

109TH CONGRESS
2D SESSION

H. R. 4845

To better prepare and develop the United States workforce for the global economy, and remove barriers that stifle innovation.

IN THE HOUSE OF REPRESENTATIVES

MARCH 2, 2006

Mr. GOODLATTE (for himself, Mr. SMITH of Texas, Mrs. JOHNSON of Connecticut, Mr. PUTNAM, Mr. SWEENEY, and Mr. TIAHRT) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Ways and Means, Science, Education and the Workforce, and Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To better prepare and develop the United States workforce for the global economy, and remove barriers that stifle innovation.

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

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Innovation and Competitiveness Act”.

6 (b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

TITLE I—REDUCE RED TAPE AND CREATE OPPORTUNITIES FOR
ECONOMIC GROWTH

Subtitle A—Business Activity Tax Simplification

- Sec. 101. Short title.
- Sec. 102. Removal of certain limitations on the application of Public Law 86–272.
- “Sec. 105. Removal of certain limitations on the application of Public Law 86–272.
- Sec. 103. Jurisdictional standard for State and local net income taxes and other business activity taxes.
- Sec. 104. Definitions.
- Sec. 105. Effective date.

Subtitle B—Attorney Accountability

- Sec. 121. Short title.
- Sec. 122. Attorney accountability.
- Sec. 123. Applicability of Rule 11 to State cases affecting interstate commerce.
- Sec. 124. Prevention of forum-shopping.
- Sec. 125. Rule of construction.
- Sec. 126. Three-strikes Rule for suspending attorneys who commit multiple Rule 11 violations.
- Sec. 127. Presumption of Rule 11 violation for repeatedly relitigating same issue.
- Sec. 128. Enhanced sanctions for document destruction in pending Federal court proceedings.
- Sec. 129. Ban on concealment of unlawful conduct.

TITLE II—INCREASE AMERICA’S TALENT POOL

- Sec. 201. Innovation Scholarship Program.

“SUBPART 6—INNOVATION SCHOLARSHIP PROGRAM

- “Sec. 419A. Innovation mathematics and science honors scholarship program.
- “Sec. 419B. Mathematics and science incentive program.
- “Sec. 419C. Mathematics and science education coordinating council grants.
- “Sec. 419D. Authorization of appropriations.

TITLE III—PROMOTION OF RESEARCH AND DEVELOPMENT

- Sec. 301. Short title.
- Sec. 302. Findings.
- Sec. 303. Permanent extension of research credit.
- Sec. 304. Increase in rates of alternative incremental credit.
- Sec. 305. Alternative simplified credit for qualified research expenses.

TITLE IV—INCREASE ACCESS TO AND EFFICIENCY OF HEALTH
CARE

Subtitle A—Health Care Choice

- Sec. 401. Short title of subtitle.
- Sec. 402. Specification of constitutional authority for enactment of law.

Sec. 403. Findings.

Sec. 404. Cooperative governing of individual health insurance coverage.

“PART D—COOPERATIVE GOVERNING OF INDIVIDUAL HEALTH INSURANCE
COVERAGE

“Sec. 2795. Definitions.

“Sec. 2796. Application of law.

“Sec. 2797. Primary State must meet Federal floor before issuer may sell
into secondary States.

“Sec. 2798. Enforcement.

Sec. 405. Severability.

Subtitle B—Health Information Technology Promotion

Sec. 411. Short title of subtitle.

Sec. 412. Office of the National Coordinator for Health Information Tech-
nology.

“PART D—HEALTH INFORMATION TECHNOLOGY

“Sec. 271. Office of the National Coordinator for Health Information
Technology.

Sec. 413. Safe harbors for provision of health information technology and train-
ing services to health care professionals.

Sec. 414. Uniform health information laws and regulations.

Sec. 415. Rulemaking to upgrade ASC X12 and NCPDP standards and ICD
codes.

Sec. 416. Report on the American Health Information Community.

Sec. 417. Strategic plan for coordinating implementation of health information
technology.

TITLE V—SEAMLESS MOBILITY

Sec. 501. Prohibition on impeding.

1 **TITLE I—REDUCE RED TAPE**
2 **AND CREATE OPPORTUNITIES**
3 **FOR ECONOMIC GROWTH**
4 **Subtitle A—Business Activity Tax**
5 **Simplification**

6 **SEC. 101. SHORT TITLE.**

7 This subtitle may be cited as the “Business Activity
8 Tax Simplification Act of 2006”.

1 **SEC. 102. REMOVAL OF CERTAIN LIMITATIONS ON THE AP-**
2 **PLICATION OF PUBLIC LAW 86-272.**

3 (a) SOLICITATIONS WITH RESPECT TO SALES AND
4 TRANSACTIONS OF OTHER THAN TANGIBLE PERSONAL
5 PROPERTY.—Section 101 of the Act entitled “An Act re-
6 lating to the power of the States to impose net income
7 taxes on income derived from interstate commerce, and
8 authorizing studies by congressional committees of mat-
9 ters pertaining thereto”, approved September 14, 1959
10 (15 U.S.C. 381 et seq.), is amended—

11 (1) in subsection (a)(1) by striking “of tan-
12 gible” and all that follows through “State; and” and
13 inserting the following: “or transactions, which or-
14 ders are sent outside the State for approval or rejec-
15 tion and, if approved, are—

16 “(A) in the case of tangible personal prop-
17 erty, filled by shipment or delivery from a point
18 outside the State; and

19 “(B) in the case of all other forms of prop-
20 erty, services, and other transactions, fulfilled
21 from a point outside the State;
22 and”;

23 (2) in subsection (c)—

24 (A) by inserting “or fulfilling transactions”
25 after “making sales”;

1 (B) by inserting “or transactions” after
2 “sales” the other places it appears; and

3 (C) by striking “of tangible personal prop-
4 erty” each place it appears; and

5 (3) in subsection (d)(1) by striking “the sale of,
6 tangible personal property” and inserting “a sale or
7 transaction,”.

8 (b) APPLICATION OF PROHIBITIONS TO OTHER BUSI-
9 NESS ACTIVITY TAXES.—Title I of the Act entitled “An
10 Act relating to the power of the States to impose net in-
11 come taxes on income derived from interstate commerce,
12 and authorizing studies by congressional committees of
13 matters pertaining thereto”, approved September 14,
14 1959 (15 U.S.C. 381 et seq.), is amended by adding at
15 the end the following:

16 “SEC. 105. Beginning with taxable periods beginning
17 on or after the first day of the first calendar year that
18 begins after the date of the enactment of the Business
19 Activity Tax Simplification Act of 2006, the prohibitions
20 of section 101 that apply with respect to net income taxes
21 shall also apply with respect to each other business activity
22 tax, as defined in section 104 of the Business Activity Tax
23 Simplification Act of 2006. A State or political subdivision
24 thereof may not assess or collect any tax which by reason

1 of this section the State or political subdivision may not
 2 impose.”.

3 (c) EFFECTIVE DATE OF SUBSECTION (a) AMEND-
 4 MENTS.—The amendments made by subsection (a) shall
 5 apply with respect to the imposition, assessment, and col-
 6 lection of taxes for taxable periods beginning on or after
 7 the first day of the first calendar year that begins after
 8 the date of the enactment of the Business Activity Tax
 9 Simplification Act of 2006.

10 **SEC. 103. JURISDICTIONAL STANDARD FOR STATE AND**
 11 **LOCAL NET INCOME TAXES AND OTHER BUSI-**
 12 **NESS ACTIVITY TAXES.**

13 (a) IN GENERAL.—No taxing authority of a State
 14 shall have power to impose, assess, or collect a net income
 15 tax or other business activity tax on any person relating
 16 to such person’s activities in interstate commerce unless
 17 such person has a physical presence in the State during
 18 the taxable period with respect to which the tax is im-
 19 posed.

20 (b) REQUIREMENTS FOR PHYSICAL PRESENCE.—For
 21 the purposes of subsection (a), a person has a physical
 22 presence in a State only if such person’s business activities
 23 in the State include any of the following, collectively and
 24 on more than 21 days in the aggregate, during such per-
 25 son’s taxable year:

1 (1) Being an individual physically in the State,
2 or assigning one or more employees to be in the
3 State, except that the following shall be excluded in
4 determining whether such 21-day limit has been ex-
5 ceeded:

6 (A) Activities in connection with a possible
7 or an actual purchase of goods or services, for
8 consumption by the person's business.

9 (B) Gathering news and covering events
10 for print, broadcast, or other distribution
11 through the media.

12 (C) Meeting government officials for pur-
13 poses other than selling goods or services, for
14 consumption by such government.

15 (D) Merely attending educational or train-
16 ing conferences, seminars or other similar func-
17 tions.

18 (E) Participating in charitable activities.

19 (2) Using the services of an agent (excluding an
20 employee) to establish or maintain the market in the
21 State, if such agent does not perform business serv-
22 ices in the State for any other person during such
23 taxable year.

24 (3) The leasing or owning of tangible personal
25 property or of real property in the State, except that

1 the following shall be excluded in determining wheth-
2 er such 21-day limit has been exceeded:

3 (A) Tangible personal property located in
4 the State for purposes of being assembled, man-
5 ufactured, processed, or tested by another per-
6 son for the benefit of the owner or lessee, or
7 used to furnish a service to the owner or lessee
8 by another person.

9 (B) Marketing or promotional materials
10 distributed in the State.

11 (C) Any property to the extent used ancil-
12 lary to an activity excluded from the computa-
13 tion of the 21-day period based on paragraph
14 (1) or (2).

15 (c) TAXABLE PERIODS NOT CONSISTING OF A
16 YEAR.—If the taxable period for which the tax is imposed
17 is not a year, then any requirements expressed in days
18 for establishing physical presence under this subtitle shall
19 be adjusted pro rata accordingly.

20 (d) EXCEPTIONS.—

21 (1) DOMESTIC BUSINESS ENTITIES AND INDIV-
22 IDUALS DOMICILED IN, OR RESIDENTS OF, THE
23 STATE.—Subsection (a) does not apply with respect
24 to—

1 (A) a person (other than an individual)
2 that is incorporated or formed under the laws
3 of the State (or domiciled in the State) in which
4 the tax is imposed; or

5 (B) an individual who is domiciled in, or a
6 resident of, the State in which the tax is im-
7 posed.

8 (2) TAXATION OF PARTNERS AND SIMILAR PER-
9 SONS.—This section shall not be construed to modify
10 or affect any State business activity tax liability of
11 an owner or beneficiary of an entity that is a part-
12 nership, an S corporation (as defined in section
13 1361 of the Internal Revenue Code of 1986 (26
14 U.S.C. 1361)), a limited liability company, a trust,
15 an estate, or any other similar entity, if the entity
16 has a physical presence in the State in which the tax
17 is imposed.

18 (3) PRESERVATION OF AUTHORITY.—This sec-
19 tion shall not be construed to modify, affect, or su-
20 persede the authority of a State to bring an enforce-
21 ment action against a person or entity that may be
22 engaged in an illegal activity, a sham transaction, or
23 any perceived or actual abuse in its business activi-
24 ties if such enforcement action—

1 (A) is of a kind customarily used by the
2 State; and

3 (B) does not modify, affect, or supersede
4 the operation of any provision of this subtitle or
5 of any other Federal law.

6 (4) CERTAIN ACTIVITIES.—With respect to the
7 following, subsection (b) shall be read by sub-
8 stituting “at least one day” for “more than 21 days
9 in the aggregate”:

10 (A) The sale within a State of tangible
11 personal property, if delivery of the property
12 originates and is completed within the State.

13 (B) The performance of services that phys-
14 ically affect real property within a State.

15 (5) EXCEPTION RELATING TO CERTAIN PER-
16 FORMANCES AND SPORTING EVENTS.—With respect
17 to the taxation of the following, subsection (b) shall
18 be read by substituting “at least one day” for “more
19 than 21 days in the aggregate”:

20 (A) A live performance in a State, before
21 a live audience of more than 100 individuals.

22 (B) A live sporting event in a State before
23 more than 100 spectators present at the event.

24 (e) RULE OF CONSTRUCTION.—This section shall not
25 be construed to modify, affect, or supersede the operation

1 of title I of the Act entitled “An Act relating to the power
2 of the States to impose net income taxes on income derived
3 from interstate commerce, and authorizing studies by con-
4 gressional committees of matters pertaining thereto”, ap-
5 proved September 14, 1959 (15 U.S.C. 381 et seq.).

6 **SEC. 104. DEFINITIONS.**

7 The following definitions apply in this subtitle:

8 (1) NET INCOME TAX.—The term “net income
9 tax” has the meaning given that term for the pur-
10 poses of the Act entitled “An Act relating to the
11 power of the States to impose net income taxes on
12 income derived from interstate commerce, and au-
13 thorizing studies by congressional committees of
14 matters pertaining thereto”, approved September
15 14, 1959 (15 U.S.C. 381 et seq.).

