

Calendar No. 20

111TH CONGRESS
1ST SESSION**S. 350**

To provide for a portion of the economic recovery package relating to revenue measures, unemployment, and health.

IN THE SENATE OF THE UNITED STATES

JANUARY 29, 2009

Mr. BAUCUS, from the Committee on Finance, reported the following original bill; which was read twice and placed on the calendar

A BILL

To provide for a portion of the economic recovery package relating to revenue measures, unemployment, and health.

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.**

4 This Act may be cited as the “American Recovery
5 and Reinvestment Act of 2009”.

6 **TITLE I—TAX PROVISIONS**7 **SEC. 1000. SHORT TITLE, ETC.**

8 (a) **SHORT TITLE.**—This title may be cited as the
9 “American Recovery and Reinvestment Tax Act of 2009”.

1 (b) REFERENCE.—Except as otherwise expressly pro-
 2 vided, whenever in this title an amendment or repeal is
 3 expressed in terms of an amendment to, or repeal of, a
 4 section or other provision, the reference shall be consid-
 5 ered to be made to a section or other provision of the In-
 6 ternal Revenue Code of 1986.

7 (c) TABLE OF CONTENTS.—The table of contents for
 8 this title is as follows:

TITLE I—TAX PROVISIONS

Sec. 1000. Short title, etc.

Subtitle A—Tax Relief for Individuals and Families

PART I—GENERAL TAX RELIEF

Sec. 1001. Making work pay credit.

Sec. 1002. Temporary increase in earned income tax credit.

Sec. 1003. Temporary increase of refundable portion of child credit.

Sec. 1004. American opportunity tax credit.

Sec. 1005. Computer technology and equipment allowed as a qualified higher
 education expense for section 529 accounts in 2009 and 2010.

Sec. 1006. Extension of first-time homebuyer credit; waiver of requirement to
 repay.

Sec. 1007. Suspension of tax on portion of unemployment compensation.

PART II—ALTERNATIVE MINIMUM TAX RELIEF

Sec. 1011. Extension of alternative minimum tax relief for nonrefundable per-
 sonal credits.

Sec. 1012. Extension of increased alternative minimum tax exemption amount.

Subtitle B—Energy Incentives

PART I—RENEWABLE ENERGY INCENTIVES

Sec. 1101. Extension of credit for electricity produced from certain renewable
 resources.

Sec. 1102. Election of investment credit in lieu of production credit.

Sec. 1103. Repeal of certain limitations on credit for renewable energy prop-
 erty.

PART II—INCREASED ALLOCATIONS OF NEW CLEAN RENEWABLE ENERGY BONDS AND QUALIFIED ENERGY CONSERVATION BONDS

Sec. 1111. Increased limitation on issuance of new clean renewable energy
 bonds.

Sec. 1112. Increased limitation on issuance of qualified energy conservation bonds.

PART III—ENERGY CONSERVATION INCENTIVES

Sec. 1121. Extension and modification of credit for nonbusiness energy property.

Sec. 1122. Modification of credit for residential energy efficient property.

Sec. 1123. Temporary increase in credit for alternative fuel vehicle refueling property.

PART IV—ENERGY RESEARCH INCENTIVES

Sec. 1131. Increased research credit for energy research.

PART V—GENERAL BUSINESS CREDIT

Sec. 1141. 5-year carryback of general business credits.

Sec. 1142. Temporary provision allowing general business credits to offset 100 percent of Federal income tax liability.

PART VI—MODIFICATION OF CREDIT FOR CARBON DIOXIDE SEQUESTRATION

Sec. 1151. Application of monitoring requirements to carbon dioxide used as a tertiary injectant.

PART VII—PLUG-IN ELECTRIC DRIVE MOTOR VEHICLES

Sec. 1161. Modification of credit for qualified plug-in electric motor vehicles.

Subtitle C—Tax Incentives for Business

PART I—TEMPORARY INVESTMENT INCENTIVES

Sec. 1201. Special allowance for certain property acquired during 2009.

Sec. 1202. Temporary increase in limitations on expensing of certain depreciable business assets.

PART II—5-YEAR CARRYBACK OF OPERATING LOSSES

Sec. 1211. 5-year carryback of operating losses.

Sec. 1212. Exception for TARP recipients.

PART III—INCENTIVES FOR NEW JOBS

Sec. 1221. Incentives to hire unemployed veterans and disconnected youth.

PART IV—CANCELLATION OF INDEBTEDNESS

Sec. 1231. Deferral and ratable inclusion of income arising from indebtedness discharged by the repurchase of a debt instrument.

PART V—QUALIFIED SMALL BUSINESS STOCK

Sec. 1241. Special rules applicable to qualified small business stock for 2009 and 2010.

PART VI—PARITY FOR TRANSPORTATION FRINGE BENEFITS

Sec. 1251. Increased exclusion amount for commuter transit benefits and transit passes.

PART VII—S CORPORATIONS

Sec. 1261. Temporary reduction in recognition period for built-in gains tax.

PART VIII—BROADBAND INCENTIVES

Sec. 1271. Broadband Internet access tax credit.

PART IX—CLARIFICATION OF REGULATIONS RELATED TO LIMITATIONS ON CERTAIN BUILT-IN LOSSES FOLLOWING AN OWNERSHIP CHANGE

Sec. 1281. Clarification of regulations related to limitations on certain built-in losses following an ownership change.

Subtitle D—Manufacturing Recovery Provisions

Sec. 1301. Temporary expansion of availability of industrial development bonds to facilities manufacturing intangible property.

Sec. 1302. Credit for investment in advanced energy facilities.

Subtitle E—Economic Recovery Tools

Sec. 1401. Recovery zone bonds.

Sec. 1402. Tribal economic development bonds.

Sec. 1403. Modifications to new markets tax credit.

Subtitle F—Infrastructure Financing Tools

PART I—IMPROVED MARKETABILITY FOR TAX-EXEMPT BONDS

Sec. 1501. De minimis safe harbor exception for tax-exempt interest expense of financial institutions.

Sec. 1502. Modification of small issuer exception to tax-exempt interest expense allocation rules for financial institutions.

Sec. 1503. Temporary modification of alternative minimum tax limitations on tax-exempt bonds.

Sec. 1504. Modification to high speed intercity rail facility bonds.

PART II—DELAY IN APPLICATION OF WITHHOLDING TAX ON GOVERNMENT CONTRACTORS

Sec. 1511. Delay in application of withholding tax on government contractors.

PART III—TAX CREDIT BONDS FOR SCHOOLS

Sec. 1521. Qualified school construction bonds.

Sec. 1522. Extension and expansion of qualified zone academy bonds.

PART IV—BUILD AMERICA BONDS

Sec. 1531. Build America bonds.

Subtitle G—Economic Recovery Payments to Certain Individuals

Sec. 1601. Economic recovery payment to recipients of Social Security, supplemental security income, railroad retirement benefits, and veterans disability compensation or pension benefits.

Subtitle H—Trade Adjustment Assistance

Sec. 1701. Temporary extension of Trade Adjustment Assistance program.

Subtitle I—Prohibition on Collection of Certain Payments Made Under the
Continued Dumping and Subsidy Offset Act of 2000

Sec. 1801. Prohibition on collection of certain payments made under the Con-
tinued Dumping and Subsidy Offset Act of 2000.

Subtitle J—Other Provisions

Sec. 1901. Application of certain labor standards to projects financed with cer-
tain tax-favored bonds.

Sec. 1902. Increase in public debt limit.

1 **Subtitle A—Tax Relief for**
2 **Individuals and Families**

3 **PART I—GENERAL TAX RELIEF**

4 **SEC. 1001. MAKING WORK PAY CREDIT.**

5 (a) IN GENERAL.—Subpart C of part IV of sub-
6 chapter A of chapter 1 is amended by inserting after sec-
7 tion 36 the following new section:

8 **“SEC. 36A. MAKING WORK PAY CREDIT.**

9 “(a) ALLOWANCE OF CREDIT.—In the case of an eli-
10 gible individual, there shall be allowed as a credit against
11 the tax imposed by this subtitle for the taxable year an
12 amount equal to the lesser of—

13 “(1) 6.2 percent of earned income of the tax-
14 payer, or

15 “(2) \$500 (\$1,000 in the case of a joint re-
16 turn).

17 “(b) LIMITATION BASED ON MODIFIED ADJUSTED
18 GROSS INCOME.—

1 “(1) IN GENERAL.—The amount allowable as a
2 credit under subsection (a) (determined without re-
3 gard to this paragraph and subsection (c)) for the
4 taxable year shall be reduced (but not below zero) by
5 4 percent of so much of the taxpayer’s modified ad-
6 justed gross income as exceeds \$75,000 (\$150,000
7 in the case of a joint return).

8 “(2) MODIFIED ADJUSTED GROSS INCOME.—
9 For purposes of subparagraph (A), the term ‘modi-
10 fied adjusted gross income’ means the adjusted
11 gross income of the taxpayer for the taxable year in-
12 creased by any amount excluded from gross income
13 under section 911, 931, or 933.

14 “(c) REDUCTION FOR CERTAIN OTHER PAY-
15 MENTS.—The credit allowed under subsection (a) for any
16 taxable year shall be reduced by the amount of any pay-
17 ments received by the taxpayer during such taxable year
18 under section 1601 of the American Recovery and Rein-
19 vestment Tax Act of 2009.

20 “(d) DEFINITIONS.—For purposes of this section—

21 “(1) ELIGIBLE INDIVIDUAL.—The term ‘eligible
22 individual’ means any individual other than—

23 “(A) any nonresident alien individual,

24 “(B) any individual with respect to whom
25 a deduction under section 151 is allowable to

1 another taxpayer for a taxable year beginning
2 in the calendar year in which the individual's
3 taxable year begins, and

4 “(C) an estate or trust.

5 Such term shall not include any individual unless the
6 requirements of section 32(c)(1)(E) are met with re-
7 spect to such individual.

8 “(2) EARNED INCOME.—The term ‘earned in-
9 come’ has the meaning given such term by section
10 32(c)(2), except that such term shall not include net
11 earnings from self-employment which are not taken
12 into account in computing taxable income. For pur-
13 poses of the preceding sentence, any amount ex-
14 cluded from gross income by reason of section 112
15 shall be treated as earned income which is taken
16 into account in computing taxable income for the
17 taxable year.

18 “(e) TERMINATION.—This section shall not apply to
19 taxable years beginning after December 31, 2010.”.

20 (b) TREATMENT OF POSSESSIONS.—

21 (1) PAYMENTS TO POSSESSIONS.—

22 (A) MIRROR CODE POSSESSION.—The Sec-
23 retary of the Treasury shall pay to each posses-
24 sion of the United States with a mirror code
25 tax system amounts equal to the loss to that

1 possession by reason of the amendments made
2 by this section with respect to taxable years be-
3 ginning in 2009 and 2010. Such amounts shall
4 be determined by the Secretary of the Treasury
5 based on information provided by the govern-
6 ment of the respective possession.

7 (B) OTHER POSSESSIONS.—The Secretary
8 of the Treasury shall pay to each possession of
9 the United States which does not have a mirror
10 code tax system amounts estimated by the Sec-
11 retary of the Treasury as being equal to the ag-
12 gregate benefits that would have been provided
13 to residents of such possession by reason of the
14 amendments made by this section for taxable
15 years beginning in 2009 and 2010 if a mirror
16 code tax system had been in effect in such pos-
17 session. The preceding sentence shall not apply
18 with respect to any possession of the United
19 States unless such possession has a plan, which
20 has been approved by the Secretary of the
21 Treasury, under which such possession will
22 promptly distribute such payments to the resi-
23 dents of such possession.

24 (2) COORDINATION WITH CREDIT ALLOWED
25 AGAINST UNITED STATES INCOME TAXES.—No cred-

1 it shall be allowed against United States income
2 taxes for any taxable year under section 36A of the
3 Internal Revenue Code of 1986 (as added by this
4 section) to any person—

5 (A) to whom a credit is allowed against
6 taxes imposed by the possession by reason of
7 the amendments made by this section for such
8 taxable year, or

9 (B) who is eligible for a payment under a
10 plan described in paragraph (1)(B) with respect
11 to such taxable year.

