other agencies and programs of the Department concerning matters of Indian health with respect to which those heads have authority and responsibility;

(9) coordinate the activities of the Department concerning matters of Indian health; and

(10) perform such other functions as the Secretary may designate.

(d) AUTHORITY.—

(1) IN GENERAL.—The Secretary, acting through the Director, shall have the authority—

(A) except to the extent provided for in paragraph (2) and subject to paragraph (4), to appoint and compensate employees for the Service in accordance with title 5, United States Code;

(B) to enter into contracts for the procurement of goods and services to carry out the functions of the Service; and

(C) to manage, expend, and obligate all funds appropriated for the Service.

(2) PERSONNEL ACTIONS.—Notwithstanding any other provision of law, the provisions of section 12 of the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 472), shall apply to all personnel actions taken with respect to new positions created within the Service as a result of its establishment under subsection (a).

(4) EMPLOYMENT AUTHORITY.—

(A) IN GENERAL.—*The Secretary may, with respect to any employee described in subparagraph (B), provide that one or more provisions of chapter 74 of title 38, United States Code (other than subchapter V of such chapter or of regulations promulgated under such chapter other than under such subchapter), shall apply—*

(i) in lieu of any provision of title 5 of the United States Code (other than as applied pursuant to section 834); or

(ii) notwithstanding any lack of specific authority for a matter with respect to which title 5 of the United States Code relates.

(B) APPLICABILITY TO EMPLOYEES.—*Authority under this paragraph may be exercised with respect to any employee in the Service holding a position—*

(i) to which chapter 51 of title 5 of the United States Code applies, excluding any senior executive service position; and

(ii) which involves health care responsibilities.

(C) DEFINITION.—*For purposes of this paragraph, “health care” means direct patient-care services or services incident to direct patient-care services.*

* * * * *

SEC. 605. AUTHORITY TO WAIVE INDIAN PREFERENCE LAWS.

To enhance recruitment and retention of employees of the Service, the Secretary may waive the requirements of the Indian preference laws (as defined in section 2(e) of Public Law 96–135 (25 U.S.C. 472a(e))) with respect to a personnel action with respect to a Service unit with the written request or resolution of an Indian tribe located within the applicable Service unit—

- (1) if such personnel action is with respect to a facility that has a personnel vacancy rate of at least 20 percent; or
- (2) in the case such personnel action is with respect to a former employee of the Service or former tribal employee who was removed from such former employment or demoted for misconduct that occurred during the five years prior to the date of such personnel action.

* * * * *

TITLE VIII—MISCELLANEOUS

* * * * *

SEC. 833. SERVICE HOSPITAL LONG-TERM CONTRACT PILOT PROGRAM.

(a) *IN GENERAL.*—The Secretary, acting through the Service, shall implement a 7-year pilot program to test the viability and advisability of entering into long-term contracts for the operation of eligible Service hospitals with governance structures that include tribal input.

(b) *ELEMENTS.*—Under such pilot program, subject to subsection (e), the following shall apply:

- (1) The Secretary shall select three eligible Service hospitals in rural areas to participate in the pilot program.
- (2) For each such participating hospital, the Secretary shall enter into a long-term contract.
- (3) At each such participating hospital, the Secretary, in consultation with the primary Indian tribes served by the hospital, shall install a governing board described in subsection (d), which shall be responsible for overseeing the local operation of the hospital.

(c) *ELIGIBLE SERVICE HOSPITAL.*—For purposes of this section, the term “eligible Service hospital” means a Service hospital that furnishes services in a rural area to direct services tribes and with respect to which the Secretary has obtained the permission of the primary Indian tribes served by the hospital for the hospital to participate under the pilot program under this section.

(d) *GOVERNANCE BOARD DESCRIBED.*—For purposes of subsection (b), a governance board described in this subsection, with respect to a Service hospital participating in the pilot program, is a board that satisfies the following criteria:

(1) *COMPOSITION.*—

(A) *IN GENERAL.*—The governance board is composed, in accordance with the best practices specified under paragraph (3), of the following individuals:

- (i) Representatives of the Service, who shall be selected by the Secretary.
- (ii) Representatives of the Service hospital.
- (iii) Representatives of each primary Indian tribe served by the hospital, who shall be selected by the respective Indian tribe.
- (iv) Experts in health care administration and delivery, who shall—
 - (I) be selected by the Secretary and respective Indian tribe; and

(II) to the extent possible, located in the State in which the hospital is located or otherwise familiar with such State.

(B) VOTING RIGHTS.—In determining the composition of the board with respect to voting rights on the board—

(i) the number of voting members representing the Service shall be equal to the number of voting members representing the Indian tribes involved; and

(ii) the number of voting members representing the hospital may not be greater than the number of voting members representing the Service or the Indian tribes involved.

(2) DUTIES.—The governance board shall perform duties in accordance with the best practices specified under paragraph (3) and shall include developing financial and quality metrics and standards for salaries, recruitment, retention, training, and dismissal of employees of such hospital.

(3) BEST PRACTICES.—The Secretary shall specify best practices for the governance board described in this subsection, including best practices relating to the number of members of such board, the authorities of the board, and the duties of the board.

(e) TREATMENT OF ELIGIBLE SERVICE HOSPITALS CURRENTLY UNDER CONTRACT.—In the case of an eligible Service hospital that is under a current contract with the Secretary as of the initiation of the selection process period for the pilot program, in order for such hospital to participate in the pilot program the Secretary, with the agreement of the hospital, may—

(1) notwithstanding any other provision of law, modify or terminate such contract and in order for such hospital to enter into a long-term contract under the pilot program; or

(2) enter into a long-term contract under the pilot program (and begin the pilot program) beginning on the date after the last date of such current contract.

(f) LONG-TERM CONTRACT DEFINED.—For purposes of this section, the term “long-term contract” means a contract for a period of at least 5 years.

(g) CLARIFICATION.—Nothing in this section shall be construed to inhibit a tribe’s authority to enter into a compact or contract under the Indian Self-Determination and Education Assistance Act.