16 (2) OTHER BUSINESS ACTIVITY TAX.—

17 (A) The term “other business activity tax”
18 means—

19 (i) a tax imposed on or measured by
20 gross receipts, gross income, or gross prof-
21 its;

22 (ii) a business license tax;

23 (iii) a business and occupation tax;

24 (iv) a franchise tax;

1 (v) a single business tax or a capital
2 stock tax; or

3 (vi) any other tax imposed by a State
4 on a business for the right to do business
5 in the State or measured by the amount
6 of, or economic results of, business or re-
7 lated activity conducted in the State.

8 (B) The term “other business activity tax”
9 does not include a sales tax, a use tax, or a
10 similar tax, imposed as the result of the sale or
11 acquisition of goods or services, whether or not
12 denominated a tax imposed on the privilege of
13 doing business.

14 (3) STATE.—The term “State” means any of
15 the several States, the District of Columbia, or any
16 territory or possession of the United States, or any
17 political subdivision of any of the foregoing.

18 (4) TANGIBLE PERSONAL PROPERTY.—The
19 term “tangible personal property” does not include
20 computer software that is owned and licensed by the
21 owner to another person.

22 **SEC. 105. EFFECTIVE DATE.**

23 Except as provided otherwise in this subtitle, this
24 subtitle applies with respect to taxable periods beginning

1 on and after the first day of the first year that begins
2 after the date of enactment of this Act.

3 **Subtitle B—Attorney**
4 **Accountability**

5 **SEC. 121. SHORT TITLE.**

6 This subtitle may be cited as the “Lawsuit Abuse Re-
7 duction Act of 2006”.

8 **SEC. 122. ATTORNEY ACCOUNTABILITY.**

9 Rule 11(c) of the Federal Rules of Civil Procedure
10 is amended—

11 (1) by amending the first sentence to read as
12 follows: “If a pleading, motion, or other paper is
13 signed in violation of this rule, the court, upon mo-
14 tion or upon its own initiative, shall impose upon the
15 attorney, law firm, or parties that have violated this
16 subdivision or are responsible for the violation, an
17 appropriate sanction, which may include an order to
18 pay the other party or parties for the reasonable ex-
19 penses incurred as a direct result of the filing of the
20 pleading, motion, or other paper, that is the subject
21 of the violation, including a reasonable attorney’s
22 fee.”;

23 (2) in paragraph (1)(A)—

1 (A) by striking “Rule 5” and all that fol-
 2 lows through “corrected.” and inserting “Rule
 3 5.”; and

4 (B) by striking “the court may award”
 5 and inserting “the court shall award”; and

6 (3) in paragraph (2), by striking “shall be lim-
 7 ited to what is sufficient” and all that follows
 8 through the end of the paragraph (including sub-
 9 paragraphs (A) and (B)) and inserting “shall be suf-
 10 ficient to deter repetition of such conduct or com-
 11 parable conduct by others similarly situated, and to
 12 compensate the parties that were injured by such
 13 conduct. The sanction may consist of an order to
 14 pay to the party or parties the amount of the rea-
 15 sonable expenses incurred as a direct result of the
 16 filing of the pleading, motion, or other paper that is
 17 the subject of the violation, including a reasonable
 18 attorney’s fee.”.

19 **SEC. 123. APPLICABILITY OF RULE 11 TO STATE CASES AF-**
 20 **FFECTING INTERSTATE COMMERCE.**

21 In any civil action in State court, the court, upon mo-
 22 tion, shall determine within 30 days after the filing of such
 23 motion whether the action substantially affects interstate
 24 commerce. Such court shall make such determination
 25 based on an assessment of the costs to the interstate econ-

1 omy, including the loss of jobs, were the relief requested
2 granted. If the court determines such action substantially
3 affects interstate commerce, the provisions of Rule 11 of
4 the Federal Rules of Civil Procedure shall apply to such
5 action.

6 **SEC. 124. PREVENTION OF FORUM-SHOPPING.**

7 (a) IN GENERAL.—Subject to subsection (b), a per-
8 sonal injury claim filed in State or Federal court may be
9 filed only in the State and, within that State, in the county
10 (or if there is no State court in the county, the nearest
11 county where a court of general jurisdiction is located) or
12 Federal district in which—

13 (1) the person bringing the claim, including an
14 estate in the case of a decedent and a parent or
15 guardian in the case of a minor or incompetent—

16 (A) resides at the time of filing; or

17 (B) resided at the time of the alleged in-
18 jury;

19 (2) the alleged injury or circumstances giving
20 rise to the personal injury claim allegedly occurred;

21 (3) the defendant's principal place of business
22 is located, if the defendant is a corporation; or

23 (4) the defendant resides, if the defendant is an
24 individual.

1 (b) DETERMINATION OF MOST APPROPRIATE
2 FORUM.—If a person alleges that the injury or cir-
3 cumstances giving rise to the personal injury claim oc-
4 curred in more than one county (or Federal district), the
5 trial court shall determine which State and county (or
6 Federal district) is the most appropriate forum for the
7 claim. If the court determines that another forum would
8 be the most appropriate forum for a claim, the court shall
9 dismiss the claim. Any otherwise applicable statute of limi-
10 tations shall be tolled beginning on the date the claim was
11 filed and ending on the date the claim is dismissed under
12 this subsection.

13 (c) DEFINITIONS.—In this section:

14 (1) The term “personal injury claim”—

15 (A) means a civil action brought under
16 State law by any person to recover for a per-
17 son’s personal injury, illness, disease, death,
18 mental or emotional injury, risk of disease, or
19 other injury, or the costs of medical monitoring
20 or surveillance (to the extent such claims are
21 recognized under State law), including any de-
22 rivative action brought on behalf of any person
23 on whose injury or risk of injury the action is
24 based by any representative party, including a

1 spouse, parent, child, or other relative of such
2 person, a guardian, or an estate;

3 (B) does not include a claim brought as a
4 class action; and

5 (C) does not include a claim against a
6 debtor in a case pending under title 11 of the
7 United States Code that is a personal injury
8 tort or wrongful death claim within the mean-
9 ing of section 157(b)(5) of title 28, United
10 States Code.

11 (2) The term “person” means any individual,
12 corporation, company, association, firm, partnership,
13 society, joint stock company, or any other entity, but
14 not any governmental entity.

15 (3) The term “State” includes the District of
16 Columbia, the Commonwealth of Puerto Rico, the
17 United States Virgin Islands, Guam, and any other
18 territory or possession of the United States.

19 (d) APPLICABILITY.—This section applies to any per-
20 sonal injury claim filed in Federal or State court on or
21 after the date of the enactment of this subtitle.

22 **SEC. 125. RULE OF CONSTRUCTION.**

23 Nothing in section 123 or in the amendments made
24 by section 122 shall be construed to bar or impede the

1 assertion or development of new claims or remedies under
 2 Federal, State, or local civil rights law.

3 **SEC. 126. THREE-STRIKES RULE FOR SUSPENDING ATTOR-**
 4 **NEYS WHO COMMIT MULTIPLE RULE 11 VIO-**
 5 **LATIONS.**

6 (a) MANDATORY SUSPENSION.—Whenever a Federal
 7 district court determines that an attorney has violated
 8 Rule 11 of the Federal Rules of Civil Procedure, the court
 9 shall determine the number of times that the attorney has
 10 violated that rule in that Federal district court during that
 11 attorney’s career. If the court determines that the number
 12 is 3 or more, the Federal district court—

13 (1) shall suspend that attorney from the prac-
 14 tice of law in that Federal district court for 1 year;
 15 and

16 (2) may suspend that attorney from the prac-
 17 tice of law in that Federal district court for any ad-
 18 ditional period that the court considers appropriate.

19 (b) APPEAL; STAY.—An attorney has the right to ap-
 20 peal a suspension under subsection (a). While such an ap-
 21 peal is pending, the suspension shall be stayed.

22 (c) REINSTATEMENT.—To be reinstated to the prac-
 23 tice of law in a Federal district court after completion of
 24 a suspension under subsection (a), the attorney must first

1 petition the court for reinstatement under such procedures
2 and conditions as the court may prescribe.

3 **SEC. 127. PRESUMPTION OF RULE 11 VIOLATION FOR RE-**
4 **PEATEDLY RELITIGATING SAME ISSUE.**

5 Whenever a party presents to a Federal court a
6 pleading, written motion, or other paper, that includes a
7 claim or defense that the party has already litigated and
8 lost on the merits in any forum in final decisions not sub-
9 ject to appeal on 3 consecutive occasions, and the claim
10 or defense involves the same plaintiff and the same de-
11 fendant, there shall be a rebuttable presumption that the
12 presentation of such paper is in violation of Rule 11 of
13 the Federal Rules of Civil Procedure.

14 **SEC. 128. ENHANCED SANCTIONS FOR DOCUMENT DE-**
15 **STRUCTION IN PENDING FEDERAL COURT**
16 **PROCEEDINGS.**

17 Whoever willfully and intentionally influences, ob-
18 structs, or impedes, or attempts to influence, or obstruct,
19 or impede, a pending Federal court proceeding through
20 the willful and intentional destruction of documents
21 sought pursuant to the rules of such Federal court pro-
22 ceeding and highly relevant to that proceeding—

23 (1) shall be punished with mandatory civil sanc-
24 tions of a degree commensurate with the civil sanc-
25 tions available under Rule 11 of the Federal Rules

1 of Civil Procedure, in addition to any other civil
2 sanctions that otherwise apply; and

3 (2) shall be held in contempt of court and, if
4 an attorney, referred to one or more appropriate
5 State bar associations for disciplinary proceedings.

6 **SEC. 129. BAN ON CONCEALMENT OF UNLAWFUL CONDUCT.**

7 (a) IN GENERAL.—In any Rule 11 of the Federal
8 Rules of Civil Procedure proceeding, a court may not order
9 that a court record not be disclosed unless the court makes
10 a finding of fact that identifies the interest that justifies
11 the order and determines that that interest outweighs any
12 interest in the public health and safety that the court de-
13 termines would be served by disclosing the court record.

14 (b) APPLICABILITY.—This section applies to any
15 record formally filed with the court, but shall not include
16 any records subject to—

17 (1) the attorney-client privilege or any other
18 privilege recognized under Federal or State law that
19 grants the right to prevent disclosure of certain in-
20 formation unless the privilege has been waived; or

21 (2) applicable State or Federal laws that pro-
22 tect the confidentiality of crime victims, including
23 victims of sexual abuse.

1 **TITLE II—INCREASE AMERICA’S**
2 **TALENT POOL**

3 **SEC. 201. INNOVATION SCHOLARSHIP PROGRAM.**

4 Subpart 6 of part A of title IV is amended to read
5 as follows:

6 **“Subpart 6—Innovation Scholarship Program**

7 **“SEC. 419A. INNOVATION MATHEMATICS AND SCIENCE**
8 **HONORS SCHOLARSHIP PROGRAM.**

9 “(a) PURPOSE.—The purpose of this section is to
10 award scholarships to students who are enrolled in studies
11 leading to baccalaureate and advanced degrees in physical,
12 life, or computer sciences, mathematics, and engineering.

13 “(b) DEFINITIONS.—As used in this section—

14 “(1) the term ‘computer science’ means the
15 branch of knowledge or study of computers, includ-
16 ing such fields of knowledge or study as computer
17 hardware, computer software, computer engineering,
18 information systems, and robotics;

19 “(2) the term ‘eligible student’ means a student
20 who—

21 “(A) is a citizen of the United States;

22 “(B) is selected by the managing agent to
23 receive a scholarship;

1 “(C) is enrolled full-time in an institution
2 of higher education, other than a United States
3 service academy; and

4 “(D) has shown a commitment to and is
5 pursuing a major in studies leading to a bacca-
6 laureate, masters, or doctoral degree (or a com-
7 bination thereof) in physical, life, or computer
8 sciences, mathematics, or engineering;

9 “(3) the term ‘engineering’ means the science
10 by which the properties of matter and the sources of
11 energy in nature are made useful to humanity in
12 structures, machines, and products, as in the con-
13 struction of engines, bridges, buildings, mines, and
14 chemical plants, including such fields of knowledge
15 or study as aeronautical engineering, chemical engi-
16 neering, civil engineering, electrical engineering, in-
17 dustrial engineering, materials engineering, manu-
18 facturing engineering, and mechanical engineering;

19 “(4) the term ‘life sciences’ means the branch
20 of knowledge or study of living things, including
21 such fields of knowledge or study as biology, bio-
22 chemistry, biophysics, microbiology, genetics, physi-
23 ology, botany, zoology, ecology, and behavioral biol-
24 ogy, except that the term does not encompass social
25 psychology or the health professions;

1 “(5) the term ‘managing agent’ means an enti-
2 ty to which an award is made under subsection (c)
3 to manage a program of Mathematics and Science
4 Honors Scholarships;

5 “(6) the term ‘mathematics’ means the branch
6 of knowledge or study of numbers and the system-
7 atic treatment of magnitude, relationships between
8 figures and forms, and relations between quantities
9 expressed symbolically, including such fields of
10 knowledge or study as statistics, applied mathe-
11 matics, and operations research; and

12 “(7) the term ‘physical sciences’ means the
13 branch of knowledge or study of the material uni-
14 verse, including such fields of knowledge or study as
15 astronomy, atmospheric sciences, chemistry, earth
16 sciences, ocean sciences, physics, and planetary
17 sciences.