12 (3) DEFINITIONS AND SPECIAL RULES.—

13 (A) POSSESSION OF THE UNITED
14 STATES.—For purposes of this subsection, the
15 term “possession of the United States” includes
16 the Commonwealth of Puerto Rico and the
17 Commonwealth of the Northern Mariana Is-
18 lands.

19 (B) MIRROR CODE TAX SYSTEM.—For pur-
20 poses of this subsection, the term “mirror code
21 tax system” means, with respect to any posses-
22 sion of the United States, the income tax sys-
23 tem of such possession if the income tax liabil-
24 ity of the residents of such possession under
25 such system is determined by reference to the

1 income tax laws of the United States as if such
2 possession were the United States.

3 (C) TREATMENT OF PAYMENTS.—For pur-
4 poses of section 1324(b)(2) of title 31, United
5 States Code, the payments under this sub-
6 section shall be treated in the same manner as
7 a refund due from the credit allowed under sec-
8 tion 36A of the Internal Revenue Code of 1986
9 (as added by this section).

10 (c) REFUNDS DISREGARDED IN THE ADMINISTRA-
11 TION OF FEDERAL PROGRAMS AND FEDERALLY AS-
12 SISTED PROGRAMS.—Any credit or refund allowed or
13 made to any individual by reason of section 36A of the
14 Internal Revenue Code of 1986 (as added by this section)
15 or by reason of subsection (b) of this section shall not be
16 taken into account as income and shall not be taken into
17 account as resources for the month of receipt and the fol-
18 lowing 2 months, for purposes of determining the eligi-
19 bility of such individual or any other individual for benefits
20 or assistance, or the amount or extent of benefits or assist-
21 ance, under any Federal program or under any State or
22 local program financed in whole or in part with Federal
23 funds.

24 (d) AUTHORITY RELATING TO CLERICAL ERRORS.—
25 Section 6213(g)(2) is amended by striking “and” at the

1 end of subparagraph (L)(ii), by striking the period at the
2 end of subparagraph (M) and inserting “, and”, and by
3 adding at the end the following new subparagraph:

4 “(N) an omission of the reduction required
5 under section 36A(c) with respect to the credit
6 allowed under section 36A or an omission of the
7 correct TIN required under section
8 36A(d)(1).”.

9 (e) CONFORMING AMENDMENTS.—

10 (1) Section 6211(b)(4)(A) is amended by insert-
11 ing “36A,” after “36,”.

12 (2) Section 1324(b)(2) of title 31, United
13 States Code, is amended by inserting “36A,” after
14 “36,”.

15 (3) The table of sections for subpart C of part
16 IV of subchapter A of chapter 1 is amended by in-
17 serting after the item relating to section 36 the fol-
18 lowing new item:

“Sec. 36A. Making work pay credit.”.

19 (f) EFFECTIVE DATE.—This section, and the amend-
20 ments made by this section, shall apply to taxable years
21 beginning after December 31, 2008.

1 **SEC. 1002. TEMPORARY INCREASE IN EARNED INCOME TAX**
2 **CREDIT.**

3 (a) IN GENERAL.—Subsection (b) of section 32 is
4 amended by adding at the end the following new para-
5 graph:

6 “(3) SPECIAL RULES FOR 2009 AND 2010.—In
7 the case of any taxable year beginning in 2009 or
8 2010—

9 “(A) INCREASED CREDIT PERCENTAGE
10 FOR 3 OR MORE QUALIFYING CHILDREN.—In
11 the case of a taxpayer with 3 or more qualifying
12 children, the credit percentage is 45 percent.

13 “(B) REDUCTION OF MARRIAGE PEN-
14 ALTY.—

15 “(i) IN GENERAL.—The dollar amount
16 in effect under paragraph (2)(B) shall be
17 \$5,000.

18 “(ii) INFLATION ADJUSTMENT.—In
19 the case of any taxable year beginning in
20 2010, the \$5,000 amount in clause (i)
21 shall be increased by an amount equal to—

22 “(I) such dollar amount, multi-
23 plied by

24 “(II) the cost of living adjust-
25 ment determined under section 1(f)(3)
26 for the calendar year in which the tax-

1 able year begins determined by sub-
2 stituting ‘calendar year 2008’ for ‘cal-
3 endar year 1992’ in subparagraph (B)
4 thereof.

5 “(iii) ROUNDING.—Subparagraph (A)
6 of subsection (j)(2) shall apply after taking
7 into account any increase under clause
8 (ii).”.

9 (b) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to taxable years beginning after
11 December 31, 2008.

12 **SEC. 1003. TEMPORARY INCREASE OF REFUNDABLE POR-**
13 **TION OF CHILD CREDIT.**

14 (a) IN GENERAL.—Paragraph (4) of section 24(d) is
15 amended to read as follows:

16 “(4) SPECIAL RULE FOR 2009 AND 2010.—Not-
17 withstanding paragraph (3), in the case of any tax-
18 able year beginning in 2009 or 2010, the dollar
19 amount in effect for such taxable year under para-
20 graph (1)(B)(i) shall be \$6,000.”.

21 (b) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to taxable years beginning after
23 December 31, 2008.

1 **SEC. 1004. AMERICAN OPPORTUNITY TAX CREDIT.**

2 (a) IN GENERAL.—Section 25A (relating to Hope
3 scholarship credit) is amended by redesignating subsection
4 (i) as subsection (j) and by inserting after subsection (h)
5 the following new subsection:

6 “(i) AMERICAN OPPORTUNITY TAX CREDIT.—In the
7 case of any taxable year beginning in 2009 or 2010—

8 “(1) INCREASE IN CREDIT.—The Hope Scholar-
9 ship Credit shall be an amount equal to the sum
10 of—

11 “(A) 100 percent of so much of the quali-
12 fied tuition and related expenses paid by the
13 taxpayer during the taxable year (for education
14 furnished to the eligible student during any
15 academic period beginning in such taxable year)
16 as does not exceed \$2,000, plus

17 “(B) 25 percent of such expenses so paid
18 as exceeds \$2,000 but does not exceed \$4,000.

19 “(2) CREDIT ALLOWED FOR FIRST 4 YEARS OF
20 POST-SECONDARY EDUCATION.—Subparagraphs (A)
21 and (C) of subsection (b)(2) shall be applied by sub-
22 stituting ‘4’ for ‘2’.

23 “(3) QUALIFIED TUITION AND RELATED EX-
24 PENSES TO INCLUDE REQUIRED COURSE MATE-
25 RIALS.—Subsection (f)(1)(A) shall be applied by

1 substituting ‘tuition, fees, and course materials’ for
2 ‘tuition and fees’.

3 “(4) INCREASE IN AGI LIMITS FOR HOPE
4 SCHOLARSHIP CREDIT.—In lieu of applying sub-
5 section (d) with respect to the Hope Scholarship
6 Credit, such credit (determined without regard to
7 this paragraph) shall be reduced (but not below
8 zero) by the amount which bears the same ratio to
9 such credit (as so determined) as—

10 “(A) the excess of—

11 “(i) the taxpayer’s modified adjusted
12 gross income (as defined in subsection
13 (d)(3)) for such taxable year, over

14 “(ii) \$80,000 (\$160,000 in the case of
15 a joint return), bears to

16 “(B) \$10,000 (\$20,000 in the case of a
17 joint return).

18 “(5) CREDIT ALLOWED AGAINST ALTERNATIVE
19 MINIMUM TAX.—In the case of a taxable year to
20 which section 26(a)(2) does not apply, so much of
21 the credit allowed under subsection (a) as is attrib-
22 utable to the Hope Scholarship Credit shall not ex-
23 ceed the excess of—

1 “(A) the sum of the regular tax liability
2 (as defined in section 26(b)) plus the tax im-
3 posed by section 55, over

4 “(B) the sum of the credits allowable
5 under this subpart (other than this subsection
6 and sections 23, 25D, and 30D) and section 27
7 for the taxable year.

8 Any reference in this section or section 24, 25, 26,
9 25B, 904, or 1400C to a credit allowable under this
10 subsection shall be treated as a reference to so much
11 of the credit allowable under subsection (a) as is at-
12 tributable to the Hope Scholarship Credit.

13 “(6) PORTION OF CREDIT MADE REFUND-
14 ABLE.—30 percent of so much of the credit allowed
15 under subsection (a) as is attributable to the Hope
16 Scholarship Credit (determined after application of
17 paragraph (4) and without regard to this paragraph
18 and section 26(a)(2) or paragraph (5), as the case
19 may be) shall be treated as a credit allowable under
20 subpart C (and not allowed under subsection (a)).
21 The preceding sentence shall not apply to any tax-
22 payer for any taxable year if such taxpayer is a child
23 to whom subsection (g) of section 1 applies for such
24 taxable year.

1 “(7) COORDINATION WITH MIDWESTERN DIS-
2 ASTER AREA BENEFITS.—In the case of a taxpayer
3 with respect to whom section 702(a)(1)(B) of the
4 Heartland Disaster Tax Relief Act of 2008 applies
5 for any taxable year, such taxpayer may elect to
6 waive the application of this subsection to such tax-
7 payer for such taxable year.”.

8 (b) CONFORMING AMENDMENTS.—

9 (1) Section 24(b)(3)(B) is amended by inserting
10 “25A(i),” after “23,”.

11 (2) Section 25(e)(1)(C)(ii) is amended by in-
12 serting “25A(i),” after “24,”.

13 (3) Section 26(a)(1) is amended by inserting
14 “25A(i),” after “24,”.

15 (4) Section 25B(g)(2) is amended by inserting
16 “25A(i),” after “23,”.

17 (5) Section 904(i) is amended by inserting
18 “25A(i),” after “24,”.

19 (6) Section 1400C(d)(2) is amended by insert-
20 ing “25A(i),” after “24,”.

21 (7) Section 1324(b)(2) of title 31, United
22 States Code, is amended by inserting “25A,” before
23 “35”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years beginning after
3 December 31, 2008.

4 (d) APPLICATION OF EGTRRA SUNSET.—The
5 amendment made by subsection (b)(1) shall be subject to
6 title IX of the Economic Growth and Tax Relief Reconcili-
7 ation Act of 2001 in the same manner as the provision
8 of such Act to which such amendment relates.

9 (e) TREASURY STUDIES REGARDING EDUCATION IN-
10 CENTIVES.—

11 (1) STUDY REGARDING COORDINATION WITH
12 NON-TAX EDUCATIONAL INCENTIVES.—The Sec-
13 retary of the Treasury, or the Secretary’s delegate,
14 shall study how to coordinate the credit allowed
15 under section 25A of the Internal Revenue Code of
16 1986 with the Federal Pell Grant program under
17 section 401 of the Higher Education Act of 1965.

18 (2) STUDY REGARDING IMPOSITION OF COMMU-
19 NITY SERVICE REQUIREMENTS.—The Secretary of
20 the Treasury, or the Secretary’s delegate, shall study
21 the feasibility of requiring students to perform com-
22 munity service as a condition of taking their tuition
23 and related expenses into account under section 25A
24 of the Internal Revenue Code of 1986.

1 (3) REPORT.—Not later than 1 year after the
2 date of the enactment of this Act, the Secretary of
3 the Treasury, or the Secretary’s delegate, shall re-
4 port to Congress on the results of the studies con-
5 ducted under this paragraph.

6 **SEC. 1005. COMPUTER TECHNOLOGY AND EQUIPMENT AL-**
7 **LOWED AS A QUALIFIED HIGHER EDUCATION**
8 **EXPENSE FOR SECTION 529 ACCOUNTS IN**
9 **2009 AND 2010.**

10 (a) IN GENERAL.—Section 529(e)(3)(A) is amended
11 by striking “and” at the end of clause (i), by striking the
12 period at the end of clause (ii), and by adding at the end
13 the following:

14 “(iii) expenses paid or incurred in
15 2009 or 2010 for the purchase of any com-
16 puter technology or equipment (as defined
17 in section 170(e)(6)(F)(i)) or Internet ac-
18 cess and related services, if such tech-
19 nology, equipment, or services are to be
20 used by the beneficiary and the bene-
21 ficiary’s family during any of the years the
22 beneficiary is enrolled at an eligible edu-
23 cational institution.