(h) REPORTS.—For each year of the pilot program, the Secretary shall submit a report to Congress on the results of the program demonstrated during the respective year. Each such report shall include the following:

(1) Information related to the financial health of each eligible hospital participating in the pilot program.

(2) Information on the affect the pilot program has on access to care.

(3) Information on patient satisfaction with services provided at such hospitals.

(4) The number of readmissions at such hospitals.

(5) The number of hospital-acquired conditions at such hospitals.

(6) Recommendations on the viability and advisability of the long-term contracts and hospital governance structure under such pilot program.

(7) Any other information the Secretary considers necessary for a proper analysis of the pilot program.

SEC. 834. REMOVAL OR DEMOTION OF EMPLOYEES.

(a) *IN GENERAL.*—The Secretary may remove or demote an individual who is an employee of the Service if the Secretary determines the performance or misconduct of the individual warrants such removal or demotion. If the Secretary so removes or demotes such an individual, the Secretary may—

(1) remove the individual from the Service; or

(2) demote the individual by means of—

(A) a reduction in grade for which the individual is qualified and that the Secretary determines is appropriate; or

(B) a reduction in annual rate of pay that the Secretary determines is appropriate.

In the case of an individual who is removed under paragraph (1) or demoted under paragraph (2), the Secretary may require such individual take unpaid administrative leave for not longer than 10 consecutive work days.

(b) *PAY OF CERTAIN DEMOTED INDIVIDUALS.*—(1) Notwithstanding any other provision of law, any individual subject to a demotion under subsection (a)(2)(A) shall, beginning on the date of such demotion, receive the annual rate of pay applicable to such grade.

(2) An individual so demoted may not be placed on administrative leave or any other category of paid leave during the period during which an appeal (if any) under this section is ongoing, and may only receive pay if the individual reports for duty. If an individual so demoted does not report for duty, such individual shall not receive pay or other benefits pursuant to subsection (e)(5).

(c) *NOTICE TO SECRETARY.*—Not later than 30 days after removing or demoting an individual under subsection (a), the Service shall submit to the Secretary notice in writing of such removal or demotion and the reason for such removal or demotion.

(d) *PROCEDURE.*—(1) The procedures under section 7513(b) of title 5 and chapter 43 of such title shall not apply to a removal or demotion under this section.

(2)(A) Subject to subparagraph (B) and subsection (e), any removal or demotion under subsection (a) may be appealed to the Merit Systems Protection Board under section 7701 of title 5.

(B) An appeal under subparagraph (A) of a removal or demotion may only be made if such appeal is made not later than seven days after the date of such removal or demotion.

(e) *EXPEDITED REVIEW BY ADMINISTRATIVE JUDGE.*—(1) Upon receipt of an appeal under subsection (d)(2)(A), the Merit Systems Protection Board shall refer such appeal to an administrative judge pursuant to section 7701(b)(1) of title 5. The administrative judge shall expedite any such appeal under such section and, in any such case, shall issue a decision not later than 45 days after the date of the appeal.

(2) Notwithstanding any other provision of law, including section 7703 of title 5, the decision of an administrative judge under para-

graph (1) shall be final and shall not be subject to any further appeal.

(3) In any case in which the administrative judge cannot issue a decision in accordance with the 45-day requirement under paragraph (1), the removal or demotion is final. In such a case, the Merit Systems Protection Board shall, within 14 days after the date that such removal or demotion is final, submit to Congress a report that explains the reasons why a decision was not issued in accordance with such requirement.

(4) The Merit Systems Protection Board or administrative judge may not stay any removal or demotion under this section.

(5) During the period beginning on the date on which an individual appeals a removal from the Service under subsection (d) and ending on the date that the administrative judge issues a final decision on such appeal, such individual may not receive any pay, awards, bonuses, incentives, allowances, differentials, student loan repayments, special payments, or benefits.

(6) To the maximum extent practicable, the Secretary shall provide to the Merit Systems Protection Board, and to any administrative judge to whom an appeal under this section is referred, such information and assistance as may be necessary to ensure an appeal under this subsection is expedited.

(f) *TERMINATION OF INVESTIGATIONS BY OFFICE OF SPECIAL COUNSEL.*—Notwithstanding any other provision of law, the Special Counsel (established by section 1211 of title 5) may terminate an investigation of a prohibited personnel practice alleged by an employee or former employee of the Department after the Special Counsel provides to the employee or former employee a written statement of the reasons for the termination of the investigation. Such statement may not be admissible as evidence in any judicial or administrative proceeding without the consent of such employee or former employee.

(g) *RELATION TO TITLE 5.*—The authority provided by this section is in addition to the authority provided by subchapter V of chapter 75 of title 5 and chapter 43 of such title.

(h) *DEFINITIONS.*—In this section:

(1) The term “individual” means an individual occupying a position at the Service but does not include—

(A) an individual, as that term is defined in section 713(g)(1); or

(B) a political appointee.

(2) The term “grade” has the meaning given such term in section 7511(a) of title 5.

(3) The term “misconduct” includes neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.

(4) The term “political appointee” means an individual who is—

(A) employed in a position described under sections 5312 through 5316 of title 5 (relating to the Executive Schedule);

(B) a limited term appointee, limited emergency appointee, or noncareer appointee in the Senior Executive Service, as defined under paragraphs (5), (6), and (7), respectively, of section 3132(a) of title 5; or

(C) employed in a position of a confidential or policy-determining character under schedule C of subpart C of part 213 of title 5 of the Code of Federal Regulations.

TITLE 5, UNITED STATES CODE

* * * * *

PART III—EMPLOYEES

* * * * *

SUBPART C—EMPLOYEE PERFORMANCE

* * * * *

CHAPTER 43—PERFORMANCE APPRAISAL

SUBCHAPTER I—GENERAL PROVISIONS

* * * * *

§ 4303. Actions based on unacceptable performance

(a) Subject to the provisions of this section, an agency may reduce in grade or remove an employee for unacceptable performance.