18 “(c) AWARD.—

19 “(1)(A) From funds authorized under section
20 419D to carry out this section, the Secretary is au-
21 thorized, through a grant or cooperative agreement,
22 to make an award to a private, non-profit organiza-
23 tion, other than an institution of higher education or
24 system of institutions of higher education, to man-
25 age, through a public and private partnership, a pro-

1 gram of Mathematics and Science Honors Scholar-
2 ships under this section.

3 “(B) The award under subparagraph (A) shall
4 be for a five-year period.

5 “(2)(A) One hundred percent of the funds
6 awarded under paragraph (1)(A) for any fiscal year
7 shall be obligated and expended solely on scholar-
8 ships to eligible students.

9 “(B) No Federal funds shall be used to provide
10 more than 50 percent of the cost of any scholarship
11 to an eligible student.

12 “(C) The maximum scholarship award shall be
13 the difference between an eligible student’s cost of
14 attendance minus any non-loan based aid such stu-
15 dent receives.

16 “(3)(A) The secretary may establish—

17 “(i) eligibility criteria for applicants for
18 managing agent, including criteria regarding fi-
19 nancial and administrative capability; and

20 “(ii) operational standards for the man-
21 aging agent, including management and per-
22 formance requirements, such as audit, record-
23 keeping, record retention, and reporting proce-
24 dures and requirements.

1 “(B) The Secretary, as necessary, may review
2 and revise any criteria, standards, and rules estab-
3 lished under this paragraph and, through the agree-
4 ment with the managing agent, see that any revi-
5 sions are implemented.

6 “(4) If the managing agent fails to meet the re-
7 quirements of this section the Secretary may termi-
8 nate the award to the managing agent.

9 “(5) The Secretary shall conduct outreach ef-
10 forts to help raise awareness of the Mathematics and
11 Science Honors Scholarships.

12 “(d) DUTIES OF THE MANAGING AGENT.—The man-
13 aging agent shall—

14 “(1) develop criteria to award Mathematics and
15 Science Honors Scholarships based on established
16 measurements available to secondary students who
17 wish to pursue degrees in physical, life, or computer
18 sciences, mathematics, and engineering;

19 “(2) establish a Mathematics and Science Hon-
20 ors Scholarship Fund in a separate, named account
21 that clearly discloses the amount of Federal and
22 non-Federal funds deposited in the account and used
23 for scholarships under this section;

1 “(3) solicit funds for scholarships and for the
2 administration of the program from non-Federal
3 sources;

4 “(4) solicit applicants for scholarships;

5 “(5) from the amounts in the Fund, award
6 scholarships to eligible students and transfer such
7 funds to the institutions of higher education that
8 they attend; and

9 “(6) annually submit to the Secretary a finan-
10 cial audit and a report on the progress of the pro-
11 gram, and such other documents as the Secretary
12 may require to determine the effective management
13 of the program.

14 “(e) APPLICATIONS.—

15 “(1) Any eligible entity that desires to be the
16 managing agent under this section shall submit an
17 application to the Secretary, in such form and con-
18 taining such information, as the Secretary may re-
19 quire.

20 “(2) Each application shall include a descrip-
21 tion of—

22 “(A) how the applicant meets or will meet
23 requirements established under subsections
24 (c)(3)(A) and (d);

1 “(B) how the applicant will solicit funds
2 for scholarships and for the administration of
3 the program from non-Federal sources;

4 “(C) how the applicant will provide nation-
5 wide outreach to inform students about the pro-
6 gram and to encourage students to pursue de-
7 grees in physical, life, or computer sciences,
8 mathematics, and engineering;

9 “(D) how the applicant will solicit applica-
10 tions for scholarships, including how the appli-
11 cant will balance efforts in urban and rural
12 areas;

13 “(E) the selection criteria based on estab-
14 lished measurements available to secondary stu-
15 dents the applicant will use to award scholar-
16 ships and to renew those awards;

17 “(F) how the applicant will inform the in-
18 stitution of higher education chosen by the re-
19 cipient of the name and scholarship amount of
20 the recipient;

21 “(G) what procedures and assurances the
22 applicant and the institution of higher edu-
23 cation that the recipient attends will use to
24 verify student eligibility, attendance, degree
25 progress, and academic performance and to de-

1 liver and account for payments to such institu-
2 tion;

3 “(H) the management (including audit and
4 accounting) procedures the applicant will use
5 for the program;

6 “(I) the human, financial, and other re-
7 sources that the applicant will need and use to
8 manage the program;

9 “(J) how the applicant will evaluate the
10 program and report to the Secretary annually;
11 and

12 “(K) a description of how the entity will
13 coordinate with, complement, and build on simi-
14 lar public and private mathematics and science
15 programs.

16 “(f) SCHOLARSHIP RECIPIENTS.—

17 “(1) A student receiving a scholarship under
18 this section shall be known as a ‘Innovation Mathe-
19 matics and Science Honors Scholar’.

20 “(2) Any student desiring to receive a scholar-
21 ship under this section shall submit an application
22 to the managing agent in such form, and containing
23 such information, as the managing agent may re-
24 quire.

1 “(3) Any student that receives a scholarship
2 under this section shall enter into an agreement with
3 the managing agent to complete 5 consecutive years
4 of service to begin no later than 12 months following
5 completion of the final degree in a position related
6 to physical, life, or computer sciences, mathematics,
7 or engineering as defined under this section.

8 “(4) If any student that receives a scholarship
9 under this section fails to earn at least a bacca-
10 laureate degree in physical, life, or computer
11 sciences, mathematics, or engineering as defined
12 under this section, the student shall repay to the
13 managing agent the amount of any financial assist-
14 ance paid to such student.

15 “(5) If any student that receives a scholarship
16 under this section fails to meet the requirements of
17 paragraph (3), the student shall repay to the man-
18 aging agent the amount of any financial assistance
19 paid to such student.

20 “(6)(A) Scholarships shall be awarded for only
21 one academic year of study at a time.

22 “(B)(i) A scholarship shall be renewable on an
23 annual basis for the established length of the aca-
24 demic program if the student awarded the scholar-
25 ship remains eligible.

1 “(ii) The managing agent may condition re-
2 newal of a scholarship on measures of academic
3 progress and achievement, with the approval of the
4 Secretary.

5 “(C)(i) If a student fails to either remain eligi-
6 ble or meet established measures of academic
7 progress and achievement, the managing agent shall
8 instruct the student’s institution of higher education
9 to suspend payment of the student’s scholarship.

10 “(ii) A suspension of payment shall remain in
11 effect until the student is able to demonstrate to the
12 satisfaction of the managing agent that he or she is
13 again eligible and meets the established measures of
14 academic progress and achievement.

15 “(iii) A student’s eligibility for a scholarship
16 shall be terminated if a suspension period exceeds
17 12 months.

18 “(D)(i)(I) A student awarded a scholarship
19 may, in a manner and under the terms established
20 by, and with the approval of, the managing agent,
21 postpone or interrupt his or her enrollment at an in-
22 stitution of higher education for up to 12 months.

23 “(II) Such a postponement or interruption shall
24 not be considered a suspension for purposes of sub-
25 paragraph (C).

1 “(ii) Neither a student nor the student’s insti-
2 tution of higher education shall receive the student’s
3 scholarship payments during the period of postpone-
4 ment or interruption, but such payments shall re-
5 sume upon enrollment or reenrollment.

6 “(iii) In exceptional circumstances, such as seri-
7 ous injury or illness or the necessity to care for fam-
8 ily members, the student’s postponement or inter-
9 ruption may, upon notification and approval of the
10 managing agent, be extended beyond the 12 month
11 period described in clause (i)(I).

12 “(g) RESPONSIBILITIES OF INSTITUTION OF HIGHER
13 EDUCATION.—

14 “(1) The managing agent shall require any in-
15 stitution of higher education that enrolls a student
16 who receives a scholarship under this section to an-
17 nually provide an assurance, prior to making any
18 payment, that the student—

19 “(A) is eligible in accordance with sub-
20 section (b)(2); and

21 “(B) has provided the institution with a
22 written commitment to attend, or is attending,
23 classes and is satisfactorily meeting the institu-
24 tion’s academic criteria for enrollment in its
25 program of study.

1 “(2)(A) The managing agent shall provide the
 2 institution of higher education with payments from
 3 the Fund for selected recipients in at least two in-
 4 stallments.

5 “(B) An institution of higher education shall re-
 6 turn prorated amounts of any scholarship payment
 7 to the managing agent, who shall deposit it in to the
 8 Fund, if a recipient declines a scholarship, does not
 9 attend courses, transfers to another institution of
 10 higher education, or becomes ineligible for a scholar-
 11 ship.

12 **“SEC. 419B. MATHEMATICS AND SCIENCE INCENTIVE PRO-**
 13 **GRAM.**

14 “(a) PROGRAM.—

15 “(1) IN GENERAL.—The Secretary is authorized
 16 to carry out a program of assuming the obligation
 17 to pay, pursuant to the provisions of this section, the
 18 interest on a loan made, insured, or guaranteed
 19 under part B or D of this title.

20 “(2) ELIGIBILITY.—The Secretary may assume
 21 interest payments under paragraph (1) only for a
 22 borrower who—

23 “(A) has submitted an application in com-
 24 pliance with subsection (d);

1 “(B) obtained one or more loans described
2 in paragraph (1) as an undergraduate student;

3 “(C) is a new borrower (within the mean-
4 ing of section 103(7) of this Act) on or after
5 the date of enactment of the College Access and
6 Opportunity Act of 2005;

7 “(D) is a highly qualified teacher of
8 science, technology, engineering or mathematics
9 at an elementary or secondary school in a high
10 need local educational agency, or is a mathe-
11 matics, science, or engineering professional; and

12 “(E) enters into an agreement with the
13 Secretary to complete 5 consecutive years of
14 service in a position described in subparagraph
15 (D), starting on the date of the agreement.

16 “(3) PRIOR INTEREST LIMITATIONS.—The Sec-
17 retary shall not make any payments for interest
18 that—

19 “(A) accrues prior to the beginning of the
20 repayment period on a loan in the case of a
21 loan made under section 428H or a Federal Di-
22 rect Unsubsidized Stafford Loan; or

23 “(B) has accrued prior to the signing of an
24 agreement under paragraph (2)(E).

1 “(4) INITIAL SELECTION.—In selecting partici-
2 pants for the program under this section, the Sec-
3 retary—

4 “(A) shall choose among eligible applicants
5 on the basis of—

6 “(i) the national security, homeland
7 security, and economic security needs of
8 the United States, as determined by the
9 Secretary, in consultation with other Fed-
10 eral agencies, including the Departments
11 of Labor, Defense, Homeland Security,
12 Commerce, and Energy, the Central Intel-
13 ligence Agency, and the National Science
14 Foundation; and

15 “(ii) the academic record or job per-
16 formance of the applicant; and

17 “(B) may choose among eligible applicants
18 on the basis of—

19 “(i) the likelihood of the applicant to
20 complete the 5-year service obligation;

21 “(ii) the likelihood of the applicant to
22 remain in science, mathematics, or engi-
23 neering after the completion of the service
24 requirement; or

1 “(iii) other relevant criteria deter-
2 mined by the Secretary.

3 “(5) AVAILABILITY SUBJECT TO APPROPRIA-
4 TIONS.—Loan interest payments under this section
5 shall be subject to the availability of appropriations.
6 If the amount appropriated for any fiscal year is not
7 sufficient to provide interest payments on behalf of
8 all qualified applicants, the Secretary shall give pri-
9 ority to those individuals on whose behalf interest
10 payments were made during the preceding fiscal
11 year.

12 “(6) REGULATIONS.—The Secretary is author-
13 ized to prescribe such regulations as may be nec-
14 essary to carry out the provisions of this section.

15 “(b) DURATION AND AMOUNT OF INTEREST PAY-
16 MENTS.—The period during which the Secretary shall pay
17 interest on behalf of a student borrower who is selected
18 under subsection (a) is the period that begins on the effec-
19 tive date of the agreement under subsection (a)(2)(E),
20 continues after successful completion of the service obliga-
21 tion, and ends on the earlier of—

22 “(1) the completion of the repayment period of
23 the loan;

24 “(2) payment by the Secretary of a total of
25 \$5,000 on behalf of the borrower;

1 “(3) if the borrower ceases to fulfill the service
2 obligation under such agreement prior to the end of
3 the 5-year period, as soon as the borrower is deter-
4 mined to have ceased to fulfill such obligation in ac-
5 cordance with regulations of the Secretary; or

6 “(4) 6 months after the end of any calendar
7 year in which the borrower’s gross income equals or
8 exceeds 4 times the national per capita disposable
9 personal income (current dollars) for such calendar
10 year, as determined on the basis of the National In-
11 come and Product Accounts Tables of the Bureau of
12 Economic Analysis of the Department of Commerce,
13 as determined in accordance with regulations pre-
14 scribed by the Secretary.