24 Clause (iii) shall not include expenses for com-
25 puter software designed for sports, games, or

1 hobbies unless the software is predominantly
2 educational in nature.”.

3 (b) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to expenses paid or incurred after
5 December 31, 2008.

6 **SEC. 1006. EXTENSION OF FIRST-TIME HOMEBUYER CRED-**
7 **IT; WAIVER OF REQUIREMENT TO REPAY.**

8 (a) EXTENSION.—

9 (1) IN GENERAL.—Section 36(h) is amended by
10 striking “July 1, 2009” and inserting “September 1,
11 2009”.

12 (2) CONFORMING AMENDMENT.—Section 36(g)
13 is amended by striking “July 1, 2009” and inserting
14 “September 1, 2009”.

15 (b) WAIVER OF RECAPTURE.—

16 (1) IN GENERAL.—Paragraph (4) of section
17 36(f) is amended by adding at the end the following
18 new subparagraph:

19 “(D) WAIVER OF RECAPTURE FOR PUR-
20 CHASES IN 2009.—In the case of any credit al-
21 lowed with respect to the purchase of a prin-
22 cipal residence after December 31, 2008, and
23 before September 1, 2009—

24 “(i) paragraph (1) shall not apply,
25 and

1 **PART II—ALTERNATIVE MINIMUM TAX RELIEF**

2 **SEC. 1011. EXTENSION OF ALTERNATIVE MINIMUM TAX RE-**
3 **LIEF FOR NONREFUNDABLE PERSONAL**
4 **CREDITS.**

5 (a) IN GENERAL.—Paragraph (2) of section 26(a)
6 (relating to special rule for taxable years 2000 through
7 2008) is amended—

8 (1) by striking “or 2008” and inserting “2008,
9 or 2009”, and

10 (2) by striking “**2008**” in the heading thereof
11 and inserting “**2009**”.

12 (b) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to taxable years beginning after
14 December 31, 2008.

15 **SEC. 1012. EXTENSION OF INCREASED ALTERNATIVE MIN-**
16 **IMUM TAX EXEMPTION AMOUNT.**

17 (a) IN GENERAL.—Paragraph (1) of section 55(d)
18 (relating to exemption amount) is amended—

19 (1) by striking “(\$69,950 in the case of taxable
20 years beginning in 2008)” in subparagraph (A) and
21 inserting “(\$70,950 in the case of taxable years be-
22 ginning in 2009)”, and

23 (2) by striking “(\$46,200 in the case of taxable
24 years beginning in 2008)” in subparagraph (B) and
25 inserting “(\$46,700 in the case of taxable years be-
26 ginning in 2009)”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years beginning after
3 December 31, 2008.

4 **Subtitle B—Energy Incentives**

5 **PART I—RENEWABLE ENERGY INCENTIVES**

6 **SEC. 1101. EXTENSION OF CREDIT FOR ELECTRICITY PRO-** 7 **DUCTION FROM CERTAIN RENEWABLE RE-** 8 **SOURCES.**

9 (a) IN GENERAL.—Subsection (d) of section 45 is
10 amended—

11 (1) by striking “2010” in paragraph (1) and in-
12 serting “2013”,

13 (2) by striking “2011” each place it appears in
14 paragraphs (2), (3), (4), (6), (7) and (9) and insert-
15 ing “2014”, and

16 (3) by striking “2012” in paragraph (11)(B)
17 and inserting “2014”.

18 (b) TECHNICAL AMENDMENT.—Paragraph (5) of
19 section 45(d) is amended by striking “and before” and
20 all that follows and inserting “ and before October 3,
21 2008.”.

22 (c) EFFECTIVE DATE.—

23 (1) IN GENERAL.—The amendments made by
24 subsection (a) shall apply to property placed in serv-
25 ice after the date of the enactment of this Act.

1 (2) TECHNICAL AMENDMENT.—The amendment
2 made by subsection (b) shall take effect as if in-
3 cluded in section 102 of the Energy Improvement
4 and Extension Act of 2008.

5 **SEC. 1102. ELECTION OF INVESTMENT CREDIT IN LIEU OF**
6 **PRODUCTION CREDIT.**

7 (a) IN GENERAL.—Subsection (a) of section 48 is
8 amended by adding at the end the following new para-
9 graph:

10 “(5) ELECTION TO TREAT QUALIFIED FACILI-
11 TIES AS ENERGY PROPERTY.—

12 “(A) IN GENERAL.—In the case of any
13 qualified investment credit facility—

14 “(i) such facility shall be treated as
15 energy property for purposes of this sec-
16 tion, and

17 “(ii) the energy percentage with re-
18 spect to such property shall be 30 percent.

19 “(B) DENIAL OF PRODUCTION CREDIT.—

20 No credit shall be allowed under section 45 for
21 any taxable year with respect to any qualified
22 investment credit facility.

23 “(C) QUALIFIED INVESTMENT CREDIT FA-
24 CILITY.—For purposes of this paragraph, the
25 term ‘qualified investment credit facility’ means

1 any of the following facilities if no credit has
2 been allowed under section 45 with respect to
3 such facility and the taxpayer makes an irrev-
4 ocable election to have this paragraph apply to
5 such facility:

6 “(i) WIND FACILITIES.—Any facility
7 described in paragraph (1) of section 45(d)
8 if such facility is placed in service in 2009,
9 2010, 2011, or 2012.

10 “(ii) OTHER FACILITIES.—Any facility
11 described in paragraph (2), (3), (4), (6),
12 (7), (9), or (11) of section 45(d) if such fa-
13 cility is placed in service in 2009, 2010,
14 2011, 2012, or 2013.”.

15 (b) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to facilities placed in service after
17 December 31, 2008.

18 **SEC. 1103. REPEAL OF CERTAIN LIMITATIONS ON CREDIT**
19 **FOR RENEWABLE ENERGY PROPERTY.**

20 (a) REPEAL OF LIMITATION ON CREDIT FOR QUALI-
21 FIED SMALL WIND ENERGY PROPERTY.—Paragraph (4)
22 of section 48(c) is amended by striking subparagraph (B)
23 and by redesignating subparagraphs (C) and (D) as sub-
24 paragraphs (B) and (C).

1 (b) REPEAL OF LIMITATION ON PROPERTY FI-
2 NANCED BY SUBSIDIZED ENERGY FINANCING.—

3 (1) IN GENERAL.—Section 48(a)(4) is amended
4 by adding at the end the following new subpara-
5 graph:

6 “(D) TERMINATION.—This paragraph
7 shall not apply to periods after December 31,
8 2008, under rules similar to the rules of section
9 48(m) (as in effect on the day before the date
10 of the enactment of the Revenue Reconciliation
11 Act of 1990).”.

12 (2) CONFORMING AMENDMENTS.—

13 (A) Section 25C(e)(1) is amended by strik-
14 ing “(8), and (9)” and inserting “and (8)”.

15 (B) Section 25D(e) is amended by striking
16 paragraph (9).

17 (C) Section 48A(b)(2) is amended by in-
18 serting “(without regard to subparagraph (D)
19 thereof)” after “section 48(a)(4)”.

20 (D) Section 48B(b)(2) is amended by in-
21 serting “(without regard to subparagraph (D)
22 thereof)” after “section 48(a)(4)”.

23 (c) EFFECTIVE DATE.—

24 (1) IN GENERAL.—Except as provided in para-
25 graph (2), the amendment made by this section shall

1 apply to periods after December 31, 2008, under
 2 rules similar to the rules of section 48(m) of the In-
 3 ternal Revenue Code of 1986 (as in effect on the day
 4 before the date of the enactment of the Revenue
 5 Reconciliation Act of 1990).

6 (2) CONFORMING AMENDMENTS.—The amend-
 7 ments made by subsection (b)(2) shall apply to tax-
 8 able years beginning after December 31, 2008.

9 **PART II—INCREASED ALLOCATIONS OF NEW**
 10 **CLEAN RENEWABLE ENERGY BONDS AND**
 11 **QUALIFIED ENERGY CONSERVATION BONDS**

12 **SEC. 1111. INCREASED LIMITATION ON ISSUANCE OF NEW**
 13 **CLEAN RENEWABLE ENERGY BONDS.**

14 Subsection (c) of section 54C is amended by adding
 15 at the end the following new paragraph:

16 “(4) ADDITIONAL LIMITATION.—The national
 17 new clean renewable energy bond limitation shall be
 18 increased by \$1,600,000,000. Such increase shall be
 19 allocated by the Secretary consistent with the rules
 20 of paragraphs (2) and (3).”.

21 **SEC. 1112. INCREASED LIMITATION ON ISSUANCE OF**
 22 **QUALIFIED ENERGY CONSERVATION BONDS.**

23 Section 54D(d) is amended by striking
 24 “800,000,000” and inserting “\$3,200,000,000”.

1 **PART III—ENERGY CONSERVATION INCENTIVES**

2 **SEC. 1121. EXTENSION AND MODIFICATION OF CREDIT FOR**
3 **NONBUSINESS ENERGY PROPERTY.**

4 (a) IN GENERAL.—Section 25C is amended by strik-
5 ing subsections (a) and (b) and inserting the following new
6 subsections:

7 “(a) ALLOWANCE OF CREDIT.—In the case of an in-
8 dividual, there shall be allowed as a credit against the tax
9 imposed by this chapter for the taxable year an amount
10 equal to 30 percent of the sum of—

11 “(1) the amount paid or incurred by the tax-
12 payer during such taxable year for qualified energy
13 efficiency improvements, and

14 “(2) the amount of the residential energy prop-
15 erty expenditures paid or incurred by the taxpayer
16 during such taxable year.

17 “(b) LIMITATION.—The aggregate amount of the
18 credits allowed under this section for taxable years begin-
19 ning in 2009 and 2010 with respect to any taxpayer shall
20 not exceed \$1,500.”.

21 (b) EXTENSION.—Section 25C(g)(2) is amended by
22 striking “December 31, 2009” and inserting “December
23 31, 2010”.

24 (c) EFFECTIVE DATE.—The amendments made by
25 this section shall apply to taxable years beginning after
26 December 31, 2008.

1 **SEC. 1122. MODIFICATION OF CREDIT FOR RESIDENTIAL**
2 **ENERGY EFFICIENT PROPERTY.**

3 (a) **REMOVAL OF CREDIT LIMITATION FOR PROP-**
4 **ERTY PLACED IN SERVICE.—**

5 (1) **IN GENERAL.—**Paragraph (1) of section
6 25D(b) is amended to read as follows:

7 “(1) **MAXIMUM CREDIT FOR FUEL CELLS.—**In
8 the case of any qualified fuel cell property expendi-
9 ture, the credit allowed under subsection (a) (deter-
10 mined without regard to subsection (c)) for any tax-
11 able year shall not exceed \$500 with respect to each
12 half kilowatt of capacity of the qualified fuel cell
13 property (as defined in section 48(c)(1)) to which
14 such expenditure relates.”.

15 (2) **CONFORMING AMENDMENT.—**Paragraph (4)
16 of section 25D(e) is amended—

17 (A) by striking all that precedes subpara-
18 graph (B) and inserting the following:

19 “(4) **FUEL CELL EXPENDITURE LIMITATIONS**
20 **IN CASE OF JOINT OCCUPANCY.—**In the case of any
21 dwelling unit with respect to which qualified fuel cell
22 property expenditures are made and which is jointly
23 occupied and used during any calendar year as a
24 residence by two or more individuals the following
25 rules shall apply:

1 “(A) MAXIMUM EXPENDITURES FOR FUEL
2 CELLS.—The maximum amount of such ex-
3 penditures which may be taken into account
4 under subsection (a) by all such individuals
5 with respect to such dwelling unit during such
6 calendar year shall be \$1,667 in the case of
7 each half kilowatt of capacity of qualified fuel
8 cell property (as defined in section 48(e)(1))
9 with respect to which such expenditures re-
10 late.”, and

11 (B) by striking subparagraph (C).