(b)(1) An employee whose reduction in grade or removal is proposed under this section is entitled to—

(A) 30 days' advance written notice of the proposed action which identifies—

- (i) specific instances of unacceptable performance by the employee on which the proposed action is based; and
- (ii) the critical elements of the employee's position involved in each instance of unacceptable performance;

(B) be represented by an attorney or other representative;

(C) a reasonable time to answer orally and in writing; and

(D) a written decision which—

(i) in the case of a reduction in grade or removal under this section, specifies the instances of unacceptable performance by the employee on which the reduction in grade or removal is based, and

(ii) unless proposed by the head of the agency, has been concurred in by an employee who is in a higher position than the employee who proposed the action.

(2) An agency may, under regulations prescribed by the head of such agency, extend the notice period under subsection (b)(1)(A) of this section for not more than 30 days. An agency may extend the notice period for more than 30 days only in accordance with regulations issued by the Office of Personnel Management.

(c) The decision to retain, reduce in grade, or remove an employee—

(1) shall be made within 30 days after the date of expiration of the notice period, and

(2) in the case of a reduction in grade or removal, may be based only on those instances of unacceptable performance by the employee—

(A) which occurred during the 1-year period ending on the date of the notice under subsection (b)(1)(A) of this section in connection with the decision; and

(B) for which the notice and other requirements of this section are complied with.

(d) If, because of performance improvement by the employee during the notice period, the employee is not reduced in grade or removed, and the employee's performance continues to be acceptable for 1 year from the date of the advance written notice provided under subsection (b)(1)(A) of this section, any entry or other notation of the unacceptable performance for which the action was proposed under this section shall be removed from any agency record relating to the employee.

(e) Any employee who is—

(1) a preference eligible;

(2) in the competitive service; or

(3) in the excepted service and covered by subchapter II of chapter 75,

and who has been reduced in grade or removed under this section is entitled to appeal the action to the Merit Systems Protection Board under section 7701.

(f) This section does not apply to—

(1) the reduction to the grade previously held of a supervisor or manager who has not completed the probationary period under section 3321(a)(2) of this title,

(2) the reduction in grade or removal of an employee in the competitive service who is serving a probationary or trial period under an initial appointment or who has not completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less, [or]

(3) the reduction in grade or removal of an employee in the excepted service who has not completed 1 year of current continuous employment in the same or similar positions[.], or

(4) any removal or demotion under section 834 of the Indian Health Care Improvement Act.

* * * * *

INTERNAL REVENUE CODE OF 1986

* * * * *

Subtitle A—Income Taxes

* * * * *

CHAPTER 1—NORMAL TAXES AND SURTAXES

* * * * *

Subchapter B—Computation of Taxable Income

* * * * *

PART III—ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

* * * * *

SEC. 108. INCOME FROM DISCHARGE OF INDEBTEDNESS.

(a) EXCLUSION FROM GROSS INCOME.—

(1) **IN GENERAL.**—Gross income does not include any amount which (but for this subsection) would be includible in gross income by reason of the discharge (in whole or in part) of indebtedness of the taxpayer if—

(A) the discharge occurs in a title 11 case,

(B) the discharge occurs when the taxpayer is insolvent,

(C) the indebtedness discharged is qualified farm indebtedness,

(D) in the case of a taxpayer other than a C corporation, the indebtedness discharged is qualified real property business indebtedness, or

(E) the indebtedness discharged is qualified principal residence indebtedness which is discharged—

(i) before January 1, 2017, or ii) subject to an arrangement that is entered into and evidenced in writing before January 1, 2017.

(2) COORDINATION OF EXCLUSIONS.—

(A) **TITLE 11 EXCLUSION TAKES PRECEDENCE.**—Subparagraphs (B), (C), (D), and (E) of paragraph (1) shall not apply to a discharge which occurs in a title 11 case.

(B) **INSOLVENCY EXCLUSION TAKES PRECEDENCE OVER QUALIFIED FARM EXCLUSION AND QUALIFIED REAL PROPERTY BUSINESS EXCLUSION.**—Subparagraphs (C) and (D) of paragraph (1) shall not apply to a discharge to the extent the taxpayer is insolvent.

(C) **PRINCIPAL RESIDENCE EXCLUSION TAKES PRECEDENCE OVER INSOLVENCY EXCLUSION UNLESS ELECTED OTHERWISE.**—Paragraph (1)(B) shall not apply to a discharge to which paragraph (1)(E) applies unless the taxpayer elects to apply paragraph (1)(B) in lieu of paragraph (1)(E).

(3) **INSOLVENCY EXCLUSION LIMITED TO AMOUNT OF INSOLVENCY.**—In the case of a discharge to which paragraph (1)(B) applies, the amount excluded under paragraph (1)(B) shall not exceed the amount by which the taxpayer is insolvent.

(b) REDUCTION OF TAX ATTRIBUTES.—

(1) **IN GENERAL.**—The amount excluded from gross income under subparagraph (A), (B), or (C) of subsection (a)(1) shall be applied to reduce the tax attributes of the taxpayer as provided in paragraph (2).

(2) **TAX ATTRIBUTES AFFECTED; ORDER OF REDUCTION.**—Except as provided in paragraph (5), the reduction referred to in paragraph (1) shall be made in the following tax attributes in the following order:

(A) NOL.—Any net operating loss for the taxable year of the discharge, and any net operating loss carryover to such taxable year.

(B) GENERAL BUSINESS CREDIT.—Any carryover to or from the taxable year of a discharge of an amount for purposes for determining the amount allowable as a credit under section 38 (relating to general business credit).

(C) MINIMUM TAX CREDIT.—The amount of the minimum tax credit available under section 53(b) as of the beginning of the taxable year immediately following the taxable year of the discharge.

(D) CAPITAL LOSS CARRYOVERS.—Any net capital loss for the taxable year of the discharge, and any capital loss carryover to such taxable year under section 1212.

(E) BASIS REDUCTION.—

(i) IN GENERAL.—The basis of the property of the taxpayer.

(ii) CROSS REFERENCE.—For provisions for making the reduction described in clause (i), see section 1017.

(F) PASSIVE ACTIVITY LOSS AND CREDIT CARRYOVERS.—Any passive activity loss or credit carryover of the taxpayer under section 469(b) from the taxable year of the discharge.