15 “(c) REPAYMENT TO ELIGIBLE LENDERS.—Subject
16 to the regulations prescribed by the Secretary by regula-
17 tion under subsection (a)(6), the Secretary shall pay to
18 each eligible lender or holder for each payment period the
19 amount of the interest that accrues on a loan of a student
20 borrower who is selected under subsection (a).

21 “(d) APPLICATION FOR REPAYMENT.—

22 “(1) IN GENERAL.—Each eligible individual de-
23 siring loan interest payment under this section shall
24 submit a complete and accurate application to the
25 Secretary at such time, in such manner, and con-

1 taining such information as the Secretary may re-
2 quire.

3 “(2) FAILURE TO COMPLETE SERVICE AGREE-
4 MENT.—Such application shall contain an agreement
5 by the individual that, if the individual fails to com-
6 plete the 5 consecutive years of service required by
7 subsection (a)(2)(E), the individual agrees to repay
8 the Secretary the amount of any interest paid by the
9 Secretary on behalf of the individual.

10 “(e) TREATMENT OF CONSOLIDATION LOANS.—A
11 consolidation loan made under section 428C of this Act,
12 or a Federal Direct Consolidation Loan made under part
13 D of title IV of this Act, may be a qualified loan for the
14 purpose of this section only to the extent that such loan
15 amount was used by a borrower who otherwise meets the
16 requirements of this section to repay—

17 “(1) a loan made under section 428 or 428H
18 of this Act; or

19 “(2) a Federal Direct Stafford Loan, or a Fed-
20 eral Direct Unsubsidized Stafford Loan, made under
21 part D of title IV of this Act.

22 “(f) PREVENTION OF DOUBLE BENEFITS.—No bor-
23 rower may, for the same service, receive a benefit under
24 both this section and—

1 “(1) any loan forgiveness program under title
2 IV of this Act; or

3 “(2) subtitle D of title I of the National and
4 Community Service Act of 1990 (42 U.S.C. 12601
5 et seq.).

6 “(g) DEFINITIONS.—As used in this section—

7 “(1) the term ‘high need local educational agen-
8 cy’ has the same meaning given such term in section
9 201(b)(4); and

10 “(2) the term ‘mathematics, science, or engi-
11 neering professional’ means a person who—

12 “(A) holds a baccalaureate, masters, or
13 doctoral degree (or a combination thereof) in
14 science, mathematics, or engineering; and

15 “(B) works in a field the Secretary deter-
16 mines is closely related to that degree, which
17 shall include working as a professor at a two-
18 or four-year institution of higher education.

19 **“SEC. 419C. MATHEMATICS AND SCIENCE EDUCATION CO-
20 ORDINATING COUNCIL GRANTS.**

21 “(a) PURPOSES.—The purposes of this section in-
22 clude—

23 “(1) supporting programs that encourage stu-
24 dents to enroll in and successfully complete bacca-

1 laureate and advanced degrees in science, tech-
2 nology, engineering, and mathematics;

3 “(2) achieving the common objective of orga-
4 nizing, leading, and implementing State-based re-
5 form agendas that support the continuing improve-
6 ment of mathematics and science education; and

7 “(3) improving collaboration in a State among
8 the State educational agency, 2-year and 4-year in-
9 stitutions of higher education, and the business com-
10 munity through the development or improvement of
11 a coordinating council.

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

13 “(1) the term ‘eligible State’ means—

14 “(A) the Governor of a State; or

15 “(B) in the case of a State for which the
16 constitution or laws of the State designate an
17 individual, entity, or agency in the State, other
18 than the Governor, to be responsible for coordi-
19 nation among segments of the State’s edu-
20 cational systems, such individual, entity, or
21 agency.

22 “(2) the term ‘mathematics and science edu-
23 cation coordinating council’ means an organization
24 that is charged by a State with coordinating mathe-
25 matics and science education in the State. Such a

1 council shall be composed of education, business,
2 and community leaders working together to increase
3 student participation and academic achievement in
4 mathematics and science.

5 “(c) STATE GRANTS.—From amounts made available
6 under section 419D for this section, the Secretary is au-
7 thorized to use not more than \$5,000,000 to award grants
8 on a competitive basis to eligible States for the purpose
9 of carrying out activities described in subsection (d).

10 “(d) USES OF FUNDS.—An eligible State that re-
11 ceives a grant under this section is authorized to use grant
12 funds to carry out one or more of the following activities:

13 “(1) In a State in which a mathematics and
14 science education coordinating council does not exist,
15 planning and establishing such a council.

16 “(2) In a State in which such a council exists,
17 reforming or expanding the activities of the council,
18 including implementing State-based reform agendas
19 that support the continuing improvement of mathe-
20 matics and science education, and support services
21 that lead to better teacher recruitment and training,
22 increased student academic achievement, and in-
23 creased student enrollment and degree attainment in
24 science, technology, engineering, and mathematics.

1 “(3) Coordinating with activities under part B
2 of title II of the Elementary and Secondary Edu-
3 cation Act of 1965 and with title II of this Act, es-
4 pecially as it pertains to the recruitment and prepa-
5 ration of highly qualified mathematics and science
6 teachers.

7 “(e) APPLICATION.—To be eligible to receive a grant
8 under this section, an eligible State shall submit an appli-
9 cation to the Secretary that—

10 “(1) describes the activities the State will carry
11 out with the funds;

12 “(2) contains a plan for continuing such activi-
13 ties once Federal funding ceases; and

14 “(3) contains such other information and assur-
15 ances as the Secretary may require.

16 “(f) CONSULTATION.—The Governor of a State, or
17 the individual, entity, or agency in the State described in
18 subsection (b)(1)(B), shall consult with the State board
19 of education, State educational agency, and the State
20 agency for higher education, as appropriate, with respect
21 to the activities assisted under this section. In the case
22 of an individual, entity, or agency described in subsection
23 (b)(1)(B), such consultation shall also include the Gov-
24 ernor.

1 “(g) CONSTRUCTION.—Nothing in this section shall
2 be construed to negate or supersede the legal authority
3 under State law of any State agency, State entity, or State
4 public official over programs that are under the jurisdic-
5 tion of the agency, entity, or official.

6 “(h) ADMINISTRATIVE PROVISIONS.—

7 “(1) IN GENERAL.—

8 “(A) Grants awarded under this section
9 shall be awarded for a period not to exceed 5
10 years.

11 “(B) A grantee may receive a grant under
12 this part only once.

13 “(C) Payments of grant funds under this
14 section shall be annual.

15 “(2) SECRETARIAL SELECTIONS.—The Sec-
16 retary shall determine which applications receive
17 funds under this section, and the amount of the
18 grant. In determining grant amounts, the Secretary
19 shall take into account the total amount of funds
20 available for all grants under this section and the
21 nature of each grant proposal, including whether
22 funds are being sought to assist in the creation of
23 a new State mathematics and science education co-
24 ordinating council or to extend the work of an exist-
25 ing council. The Secretary shall also take into ac-

1 count the equitable geographic distribution of grants
2 throughout the United States.

3 “(3) MATCHING REQUIREMENT.—Each eligible
4 State receiving a grant under this section shall pro-
5 vide, from non-Federal sources, an amount equal to
6 50 percent of the amount of the grant (in cash or
7 in kind) to carry out the activities supported by the
8 grant.

9 “(i) ACCOUNTABILITY AND EVALUATION.—

10 “(1) STATE GRANT ACCOUNTABILITY RE-
11 PORT.—An eligible State that receives a grant under
12 this section shall submit an annual accountability re-
13 port to the Secretary. Such report shall include a de-
14 scription of the degree to which the eligible State, in
15 using grant funds, has made substantial progress in
16 meeting its objectives.

17 “(2) EVALUATION AND DISSEMINATION.—The
18 Secretary shall evaluate the activities funded under
19 this section and report the Secretary’s findings re-
20 garding such activities to the authorizing commit-
21 tees. The Secretary shall broadly disseminate suc-
22 cessful practices developed by eligible States under
23 this section, and shall broadly disseminate informa-
24 tion regarding such practices that were found to be
25 ineffective.

1 “(3) REVOCATION.—If the Secretary deter-
 2 mines that an eligible State is not making substan-
 3 tial progress in meeting the purposes, objectives, and
 4 measures, as appropriate, required under this sec-
 5 tion by the end of the second year of a grant, then
 6 the grant payment shall not be made for the third
 7 year and subsequent years of the grant.

8 **“SEC. 419D. AUTHORIZATION OF APPROPRIATIONS.**

9 “There are authorized to be appropriated
 10 \$41,000,000 for fiscal year 2006 and such sums as may
 11 be necessary for each of the 5 succeeding fiscal years to
 12 carry out this subpart.”.

13 **TITLE III—PROMOTION OF**
 14 **RESEARCH AND DEVELOPMENT**

15 **SEC. 301. SHORT TITLE.**

16 This title may be cited as the “Investment in America
 17 Act of 2006”.

18 **SEC. 302. FINDINGS.**

19 The Congress finds as follows:

20 (1) Research and development performed in the
 21 United States results in quality jobs, better and
 22 safer products, increased ownership of technology-
 23 based intellectual property, and higher productivity
 24 in the United States.

1 (2) The extent to which companies perform and
 2 increase research and development activities in the
 3 United States is in part dependent on Federal tax
 4 policy.

5 (3) The Congress should make permanent a re-
 6 search and development credit that provides a mean-
 7 ingful incentive to all types of taxpayers.

8 **SEC. 303. PERMANENT EXTENSION OF RESEARCH CREDIT.**

9 (a) IN GENERAL.—Section 41 of the Internal Rev-
 10 enue Code of 1986 (relating to credit for increasing re-
 11 search activities) is amended by striking subsection (h).

12 (b) CONFORMING AMENDMENT.—Paragraph (1) of
 13 section 45C(b) of such Code is amended by striking sub-
 14 paragraph (D).

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

18 **SEC. 304. INCREASE IN RATES OF ALTERNATIVE INCRE-**
 19 **MENTAL CREDIT.**

20 (a) IN GENERAL.—Subparagraph (A) of section
 21 41(c)(4) of the Internal Revenue Code of 1986 (relating
 22 to election of alternative incremental credit) is amended—

23 (1) by striking “2.65 percent” and inserting “3
 24 percent”,

1 (2) by striking “3.2 percent” and inserting “4
2 percent”, and

3 (3) by striking “3.75 percent” and inserting “5
4 percent”.

5 (b) EFFECTIVE DATE.—The amendment made by
6 this section shall apply to taxable years ending after the
7 date of the enactment of this Act.

8 **SEC. 305. ALTERNATIVE SIMPLIFIED CREDIT FOR QUALI-**
9 **FIED RESEARCH EXPENSES.**

10 (a) IN GENERAL.—Subsection (c) of section 41 of the
11 Internal Revenue Code of 1986 (relating to base amount)
12 is amended by redesignating paragraphs (5) and (6) as
13 paragraphs (6) and (7), respectively, and by inserting
14 after paragraph (4) the following new paragraph:

15 “(5) ELECTION OF ALTERNATIVE SIMPLIFIED
16 CREDIT.—

17 “(A) IN GENERAL.—At the election of the
18 taxpayer, the credit determined under sub-
19 section (a)(1) shall be equal to 12 percent of so
20 much of the qualified research expenses for the
21 taxable year as exceeds 50 percent of the aver-
22 age qualified research expenses for the 3 tax-
23 able years preceding the taxable year for which
24 the credit is being determined.

1 “(B) SPECIAL RULE IN CASE OF NO
2 QUALIFIED RESEARCH EXPENSES IN ANY OF 3
3 PRECEDING TAXABLE YEARS.—

4 “(i) TAXPAYERS TO WHICH SUBPARA-
5 GRAPH APPLIES.—The credit under this
6 paragraph shall be determined under this
7 subparagraph if the taxpayer has no quali-
8 fied research expenses in any one of the 3
9 taxable years preceding the taxable year
10 for which the credit is being determined.

11 “(ii) CREDIT RATE.—The credit de-
12 termined under this subparagraph shall be
13 equal to 6 percent of the qualified research
14 expenses for the taxable year.

15 “(C) ELECTION.—An election under this
16 paragraph shall apply to the taxable year for
17 which made and all succeeding taxable years
18 unless revoked with the consent of the Sec-
19 retary. An election under this paragraph may
20 not be made for any taxable year to which an
21 election under paragraph (4) applies.”.

22 (b) COORDINATION WITH ELECTION OF ALTER-
23 NATIVE INCREMENTAL CREDIT.—

24 (1) IN GENERAL.—Section 41(c)(4)(B) of such
25 Code (relating to election) is amended by adding at

1 the end the following: “An election under this para-
 2 graph may not be made for any taxable year to
 3 which an election under paragraph (5) applies.”.