12 (b) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to taxable years beginning after
14 December 31, 2008.

15 **SEC. 1123. TEMPORARY INCREASE IN CREDIT FOR ALTER-**
16 **NATIVE FUEL VEHICLE REFUELING PROP-**
17 **ERTY.**

18 (a) IN GENERAL.—Section 30C(e) is amended by
19 adding at the end the following new paragraph:

20 “(6) SPECIAL RULE FOR PROPERTY PLACED IN
21 SERVICE DURING 2009 AND 2010.—In the case of
22 property placed in service in taxable years beginning
23 after December 31, 2008, and before January 1,
24 2011—

1 “(A) in the case of any such property
2 which does not relate to hydrogen—

3 “(i) subsection (a) shall be applied by
4 substituting ‘50 percent’ for ‘30 percent’,

5 “(ii) subsection (b)(1) shall be applied
6 by substituting ‘\$50,000’ for ‘\$30,000’,
7 and

8 “(iii) subsection (b)(2) shall be ap-
9 plied by substituting ‘\$2,000’ for ‘\$1,000’,
10 and

11 “(B) in the case of any such property
12 which relates to hydrogen, subsection (b)(1)
13 shall be applied by substituting ‘\$200,000’ for
14 ‘\$30,000’.”.

15 (b) EFFECTIVE DATE.—The amendment made by
16 this section shall apply to taxable years beginning after
17 December 31, 2008.

18 **PART IV—ENERGY RESEARCH INCENTIVES**

19 **SEC. 1131. INCREASED RESEARCH CREDIT FOR ENERGY RE-**
20 **SEARCH.**

21 (a) IN GENERAL.—Section 41 is amended by redesi-
22 gnating subsection (h) as subsection (i) and by inserting
23 after subsection (g) the following new subsection:

24 “(h) ENERGY RESEARCH CREDIT.—In the case of
25 any taxable year beginning in 2009 or 2010—

1 “(1) IN GENERAL.—The credit determined
2 under subsection (a)(1) shall be increased by 20 per-
3 cent of the qualified energy research expenses for
4 the taxable year.

5 “(2) QUALIFIED ENERGY RESEARCH EX-
6 PENSES.—For purposes of this subsection—

7 “(A) IN GENERAL.—The term ‘qualified
8 energy research expenses’ means so much of the
9 taxpayer’s qualified research expenses as are re-
10 lated to the fields of fuel cells and battery tech-
11 nology, renewable energy and renewable fuels,
12 energy conservation technology, efficient trans-
13 mission and distribution of electricity, and car-
14 bon capture and sequestration.

15 “(B) COORDINATION WITH QUALIFYING
16 ADVANCED ENERGY PROJECT CREDIT.—Such
17 term shall not include expenditures taken into
18 account in determining the amount of the credit
19 under section 48 or 48C.

20 “(3) COORDINATION WITH OTHER RESEARCH
21 CREDITS.—

22 “(A) IN GENERAL.—The amount of quali-
23 fied energy research expenses taken into ac-
24 count under subsection (a)(1)(A) shall not ex-
25 ceed the base amount.

1 “(B) ALTERNATIVE SIMPLIFIED CREDIT.—
2 For purposes of subsection (c)(5), the amount
3 of qualified energy research expenses taken into
4 account for the taxable year for which the cred-
5 it is being determined shall not exceed—

6 “(i) in the case of subsection
7 (c)(5)(A), 50 percent of the average quali-
8 fied research expenses for the 3 taxable
9 years preceding the taxable year for which
10 the credit is being determined, and

11 “(ii) in the case of subsection
12 (c)(5)(B)(ii), zero.

13 “(C) BASIC RESEARCH AND ENERGY RE-
14 SEARCH CONSORTIUM PAYMENTS.—Any amount
15 taken into account under paragraph (1) shall
16 not be taken into account under paragraph (2)
17 or (3) of subsection (a).”.

18 (b) CONFORMING AMENDMENT.—Subparagraph (B)
19 of section 41(i)(1)(B), as redesignated by subsection (a),
20 is amended by inserting “(in the case of the increase in
21 the credit determined under subsection (h), December 31,
22 2010)” after “December 31, 2009”.

23 (c) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to taxable years beginning after
25 December 31, 2008.

PART V—GENERAL BUSINESS CREDIT**SEC. 1141. 5-YEAR CARRYBACK OF GENERAL BUSINESS CREDITS.**

(a) IN GENERAL.—Subsection (a) of section 39 is amended by adding at the end the following new paragraph:

“(4) SPECIAL RULE FOR 2008 AND 2009 BUSINESS CREDITS.—In the case of any current year business credit for a taxable year ending in 2008 or 2009—

“(A) paragraph (1)(A) shall be applied by substituting ‘each of the 5 taxable years’ for ‘the taxable year’ in subparagraph (A) thereof, and

“(B) paragraph (2) shall be applied—

“(i) by substituting ‘25 taxable years’ for ‘21 taxable years’, and

“(ii) by substituting ‘24 taxable years’ for ‘20 taxable years’.”.

(b) EFFECTIVE DATE.—The amendment made by this subsection shall apply to taxable years ending after December 31, 2007, and to carrybacks of business credits from such taxable years.

1 **SEC. 1142. TEMPORARY PROVISION ALLOWING GENERAL**
2 **BUSINESS CREDITS TO OFFSET 100 PERCENT**
3 **OF FEDERAL INCOME TAX LIABILITY.**

4 (a) IN GENERAL.—Subsection (c) of section 38 is
5 amended by adding at the end the following new para-
6 graph:

7 “(6) TEMPORARY PROVISION ALLOWING GEN-
8 ERAL BUSINESS CREDITS TO OFFSET 100 PERCENT
9 OF FEDERAL INCOME TAX LIABILITY.—

10 “(A) IN GENERAL.—In the case of a tax-
11 able year ending in 2008 or 2009—

12 “(i) the limitation under paragraph
13 (1) shall be the net income tax (as defined
14 in paragraph (1)) for purposes of deter-
15 mining the amount of the credit allowed
16 under subsection (a) for such taxable year,
17 and

18 “(ii) the excess credit for such taxable
19 year shall, solely for purposes of deter-
20 mining the amount of such excess credit
21 which may be carried back to a preceding
22 taxable year, be increased by the amount
23 of business credit carryforwards which are
24 carried to such taxable year and which are
25 not allowed for such taxable year by reason

1 of the limitation under paragraph (1) (as
2 modified by clause (i)).

3 “(B) INCREASE IN LIMITATION FOR TAX-
4 ABLE YEARS TO WHICH EXCESS CREDITS FOR
5 2008 AND 2009 ARE CARRIED BACK.—

6 “(i) IN GENERAL.—Solely for pur-
7 poses of determining the portion of any ex-
8 cess credit described in subparagraph
9 (A)(ii) for which credit will be allowed
10 under subsection (a)(3) for any preceding
11 taxable year, the limitation under para-
12 graph (1) for such preceding taxable year
13 shall be the net income tax (as defined in
14 paragraph (1)).

15 “(ii) ORDERING RULE.—If the excess
16 credit described in subparagraph (A)(ii) in-
17 cludes business credit carryforwards from
18 preceding taxable years, such excess credit
19 shall be treated as allowed for any pre-
20 ceding taxable year on a first-in first-out
21 basis.”.

22 (b) EFFECTIVE DATE.—The amendment made by
23 this section shall apply to taxable years ending after De-
24 cember 31, 2007, and to carrybacks of credits from such
25 taxable years.

1 **PART VI—MODIFICATION OF CREDIT FOR**
2 **CARBON DIOXIDE SEQUESTRATION**

3 **SEC. 1151. APPLICATION OF MONITORING REQUIREMENTS**
4 **TO CARBON DIOXIDE USED AS A TERTIARY**
5 **INJECTANT.**

6 (a) **IN GENERAL.**—Section 45Q(a)(2) is amended by
7 striking “and” at the end of subparagraph (A), by striking
8 the period at the end of subparagraph (B) and inserting
9 “, and”, and by adding at the end the following new sub-
10 paragraph:

11 “(C) disposed of by the taxpayer in secure
12 geological storage.”.

13 (b) **CONFORMING AMENDMENT.**—Section 45Q(d)(2)
14 is amended by striking “subsection (a)(1)(B)” and insert-
15 ing “paragraph (1)(B) or (2)(C) of subsection (a)”.

16 (c) **EFFECTIVE DATE.**—The amendments made by
17 this section shall apply to carbon dioxide captured after
18 the date of the enactment of this Act.

19 **PART VII—PLUG-IN ELECTRIC DRIVE MOTOR**
20 **VEHICLES**

21 **SEC. 1161. MODIFICATION OF CREDIT FOR QUALIFIED**
22 **PLUG-IN ELECTRIC MOTOR VEHICLES.**

23 (a) **INCREASE IN VEHICLES ELIGIBLE FOR CRED-**
24 **IT.**—Section 30D(b)(2)(B) is amended by striking
25 “250,000” and inserting “500,000”.

1 (b) EXCLUSION OF NEIGHBORHOOD ELECTRIC VEHI-
 2 CLES FROM EXISTING CREDIT.—Section 30D(e)(1) is
 3 amended to read as follows:

4 “(1) MOTOR VEHICLE.—The term ‘motor vehi-
 5 cle’ means a motor vehicle (as defined in section
 6 30(c)(2)), which is treated as a motor vehicle for
 7 purposes of title II of the Clean Air Act.”.

8 (c) CREDIT FOR CERTAIN OTHER VEHICLES.—Sec-
 9 tion 30D is amended—

10 (1) by redesignating subsections (f) and (g) as
 11 subsections (g) and (h), respectively, and

12 (2) by inserting after subsection (e) the fol-
 13 lowing new subsection:

14 “(f) CREDIT FOR CERTAIN OTHER VEHICLES.—For
 15 purposes of this section—

16 “(1) IN GENERAL.—In the case of a specified
 17 vehicle, this section shall be applied with the fol-
 18 lowing modifications:

19 “(A) For purposes of subsection (a)(1), in
 20 lieu of the applicable amount determined under
 21 subsection (a)(2), the applicable amount shall
 22 be 10 percent of so much of the cost of the
 23 specified vehicle as does not exceed \$40,000.

1 “(B) Subsection (b) shall not apply and no
2 specified vehicle shall be taken into account
3 under subsection (b)(2).

4 “(C) Subsection (c)(3) shall not apply.

5 “(2) SPECIFIED VEHICLE.—For purposes of
6 this subsection—

7 “(A) IN GENERAL.—The term ‘specified
8 vehicle’ means—

9 “(i) any 2- or 3-wheeled motor vehi-
10 cle, or

11 “(ii) any low-speed motor vehicle,
12 which is placed in service after December 31,
13 2009, and before January 1, 2012.

14 “(B) 2- OR 3-WHEELED MOTOR VEHI-
15 CLE.—The term ‘2- or 3-wheeled motor vehicle’
16 means any vehicle—

17 “(i) which would be described in sec-
18 tion 30(c)(2) except that it has 2 or 3
19 wheels,

20 “(ii) with motive power having a seat
21 or saddle for the use of the rider and de-
22 signed to travel on not more than 3 wheels
23 in contact with the ground,

24 “(iii) which has an electric motor that
25 produces in excess of 5-brake horsepower,

1 “(iv) which draws propulsion from 1
2 or more traction batteries, and

3 “(v) which has been certified to the
4 Department of Transportation pursuant to
5 section 567 of title 49, Code of Federal
6 Regulations, as conforming to all applica-
7 ble Federal motor vehicle safety standards
8 in effect on the date of the manufacture of
9 the vehicle.

10 “(C) LOW-SPEED MOTOR VEHICLE.—The
11 term ‘low-speed motor vehicle’ means a motor
12 vehicle (as defined in section 30(c)(2)) which
13 meets the requirements of section 571.500 of
14 title 49, Code of Federal Regulations.”.

15 (d) EFFECTIVE DATES.—

16 (1) INCREASE IN VEHICLES ELIGIBLE FOR
17 CREDIT.—The amendment made by subsection (a)
18 shall take effect on the date of the enactment of this
19 Act.