(G) FOREIGN TAX CREDIT CARRYOVERS.—Any carryover to or from the taxable year of the discharge for purposes of determining the amount of the credit allowable under section 27.

(3) AMOUNT OF REDUCTION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the reductions described in paragraph (2) shall be one dollar for each dollar excluded by subsection (a).

(B) CREDIT CARRYOVER REDUCTION.—The reductions described in subparagraphs (B), (C), and (G) shall be 33 1/3 cents for each dollar excluded by subsection (a). The reduction described in subparagraph (F) in any passive activity credit carryover shall be 33 1/3 cents for each dollar excluded by subsection (a).

(4) ORDERING RULES.—

(A) REDUCTIONS MADE AFTER DETERMINATION OF TAX FOR YEAR.—The reductions described in paragraph (2) shall be made after the determination of the tax imposed by this chapter for the taxable year of the discharge.

(B) REDUCTIONS UNDER SUBPARAGRAPH (A) OR (D) OF PARAGRAPH (2).—The reductions described in subparagraph (A) or (D) of paragraph (2) (as the case may be) shall be made first in the loss for the taxable year of the discharge and then in the carryovers to such taxable year in the order of the taxable years from which each such carryover arose.

(C) REDUCTIONS UNDER SUBPARAGRAPHS (B) AND (G) OF PARAGRAPH (2).—The reductions described in subparagraphs (B) and (G) of paragraph (2) shall be made in the order in which carryovers are taken into account under this chapter for the taxable year of the discharge.

(5) ELECTION TO APPLY REDUCTION FIRST AGAINST DEPRECIABLE PROPERTY.—

(A) IN GENERAL.—The taxpayer may elect to apply any portion of the reduction referred to in paragraph (1) to the reduction under section 1017 of the basis of the depreciable property of the taxpayer.

(B) LIMITATION.—The amount to which an election under subparagraph (A) applies shall not exceed the aggregate adjusted bases of the depreciable property held by the taxpayer as of the beginning of the taxable year following the taxable year in which the discharge occurs.

(C) OTHER TAX ATTRIBUTES NOT REDUCED.—Paragraph (2) shall not apply to any amount to which an election under this paragraph applies.

(c) TREATMENT OF DISCHARGE OF QUALIFIED REAL PROPERTY BUSINESS INDEBTEDNESS.—

(1) BASIS REDUCTION.—

(A) IN GENERAL.—The amount excluded from gross income under subparagraph (D) of subsection (a)(1) shall be applied to reduce the basis of the depreciable real property of the taxpayer.

(B) CROSS REFERENCE.—For provisions making the reduction described in subparagraph (A), see section 1017.

(2) LIMITATIONS.—

(A) INDEBTEDNESS IN EXCESS OF VALUE.—The amount excluded under subparagraph (D) of subsection (a)(1) with respect to any qualified real property business indebtedness shall not exceed the excess (if any) of—

(i) the outstanding principal amount of such indebtedness (immediately before the discharge), over

(ii) the fair market value of the real property described in paragraph (3)(A) (as of such time), reduced by the outstanding principal amount of any other qualified real property business indebtedness secured by such property (as of such time).

(B) OVERALL LIMITATION.—The amount excluded under subparagraph (D) of subsection (a)(1) shall not exceed the aggregate adjusted bases of depreciable real property (determined after any reductions under subsections (b) and (g)) held by the taxpayer immediately before the discharge (other than depreciable real property acquired in contemplation of such discharge).

(3) QUALIFIED REAL PROPERTY BUSINESS INDEBTEDNESS.—The term “qualified real property business indebtedness” means indebtedness which—

(A) was incurred or assumed by the taxpayer in connection with real property used in a trade or business and is secured by such real property,

(B) was incurred or assumed before January 1, 1993, or if incurred or assumed on or after such date, is qualified acquisition indebtedness, and

(C) with respect to which such taxpayer makes an election to have this paragraph apply.

Such term shall not include qualified farm indebtedness. Indebtedness under subparagraph (B) shall include indebtedness

resulting from the refinancing of indebtedness under subparagraph (B) (or this sentence), but only to the extent it does not exceed the amount of the indebtedness being refinanced.

(4) QUALIFIED ACQUISITION INDEBTEDNESS.—For purposes of paragraph (3)(B), the term “qualified acquisition indebtedness” means, with respect to any real property described in paragraph (3)(A), indebtedness incurred or assumed to acquire, construct, reconstruct, or substantially improve such property.

(5) REGULATIONS.—The Secretary shall issue such regulations as are necessary to carry out this subsection, including regulations preventing the abuse of this subsection through cross-collateralization or other means.

(d) MEANING OF TERMS; SPECIAL RULES RELATING TO CERTAIN PROVISIONS.—

(1) INDEBTEDNESS OF TAXPAYER.—For purposes of this section, the term “indebtedness of the taxpayer” means any indebtedness—

(A) for which the taxpayer is liable, or

(B) subject to which the taxpayer holds property.

(2) TITLE 11 CASE.—For purposes of this section, the term “title 11 case” means a case under title 11 of the United States Code (relating to bankruptcy), but only if the taxpayer is under the jurisdiction of the court in such case and the discharge of indebtedness is granted by the court or is pursuant to a plan approved by the court.

(3) INSOLVENT.—For purposes of this section, the term “insolvent” means the excess of liabilities over the fair market value of assets. With respect to any discharge, whether or not the taxpayer is insolvent, and the amount by which the taxpayer is insolvent, shall be determined on the basis of the taxpayer’s assets and liabilities immediately before the discharge.

(5) DEPRECIABLE PROPERTY.—The term “depreciable property” has the same meaning as when used in section 1017.

(6) CERTAIN PROVISIONS TO BE APPLIED AT PARTNER LEVEL.—In the case of a partnership, subsections (a), (b), (c), and (g) shall be applied at the partner level.

(7) SPECIAL RULES FOR S CORPORATION.—

(A) CERTAIN PROVISIONS TO BE APPLIED AT CORPORATE LEVEL.—In the case of an S corporation, subsections (a), (b), (c), and (g) shall be applied at the corporate level, including by not taking into account under section 1366(a) any amount excluded under subsection (a) of this section.