4 (2) TRANSITION RULE.—In the case of an elec-
 5 tion under section 41(c)(4) of the Internal Revenue
 6 Code of 1986 which applies to the taxable year
 7 which includes the date of the enactment of this Act,
 8 such election shall be treated as revoked with the
 9 consent of the Secretary of the Treasury if the tax-
 10 payer makes an election under section 41(c)(5) of
 11 such Code (as added by subsection (a)) for such
 12 year.

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

16 **TITLE IV—INCREASE ACCESS TO** 17 **AND EFFICIENCY OF HEALTH** 18 **CARE**

19 **Subtitle A—Health Care Choice**

20 **SEC. 401. SHORT TITLE OF SUBTITLE.**

21 This subtitle may be cited as “Health Care Choice
 22 Act of 2006”.

1 **SEC. 402. SPECIFICATION OF CONSTITUTIONAL AUTHORITY**
2 **FOR ENACTMENT OF LAW.**

3 This subtitle is enacted pursuant to the power grant-
4 ed Congress under article I, section 8, clause 3, of the
5 United States Constitution.

6 **SEC. 403. FINDINGS.**

7 Congress finds the following:

8 (1) The application of numerous and significant
9 variations in State law impacts the ability of insur-
10 ers to offer, and individuals to obtain, affordable in-
11 dividual health insurance coverage, thereby impeding
12 commerce in individual health insurance coverage.

13 (2) Individual health insurance coverage is in-
14 creasingly offered through the Internet, other elec-
15 tronic means, and by mail, all of which are inher-
16 ently part of interstate commerce.

17 (3) In response to these issues, it is appropriate
18 to encourage increased efficiency in the offering of
19 individual health insurance coverage through a col-
20 laborative approach by the States in regulating this
21 coverage.

22 (4) The establishment of risk-retention groups
23 has provided a successful model for the sale of insur-
24 ance across State lines, as the acts establishing
25 those groups allow insurance to be sold in multiple
26 States but regulated by a single State.

1 **SEC. 404. COOPERATIVE GOVERNING OF INDIVIDUAL**
 2 **HEALTH INSURANCE COVERAGE.**

3 (a) IN GENERAL.—Title XXVII of the Public Health
 4 Service Act (42 U.S.C. 300gg et seq.) is amended by add-
 5 ing at the end the following new part:

6 “PART D—COOPERATIVE GOVERNING OF INDIVIDUAL
 7 HEALTH INSURANCE COVERAGE

8 “DEFINITIONS

9 “SEC. 2795. In this part:

10 “(1) PRIMARY STATE.—The term ‘primary
 11 State’ means, with respect to individual health insur-
 12 ance coverage offered by a health insurance issuer,
 13 the State designated by the issuer as the State
 14 whose covered laws shall govern the health insurance
 15 issuer in the sale of such coverage under this part.
 16 An issuer, with respect to a particular policy, may
 17 only designate one such State as its primary State
 18 with respect to all such coverage it offers. Such an
 19 issuer may not change the designated primary State
 20 with respect to individual health insurance coverage
 21 once the policy is issued, except that such a change
 22 may be made upon renewal of the policy. With re-
 23 spect to such designated State, the issuer is deemed
 24 to be doing business in that State.

25 “(2) SECONDARY STATE.—The term ‘secondary
 26 State’ means, with respect to individual health insur-

1 ance coverage offered by a health insurance issuer,
2 any State that is not the primary State. In the case
3 of a health insurance issuer that is selling a policy
4 in, or to a resident of, a secondary State, the issuer
5 is deemed to be doing business in that secondary
6 State.

7 “(3) HEALTH INSURANCE ISSUER.—The term
8 ‘health insurance issuer’ has the meaning given such
9 term in section 2791(b)(2), except that such an
10 issuer must be licensed in the primary State and be
11 qualified to sell individual health insurance coverage
12 in that State.

13 “(4) INDIVIDUAL HEALTH INSURANCE COV-
14 ERAGE.—The term ‘individual health insurance cov-
15 erage’ means health insurance coverage offered in
16 the individual market, as defined in section
17 2791(e)(1).

18 “(5) APPLICABLE STATE AUTHORITY.—The
19 term ‘applicable State authority’ means, with respect
20 to a health insurance issuer in a State, the State in-
21 surance commissioner or official or officials des-
22 ignated by the State to enforce the requirements of
23 this title for the State with respect to the issuer.

24 “(6) HAZARDOUS FINANCIAL CONDITION.—The
25 term ‘hazardous financial condition’ means that,

1 based on its present or reasonably anticipated finan-
2 cial condition, a health insurance issuer is unlikely
3 to be able—

4 “(A) to meet obligations to policyholders
5 with respect to known claims and reasonably
6 anticipated claims; or

7 “(B) to pay other obligations in the normal
8 course of business.

9 “(7) COVERED LAWS.—The term ‘covered laws’
10 means the laws, rules, regulations, agreements, and
11 orders governing the insurance business pertaining
12 to—

13 “(A) individual health insurance coverage
14 issued by a health insurance issuer;

15 “(B) the offer, sale, and issuance of indi-
16 vidual health insurance coverage to an indi-
17 vidual; and

18 “(C) the provision to an individual in rela-
19 tion to individual health insurance coverage
20 of—

21 “(i) health care and insurance related
22 services;

23 “(ii) management, operations, and in-
24 vestment activities of a health insurance
25 issuer; and

1 “(iii) loss control and claims adminis-
2 tration for a health insurance issuer with
3 respect to liability for which the issuer pro-
4 vides insurance.

5 “(8) STATE.—The term ‘State’ means only the
6 50 States and the District of Columbia.

7 “(9) UNFAIR CLAIMS SETTLEMENT PRAC-
8 TICES.—The term ‘unfair claims settlement prac-
9 tices’ means only the following practices:

10 “(A) Knowingly misrepresenting to claim-
11 ants and insured individuals relevant facts or
12 policy provisions relating to coverage at issue.

13 “(B) Failing to acknowledge with reason-
14 able promptness pertinent communications with
15 respect to claims arising under policies.

16 “(C) Failing to adopt and implement rea-
17 sonable standards for the prompt investigation
18 and settlement of claims arising under policies.

19 “(D) Failing to effectuate prompt, fair,
20 and equitable settlement of claims submitted in
21 which liability has become reasonably clear.

22 “(E) Refusing to pay claims without con-
23 ducting a reasonable investigation.

24 “(F) Failing to affirm or deny coverage of
25 claims within a reasonable period of time after

1 having completed an investigation related to
2 those claims.

3 “(10) FRAUD AND ABUSE.—The term ‘fraud
4 and abuse’ means an act or omission committed by
5 a person who, knowingly and with intent to defraud,
6 commits, or conceals any material information con-
7 cerning, one or more of the following:

8 “(A) Presenting, causing to be presented
9 or preparing with knowledge or belief that it
10 will be presented to or by an insurer, a rein-
11 surer, broker or its agent, false information as
12 part of, in support of or concerning a fact ma-
13 terial to one or more of the following:

14 “(i) An application for the issuance or
15 renewal of an insurance policy or reinsur-
16 ance contract.

17 “(ii) The rating of an insurance policy
18 or reinsurance contract.

19 “(iii) A claim for payment or benefit
20 pursuant to an insurance policy or reinsur-
21 ance contract.

22 “(iv) Premiums paid on an insurance
23 policy or reinsurance contract.

1 “(v) Payments made in accordance
2 with the terms of an insurance policy or
3 reinsurance contract.

4 “(vi) A document filed with the com-
5 missioner or the chief insurance regulatory
6 official of another jurisdiction.

7 “(vii) The financial condition of an in-
8 surer or reinsurer.

9 “(viii) The formation, acquisition,
10 merger, reconsolidation, dissolution or
11 withdrawal from one or more lines of in-
12 surance or reinsurance in all or part of a
13 State by an insurer or reinsurer.

14 “(ix) The issuance of written evidence
15 of insurance.

16 “(x) The reinstatement of an insur-
17 ance policy.

18 “(B) Solicitation or acceptance of new or
19 renewal insurance risks on behalf of an insurer
20 reinsurer or other person engaged in the busi-
21 ness of insurance by a person who knows or
22 should know that the insurer or other person
23 responsible for the risk is insolvent at the time
24 of the transaction.

1 “(C) Transaction of the business of insur-
2 ance in violation of laws requiring a license, cer-
3 tificate of authority or other legal authority for
4 the transaction of the business of insurance.

5 “(D) Attempt to commit, aiding or abet-
6 ting in the commission of, or conspiracy to com-
7 mit the acts or omissions specified in this para-
8 graph.

9 “APPLICATION OF LAW

10 “SEC. 2796. (a) IN GENERAL.—The covered laws of
11 the primary State shall apply to individual health insur-
12 ance coverage offered by a health insurance issuer in the
13 primary State and in any secondary State, but only if the
14 coverage and issuer comply with the conditions of this sec-
15 tion with respect to the offering of coverage in any sec-
16 ondary State.

17 “(b) EXEMPTIONS FROM COVERED LAWS IN A SEC-
18 ONDARY STATE.—Except as provided in this section, a
19 health insurance issuer with respect to its offer, sale, re-
20 newal, and issuance of individual health insurance cov-
21 erage in any secondary State is exempt from any covered
22 laws of the secondary State (and any rules, regulations,
23 agreements, or orders sought or issued by such State
24 under or related to such covered laws) to the extent that
25 such laws would—

1 “(1) make unlawful, or regulate, directly or in-
2 directly, the operation of the health insurance issuer
3 operating in the secondary State, except that any
4 secondary State may require such an issuer—

5 “(A) to pay, on a nondiscriminatory basis,
6 applicable premium and other taxes (including
7 high risk pool assessments) which are levied on
8 insurers and surplus lines insurers, brokers, or
9 policyholders under the laws of the State;

10 “(B) to register with and designate the
11 State insurance commissioner as its agent solely
12 for the purpose of receiving service of legal doc-
13 uments or process;

14 “(C) to submit to an examination of its fi-
15 nancial condition by the State insurance com-
16 missioner in any State in which the issuer is
17 doing business to determine the issuer’s finan-
18 cial condition, if—

19 “(i) the State insurance commissioner
20 of the primary State has not done an ex-
21 amination within the period recommended
22 by the National Association of Insurance
23 Commissioners; and

24 “(ii) any such examination is con-
25 ducted in accordance with the examiners’

1 handbook of the National Association of
2 Insurance Commissioners and is coordi-
3 nated to avoid unjustified duplication and
4 unjustified repetition;

5 “(D) to comply with a lawful order
6 issued—

7 “(i) in a delinquency proceeding com-
8 menced by the State insurance commis-
9 sioner if there has been a finding of finan-
10 cial impairment under subparagraph (C);
11 or

12 “(ii) in a voluntary dissolution pro-
13 ceeding;

14 “(E) to comply with an injunction issued
15 by a court of competent jurisdiction, upon a pe-
16 tition by the State insurance commissioner al-
17 leging that the issuer is in hazardous financial
18 condition;

19 “(F) to participate, on a nondiscriminatory
20 basis, in any insurance insolvency guaranty as-
21 sociation or similar association to which a
22 health insurance issuer in the State is required
23 to belong;

24 “(G) to comply with any State law regard-
25 ing fraud and abuse (as defined in section

1 2795(10)), except that if the State seeks an in-
2 junction regarding the conduct described in this
3 subparagraph, such injunction must be obtained
4 from a court of competent jurisdiction; or

5 “(H) to comply with any State law regard-
6 ing unfair claims settlement practices (as de-
7 fined in section 2795(9));

8 “(2) require any individual health insurance
9 coverage issued by the issuer to be countersigned by
10 an insurance agent or broker residing in that Sec-
11 ondary State; or

12 “(3) otherwise discriminate against the issuer
13 issuing insurance in both the primary State and in
14 any secondary State.

15 “(c) CLEAR AND CONSPICUOUS DISCLOSURE.—A
16 health insurance issuer shall provide the following, in 12-
17 point bold type, in any insurance coverage offered in a
18 secondary State under this part by such a health insur-
19 ance issuer and at renewal of the policy, with the 5 blank
20 spaces therein being appropriately filled with the name of
21 the health insurance issuer, the name of primary State,
22 the name of the secondary State, the name of the sec-
23 ondary State, and the name of the secondary State, re-
24 spectively, for the coverage concerned:

‘Notice

1
2 **‘This policy is issued by _____ and is**
3 **governed by the laws and regulations of the**
4 **State of _____, and it has met all the laws**
5 **of that State as determined by that State’s De-**
6 **partment of Insurance. This policy may be**
7 **less expensive than others because it is not**
8 **subject to all of the insurance laws and regu-**
9 **lations of the State of _____, including**
10 **coverage of some services or benefits man-**
11 **dated by the law of the State of _____. Ad-**
12 **ditionally, this policy is not subject to all of**
13 **the consumer protection laws or restrictions**
14 **on rate changes of the State of _____. As**
15 **with all insurance products, before pur-**
16 **chasing this policy, you should carefully re-**
17 **view the policy and determine what health**
18 **care services the policy covers and what bene-**
19 **fits it provides, including any exclusions, limi-**
20 **tations, or conditions for such services or ben-**
21 **efits.’.**

22 “(d) PROHIBITION ON CERTAIN RECLASSIFICATIONS
23 AND PREMIUM INCREASES.—

24 “(1) IN GENERAL.—For purposes of this sec-
25 tion, a health insurance issuer that provides indi-

vidual health insurance coverage to an individual under this part in a primary or secondary State may not upon renewal—

“(A) move or reclassify the individual insured under the health insurance coverage from the class such individual is in at the time of issue of the contract based on the health-status related factors of the individual; or

“(B) increase the premiums assessed the individual for such coverage based on a health status-related factor or change of a health status-related factor or the past or prospective claim experience of the insured individual.