20 (2) OTHER MODIFICATIONS.—The amendments
21 made by subsections (b) and (c) shall apply to prop-
22 erty placed in service after December 31, 2009, in
23 taxable years beginning after such date.

1 **Subtitle C—Tax Incentives for**
2 **Business**

3 **PART I—TEMPORARY INVESTMENT INCENTIVES**

4 **SEC. 1201. SPECIAL ALLOWANCE FOR CERTAIN PROPERTY**
5 **ACQUIRED DURING 2009.**

6 (a) EXTENSION OF SPECIAL ALLOWANCE.—

7 (1) IN GENERAL.—Paragraph (2) of section
8 168(k) is amended—

9 (A) by striking “January 1, 2010” and in-
10 serting “January 1, 2011”, and

11 (B) by striking “January 1, 2009” each
12 place it appears and inserting “January 1,
13 2010”.

14 (2) CONFORMING AMENDMENTS.—

15 (A) The heading for subsection (k) of sec-
16 tion 168 is amended by striking “JANUARY 1,
17 2009” and inserting “JANUARY 1, 2010”.

18 (B) The heading for clause (ii) of section
19 168(k)(2)(B) is amended by striking “PRE-JAN-
20 UARY 1, 2009” and inserting “PRE-JANUARY 1,
21 2010”.

22 (C) Subparagraph (B) of section 168(l)(5)
23 is amended by striking “January 1, 2009” and
24 inserting “January 1, 2010”.

1 (D) Subparagraph (C) of section 168(n)(2)
2 is amended by striking “January 1, 2009” and
3 inserting “January 1, 2010”.

4 (E) Subparagraph (B) of section
5 1400N(d)(3) is amended by striking “January
6 1, 2009” and inserting “January 1, 2010”.

7 (3) TECHNICAL AMENDMENT.—Subparagraph
8 (D) of section 168(k)(4) is amended—

9 (A) by striking “and” at the end of clause
10 (i),

11 (B) by redesignating clause (ii) as clause
12 (iii), and

13 (C) by inserting after clause (i) the fol-
14 lowing new clause:

15 “(ii) ‘April 1, 2008’ shall be sub-
16 stituted for ‘January 1, 2008’ in subpara-
17 graph (A)(iii)(I) thereof, and”.

18 (b) EXTENSION OF ELECTION TO ACCELERATE THE
19 AMT AND RESEARCH CREDITS IN LIEU OF BONUS DE-
20 PRECIATION.—Section 168(k)(4) (relating to election to
21 accelerate the AMT and research credits in lieu of bonus
22 depreciation) is amended—

23 (1) by striking “2009” and inserting “2010” in
24 subparagraph (D)(iii) (as redesignated by subsection
25 (a)(3)), and

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

3 “(H) SPECIAL RULES FOR EXTENSION
4 PROPERTY.—

5 “(i) TAXPAYERS PREVIOUSLY ELECT-
6 ING ACCELERATION.—In the case of a tax-
7 payer who made the election under sub-
8 paragraph (A) for its first taxable year
9 ending after March 31, 2008—

10 “(I) the taxpayer may elect not
11 to have this paragraph apply to exten-
12 sion property, but

13 “(II) if the taxpayer does not
14 make the election under subclause (I),
15 in applying this paragraph to the tax-
16 payer a separate bonus depreciation
17 amount, maximum amount, and max-
18 imum increase amount shall be com-
19 puted and applied to eligible qualified
20 property which is extension property
21 and to eligible qualified property
22 which is not extension property.

23 “(ii) TAXPAYERS NOT PREVIOUSLY
24 ELECTING ACCELERATION.—In the case of
25 a taxpayer who did not make the election

1 under subparagraph (A) for its first tax-
2 able year ending after March 31, 2008—

3 “(I) the taxpayer may elect to
4 have this paragraph apply to its first
5 taxable year ending after December
6 31, 2008, and each subsequent tax-
7 able year, and

8 “(II) if the taxpayer makes the
9 election under subclause (I), this
10 paragraph shall only apply to eligible
11 qualified property which is extension
12 property.

13 “(iii) EXTENSION PROPERTY.—For
14 purposes of this subparagraph, the term
15 ‘extension property’ means property which
16 is eligible qualified property solely by rea-
17 son of the extension of the application of
18 the special allowance under paragraph (1)
19 pursuant to the amendments made by sec-
20 tion 1201(a) of the American Recovery and
21 Reinvestment Tax Act of 2009 (and the
22 application of such extension to this para-
23 graph pursuant to the amendment made
24 by section 1201(b)(1) of such Act).”.

1 (c) INCLUSION OF FILMS OR VIDEOTAPE AS QUALI-
2 FIED PROPERTY.—

3 (1) IN GENERAL.—Section 168(k)(2) is amend-
4 ed by adding at the end the following new subpara-
5 graph:

6 “(H) CERTAIN FILMS.—The term ‘quali-
7 fied property’ includes property—

8 “(i) which is a motion picture film or
9 video tape (within the meaning of sub-
10 section (f)(3)) for which a deduction is al-
11 lowable under section 167(a) without re-
12 gard to this section,

13 “(ii) the original use of which com-
14 mences with the taxpayer after December
15 31, 2008,

16 “(iii) which is—

17 “(I) acquired by the taxpayer
18 after December 31, 2008, and before
19 January 1, 2010, but only if no writ-
20 ten binding contract for the acquisi-
21 tion was in effect before January 1,
22 2009, or

23 “(II) acquired by the taxpayer
24 pursuant to a written binding contract
25 which was entered into after Decem-

1 ber 31, 2008, and before January 1,
2 2010,

3 “(iv) which is placed in service by the
4 taxpayer before January 1, 2010, or, in
5 the case of property described in subpara-
6 graph (B), before January 1, 2011, and

7 “(v) the production of which is a
8 qualified film or television production (as
9 defined in section 181(d) (determined with-
10 out regard to paragraph (2)(B)(ii) there-
11 of)) with respect to which an election is
12 not in effect under section 181.”.

13 (2) CONFORMING AMENDMENTS.—

14 (A) Subclause (I) of section
15 168(k)(2)(B)(i) is amended by inserting “sub-
16 paragraph (H) or” after “requirements of”.

17 (B) Subclause (II) of section
18 168(k)(2)(B)(i) is amended by striking “or is
19 transportation property” and inserting “, is
20 transportation property, or is property de-
21 scribed in subparagraph (H)”.

22 (C) Clause (iii) of section 168(k)(2)(D) is
23 amended by adding at the end the following
24 new sentence: “For purposes of the preceding
25 sentence, all property described in subpara-

1 graph (H) shall be treated as one class of prop-
2 erty.”.

3 (D) Subparagraph (E) of section 168(k)(2)
4 is amended by adding at the end the following
5 new clause:

6 “(v) APPLICATION TO FILM AND VID-
7 EOTAPE PROPERTY.—In the case of prop-
8 erty described in subparagraph (H),
9 clauses (i), (ii), (iii), and (iv) of this sub-
10 paragraph shall be applied—

11 “(I) by substituting ‘December
12 31, 2008’ for ‘December 31, 2007’
13 each place it appears, and

14 “(II) by treating any reference to
15 a clause of subparagraph (A) as a ref-
16 erence to the corresponding clause of
17 subparagraph (H).”.

18 (d) EFFECTIVE DATES.—

19 (1) IN GENERAL.—Except as provided in para-
20 graph (2), the amendments made by this section
21 shall apply to property placed in service after De-
22 cember 31, 2008, in taxable years ending after such
23 date.

1 (2) TECHNICAL AMENDMENT.—The amend-
2 ments made by subsection (a)(3) shall apply to tax-
3 able years ending after March 31, 2008.

4 **SEC. 1202. TEMPORARY INCREASE IN LIMITATIONS ON EX-**
5 **PENSING OF CERTAIN DEPRECIABLE BUSI-**
6 **NESS ASSETS.**

7 (a) IN GENERAL.—Paragraph (7) of section 179(b)
8 is amended—

9 (1) by striking “2008” and inserting “2008, or
10 2009”, and

11 (2) by striking “2008” in the heading thereof
12 and inserting “2008, AND 2009”.

13 (b) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to taxable years beginning after
15 December 31, 2008.

16 **PART II—5-YEAR CARRYBACK OF OPERATING**
17 **LOSSES**

18 **SEC. 1211. 5-YEAR CARRYBACK OF OPERATING LOSSES.**

19 (a) IN GENERAL.—Subparagraph (H) of section
20 172(b)(1) is amended to read as follows:

21 “(H) CARRYBACK FOR 2008 AND 2009 NET
22 OPERATING LOSSES.—

23 “(i) IN GENERAL.—In the case of an
24 applicable 2008 or 2009 net operating loss
25 with respect to which the taxpayer has

1 elected the application of this subpara-
2 graph—

3 “(I) subparagraph (A)(i) shall be
4 applied by substituting any whole
5 number elected by the taxpayer which
6 is more than 2 and less than 6 for ‘2’,

7 “(II) subparagraph (E)(ii) shall
8 be applied by substituting the whole
9 number which is one less than the
10 whole number substituted under sub-
11 clause (II) for ‘2’, and

12 “(III) subparagraph (F) shall not
13 apply.

14 “(ii) APPLICABLE 2008 OR 2009 NET
15 OPERATING LOSS.—For purposes of this
16 subparagraph, the term ‘applicable 2008
17 or 2009 net operating loss’ means—

18 “(I) the taxpayer’s net operating
19 loss for any taxable year ending in
20 2008 or 2009, or

21 “(II) if the taxpayer elects to
22 have this subclause apply in lieu of
23 subclause (I), the taxpayer’s net oper-
24 ating loss for any taxable year begin-
25 ning in 2008 or 2009.

1 “(iii) ELECTION.—Any election under
2 this subparagraph shall be made in such
3 manner as may be prescribed by the Sec-
4 retary, and shall be made by the due date
5 (including extension of time) for filing the
6 taxpayer’s return for the taxable year of
7 the net operating loss. Any such election,
8 once made, shall be irrevocable.

9 “(iv) COORDINATION WITH ALTER-
10 NATIVE TAX NET OPERATING LOSS DEDUC-
11 TION.—In the case of a taxpayer who
12 elects to have clause (ii)(II) apply, section
13 56(d)(1)(A)(ii) shall be applied by sub-
14 stituting ‘ending during 2001 or 2002 or
15 beginning during 2008 or 2009’ for ‘end-
16 ing during 2001, 2002, 2008, or 2009’.”.

17 (b) ALTERNATIVE TAX NET OPERATING LOSS DE-
18 DUCTION.—Subclause (I) of section 56(d)(1)(A)(ii) is
19 amended to read as follows:

20 “(I) the amount of such deduc-
21 tion attributable to the sum of
22 carrybacks of net operating losses
23 from taxable years ending during
24 2001, 2002, 2008, or 2009 and

1 carryovers of net operating losses to
2 such taxable years, or”.

3 (c) LOSS FROM OPERATIONS OF LIFE INSURANCE
4 COMPANIES.—Subsection (b) of section 810 is amended
5 by adding at the end the following new paragraph:

6 “(4) CARRYBACK FOR 2008 AND 2009 LOSSES.—

7 “(A) IN GENERAL.—In the case of an ap-
8 plicable 2008 or 2009 loss from operations with
9 respect to which the taxpayer has elected the
10 application of this paragraph, paragraph (1)(A)
11 shall be applied, at the election of the taxpayer,
12 by substituting ‘5’ or ‘4’ for ‘3’.

13 “(B) APPLICABLE 2008 OR 2009 LOSS FROM
14 OPERATIONS.—For purposes of this paragraph,
15 the term ‘applicable 2008 or 2009 loss from op-
16 erations’ means—

17 “(i) the taxpayer’s loss from oper-
18 ations for any taxable year ending in 2008
19 or 2009, or

20 “(ii) if the taxpayer elects to have this
21 clause apply in lieu of clause (i), the tax-
22 payer’s loss from operations for any tax-
23 able year beginning in 2008 or 2009.