(B) REDUCTION IN CARRYOVER OF DISALLOWED LOSSES AND DEDUCTIONS.—In the case of an S corporation, for purposes of subparagraph (A) of subsection (b)(2), any loss or deduction which is disallowed for the taxable year of the discharge under section 1366(d)(1) shall be treated as a net operating loss for such taxable year. The preceding sentence shall not apply to any discharge to the extent that subsection (a)(1)(D) applies to such discharge.

(C) COORDINATION WITH BASIS ADJUSTMENTS UNDER SECTION 1367(B)(2).—For purposes of subsection (e)(6), a shareholder’s adjusted basis in indebtedness of an S corporation shall be determined without regard to any adjustments made under section 1367(b)(2).

(8) REDUCTIONS OF TAX ATTRIBUTES IN TITLE 11 CASES OF INDIVIDUALS TO BE MADE BY ESTATE.—In any case under chapter 7 or 11 of title 11 of the United States Code to which section 1398 applies, for purposes of paragraphs (1) and (5) of subsection (b) the estate (and not the individual) shall be treated as the taxpayer. The preceding sentence shall not apply for purposes of applying section 1017 to property transferred by the estate to the individual.

(9) TIME FOR MAKING ELECTION, ETC.—

(A) TIME.—An election under paragraph (5) of subsection (b) or under paragraph (3)(C) of subsection (c) shall be made on the taxpayer's return for the taxable year in which the discharge occurs or at such other time as may be permitted in regulations prescribed by the Secretary.

(B) REVOCATION ONLY WITH CONSENT.—An election referred to in subparagraph (A), once made, may be revoked only with the consent of the Secretary.

(C) MANNER.—An election referred to in subparagraph (A) shall be made in such manner as the Secretary may by regulations prescribe.

(10) CROSS REFERENCE.—For provision that no reduction is to be made in the basis of exempt property of an individual debtor, see section 1017(c)(1).

(e) GENERAL RULES FOR DISCHARGE OF INDEBTEDNESS (INCLUDING DISCHARGES NOT IN TITLE 11 CASES OR INSOLVENCY).—For purposes of this title—

(1) NO OTHER INSOLVENCY EXCEPTION.—Except as otherwise provided in this section, there shall be no insolvency exception from the general rule that gross income includes income from the discharge of indebtedness.

(2) INCOME NOT REALIZED TO EXTENT OF LOST DEDUCTIONS.—No income shall be realized from the discharge of indebtedness to the extent that payment of the liability would have given rise to a deduction.

(3) ADJUSTMENTS FOR UNAMORTIZED PREMIUM AND DISCOUNT.—The amount taken into account with respect to any discharge shall be properly adjusted for unamortized premium and unamortized discount with respect to the indebtedness discharged.

(4) ACQUISITION OF INDEBTEDNESS BY PERSON RELATED TO DEBTOR.—

(A) TREATED AS ACQUISITION BY DEBTOR.—For purposes of determining income of the debtor from discharge of indebtedness, to the extent provided in regulations prescribed by the Secretary, the acquisition of outstanding indebtedness by a person bearing a relationship to the debtor specified in section 267(b) or 707(b)(1) from a person who does not bear such a relationship to the debtor shall be treated as the acquisition of such indebtedness by the debtor. Such regulations shall provide for such adjustments in the treatment of any subsequent transactions involving the indebtedness as may be appropriate by reason of the application of the preceding sentence.

(B) MEMBERS OF FAMILY.—For purposes of this paragraph, sections 267(b) and 707(b)(1) shall be applied as if

section 267(c)(4) provided that the family of an individual consists of the individual's spouse, the individual's children, grandchildren, and parents, and any spouse of the individual's children or grandchildren.

(C) ENTITIES UNDER COMMON CONTROL TREATED AS RELATED.—For purposes of this paragraph, two entities which are treated as a single employer under subsection (b) or (c) of section 414 shall be treated as bearing a relationship to each other which is described in section 267(b).

(5) PURCHASE-MONEY DEBT REDUCTION FOR SOLVENT DEBTOR TREATED AS PRICE REDUCTION.—If—

(A) the debt of a purchaser of property to the seller of such property which arose out of the purchase of such property is reduced,

(B) such reduction does not occur—

(i) in a title 11 case, or

(ii) when the purchaser is insolvent, and

(C) but for this paragraph, such reduction would be treated as income to the purchaser from the discharge of indebtedness,

then such reduction shall be treated as a purchase price adjustment.

(6) INDEBTEDNESS CONTRIBUTED TO CAPITAL.—Except as provided in regulations, for purposes of determining income of the debtor from discharge of indebtedness, if a debtor corporation acquires its indebtedness from a shareholder as a contribution to capital—

(A) section 118 shall not apply, but

(B) such corporation shall be treated as having satisfied the indebtedness with an amount of money equal to the shareholder's adjusted basis in the indebtedness.

(7) RECAPTURE OF GAIN ON SUBSEQUENT SALE OF STOCK.—

(A) IN GENERAL.—If a creditor acquires stock of a debtor corporation in satisfaction of such corporation's indebtedness, for purposes of section 1245—

(i) such stock (and any other property the basis of which is determined in whole or in part by reference to the adjusted basis of such stock) shall be treated as section 1245 property,

(ii) the aggregate amount allowed to the creditor—

(I) as deductions under subsection (a) or (b) of section 166 (by reason of the worthlessness or partial worthlessness of the indebtedness), or

(II) as an ordinary loss on the exchange, shall be treated as an amount allowed as a deduction for depreciation, and

(iii) an exchange of such stock qualifying under section 354(a), 355(a), or 356(a) shall be treated as an exchange to which section 1245(b)(3) applies.

The amount determined under clause (ii) shall be reduced by the amount (if any) included in the creditor's gross income on the exchange.

(B) SPECIAL RULE FOR CASH BASIS TAXPAYERS.—In the case of any creditor who computes his taxable income under the cash receipts and disbursements method, proper

adjustment shall be made in the amount taken into account under clause (ii) of subparagraph (A) for any amount which was not included in the creditor's gross income but which would have been included in such gross income if such indebtedness had been satisfied in full.