“(2) CONSTRUCTION.—Nothing in paragraph (1) shall be construed to prohibit a health insurance issuer—

“(A) from terminating or discontinuing coverage or a class of coverage in accordance with subsections (b) and (c) of section 2742;

“(B) from raising premium rates for all policy holders within a class based on claims experience;

“(C) from changing premiums or offering discounted premiums to individuals who engage in wellness activities at intervals prescribed by

1 the issuer, if such premium changes or incen-
2 tives—

3 “(i) are disclosed to the consumer in
4 the insurance contract;

5 “(ii) are based on specific wellness ac-
6 tivities that are not applicable to all indi-
7 viduals; and

8 “(iii) are not obtainable by all individ-
9 uals to whom coverage is offered;

10 “(D) from reinstating lapsed coverage; or

11 “(E) from retroactively adjusting the rates
12 charged an individual insured individual if the
13 initial rates were set based on material mis-
14 representation by the individual at the time of
15 issue.

16 “(e) PRIOR OFFERING OF POLICY IN PRIMARY
17 STATE.—A health insurance issuer may not offer for sale
18 individual health insurance coverage in a secondary State
19 unless that coverage is currently offered for sale in the
20 primary State.

21 “(f) LICENSING OF AGENTS OR BROKERS FOR
22 HEALTH INSURANCE ISSUERS.—Any State may require
23 that a person acting, or offering to act, as an agent or
24 broker for a health insurance issuer with respect to the
25 offering of individual health insurance coverage obtain a

1 license from that State, except that a State may not im-
2 pose any qualification or requirement which discriminates
3 against a nonresident agent or broker.

4 “(g) DOCUMENTS FOR SUBMISSION TO STATE IN-
5 SURANCE COMMISSIONER.—Each health insurance issuer
6 issuing individual health insurance coverage in both pri-
7 mary and secondary States shall submit—

8 “(1) to the insurance commissioner of each
9 State in which it intends to offer such coverage, be-
10 fore it may offer individual health insurance cov-
11 erage in such State—

12 “(A) a copy of the plan of operation or fea-
13 sibility study or any similar statement of the
14 policy being offered and its coverage (which
15 shall include the name of its primary State and
16 its principal place of business);

17 “(B) written notice of any change in its
18 designation of its primary State; and

19 “(C) written notice from the issuer of the
20 issuer’s compliance with all the laws of the pri-
21 mary State; and

22 “(2) to the insurance commissioner of each sec-
23 ondary State in which it offers individual health in-
24 surance coverage, a copy of the issuer’s quarterly fi-
25 nancial statement submitted to the primary State,

1 which statement shall be certified by an independent
2 public accountant and contain a statement of opin-
3 ion on loss and loss adjustment expense reserves
4 made by—

5 “(A) a member of the American Academy
6 of Actuaries; or

7 “(B) a qualified loss reserve specialist.

8 “(h) POWER OF COURTS TO ENJOIN CONDUCT.—
9 Nothing in this section shall be construed to affect the
10 authority of any Federal or State court to enjoin—

11 “(1) the solicitation or sale of individual health
12 insurance coverage by a health insurance issuer to
13 any person or group who is not eligible for such in-
14 surance; or

15 “(2) the solicitation or sale of individual health
16 insurance coverage by, or operation of, a health in-
17 surance issuer that is in hazardous financial condi-
18 tion.

19 “(i) STATE POWERS TO ENFORCE STATE LAWS.—

20 “(1) IN GENERAL.—Subject to the provisions of
21 subsection (b)(1)(G) (relating to injunctions) and
22 paragraph (2), nothing in this section shall be con-
23 strued to affect the authority of any State to make
24 use of any of its powers to enforce the laws of such

1 State with respect to which a health insurance issuer
2 is not exempt under subsection (b).

3 “(2) COURTS OF COMPETENT JURISDICTION.—

4 If a State seeks an injunction regarding the conduct
5 described in paragraphs (1) and (2) of subsection
6 (h), such injunction must be obtained from a Fed-
7 eral or State court of competent jurisdiction.

8 “(j) STATES’ AUTHORITY TO SUE.—Nothing in this
9 section shall affect the authority of any State to bring ac-
10 tion in any Federal or State court.

11 “(k) GENERALLY APPLICABLE LAWS.—Nothing in
12 this section shall be construed to affect the applicability
13 of State laws generally applicable to persons or corpora-
14 tions.

15 “PRIMARY STATE MUST MEET FEDERAL FLOOR BEFORE
16 ISSUER MAY SELL INTO SECONDARY STATES

17 “SEC. 2797. A health insurance issuer may not offer,
18 sell, or issue individual health insurance coverage in a sec-
19 ondary State if the primary State does not meet the fol-
20 lowing requirements:

21 “(1) The State insurance commissioner must
22 use a risk-based capital formula for the determina-
23 tion of capital and surplus requirements for all
24 health insurance issuers.

25 “(2) The State must have legislation or regula-
26 tions in place establishing an independent review

1 process for individuals who are covered by individual
2 health insurance coverage unless the issuer provides
3 an independent review mechanism functionally equiv-
4 alent (as determined by the primary State insurance
5 commissioner or official) to that prescribed in the
6 ‘Health Carrier External Review Model Act’ of the
7 National Association of Insurance Commissioners for
8 all individuals who purchase insurance coverage
9 under the terms of this part.

10 “ENFORCEMENT

11 “SEC. 2798. (a) IN GENERAL.—Subject to subsection
12 (b), with respect to specific individual health insurance
13 coverage the primary State for such coverage has sole ju-
14 risdiction to enforce the primary State’s covered laws in
15 the primary State and any secondary State.

16 “(b) SECONDARY STATE’S AUTHORITY.—Nothing in
17 subsection (a) shall be construed to affect the authority
18 of a secondary State to enforce its laws as set forth in
19 the exception specified in section 2796(b)(1).

20 “(c) COURT INTERPRETATION.—In reviewing action
21 initiated by the applicable secondary State authority, the
22 court of competent jurisdiction shall apply the covered
23 laws of the primary State.

24 “(d) NOTICE OF COMPLIANCE FAILURE.—In the case
25 of individual health insurance coverage offered in a sec-
26 ondary State that fails to comply with the covered laws

1 of the primary State, the applicable State authority of the
 2 secondary State may notify the applicable State authority
 3 of the primary State.”.

4 (b) EFFECTIVE DATE.—The amendment made by
 5 subsection (a) shall apply to individual health insurance
 6 coverage offered, issued, or sold after the date of the en-
 7 actment of this Act.

8 **SEC. 405. SEVERABILITY.**

9 If any provision of this subtitle or the application of
 10 such provision to any person or circumstance is held to
 11 be unconstitutional, the remainder of this subtitle and the
 12 application of the provisions of such to any other person
 13 or circumstance shall not be affected.

14 **Subtitle B—Health Information**
 15 **Technology Promotion**

16 **SEC. 411. SHORT TITLE OF SUBTITLE.**

17 This subtitle may be cited as the “Health Informa-
 18 tion Technology Promotion Act of 2006”.

19 **SEC. 412. OFFICE OF THE NATIONAL COORDINATOR FOR**
 20 **HEALTH INFORMATION TECHNOLOGY.**

21 (a) IN GENERAL.—Title II of the Public Health Serv-
 22 ice Act is amended by adding at the end the following new
 23 part:

1 “PART D—HEALTH INFORMATION TECHNOLOGY

2 “OFFICE OF THE NATIONAL COORDINATOR FOR HEALTH
3 INFORMATION TECHNOLOGY

4 “SEC. 271. (a) ESTABLISHMENT.—There is estab-
5 lished within the Department of Health and Human Serv-
6 ices an Office of the National Coordinator for Health In-
7 formation Technology that shall be headed by the National
8 Coordinator for Health Information Technology (referred
9 to in this section as the ‘National Coordinator’). The Na-
10 tional Coordinator shall be appointed by the President and
11 shall report directly to the Secretary. The National Coor-
12 dinator shall be paid at a rate equal to the rate of basic
13 pay for level IV of the Executive Schedule.

14 “(b) GOALS OF NATIONWIDE INTEROPERABLE
15 HEALTH INFORMATION TECHNOLOGY INFRASTRUC-
16 TURE.—The National Coordinator shall perform the du-
17 ties under subsection (c) in a manner consistent with the
18 development of a nationwide interoperable health informa-
19 tion technology infrastructure that—

20 “(1) improves health care quality, reduces med-
21 ical errors, increases the efficiency of care, and ad-
22 vances the delivery of appropriate, evidence-based
23 health care services;

24 “(2) promotes wellness, disease prevention, and
25 management of chronic illnesses by increasing the

1 availability and transparency of information related
2 to the health care needs of an individual for such in-
3 dividual;

4 “(3) ensures that appropriate information nec-
5 essary to make medical decisions is available in a us-
6 able form at the time and in the location that the
7 medical service involved is provided;

8 “(4) produces greater value for health care ex-
9 penditures by reducing health care costs that result
10 from inefficiency, medical errors, inappropriate care,
11 and incomplete information;

12 “(5) promotes a more effective marketplace,
13 greater competition, greater systems analysis, in-
14 creased choice, enhanced quality, and improved out-
15 comes in health care services;

16 “(6) improves the coordination of information
17 and the provision of such services through an effec-
18 tive infrastructure for the secure and authorized ex-
19 change and use of health care information; and

20 “(7) ensures that the confidentiality of individ-
21 ually identifiable health information of a patient is
22 secure and protected.

23 “(c) DUTIES OF NATIONAL COORDINATOR.—

24 “(1) STRATEGIC PLANNER FOR INTEROPER-
25 ABLE HEALTH INFORMATION TECHNOLOGY.—The

1 National Coordinator shall maintain, direct, and
2 oversee the continuous improvement of a strategic
3 plan to guide the nationwide implementation of
4 interoperable health information technology in both
5 the public and private health care sectors consistent
6 with subsection (b).

7 “(2) PRINCIPAL ADVISOR TO HHS.—The Na-
8 tional Coordinator shall serve as the principal advi-
9 sor of the Secretary on the development, application,
10 and use of health information technology, and co-
11 ordinate the health information technology programs
12 of the Department of Health and Human Services.

13 “(3) COORDINATOR OF FEDERAL GOVERNMENT
14 ACTIVITIES.—

15 “(A) IN GENERAL.—The National Coordi-
16 nator shall serve as the coordinator of Federal
17 Government activities relating to health infor-
18 mation technology.

19 “(B) SPECIFIC COORDINATION FUNC-
20 TIONS.—In carrying out subparagraph (A), the
21 National Coordinator shall provide for—

22 “(i) the development and approval of
23 standards used in the electronic creation,
24 maintenance, or exchange of health infor-
25 mation; and

1 “(ii) the certification and inspection of
2 health information technology products, ex-
3 changes, and architectures to ensure that
4 such products, exchanges, and architec-
5 tures conform to the applicable standards
6 approved under clause (i).

7 “(C) USE OF PRIVATE ENTITIES.—The
8 National Coordinator shall, to the maximum ex-
9 tent possible, contract with or recognize private
10 entities in carrying out subparagraph (B).

11 “(D) UNIFORM APPLICATION OF STAND-
12 ARDS.—A standard approved under subpara-
13 graph (B)(i) for use in the electronic creation,
14 maintenance, or exchange of health information
15 shall preempt a standard adopted under State
16 law, regulation, or rule for such a use.

17 “(4) INTRAGOVERNMENTAL COORDINATOR.—
18 The National Coordinator shall ensure that health
19 information technology policies and programs of the
20 Department of Health and Human Services are co-
21 ordinated with those of relevant executive branch
22 agencies and departments with a goal to avoid dupli-
23 cation of effort and to ensure that each agency or
24 department conducts programs within the areas of
25 its greatest expertise and its mission in order to cre-

1 ate a national interoperable health information sys-
2 tem capable of meeting national public health needs
3 effectively and efficiently.

4 “(5) ADVISOR TO OMB.—The National Coordi-
5 nator shall provide to the Director of the Office of
6 Management and Budget comments and advice with
7 respect to specific Federal health information tech-
8 nology programs.

9 “(d) AUTHORIZATION OF APPROPRIATIONS.—There
10 are authorized to be appropriated such sums as may be
11 necessary to carry out this section for each of fiscal years
12 2007 through 2011.”.

13 (b) TREATMENT OF EXECUTIVE ORDER 13335.—Ex-
14 ecutive Order 13335 shall not have any force or effect
15 after the date of the enactment of this Act.