24 “(C) ELECTION.—Any election under this
25 paragraph shall be made in such manner as

1 may be prescribed by the Secretary, and shall
2 be made by the due date (including extension of
3 time) for filing the taxpayer's return for the
4 taxable year of the loss from operations. Any
5 such election, once made, shall be irrevocable.

6 “(D) COORDINATION WITH ALTERNATIVE
7 TAX NET OPERATING LOSS DEDUCTION.—In the
8 case of a taxpayer who elects to have subpara-
9 graph (B)(ii) apply, section 56(d)(1)(A)(ii) shall
10 be applied by substituting ‘ending during 2001
11 or 2002 or beginning during 2008 or 2009’ for
12 ‘ending during 2001, 2002, 2008, or 2009’.”.

13 (d) CONFORMING AMENDMENT.—Section 172 is
14 amended by striking subsection (k) and by redesignating
15 subsection (l) as subsection (k).

16 (e) EFFECTIVE DATE.—

17 (1) IN GENERAL.—Except as otherwise pro-
18 vided in this subsection, the amendments made by
19 this section shall apply to net operating losses aris-
20 ing in taxable years ending after December 31,
21 2007.

22 (2) ALTERNATIVE TAX NET OPERATING LOSS
23 DEDUCTION.—The amendment made by subsection
24 (b) shall apply to taxable years ending after 1997.

1 (3) LOSS FROM OPERATIONS OF LIFE INSUR-
2 ANCE COMPANIES.—The amendment made by sub-
3 section (d) shall apply to losses from operations aris-
4 ing in taxable years ending after December 31,
5 2007.

6 (4) TRANSITIONAL RULE.—In the case of a net
7 operating loss (or, in the case of a life insurance
8 company, a loss from operations) for a taxable year
9 ending before the date of the enactment of this
10 Act—

11 (A) any election made under section
12 172(b)(3) or 810(b)(3) of the Internal Revenue
13 Code of 1986 with respect to such loss may
14 (notwithstanding such section) be revoked be-
15 fore the applicable date,

16 (B) any election made under section
17 172(k) or 810(b)(4) of such Code with respect
18 to such loss shall (notwithstanding such sec-
19 tion) be treated as timely made if made before
20 the applicable date, and

21 (C) any application under section 6411(a)
22 of such Code with respect to such loss shall be
23 treated as timely filed if filed before the appli-
24 cable date.

1 For purposes of this paragraph, the term “applica-
2 ble date” means the date which is 60 days after the
3 date of the enactment of this Act.

4 **SEC. 1212. EXCEPTION FOR TARP RECIPIENTS.**

5 The amendments made by this part shall not apply
6 to—

7 (1) any taxpayer if—

8 (A) the Federal Government acquires, at
9 any time, an equity interest in the taxpayer
10 pursuant to the Emergency Economic Stabiliza-
11 tion Act of 2008, or

12 (B) the Federal Government acquires, at
13 any time, any warrant (or other right) to ac-
14 quire any equity interest with respect to the
15 taxpayer pursuant to such Act,

16 (2) the Federal National Mortgage Association
17 and the Federal Home Loan Mortgage Corporation,
18 and

19 (3) any taxpayer which at any time in 2008 or
20 2009 is a member of the same affiliated group (as
21 defined in section 1504 of the Internal Revenue
22 Code of 1986, determined without regard to sub-
23 section (b) thereof) as a taxpayer described in para-
24 graph (1) or (2).

1 **PART III—INCENTIVES FOR NEW JOBS**

2 **SEC. 1221. INCENTIVES TO HIRE UNEMPLOYED VETERANS**
3 **AND DISCONNECTED YOUTH.**

4 (a) IN GENERAL.—Subsection (d) of section 51 is
5 amended by adding at the end the following new para-
6 graph:

7 “(14) CREDIT ALLOWED FOR UNEMPLOYED
8 VETERANS AND DISCONNECTED YOUTH HIRED IN
9 2009 OR 2010.—

10 “(A) IN GENERAL.—Any unemployed vet-
11 eran or disconnected youth who begins work for
12 the employer during 2009 or 2010 shall be
13 treated as a member of a targeted group for
14 purposes of this subpart.

15 “(B) DEFINITIONS.—For purposes of this
16 paragraph—

17 “(i) UNEMPLOYED VETERAN.—The
18 term ‘unemployed veteran’ means any vet-
19 eran (as defined in paragraph (3)(B), de-
20 termined without regard to clause (ii)
21 thereof) who is certified by the designated
22 local agency as—

23 “(I) having been discharged or
24 released from active duty in the
25 Armed Forces during 2008, 2009, or
26 2010, and

1 “(II) being in receipt of unem-
2 ployment compensation under State or
3 Federal law for not less than 4 weeks
4 during the 1-year period ending on
5 the hiring date.

6 “(ii) DISCONNECTED YOUTH.—The
7 term ‘disconnected youth’ means any indi-
8 vidual who is certified by the designated
9 local agency—

10 “(I) as having attained age 16
11 but not age 25 on the hiring date,

12 “(II) as not regularly attending
13 any secondary, technical, or post-sec-
14 ondary school during the 6-month pe-
15 riod preceding the hiring date,

16 “(III) as not regularly employed
17 during such 6-month period, and

18 “(IV) as not readily employable
19 by reason of lacking a sufficient num-
20 ber of basic skills.”.

21 (b) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to individuals who begin work for
23 the employer after December 31, 2008.

1 **PART IV—CANCELLATION OF INDEBTEDNESS**

2 **SEC. 1231. DEFERRAL AND RATABLE INCLUSION OF IN-**
3 **COME ARISING FROM INDEBTEDNESS DIS-**
4 **CHARGED BY THE REPURCHASE OF A DEBT**
5 **INSTRUMENT.**

6 (a) IN GENERAL.—Section 108 (relating to income
7 from discharge of indebtedness) is amended by adding at
8 the end the following new subsection:

9 “(i) DEFERRAL AND RATABLE INCLUSION OF IN-
10 COME ARISING FROM INDEBTEDNESS DISCHARGED BY
11 THE REPURCHASE OF A DEBT INSTRUMENT.—

12 “(1) IN GENERAL.—Notwithstanding section
13 61, income from the discharge of indebtedness in
14 connection with the repurchase of a debt instrument
15 after December 31, 2008, and before January 1,
16 2011, shall be includible in gross income ratably
17 over the 8-taxable-year period beginning with—

18 “(A) in the case of a repurchase occurring
19 in 2009, the second taxable year following the
20 taxable year in which the repurchase occurs,
21 and

22 “(B) in the case of a repurchase occurring
23 in 2010, the taxable year following the taxable
24 year in which the repurchase occurs.

25 “(2) DEBT INSTRUMENT.—For purposes of this
26 subsection, the term ‘debt instrument’ means a

1 bond, debenture, note, certificate, or any other in-
2 strument or contractual arrangement constituting
3 indebtedness (within the meaning of section
4 1275(a)(1)).

5 “(3) REPURCHASE.—For purposes of this sub-
6 section, the term ‘repurchase’ means, with respect to
7 any debt instrument, a cash purchase of the debt in-
8 strument by—

9 “(A) the debtor which issued the debt in-
10 strument, or

11 “(B) any person related to such debtor.

12 For purposes of subparagraph (B), the determina-
13 tion of whether a person is related to another person
14 shall be made in the same manner as under sub-
15 section (e)(4).

16 “(4) AUTHORITY TO PRESCRIBE REGULA-
17 TIONS.—The Secretary may prescribe such regula-
18 tions as may be necessary or appropriate for pur-
19 poses of applying this subsection.”.

20 (b) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to discharges in taxable years end-
22 ing after December 31, 2008.

1 **PART V—QUALIFIED SMALL BUSINESS STOCK**

2 **SEC. 1241. SPECIAL RULES APPLICABLE TO QUALIFIED**
3 **SMALL BUSINESS STOCK FOR 2009 AND 2010.**

4 (a) IN GENERAL.—Section 1202(a) is amended by
5 adding at the end the following new paragraph:

6 “(3) SPECIAL RULES FOR 2009 AND 2010.—In
7 the case of qualified small business stock acquired
8 after the date of the enactment of this paragraph
9 and before January 1, 2011—

10 “(A) paragraph (1) shall be applied by
11 substituting ‘75 percent’ for ‘50 percent’, and

12 “(B) paragraph (2) shall not apply.”.

13 (b) EFFECTIVE DATE.—The amendment made by
14 this section shall apply to stock acquired after the date
15 of the enactment of this Act.

16 **PART VI—PARITY FOR TRANSPORTATION**

17 **FRINGE BENEFITS**

18 **SEC. 1251. INCREASED EXCLUSION AMOUNT FOR COM-**
19 **MUTER TRANSIT BENEFITS AND TRANSIT**
20 **PASSES.**

21 (a) IN GENERAL.—Paragraph (2) of section 132(f)
22 is amended by adding at the end the following flush sen-
23 tence:

24 “‘In the case of any month beginning on or after the
25 date of the enactment of this sentence and before
26 January 1, 2011, subparagraph (A) shall be applied

1 as if the dollar amount therein were the same as the
2 dollar amount under subparagraph (B) (as in effect
3 for such month).”.

4 (b) EFFECTIVE DATE.—The amendment made by
5 this section shall apply to months beginning on or after
6 the date of the enactment of this section.

7 **PART VII—S CORPORATIONS**

8 **SEC. 1261. TEMPORARY REDUCTION IN RECOGNITION PE-** 9 **RIOD FOR BUILT-IN GAINS TAX.**

10 (a) IN GENERAL.—Paragraph (7) of section 1374(d)
11 (relating to definitions and special rules) is amended to
12 read as follows:

13 “(7) RECOGNITION PERIOD.—

14 “(A) IN GENERAL.—The term ‘recognition
15 period’ means the 10-year period beginning
16 with the 1st day of the 1st taxable year for
17 which the corporation was an S corporation.

18 “(B) SPECIAL RULE FOR 2009 AND 2010.—
19 In the case of any taxable year beginning in
20 2009 or 2010, no tax shall be imposed on the
21 net unrecognized built-in gain of an S corpora-
22 tion if the 7th taxable year in the recognition
23 period preceded such taxable year. The pre-
24 ceding sentence shall be applied separately with

1 respect to any asset to which paragraph (8) ap-
2 plies.

3 “(C) SPECIAL RULE FOR DISTRIBUTIONS
4 TO SHAREHOLDERS.—For purposes of applying
5 this section to any amount includible in income
6 by reason of distributions to shareholders pur-
7 suant to section 593(e)—

8 “(i) subparagraph (A) shall be applied
9 without regard to the phrase ‘10-year’, and

10 “(ii) subparagraph (B) shall not
11 apply.”.

12 (b) EFFECTIVE DATE.—The amendment made by
13 this section shall apply to taxable years beginning after
14 December 31, 2008.

15 **PART VIII—BROADBAND INCENTIVES**

16 **SEC. 1271. BROADBAND INTERNET ACCESS TAX CREDIT.**

17 (a) IN GENERAL.—Subpart E of part IV of chapter
18 1 of the Internal Revenue Code of 1986 (relating to rules
19 for computing investment credit), as amended by this Act,
20 is amended by inserting after section 48C the following
21 new section:

22 **“SEC. 48D. BROADBAND INTERNET ACCESS CREDIT.**

23 “(a) GENERAL RULE.—For purposes of section 46,
24 the broadband credit for any taxable year is the sum of—

1 “(1) the current generation broadband credit,
2 plus

3 “(2) the next generation broadband credit.

4 “(b) CURRENT GENERATION BROADBAND CREDIT;
5 NEXT GENERATION BROADBAND CREDIT.—For purposes
6 of this section—

7 “(1) CURRENT GENERATION BROADBAND
8 CREDIT.—The current generation broadband credit
9 for any taxable year is equal to 10 percent (20 per-
10 cent in the case of qualified subscribers which are
11 unserved subscribers) of the qualified broadband ex-
12 penditures incurred with respect to qualified equip-
13 ment providing current generation broadband serv-
14 ices to qualified subscribers and taken into account
15 with respect to such taxable year.