(C) STOCK OF PARENT CORPORATION.—For purposes of this paragraph, stock of a corporation in control (within the meaning of section 368(c)) of the debtor corporation shall be treated as stock of the debtor corporation.

(D) TREATMENT OF SUCCESSOR CORPORATION.—For purposes of this paragraph, the term "debtor corporation" includes a successor corporation.

(E) PARTNERSHIP RULE.—Under regulations prescribed by the Secretary, rules similar to the rules of the foregoing subparagraphs of this paragraph shall apply with respect to the indebtedness of a partnership.

(8) INDEBTEDNESS SATISFIED BY CORPORATE STOCK OR PARTNERSHIP INTEREST.—For purposes of determining income of a debtor from discharge of indebtedness, if—

(A) a debtor corporation transfers stock, or

(B) a debtor partnership transfers a capital or profits interest in such partnership,

to a creditor in satisfaction of its recourse or nonrecourse indebtedness, such corporation or partnership shall be treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the stock or interest. In the case of any partnership, any discharge of indebtedness income recognized under this paragraph shall be included in the distributive shares of taxpayers which were the partners in the partnership immediately before such discharge.

(9) DISCHARGE OF INDEBTEDNESS INCOME NOT TAKEN INTO ACCOUNT IN DETERMINING WHETHER ENTITY MEETS REIT QUALIFICATIONS.—Any amount included in gross income by reason of the discharge of indebtedness shall not be taken into account for purposes of paragraphs (2) and (3) of section 856(c).

(10) INDEBTEDNESS SATISFIED BY ISSUANCE OF DEBT INSTRUMENT.—

(A) IN GENERAL.—For purposes of determining income of a debtor from discharge of indebtedness, if a debtor issues a debt instrument in satisfaction of indebtedness, such debtor shall be treated as having satisfied the indebtedness with an amount of money equal to the issue price of such debt instrument.

(B) ISSUE PRICE.—For purposes of subparagraph (A), the issue price of any debt instrument shall be determined under sections 1273 and 1274. For purposes of the preceding sentence, section 1273(b)(4) shall be applied by reducing the stated redemption price of any instrument by the portion of such stated redemption price which is treated as interest for purposes of this chapter.

(f) STUDENT LOANS.—

(1) IN GENERAL.—In the case of an individual, gross income does not include any amount which (but for this subsection) would be includible in gross income by reason of the discharge (in whole or in part) of any student loan if such discharge was

pursuant to a provision of such loan under which all or part of the indebtedness of the individual would be discharged if the individual worked for a certain period of time in certain professions for any of a broad class of employers.

(2) **STUDENT LOAN.**—For purposes of this subsection, the term “student loan” means any loan to an individual to assist the individual in attending an educational organization described in section 170(b)(1)(A)(ii) made by—

(A) the United States, or an instrumentality or agency thereof,

(B) a State, territory, or possession of the United States, or the District of Columbia, or any political subdivision thereof,

(C) a public benefit corporation—

(i) which is exempt from taxation under section 501(c)(3),

(ii) which has assumed control over a State, county, or municipal hospital, and

(iii) whose employees have been deemed to be public employees under State law, or

(D) any educational organization described in section 170(b)(1)(A)(ii) if such loan is made—

(i) pursuant to an agreement with any entity described in subparagraph (A), (B), or (C) under which the funds from which the loan was made were provided to such educational organization, or

(ii) pursuant to a program of such educational organization which is designed to encourage its students to serve in occupations with unmet needs or in areas with unmet needs and under which the services provided by the students (or former students) are for or under the direction of a governmental unit or an organization described in section 501(c)(3) and exempt from tax under section 501(a).

The term “student loan” includes any loan made by an educational organization described in section 170(b)(1)(A)(ii) or by an organization exempt from tax under section 501(a) to refinance a loan to an individual to assist the individual in attending any such educational organization but only if the refinancing loan is pursuant to a program of the refinancing organization which is designed as described in subparagraph (D)(ii).

(3) **EXCEPTION FOR DISCHARGES ON ACCOUNT OF SERVICES PERFORMED FOR CERTAIN LENDERS.**—Paragraph (1) shall not apply to the discharge of a loan made by an organization described in paragraph (2)(D) if the discharge is on account of services performed for either such organization.

[(4) **PAYMENTS UNDER NATIONAL HEALTH SERVICE CORPS LOAN REPAYMENT PROGRAM AND CERTAIN STATE LOAN REPAYMENT PROGRAMS.**—In the case of an individual, gross income shall not include any amount received under section 338B(g) of the Public Health Service Act, under a State program described in section 338I of such Act, or under any other State loan repayment or loan forgiveness program that is intended to provide for the increased availability of health care services

in underserved or health professional shortage areas (as determined by such State).】

(4) *PAYMENTS UNDER NATIONAL HEALTH SERVICE CORPS LOAN REPAYMENT PROGRAM, INDIAN HEALTH SERVICE LOAN REPAYMENT PROGRAM, AND CERTAIN STATE LOAN REPAYMENT PROGRAMS.—In the case of an individual, gross income shall not include any amount received—*

(A) *under section 338B(g) of the Public Health Service Act (but only if such amount is received with respect to the type of health profession or specialty for which an individual would have been eligible for participation in the program under section 338B of such Act as such program was in effect on January 1, 2016),*

(B) *under a State program described in section 338I of such Act,*

(C) *under section 108 of the Indian Health Care Improvement Act (but only in the case of a health profession or specialty described in subparagraph (A)), or*

(D) *under any other State loan repayment or loan forgiveness program that is intended to provide for the increased availability of health care services in underserved or health professional shortage areas (as determined by such State).*

(g) **SPECIAL RULES FOR DISCHARGE OF QUALIFIED FARM INDEBTEDNESS.—**

(1) **DISCHARGE MUST BE BY QUALIFIED PERSON.—**

(A) **IN GENERAL.—**Subparagraph (C) of subsection (a)(1) shall apply only if the discharge is by a qualified person.