16 (c) TRANSITION FROM ONCHIT UNDER EXECUTIVE
17 ORDER.—

18 (1) IN GENERAL.—All functions, personnel, as-
19 sets, liabilities, administrative actions, and statutory
20 reporting requirements applicable to the old Na-
21 tional Coordinator or the Office of the old National
22 Coordinator on the date before the date of the enact-
23 ment of this Act shall be transferred, and applied in
24 the same manner and under the same terms and
25 conditions, to the new National Coordinator and the

1 Office of the new National Coordinator as of the
2 date of the enactment of this Act.

3 (2) ACTING NATIONAL COORDINATOR.—Before
4 the appointment of the new National Coordinator,
5 the old National Coordinator shall act as the Na-
6 tional Coordinator for Health Information Tech-
7 nology until the office is filled as provided in section
8 271(a) of the Public Health Service Act, as added
9 by subsection (a). The President may appoint the
10 old National Coordinator as the new National Coor-
11 dinator.

12 (3) DEFINITIONS.—For purposes of this sub-
13 section:

14 (A) NEW NATIONAL COORDINATOR.—The
15 term “new National Coordinator” means the
16 National Coordinator for Health Information
17 Technology appointed under section 271(a) of
18 the Public Health Service Act, as added by sub-
19 section (a).

20 (B) OLD NATIONAL COORDINATOR.—The
21 term “old National Coordinator” means the
22 National Coordinator for Health Information
23 Technology appointed under Executive Order
24 13335.

1 **SEC. 413. SAFE HARBORS FOR PROVISION OF HEALTH IN-**
2 **FORMATION TECHNOLOGY AND TRAINING**
3 **SERVICES TO HEALTH CARE PROFES-**
4 **SIONALS.**

5 (a) FOR CIVIL PENALTIES.—Section 1128A(b) of the
6 Social Security Act (42 U.S.C. 1320a–7a(b)) is amended
7 by adding at the end the following new paragraph:

8 “(4)(A) For purposes of this subsection, a payment
9 described in paragraph (1) does not include any nonmone-
10 tary remuneration (in the form of health information tech-
11 nology and related training services) made by an entity
12 to a physician if—

13 “(i) such remuneration is made without a con-
14 dition that—

15 “(I) limits or restricts the use of the health
16 information technology to services provided by
17 the physician to individuals receiving services at
18 the entity;

19 “(II) limits or restricts the use of the
20 health information technology in conjunction
21 with other health information technology; or

22 “(III) takes into account the volume or
23 value of referrals (or other business generated)
24 by the physician to the entity;

25 “(ii) in the case of such remuneration made on
26 a date that is on or after the date described in sec-

1 tion 413(d)(2) of the Health Information Tech-
2 nology Promotion Act of 2006, to the extent the Na-
3 tional Coordinator of Health Information Tech-
4 nology has approved a standard under section
5 271(c)(3)(B)(i) of the Public Health Service Act, the
6 health information technology provided conforms to
7 such standard;

8 “(iii) in the case of such remuneration made on
9 or after the date that is three years after the date
10 described in section 413(d)(2) of the Health Infor-
11 mation Technology Promotion Act of 2006, if the
12 Secretary establishes criteria under section
13 413(e)(3) of such Act, such remuneration is made in
14 accordance with such criteria; and

15 “(iv) such remuneration is arranged for in a
16 written agreement that is signed by a representative
17 of the entity and by the physician and that specifies
18 the remuneration made.

19 “(B) For purposes of subparagraph (A) and sections
20 1128B(b)(3)(J) and 1877(e)(9), the term ‘health informa-
21 tion technology’ means hardware, software, license, right,
22 intellectual property, equipment, or other information
23 technology used primarily for the electronic creation,
24 maintenance, and exchange of clinical health information
25 to improve health care quality or efficiency.”.

1 (b) FOR CRIMINAL PENALTIES.—Section
2 1128B(b)(3) of such Act (42 U.S.C. 1320a–7b(b)(3)) is
3 amended—

4 (1) in subparagraph (G), by striking “and” at
5 the end;

6 (2) in the subparagraph (H) added by section
7 237(d) of the Medicare Prescription Drug, Improve-
8 ment, and Modernization Act of 2003 (Public Law
9 108–173; 117 Stat. 2213)—

10 (A) by moving such subparagraph 2 ems to
11 the left; and

12 (B) by striking the period at the end and
13 inserting a semicolon;

14 (3) in the subparagraph (H) added by section
15 431(a) of such Act (117 Stat. 2287)—

16 (A) by redesignating such subparagraph as
17 subparagraph (I);

18 (B) by moving such subparagraph 2 ems
19 to the left; and

20 (C) by striking the period at the end and
21 inserting “; and”; and

22 (4) by adding at the end the following new sub-
23 paragraph:

24 “(J) any nonmonetary remuneration (in the
25 form of health information technology, as defined in

1 section 1128A(b)(4)(B), and related training serv-
2 ices) made to a person if—

3 “(i) such remuneration is solicited or re-
4 ceived (or offered or paid) without a condition
5 that—

6 “(I) limits or restricts the use of the
7 health information technology to services
8 provided by the person to individuals re-
9 ceiving services at the location of the entity
10 providing such technology;

11 “(II) limits or restricts the use of the
12 health information technology in conjunc-
13 tion with other health information tech-
14 nology; or

15 “(III) takes into account the volume
16 or value of referrals (or other business
17 generated) by the person to the entity pro-
18 viding such technology;

19 “(ii) in the case of such remuneration
20 made on a date that is on or after the date de-
21 scribed in section 413(d)(2) of the Health In-
22 formation Technology Promotion Act of 2006,
23 to the extent the National Coordinator of
24 Health Information Technology has approved a
25 standard under section 271(c)(3)(B)(i) of the

1 Public Health Service Act, the health informa-
 2 tion technology provided conforms to such
 3 standard;

4 “(iii) in the case of such remuneration
 5 made on or after the date that is three years
 6 after the date described in section 413(d)(2) of
 7 the Health Information Technology Promotion
 8 Act of 2006, if the Secretary establishes criteria
 9 under section 413(e)(3) of such Act, such remu-
 10 neration is made in accordance with such cri-
 11 teria; and

12 “(iv) such remuneration is arranged for in
 13 a written agreement that is signed by the par-
 14 ties involved and that specifies the remunera-
 15 tion solicited or received (or offered or paid).”.

16 (c) FOR LIMITATION ON CERTAIN PHYSICIAN RE-
 17 FERRALS.—Section 1877(e) of such Act (42 U.S.C.
 18 1395nn(e)) is amended by adding at the end the following
 19 new paragraph:

20 “(9) INFORMATION TECHNOLOGY AND TRAIN-
 21 ING SERVICES.—Any nonmonetary remuneration (in
 22 the form of health information technology, as de-
 23 fined in section 1128A(b)(4)(B), and related train-
 24 ing services) made by an entity to a physician if—

1 “(A) such remuneration is made without a
2 condition that—

3 “(i) limits or restricts the use of the
4 health information technology to services
5 provided by the physician to individuals re-
6 ceiving services at the location of the entity
7 providing such technology;

8 “(ii) limits or restricts the use of the
9 health information technology in conjunc-
10 tion with other health information tech-
11 nology; or

12 “(iii) takes into account the volume or
13 value of referrals (or other business gen-
14 erated) by the physician to the entity pro-
15 viding such technology;

16 “(B) in the case of such remuneration
17 made on a date that is on or after the date de-
18 scribed in section 413(d)(2) of the Health In-
19 formation Technology Promotion Act of 2006,
20 to the extent the National Coordinator of
21 Health Information Technology has approved a
22 standard under section 271(c)(3)(B)(i) of the
23 Public Health Service Act, the health informa-
24 tion technology provided conforms to such
25 standard;

1 “(C) in the case of such remuneration
2 made on or after the date that is three years
3 after the date described in section 413(d)(2) of
4 the Health Information Technology Promotion
5 Act of 2006, if the Secretary establishes criteria
6 under section 413(e)(3) of such Act, such remuneration is made in accordance with such criteria; and

9 “(D) such remuneration is arranged for in
10 a written agreement that is signed by a representative of the entity and by the physician
11 and that specifies the remuneration made.”.

12
13 (d) REGULATION, EFFECTIVE DATE, AND EFFECT
14 ON STATE LAWS.—

15 (1) REGULATIONS.—Not later than 180 days
16 after the date of the enactment of this Act, the Secretary of Health and Human Services shall promulgate such regulations as may be necessary to carry
17 out the provisions of this section.

18
19 (2) EFFECTIVE DATE.—The amendments made
20 by this section shall take effect on the date that is
21 180 days after the date of the enactment of this Act.

22
23 (3) PREEMPTION OF STATE LAWS.—No State
24 (as defined in section 414(a)(3)) shall have in effect
25 a State law that imposes a criminal or civil penalty

1 for a transaction described in section 1128A(b)(4);
2 1128B(b)(3)(J); or 1877(e)(9) of the Social Security
3 Act, as added by this section, if the conditions de-
4 scribed in the respective section, with respect to such
5 transaction, are met.

6 (e) STUDY AND REPORT TO ASSESS EFFECT OF
7 SAFE HARBORS ON HEALTH SYSTEM.—

8 (1) IN GENERAL.—The Secretary of Health and
9 Human Services shall conduct a study to determine
10 the impact of each of the safe harbors described in
11 paragraph (4). In particular, the study shall examine
12 the following:

13 (A) The effectiveness of each safe harbor
14 in increasing the adoption of health information
15 technology.

16 (B) The types of health information tech-
17 nology provided under each safe harbor.

18 (C) The extent to which the financial or
19 other business relationships between providers
20 under each safe harbor have changed as a re-
21 sult of the safe harbor in a way that adversely
22 affects the health care system or choices avail-
23 able to consumers.

24 (2) REPORT.—Not later than three years after
25 the effective date described in subsection (d)(2), the

1 Secretary of Health and Human Services shall sub-
2 mit to Congress a report on the study under para-
3 graph (1) and shall include such recommendations
4 for changes in the safe harbors as the Secretary de-
5 termines may be appropriate.

6 (3) UPDATED CRITERIA FOR PERMISSIBLE
7 HEALTH INFORMATION TECHNOLOGY REMUNERA-
8 TION UNDER SAFE HARBORS.—Not later than three
9 years after the effective date described in subsection
10 (d)(2), the Secretary of Health and Human Services
11 may issue regulations that establish updated criteria
12 for nonmonetary remuneration (in the form of
13 health information technology and related training
14 services) for purposes of the safe harbors described
15 in paragraph (4). Such criteria may be based on the
16 extent to which the health information technology
17 conforms to a standard developed under section
18 271(c)(3)(B)(i) of the Public Health Service Act, as
19 added by section 412, only to the extent that such
20 standard is recognized by the National Coordinator
21 of Health Information Technology under such sec-
22 tion 271(c)(3)(B)(i).

23 (4) SAFE HARBORS DESCRIBED.—For purposes
24 of paragraphs (1) and (3), the safe harbors de-
25 scribed in this paragraph are—

1 (A) the safe harbor under section
 2 1128A(b)(4) of the Social Security Act (42
 3 U.S.C. 1320a–7a(b)(4)), as added by subsection
 4 (a);

5 (B) the safe harbor under section
 6 1128B(b)(3)(J) of such Act (42 U.S.C. 1320a–
 7 7b(b)(3)(J)), as added by subsection (b); and

8 (C) the safe harbor under section
 9 1877(e)(9) of such Act (42 U.S.C.
 10 1395nn(e)(9)), as added by subsection (c).

11 **SEC. 414. UNIFORM HEALTH INFORMATION LAWS AND REG-**
 12 **ULATIONS.**

13 (a) STUDY TO DETERMINE EXTENT OF VARIATION
 14 IN STATE HEALTH INFORMATION LAWS AND REGULA-
 15 TIONS.—

16 (1) IN GENERAL.—The Secretary of Health and
 17 Human Services shall conduct a study of State secu-
 18 rity and confidentiality laws and current Federal se-
 19 curity and confidentiality standards to determine—

20 (A) the degree to which such State laws
 21 vary among States, and between the States and
 22 such current Federal standards;

23 (B) how any such variation may adversely
 24 impact the security and confidentiality of indi-
 25 vidually identifiable health information and the

1 electronic exchange of clinical health informa-
2 tion among States, the Federal government,
3 and private entities; and

4 (C) the strengths and weaknesses of such
5 State laws and of such current Federal stand-
6 ards for purposes of protecting the security and
7 confidentiality of individually identifiable health
8 information while also taking into account the
9 need for timely and efficient exchanges of
10 health information to improve quality of care
11 and ensure the availability of health informa-
12 tion necessary to make medical decisions at the
13 the location in which the medical care involved
14 is provided.