16 “(2) NEXT GENERATION BROADBAND CRED-
17 IT.—The next generation broadband credit for any
18 taxable year is equal to 20 percent of the qualified
19 broadband expenditures incurred with respect to
20 qualified equipment providing next generation
21 broadband services to qualified subscribers and
22 taken into account with respect to such taxable year.

23 “(c) WHEN EXPENDITURES TAKEN INTO AC-
24 COUNT.—For purposes of this section—

1 “(1) IN GENERAL.—Qualified broadband ex-
2 penditures with respect to qualified equipment shall
3 be taken into account with respect to the first tax-
4 able year in which—

5 “(A) current generation broadband services
6 are provided through such equipment to quali-
7 fied subscribers, or

8 “(B) next generation broadband services
9 are provided through such equipment to quali-
10 fied subscribers.

11 “(2) LIMITATION.—

12 “(A) IN GENERAL.—Qualified broadband
13 expenditures shall be taken into account under
14 paragraph (1) only with respect to qualified
15 equipment—

16 “(i) the original use of which com-
17 mences with the taxpayer, and

18 “(ii) which is placed in service, after
19 December 31, 2008, and before January 1,
20 2011.

21 “(B) SALE-LEASEBACKS.—For purposes of
22 subparagraph (A), if property—

23 “(i) is originally placed in service
24 after December 31, 2008, by any person,
25 and

1 “(ii) sold and leased back by such per-
2 son within 3 months after the date such
3 property was originally placed in service,
4 such property shall be treated as originally
5 placed in service not earlier than the date on
6 which such property is used under the leaseback
7 referred to in clause (ii).

8 “(d) SPECIAL ALLOCATION RULES FOR CURRENT
9 GENERATION BROADBAND SERVICES.—For purposes of
10 determining the current generation broadband credit
11 under subsection (a)(1) with respect to qualified equip-
12 ment through which current generation broadband serv-
13 ices are provided, if the qualified equipment is capable of
14 serving both qualified subscribers and other subscribers,
15 the qualified broadband expenditures shall be multiplied
16 by a fraction—

17 “(1) the numerator of which is the sum of the
18 number of potential qualified subscribers within the
19 rural areas and the underserved areas and the
20 unserved areas which the equipment is capable of
21 serving with current generation broadband services,
22 and

23 “(2) the denominator of which is the total po-
24 tential subscriber population of the area which the

1 equipment is capable of serving with current genera-
2 tion broadband services.

3 “(e) DEFINITIONS.—For purposes of this section—

4 “(1) ANTENNA.—The term ‘antenna’ means
5 any device used to transmit or receive signals
6 through the electromagnetic spectrum, including sat-
7 ellite equipment.

8 “(2) CABLE OPERATOR.—The term ‘cable oper-
9 ator’ has the meaning given such term by section
10 602(5) of the Communications Act of 1934 (47
11 U.S.C. 522(5)).

12 “(3) COMMERCIAL MOBILE SERVICE CAR-
13 RIER.—The term ‘commercial mobile service carrier’
14 means any person authorized to provide commercial
15 mobile radio service as defined in section 20.3 of
16 title 47, Code of Federal Regulations.

17 “(4) CURRENT GENERATION BROADBAND SERV-
18 ICE.—The term ‘current generation broadband serv-
19 ice’ means the transmission of signals at a rate of
20 at least 5,000,000 bits per second to the subscriber
21 and at least 1,000,000 bits per second from the sub-
22 scriber (at least 3,000,000 bits per second to the
23 subscriber and at least 768,000 bits per second from
24 the subscriber in the case of service through radio
25 transmission of energy).

1 “(5) MULTIPLEXING OR DEMULTIPLEXING.—
2 The term ‘multiplexing’ means the transmission of 2
3 or more signals over a single channel, and the term
4 ‘demultiplexing’ means the separation of 2 or more
5 signals previously combined by compatible multi-
6 plexing equipment.

7 “(6) NEXT GENERATION BROADBAND SERV-
8 ICE.—The term ‘next generation broadband service’
9 means the transmission of signals at a rate of at
10 least 100,000,000 bits per second to the subscriber
11 (or its equivalent when the data rate is measured be-
12 fore being compressed for transmission) and at least
13 20,000,000 bits per second from the subscriber (or
14 its equivalent as so measured).

15 “(7) NONRESIDENTIAL SUBSCRIBER.—The
16 term ‘nonresidential subscriber’ means any person
17 who purchases broadband services which are deliv-
18 ered to the permanent place of business of such per-
19 son.

20 “(8) OPEN VIDEO SYSTEM OPERATOR.—The
21 term ‘open video system operator’ means any person
22 authorized to provide service under section 653 of
23 the Communications Act of 1934 (47 U.S.C. 573).

24 “(9) OTHER WIRELESS CARRIER.—The term
25 ‘other wireless carrier’ means any person (other than

1 a telecommunications carrier, commercial mobile
2 service carrier, cable operator, open video system op-
3 erator, or satellite carrier) providing current genera-
4 tion broadband services or next generation
5 broadband service to subscribers through the radio
6 transmission of energy.

7 “(10) PACKET SWITCHING.—The term ‘packet
8 switching’ means controlling or routing the path of
9 a digitized transmission signal which is assembled
10 into packets or cells.

11 “(11) PROVIDER.—The term ‘provider’ means,
12 with respect to any qualified equipment any—

13 “(A) cable operator,

14 “(B) commercial mobile service carrier,

15 “(C) open video system operator,

16 “(D) satellite carrier,

17 “(E) telecommunications carrier, or

18 “(F) other wireless carrier,

19 providing current generation broadband services or
20 next generation broadband services to subscribers
21 through such qualified equipment.

22 “(12) PROVISION OF SERVICES.—A provider
23 shall be treated as providing services to 1 or more
24 subscribers if—

1 “(A) such a subscriber has been passed by
2 the provider’s equipment and can be connected
3 to such equipment for a standard connection
4 fee,

5 “(B) the provider is physically able to de-
6 liver current generation broadband services or
7 next generation broadband services, as applica-
8 ble, to such a subscriber without making more
9 than an insignificant investment with respect to
10 such subscriber,

11 “(C) the provider has made reasonable ef-
12 forts to make such subscribers aware of the
13 availability of such services,

14 “(D) such services have been purchased by
15 1 or more such subscribers, and

16 “(E) such services are made available to
17 such subscribers at average prices comparable
18 to those at which the provider makes available
19 similar services in any areas in which the pro-
20 vider makes available such services.

21 “(13) QUALIFIED EQUIPMENT.—

22 “(A) IN GENERAL.—The term ‘qualified
23 equipment’ means property with respect to
24 which depreciation (or amortization in lieu of
25 depreciation) is allowable and which provides

1 current generation broadband services or next
2 generation broadband services—

3 “(i) at least a majority of the time
4 during periods of maximum demand to
5 each subscriber who is utilizing such serv-
6 ices, and

7 “(ii) in a manner substantially the
8 same as such services are provided by the
9 provider to subscribers through equipment
10 with respect to which no credit is allowed
11 under subsection (a)(1).

12 “(B) ONLY CERTAIN INVESTMENT TAKEN
13 INTO ACCOUNT.—Except as provided in sub-
14 paragraph (C) or (D), equipment shall be taken
15 into account under subparagraph (A) only to
16 the extent it—

17 “(i) extends from the last point of
18 switching to the outside of the unit, build-
19 ing, dwelling, or office owned or leased by
20 a subscriber in the case of a telecommuni-
21 cations carrier or broadband-over-powerline
22 operator,

23 “(ii) extends from the customer side
24 of the mobile telephone switching office to
25 a transmission/receive antenna (including

1 such antenna) owned or leased by a sub-
2 scriber in the case of a commercial mobile
3 service carrier,

4 “(iii) extends from the customer side
5 of the headend to the outside of the unit,
6 building, dwelling, or office owned or
7 leased by a subscriber in the case of a
8 cable operator or open video system oper-
9 ator, or

10 “(iv) extends from a transmission/re-
11 ceive antenna (including such antenna)
12 which transmits and receives signals to or
13 from multiple subscribers, to a trans-
14 mission/receive antenna (including such
15 antenna) on the outside of the unit, build-
16 ing, dwelling, or office owned or leased by
17 a subscriber in the case of a satellite car-
18 rier or other wireless carrier, unless such
19 other wireless carrier is also a tele-
20 communications carrier.

21 “(C) PACKET SWITCHING EQUIPMENT.—

22 Packet switching equipment, regardless of loca-
23 tion, shall be taken into account under subpara-
24 graph (A) only if it is deployed in connection
25 with equipment described in subparagraph (B)

1 and is uniquely designed to perform the func-
2 tion of packet switching for current generation
3 broadband services or next generation
4 broadband services, but only if such packet
5 switching is the last in a series of such func-
6 tions performed in the transmission of a signal
7 to a subscriber or the first in a series of such
8 functions performed in the transmission of a
9 signal from a subscriber.

10 “(D) MULTIPLEXING AND
11 DEMULTIPLEXING EQUIPMENT.—Multiplexing
12 and demultiplexing equipment shall be taken
13 into account under subparagraph (A) only to
14 the extent it is deployed in connection with
15 equipment described in subparagraph (B) and
16 is uniquely designed to perform the function of
17 multiplexing and demultiplexing packets or cells
18 of data and making associated application
19 adaptations, but only if such multiplexing or
20 demultiplexing equipment is located between
21 packet switching equipment described in sub-
22 paragraph (C) and the subscriber’s premises.

23 “(14) QUALIFIED BROADBAND EXPENDI-
24 TURE.—

1 “(A) IN GENERAL.—The term ‘qualified
2 broadband expenditure’ means any amount—

3 “(i) chargeable to capital account with
4 respect to the purchase and installation of
5 qualified equipment (including any up-
6 grades thereto) for which depreciation is
7 allowable under section 168, and

8 “(ii) incurred after December 31,
9 2008, and before January 1, 2011.

10 “(B) CERTAIN SATELLITE EXPENDITURES
11 EXCLUDED.—Such term shall not include any
12 expenditure with respect to the launching of
13 any satellite equipment.

14 “(C) LEASED EQUIPMENT.—Such term
15 shall include so much of the purchase price paid
16 by the lessor of equipment subject to a lease de-
17 scribed in subsection (c)(2)(B) as is attrib-
18 utable to expenditures incurred by the lessee
19 which would otherwise be described in subpara-
20 graph (A).

21 “(15) QUALIFIED SUBSCRIBER.—The term
22 ‘qualified subscriber’ means—

23 “(A) with respect to the provision of cur-
24 rent generation broadband services—

1 “(i) any nonresidential subscriber
2 maintaining a permanent place of business
3 in a rural area, an underserved area, or an
4 unserved area, or

5 “(ii) any residential subscriber resid-
6 ing in a dwelling located in a rural area,
7 an underserved area, or an unserved area
8 which is not a saturated market, and

9 “(B) with respect to the provision of next
10 generation broadband services—

11 “(i) any nonresidential subscriber
12 maintaining a permanent place of business
13 in a rural area, an underserved area, or an
14 unserved area , or

15 “(ii) any residential subscriber.

16 “(16) RESIDENTIAL SUBSCRIBER.—The term
17 ‘residential subscriber’ means any individual who
18 purchases broadband services which are delivered to
19 such individual’s dwelling.

20 “(17) RURAL AREA.—The term ‘rural area’
21 means any census tract which—

22 “(A) is not within 10 miles of any incor-
23 porated or census designated place containing
24 more than 25,000 people, and

1 “(B) is not within a county or county
2 equivalent which has an overall population den-
3 sity of more than 500 people per square mile of
4 land.

5 “(18) RURAL SUBSCRIBER.—The term ‘rural
6 subscriber’ means any residential subscriber residing
7 in a dwelling located in a rural area or nonresiden-
8 tial subscriber maintaining a permanent place of
9 business located in a rural area.

10 “(19) SATELLITE CARRIER.—The term ‘sat-
11 ellite carrier’ means any person using the facilities
12 of a satellite or satellite service licensed by the Fed-
13 eral Communications Commission and operating in
14 the Fixed-Satellite Service under part 25 of title 47
15 of the Code of Federal Regulations or the Direct
16 Broadcast Satellite Service under part 100 of title
17 47 of such Code to establish and operate a channel
18 of communications for distribution of signals, and
19 owning or leasing a capacity or service on a satellite
20 in order to provide such point-to-multipoint distribu-
21 tion.