(B) **QUALIFIED PERSON.—**For purposes of subparagraph (A), the term “qualified person” has the meaning given to such term by section 49(a)(1)(D)(iv); except that such term shall include any Federal, State, or local government or agency or instrumentality thereof.

(2) **QUALIFIED FARM INDEBTEDNESS.—**For purposes of this section, indebtedness of a taxpayer shall be treated as qualified farm indebtedness if—

(A) such indebtedness was incurred directly in connection with the operation by the taxpayer of the trade or business of farming, and

(B) 50 percent or more of the aggregate gross receipts of the taxpayer for the 3 taxable years preceding the taxable year in which the discharge of such indebtedness occurs is attributable to the trade or business of farming.

(3) **AMOUNT EXCLUDED CANNOT EXCEED SUM OF TAX ATTRIBUTES AND BUSINESS AND INVESTMENT ASSETS.—**

(A) **IN GENERAL.—**The amount excluded under subparagraph (C) of subsection (a)(1) shall not exceed the sum of—

(i) the adjusted tax attributes of the taxpayer, and

(ii) the aggregate adjusted bases of qualified property held by the taxpayer as of the beginning of the taxable year following the taxable year in which the discharge occurs.

(B) **ADJUSTED TAX ATTRIBUTES.—**For purposes of subparagraph (A), the term “adjusted tax attributes” means the sum of the tax attributes described in subparagraphs

(A), (B), (C), (D), (F), and (G) of subsection (b)(2) determined by taking into account \$3 for each \$1 of the attributes described in subparagraphs (B), (C), and (G) of subsection (b)(2) and the attribute described in subparagraph (F) of subsection (b)(2) to the extent attributable to any passive activity credit carryover.

(C) QUALIFIED PROPERTY.—For purposes of this paragraph, the term “qualified property” means any property which is used or is held for use in a trade or business or for the production of income.

(D) COORDINATION WITH INSOLVENCY EXCLUSION.—For purposes of this paragraph, the adjusted basis of any qualified property and the amount of the adjusted tax attributes shall be determined after any reduction under subsection (b) by reason of amounts excluded from gross income under subsection (a)(1)(B).

(h) SPECIAL RULES RELATING TO QUALIFIED PRINCIPAL RESIDENCE INDEBTEDNESS.—

(1) BASIS REDUCTION.—The amount excluded from gross income by reason of subsection (a)(1)(E) shall be applied to reduce (but not below zero) the basis of the principal residence of the taxpayer.

(2) QUALIFIED PRINCIPAL RESIDENCE INDEBTEDNESS.—For purposes of this section, the term “qualified principal residence indebtedness” means acquisition indebtedness (within the meaning of section 163(h)(3)(B), applied by substituting “\$2,000,000 (\$1,000,000)” for “\$1,000,000 (\$500,000)” in clause (ii) thereof) with respect to the principal residence of the taxpayer.

(3) EXCEPTION FOR CERTAIN DISCHARGES NOT RELATED TO TAXPAYER’S FINANCIAL CONDITION.—Subsection (a)(1)(E) shall not apply to the discharge of a loan if the discharge is on account of services performed for the lender or any other factor not directly related to a decline in the value of the residence or to the financial condition of the taxpayer.

(4) ORDERING RULE.—If any loan is discharged, in whole or in part, and only a portion of such loan is qualified principal residence indebtedness, subsection (a)(1)(E) shall apply only to so much of the amount discharged as exceeds the amount of the loan (as determined immediately before such discharge) which is not qualified principal residence indebtedness.

(5) PRINCIPAL RESIDENCE.—For purposes of this subsection, the term “principal residence” has the same meaning as when used in section 121.

(i) DEFERRAL AND RATABLE INCLUSION OF INCOME ARISING FROM BUSINESS INDEBTEDNESS DISCHARGED BY THE REACQUISITION OF A DEBT INSTRUMENT.—

(1) IN GENERAL.—At the election of the taxpayer, income from the discharge of indebtedness in connection with the reacquisition after December 31, 2008, and before January 1, 2011, of an applicable debt instrument shall be includible in gross income ratably over the 5-taxable-year period beginning with—

(A) in the case of a reacquisition occurring in 2009, the fifth taxable year following the taxable year in which the reacquisition occurs, and

(B) in the case of a reacquisition occurring in 2010, the fourth taxable year following the taxable year in which the reacquisition occurs.

(2) DEFERRAL OF DEDUCTION FOR ORIGINAL ISSUE DISCOUNT IN DEBT FOR DEBT EXCHANGES.—

(A) IN GENERAL.—If, as part of a reacquisition to which paragraph (1) applies, any debt instrument is issued for the applicable debt instrument being reacquired (or is treated as so issued under subsection (e)(4) and the regulations thereunder) and there is any original issue discount determined under subpart A of part V of subchapter P of this chapter with respect to the debt instrument so issued—

(i) except as provided in clause (ii), no deduction otherwise allowable under this chapter shall be allowed to the issuer of such debt instrument with respect to the portion of such original issue discount which—

(I) accrues before the 1st taxable year in the 5-taxable-year period in which income from the discharge of indebtedness attributable to the reacquisition of the debt instrument is includible under paragraph (1), and

(II) does not exceed the income from the discharge of indebtedness with respect to the debt instrument being reacquired, and

(ii) the aggregate amount of deductions disallowed under clause (i) shall be allowed as a deduction ratably over the 5-taxable-year period described in clause (i)(I).

If the amount of the original issue discount accruing before such 1st taxable year exceeds the income from the discharge of indebtedness with respect to the applicable debt instrument being reacquired, the deductions shall be disallowed in the order in which the original issue discount is accrued.

(B) DEEMED DEBT FOR DEBT EXCHANGES.—For purposes of subparagraph (A), if any debt instrument is issued by an issuer and the proceeds of such debt instrument are used directly or indirectly by the issuer to reacquire an applicable debt instrument of the issuer, the debt instrument so issued shall be treated as issued for the debt instrument being reacquired. If only a portion of the proceeds from a debt instrument are so used, the rules of subparagraph (A) shall apply to the portion of any original issue discount on the newly issued debt instrument which is equal to the portion of the proceeds from such instrument used to reacquire the outstanding instrument.