15 (2) REPORT.—Not later than 18 months after
16 the date of the enactment of this Act, the Secretary
17 of Health and Human Services shall submit to Con-
18 gress a report on the study under paragraph (1) and
19 shall include in such report—

20 (A) a determination by the Secretary
21 whether State security and confidentiality laws
22 and current Federal security and confidentiality
23 standards should be conformed to create a sin-
24 gle set of national standards to preserve and
25 protect the security and confidentiality of pa-

1 tient health information in order to improve
2 health care quality and efficiency; and

3 (B) if the Secretary determines such State
4 laws and such current Federal standards should
5 be conformed to create such a single set of na-
6 tional standards, what the single set of stand-
7 ards should be.

8 (3) DEFINITIONS.—For purposes of this sub-
9 section:

10 (A) STATE SECURITY AND CONFIDEN-
11 TIALITY LAWS.—The term “State security and
12 confidentiality laws” means State laws and reg-
13 ulations relating to the privacy and confiden-
14 tiality of individually identifiable health infor-
15 mation or to the security of such information.

16 (B) CURRENT FEDERAL SECURITY AND
17 CONFIDENTIALITY STANDARDS.—The term
18 “current Federal security and confidentiality
19 standards” means the Federal privacy stand-
20 ards established pursuant to section 264(c) of
21 the Health Insurance Portability and Account-
22 ability Act of 1996 (42 U.S.C. 1320d–2 note)
23 and security standards established under sec-
24 tion 1173(d) of the Social Security Act.

1 (C) STATE.—The term “State” has the
 2 meaning given such term when used in title XI
 3 of the Social Security Act, as provided under
 4 section 1101(a) of such Act (42 U.S.C.
 5 1301(a)).

6 (b) ESTABLISHMENT OF UNIFORM CONFIDEN-
 7 TIALITY AND SECURITY STANDARDS.—

8 (1) IN GENERAL.—Section 1178(a) of the So-
 9 cial Security Act (42 U.S.C. 1320d–7(a)), is amend-
 10 ed—

11 (A) in paragraph (1), by inserting after
 12 “Except as provided in paragraph (2)” the fol-
 13 lowing: “and subject to paragraph (3)”;

14 (B) in paragraph (2), by striking “A provi-
 15 sion” and inserting “Subject to paragraph
 16 (3)(B), a provision”; and

17 (C) by adding at the end the following new
 18 paragraph:

19 “(3) UNIFORM NATIONAL STANDARDS.—

20 “(A) IN GENERAL.—

21 “(i) CREATING UNIFORM NATIONAL
 22 STANDARDS.—If the conditions under
 23 clause (ii) are met, then the regulation and
 24 standards described in subparagraph (C)
 25 shall become the single set of national

standards to preserve and protect the security and confidentiality of individually identifiable patient health information in order to improve health care quality and efficiency and supersede the current Federal security and confidentiality standards and State security and confidentiality laws, as defined in section 414(a)(3) of the Health Information Technology Promotion Act of 2006.

“(ii) CONDITIONS.—For purposes of clause (i), the conditions under this clause are the following:

“(I) DETERMINATION OF NEED FOR SINGLE SET OF STANDARDS.—

The Secretary determines under section 414(a)(2)(A) of the Health Information Technology Promotion Act of 2006 that State security and confidentiality laws and current Federal security and confidentiality standards should be conformed to create a single set of national standards to preserve and protect the security and confidentiality of individually identifiable pa-

1 tient health information in order to
2 improve health care quality and effi-
3 ciency.

4 “(II) SECRETARY SPECIFIES
5 STANDARDS.—The Secretary specifies
6 that the regulation and standards de-
7 scribed in subparagraph (C) should be
8 the single set of national standards.

9 “(III) NO LEGISLATION ESTAB-
10 LISHING STANDARDS.—Legislation
11 creating a single set of national stand-
12 ards and preempting State security
13 and confidentiality laws is not enacted
14 by the date that is 36 months after
15 the date of the enactment of the
16 Health Information Technology Pro-
17 motion Act of 2006.

18 “(B) NARROWING OF PREEMPTION EXCEP-
19 TIONS.—

20 “(i) SUBSEQUENT LEGISLATION.—If
21 legislation described in subparagraph (A)
22 is enacted by the date described in such
23 subparagraph, as of the date of enactment
24 of such legislation paragraph (2) shall be
25 superseded by such exceptions as may be

1 provided for in such legislation. It is the
2 intent of Congress that such exceptions be
3 as narrow as possible to maximize the uni-
4 form application of the regulation and
5 standards described in subparagraph (C).

6 “(ii) NO LEGISLATION.—If legislation
7 described in subparagraph (A) is not en-
8 acted by the date described in such sub-
9 paragraph, paragraph (2) shall be super-
10 seded by such exceptions as may be pro-
11 vided for by the Secretary by regulation
12 issued in connection with the regulation
13 and standards described in subparagraph
14 (C). It is the intent of Congress that such
15 exceptions be as narrow as possible to
16 maximize the uniform application of the
17 regulation and standards described in sub-
18 paragraph (C).

19 “(C) APPLICATION OF UNIFORM STAND-
20 ARDS.—The regulation and standards described
21 in this subparagraph are the regulation promul-
22 gated under section 264(c)(1) of the Health In-
23 surance Portability and Accountability Act of
24 1996 (42 U.S.C. 1320d–2 note) and standards
25 under section 1173(d), as modified by the Sec-

retary to the extent the Secretary determines, after consideration of the results of the study conducted under section 414(a) of the Health Information Technology Promotion Act of 2006, necessary to promote uniformity and efficiency in the application of confidentiality and security standards with respect to individually identifiable health information.”.

(2) HIPAA CONFORMING AMENDMENT.—Section 264(c)(2) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note) is amended by striking “A regulation” and inserting “(A) Subject to section 1178(a)(3) of the Social Security Act, a regulation”.

SEC. 415. RULEMAKING TO UPGRADE ASC X12 AND NCPDP STANDARDS AND ICD CODES.

(a) IN GENERAL.—Not later than April 1, 2007, the Secretary of Health and Human Services shall promulgate a final rule under section 1174(b) of the Social Security Act (42 U.S.C. 1320d–3(b)) to provide for the following modification of standards:

(1) ACCREDITED STANDARDS COMMITTEE X12 (ASC X12) STANDARD.—The replacement of the Accredited Standards Committee X12 (ASC X12) version 4010 adopted under section 1173(a) of such

1 Act (42 U.S.C. 1320d–2(a)), including for purposes
2 of part A of title XVIII of such Act, with the ASC
3 X12 version 5010, as reviewed by the National Com-
4 mittee on Vital Health Statistics.

5 (2) NATIONAL COUNCIL FOR PRESCRIPTION
6 DRUG PROGRAMS (NCPDP) TELECOMMUNICATIONS
7 STANDARDS.—The replacement of the National
8 Council for Prescription Drug Programs (NCPDP)
9 Telecommunications Standards version 5.1 adopted
10 under section 1173(a) of such Act (42 U.S.C.
11 1320d–2(a)), including for purposes of part A of
12 title XVIII of such Act, with NCPDP Telecommuni-
13 cations Standards version C.3, as approved by such
14 Council and reviewed by the National Committee on
15 Vital Health Statistics.

16 (3) ICD CODES.—The replacement of the Inter-
17 national Statistical Classification of Diseases and
18 Related Health Problems, 9th revision, Clinical
19 Modification (ICD–9–CM) under the regulation pro-
20 mulgated under section 1173(c) of such Act (42
21 U.S.C. 1320d–2(c)), including for purposes of part
22 A of title XVIII of such Act, with both of the fol-
23 lowing:

24 (A) The International Statistical Classi-
25 fication of Diseases and Related Health Prob-

1 lems, 10th revision, Clinical Modification (ICD–
2 10–CM).

3 (B) The International Statistical Classi-
4 fication of Diseases and Related Health Prob-
5 lems, 10th revision, Procedure Coding System
6 (ICD–10–PCS).

7 (b) RULE OF CONSTRUCTION.—Nothing in sub-
8 section (a)(3) shall be construed as affecting the applica-
9 tion of classification methodologies or codes, such as CPT
10 or HCPCS codes, other than under the International Sta-
11 tistical Classification of Diseases and Related Health
12 Problems (ICD).

13 (c) NOTICE.—Not later than 30 days after the date
14 of the enactment of this Act, the Secretary of Health and
15 Human Services shall publish in the Federal Register a
16 notice of the requirements to promulgate final rules under
17 subsection (a). Such notice shall include—

18 (1) the respective date by which each such rule
19 must be promulgated under such subsection;

20 (2) the respective compliance date described in
21 subsection (e) for each such rule; and

22 (3) a statement that entities covered under the
23 Health Insurance Portability and Accountability Act
24 of 1996 and health information technology vendors
25 should plan for the implementation of upgraded ASC

1 X12, NCPDP, and ICD codes under such sub-
2 section.

3 (d) NO JUDICIAL REVIEW.—The final rules promul-
4 gated under subsections (a) shall not be subject to judicial
5 review.

6 (e) COMPLIANCE WITH UPGRADED STANDARDS.—
7 For purposes of section 1175(b)(2) of the Social Security
8 Act (42 U.S.C. 1320d–4(b)(2))—

9 (1) ASC X12 AND NCPDP STANDARDS.—The
10 final rules promulgated under paragraphs (1) and
11 (2) of subsection (a) shall apply to transactions oc-
12 ccurring on or after April 1, 2009.

13 (2) ICD CODES.—The final rule promulgated
14 under paragraph (3) of subsection (a) shall apply to
15 transactions occurring on or after October 1, 2009.

16 **SEC. 416. REPORT ON THE AMERICAN HEALTH INFORMA-**
17 **TION COMMUNITY.**

18 Not later than two years after the date of the enact-
19 ment of this Act, the Secretary of Health and Human
20 Services shall submit to Congress a report on the work
21 conducted by the American Health Information Commu-
22 nity (in this section referred to as “AHIC”), as established
23 by the Secretary. Such report shall include the following:

24 (1) A description of the accomplishments of
25 AHIC, with respect to the promotion of the develop-

1 ment of a nationwide health information network
2 and the increased adoption of health information
3 technology.

4 (2) Information identifying the practices that
5 are used to protect health information and to guar-
6 antee confidentiality and security of such informa-
7 tion.

8 (3) Information on the progress in—

9 (A) establishing uniform industry-wide
10 health information technology standards;

11 (B) achieving an internet-based nationwide
12 health information network; and

13 (C) achieving interoperable electronic
14 health record adoption across health care pro-
15 viders.

16 (4) Recommendations for the transition of the
17 AHIC to a permanent advisory entity, including—

18 (A) a schedule for such transition;

19 (B) options for structuring the entity as ei-
20 ther a public-private or private sector entity;

21 (C) the role of the Federal Government in
22 the entity; and

23 (D) the ongoing responsibilities of the enti-
24 ty, such as in establishing standards, certifying
25 health information technology, and providing

1 long-term governance for health care trans-
2 formation.

3 **SEC. 417. STRATEGIC PLAN FOR COORDINATING IMPLE-**
4 **MENTATION OF HEALTH INFORMATION**
5 **TECHNOLOGY.**

6 (a) IN GENERAL.—Not later than 180 days after the
7 date of the enactment of this Act, the Secretary of Health
8 and Human Services, in consultation with entities involved
9 in the area of health information technology, shall develop
10 a strategic plan related to the need for coordination in
11 such area.

12 (b) COORDINATION OF SPECIFIC IMPLEMENTATION
13 PROCESSES.—The strategic plan under subsection (a)
14 shall address the need for coordination in the implementa-
15 tion of the following:

16 (1) HEALTH INFORMATION TECHNOLOGY
17 STANDARDS.—Health information technology stand-
18 ards approved under section 271(c)(3)(B)(i) of the
19 Public Health Service Act, as added by section 412.

20 (2) HIPAA TRANSACTION STANDARDS.—Trans-
21 action standards under section 1173(a) of the Social
22 Security Act (42 U.S.C. 1320d–2(d)).

23 (3) UPDATED ICD CODES.—The International
24 Statistical Classification of Diseases and Related
25 Health Problems, 10th revision, Clinical Modifica-

tion (ICD–10–CM) and the International Statistical Classification of Diseases and Related Health Problems, 10th revision, Procedure Coding System (ICD–10–PCS) described in section 415.

(c) COORDINATION AMONG SPECIFIC FEDERAL ENTITIES.—The strategic plan under subsection (a) shall address any methods to coordinate, with respect to the electronic exchange of health information, actions taken by the following entities:

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

(2) The American Health Information Community.

(3) The Office of Electronic Standards and Security of the Centers for Medicare and Medicaid Services.

(4) The National Committee on Vital Health Statistics.

(5) Any other entity involved in the electronic exchange of health information that the Secretary determines appropriate.

TITLE V—SEAMLESS MOBILITY

SEC. 501. PROHIBITION ON IMPEDING.

(a) PROHIBITION.—The Federal Communications Commission shall not, in this or any other proceeding,

1 take any action to impede the development of seamless
2 mobility.

3 (b) DEFINITION.—For purposes of this section, the
4 term “seamless mobility” means the ability of a user and
5 a user’s connecting devices to move easily and smoothly
6 between and among Internet-protocol enabled technology
7 platforms, facilities, and networks.

○