(3) APPLICABLE DEBT INSTRUMENT.—For purposes of this subsection—

(A) APPLICABLE DEBT INSTRUMENT.—The term “applicable debt instrument” means any debt instrument which was issued by—

(i) a C corporation, or

(ii) any other person in connection with the conduct of a trade or business by such person.

(B) DEBT INSTRUMENT.—The term “debt instrument” means a bond, debenture, note, certificate, or any other instrument or contractual arrangement constituting indebtedness (within the meaning of section 1275(a)(1)).

(4) REACQUISITION.—For purposes of this subsection—

(A) IN GENERAL.—The term “reacquisition” means, with respect to any applicable debt instrument, any acquisition of the debt instrument by—

- (i) the debtor which issued (or is otherwise the obligor under) the debt instrument, or
- (ii) a related person to such debtor.

(B) ACQUISITION.—The term “acquisition” shall, with respect to any applicable debt instrument, include an acquisition of the debt instrument for cash, the exchange of the debt instrument for another debt instrument (including an exchange resulting from a modification of the debt instrument), the exchange of the debt instrument for corporate stock or a partnership interest, and the contribution of the debt instrument to capital. Such term shall also include the complete forgiveness of the indebtedness by the holder of the debt instrument.

(5) OTHER DEFINITIONS AND RULES.—For purposes of this subsection—

(A) RELATED PERSON.—The determination of whether a person is related to another person shall be made in the same manner as under subsection (e)(4).

(B) ELECTION.—

(i) IN GENERAL.—An election under this subsection with respect to any applicable debt instrument shall be made by including with the return of tax imposed by chapter 1 for the taxable year in which the reacquisition of the debt instrument occurs a statement which—

- (I) clearly identifies such instrument, and
- (II) includes the amount of income to which paragraph (1) applies and such other information as the Secretary may prescribe.

(ii) ELECTION IRREVOCABLE.—Such election, once made, is irrevocable.

(iii) PASS-THRU ENTITIES.—In the case of a partnership, S corporation, or other pass-thru entity, the election under this subsection shall be made by the partnership, the S corporation, or other entity involved.

(C) COORDINATION WITH OTHER EXCLUSIONS.—If a taxpayer elects to have this subsection apply to an applicable debt instrument, subparagraphs (A), (B), (C), and (D) of subsection (a)(1) shall not apply to the income from the discharge of such indebtedness for the taxable year of the election or any subsequent taxable year.

(D) ACCELERATION OF DEFERRED ITEMS.—

(i) IN GENERAL.—In the case of the death of the taxpayer, the liquidation or sale of substantially all the assets of the taxpayer (including in a title 11 or similar case), the cessation of business by the taxpayer, or similar circumstances, any item of income or deduc-

tion which is deferred under this subsection (and has not previously been taken into account) shall be taken into account in the taxable year in which such event occurs (or in the case of a title 11 or similar case, the day before the petition is filed).

(ii) SPECIAL RULE FOR PASS-THRU ENTITIES.—The rule of clause (i) shall also apply in the case of the sale or exchange or redemption of an interest in a partnership, S corporation, or other pass-thru entity by a partner, shareholder, or other person holding an ownership interest in such entity.

(6) SPECIAL RULE FOR PARTNERSHIPS.—In the case of a partnership, any income deferred under this subsection shall be allocated to the partners in the partnership immediately before the discharge in the manner such amounts would have been included in the distributive shares of such partners under section 704 if such income were recognized at such time. Any decrease in a partner's share of partnership liabilities as a result of such discharge shall not be taken into account for purposes of section 752 at the time of the discharge to the extent it would cause the partner to recognize gain under section 731. Any decrease in partnership liabilities deferred under the preceding sentence shall be taken into account by such partner at the same time, and to the extent remaining in the same amount, as income deferred under this subsection is recognized.

(7) SECRETARIAL AUTHORITY.—The Secretary may prescribe such regulations, rules, or other guidance as may be necessary or appropriate for purposes of applying this subsection, including—

(A) extending the application of the rules of paragraph (5)(D) to other circumstances where appropriate,

(B) requiring reporting of the election (and such other information as the Secretary may require) on returns of tax for subsequent taxable years, and

(C) rules for the application of this subsection to partnerships, S corporations, and other pass-thru entities, including for the allocation of deferred deductions.

* * * * *

VII. ADDITIONAL VIEWS

Setting aside the merits of the legislation that the Committee has recently considered, there remains good reason to object to the path that Republicans have charted with respect to consideration of these tax bills. Over the last two weeks, the Committee has marked up seven Republican revenue bills. While it is true that some of these bills have bipartisan support, it is inexcusable that none of the bills recommended for consideration by the Democrats on the Committee were brought up at either of the Committee's most recent markups.

Republicans on the Committee squandered the opportunity to take up legislation that would provide incentives for other low-carbon energy alternatives, including efforts to correct an unintentional omission from the tax legislation that the Congress considered in December of last year. While the Congress provided a long-term extension of the section 48 investment tax credit for solar facilities, the legislation that was signed into law inadvertently excluded the other technologies included in the section 48 investment tax credit. The omitted extension applies to investments in fuel cell property, microturbine property, geothermal property, small wind property, combined heat and power property, and fiber optic solar property. Committee Members on both sides of the aisle expressed impassioned support for these provisions, yet the Republicans continue to reject legislation to right this wrong. Although the Chairman committed to continuing to listen to supporters of the bill, I would argue that given that it has such broad support, the time to listen has passed, and it is now time to act.

It is my hope that the Republicans on this Committee will abandon their extraordinary partisanship, and move away from this piecemeal consideration of legislation. The need for comprehensive tax reform has never been more pressing, and the Committee should turn its focus from these miscellaneous provisions and towards a reform that makes our nation's tax code fair, addresses the problems of income and wealth inequality, and provides opportunities for all Americans to succeed.

SANDER M. LEVIN, *Ranking Member.*