22 “(20) SATURATED MARKET.—The term ‘satu-
23 rated market’ means any census tract in which, as
24 of the date of the enactment of this section—

1 “(A) current generation broadband services
2 have been provided by a single provider to 85
3 percent or more of the total number of potential
4 residential subscribers residing in dwellings lo-
5 cated within such census tract, and

6 “(B) such services can be utilized—

7 “(i) at least a majority of the time
8 during periods of maximum demand by
9 each such subscriber who is utilizing such
10 services, and

11 “(ii) in a manner substantially the
12 same as such services are provided by the
13 provider to subscribers through equipment
14 with respect to which no credit is allowed
15 under subsection (a)(1).

16 “(21) SUBSCRIBER.—The term ‘subscriber’
17 means any person who purchases current generation
18 broadband services or next generation broadband
19 services.

20 “(22) TELECOMMUNICATIONS CARRIER.—The
21 term ‘telecommunications carrier’ has the meaning
22 given such term by section 3(44) of the Communica-
23 tions Act of 1934 (47 U.S.C. 153(44)), but—

1 “(A) includes all members of an affiliated
2 group of which a telecommunications carrier is
3 a member, and

4 “(B) does not include any commercial mo-
5 bile service carrier.

6 “(23) TOTAL POTENTIAL SUBSCRIBER POPU-
7 LATION.—The term ‘total potential subscriber popu-
8 lation’ means, with respect to any area and based on
9 the most recent census data, the total number of po-
10 tential residential subscribers residing in dwellings
11 located in such area and potential nonresidential
12 subscribers maintaining permanent places of busi-
13 ness located in such area.

14 “(24) UNDERSERVED AREA.—The term ‘under-
15 served area’ means any census tract which is located
16 in—

17 “(A) an empowerment zone or enterprise
18 community designated under section 1391,

19 “(B) the District of Columbia Enterprise
20 Zone established under section 1400,

21 “(C) a renewal community designated
22 under section 1400E, or

23 “(D) a low-income community designated
24 under section 45D.

1 “(25) UNDERSERVED SUBSCRIBER.—The term
2 ‘underserved subscriber’ means any residential sub-
3 scriber residing in a dwelling located in an under-
4 served area or nonresidential subscriber maintaining
5 a permanent place of business located in an under-
6 served area.

7 “(26) UNSERVED AREA.—The term ‘unserved
8 area’ means any census tract in which no current
9 generation broadband services are provided, as cer-
10 tified by the State in which such tract is located not
11 later than September 30, 2009.

12 “(27) UNSERVED SUBSCRIBER.—The term
13 ‘unserved subscriber’ means any residential sub-
14 scriber residing in a dwelling located in an unserved
15 area or nonresidential subscriber maintaining a per-
16 manent place of business located in an unserved
17 area.”.

18 (b) CREDIT TO BE PART OF INVESTMENT CREDIT.—
19 Section 46 (relating to the amount of investment credit),
20 as amended by this Act, is amended by striking “and”
21 at the end of paragraph (4), by striking the period at the
22 end of paragraph (5) and inserting “, and”, and by adding
23 at the end the following:

24 “(6) the broadband Internet access credit.”

1 (c) SPECIAL RULE FOR MUTUAL OR COOPERATIVE
2 TELEPHONE COMPANIES.—Section 501(c)(12)(B) (relat-
3 ing to list of exempt organizations) is amended by striking
4 “or” at the end of clause (iii), by striking the period at
5 the end of clause (iv) and inserting “, or”, and by adding
6 at the end the following new clause:

7 “(v) from the sale of property subject
8 to a lease described in section
9 48D(c)(2)(B), but only to the extent such
10 income does not in any year exceed an
11 amount equal to the credit for qualified
12 broadband expenditures which would be
13 determined under section 48D for such
14 year if the mutual or cooperative telephone
15 company was not exempt from taxation
16 and was treated as the owner of the prop-
17 erty subject to such lease.”.

18 (d) CONFORMING AMENDMENTS.—

19 (1) Section 49(a)(1)(C), as amended by this
20 Act, is amended by striking “and” at the end of
21 clause (iv), by striking the period at the end of
22 clause (v) and inserting “, and”, and by adding after
23 clause (v) the following new clause:

24 “(vi) the portion of the basis of any
25 qualified equipment attributable to quali-

1 fied broadband expenditures under section
2 48D.”.

3 (2) The table of sections for subpart E of part
4 IV of subchapter A of chapter 1, as amended by this
5 Act, is amended by inserting after the item relating
6 to section 48C the following:

“Sec. 48D. Broadband internet access credit.”.

7 (e) DESIGNATION OF CENSUS TRACTS.—

8 (1) IN GENERAL.—The Secretary of the Treas-
9 ury shall, not later than 90 days after the date of
10 the enactment of this Act, designate and publish
11 those census tracts meeting the criteria described in
12 paragraphs (17), (23), (24), and (26) of section
13 48D(e) of the Internal Revenue Code of 1986 (as
14 added by this section). In making such designations,
15 the Secretary of the Treasury shall consult with
16 such other departments and agencies as the Sec-
17 retary determines appropriate.

18 (2) SATURATED MARKET.—

19 (A) IN GENERAL.—For purposes of desig-
20 nating and publishing those census tracts meet-
21 ing the criteria described in subsection (e)(20)
22 of such section 48D—

23 (i) the Secretary of the Treasury shall
24 prescribe not later than 30 days after the
25 date of the enactment of this Act the form

1 upon which any provider which takes the
2 position that it meets such criteria with re-
3 spect to any census tract shall submit a
4 list of such census tracts (and any other
5 information required by the Secretary) not
6 later than 60 days after the date of the
7 publication of such form, and

8 (ii) the Secretary of the Treasury
9 shall publish an aggregate list of such cen-
10 sus tracts submitted and the applicable
11 providers not later than 30 days after the
12 last date such submissions are allowed
13 under clause (i).

14 (B) NO SUBSEQUENT LISTS REQUIRED.—

15 The Secretary of the Treasury shall not be re-
16 quired to publish any list of census tracts meet-
17 ing such criteria subsequent to the list de-
18 scribed in subparagraph (A)(ii).

19 (C) AUTHORITY TO DISREGARD FALSE
20 SUBMISSIONS.—In addition to imposing any
21 other applicable penalties, the Secretary of the
22 Treasury shall have the discretion to disregard
23 any form described in subparagraph (A)(i) on
24 which a provider knowingly submitted false in-
25 formation.

1 (f) OTHER REGULATORY MATTERS.—

2 (1) PROHIBITION.—No Federal or State agency
3 or instrumentality shall adopt regulations or rate-
4 making procedures that would have the effect of
5 eliminating or reducing any credit or portion thereof
6 allowed under section 48D of the Internal Revenue
7 Code of 1986 (as added by this section) or otherwise
8 subverting the purpose of this section.

9 (2) TREASURY REGULATORY AUTHORITY.—It is
10 the intent of Congress in providing the broadband
11 Internet access credit under section 48D of the In-
12 ternal Revenue Code of 1986 (as added by this sec-
13 tion) to provide incentives for the purchase, installa-
14 tion, and connection of equipment and facilities of-
15 fering expanded broadband access to the Internet for
16 users in certain low income and rural areas of the
17 United States, as well as to residential users nation-
18 wide, in a manner that maintains competitive neu-
19 trality among the various classes of providers of
20 broadband services. Accordingly, the Secretary of
21 the Treasury shall prescribe such regulations as may
22 be necessary or appropriate to carry out the pur-
23 poses of section 48D of such Code, including—

24 (A) regulations to determine how and when
25 a taxpayer that incurs qualified broadband ex-

1 penditures satisfies the requirements of section
2 48D of such Code to provide broadband serv-
3 ices, and

4 (B) regulations describing the information,
5 records, and data taxpayers are required to pro-
6 vide the Secretary to substantiate compliance
7 with the requirements of section 48D of such
8 Code.

9 (g) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to expenditures incurred after De-
11 cember 31, 2008.

12 **PART IX—CLARIFICATION OF REGULATIONS RE-**
13 **LATED TO LIMITATIONS ON CERTAIN BUILT-**
14 **IN LOSSES FOLLOWING AN OWNERSHIP**
15 **CHANGE**

16 **SEC. 1281. CLARIFICATION OF REGULATIONS RELATED TO**
17 **LIMITATIONS ON CERTAIN BUILT-IN LOSSES**
18 **FOLLOWING AN OWNERSHIP CHANGE.**

19 (a) FINDINGS.—Congress finds as follows:

20 (1) The delegation of authority to the Secretary
21 of the Treasury under section 382(m) of the Inter-
22 nal Revenue Code of 1986 does not authorize the
23 Secretary to provide exemptions or special rules that
24 are restricted to particular industries or classes of
25 taxpayers.

1 (2) Internal Revenue Service Notice 2008–83 is
2 inconsistent with the congressional intent in enact-
3 ing such section 382(m).

4 (3) The legal authority to prescribe Internal
5 Revenue Service Notice 2008–83 is doubtful.

6 (4) However, as taxpayers should generally be
7 able to rely on guidance issued by the Secretary of
8 the Treasury legislation is necessary to clarify the
9 force and effect of Internal Revenue Service Notice
10 2008–83 and restore the proper application under
11 the Internal Revenue Code of 1986 of the limitation
12 on built-in losses following an ownership change of
13 a bank.

14 (b) DETERMINATION OF FORCE AND EFFECT OF IN-
15 TERNAL REVENUE SERVICE NOTICE 2008–83 EXEMPT-
16 ING BANKS FROM LIMITATION ON CERTAIN BUILT-IN
17 LOSSES FOLLOWING OWNERSHIP CHANGE.—

18 (1) IN GENERAL.—Internal Revenue Service
19 Notice 2008–83—

20 (A) shall be deemed to have the force and
21 effect of law with respect to any ownership
22 change (as defined in section 382(g) of the In-
23 ternal Revenue Code of 1986) occurring on or
24 before January 16, 2009, and

1 (B) shall have no force or effect with re-
 2 spect to any ownership change after such date.

3 (2) **BINDING CONTRACTS.**—Notwithstanding
 4 paragraph (1), Internal Revenue Service Notice
 5 2008–83 shall have the force and effect of law with
 6 respect to any ownership change (as so defined)
 7 which occurs after January 16, 2009, if such
 8 change—

9 (A) is pursuant to a written binding con-
 10 tract entered into on or before such date, or

11 (B) is pursuant to a written agreement en-
 12 tered into on or before such date and such
 13 agreement was described on or before such date
 14 in a public announcement or in a filing with the
 15 Securities and Exchange Commission required
 16 by reason of such ownership change.

17 **Subtitle D—Manufacturing** 18 **Recovery Provisions**

19 **SEC. 1301. TEMPORARY EXPANSION OF AVAILABILITY OF**
 20 **INDUSTRIAL DEVELOPMENT BONDS TO FA-**
 21 **CILITIES MANUFACTURING INTANGIBLE**
 22 **PROPERTY.**

23 (a) **IN GENERAL.**—Subparagraph (C) of section
 24 144(a)(12) is amended—

1 (1) by striking “For purposes of this para-
2 graph, the term” and inserting “For purposes of
3 this paragraph—

4 “(i) IN GENERAL.—The term”, and

5 (2) by striking the last sentence and inserting
6 the following new clauses:

7 “(ii) CERTAIN FACILITIES IN-
8 CLUDED.—Such term includes facilities
9 which are directly related and ancillary to
10 a manufacturing facility (determined with-
11 out regard to this clause) if—

12 “(I) such facilities are located on
13 the same site as the manufacturing
14 facility, and

15 “(II) not more than 25 percent
16 of the net proceeds of the issue are
17 used to provide such facilities.

18 “(iii) SPECIAL RULES FOR BONDS
19 ISSUED IN 2009 AND 2010.—In the case of
20 any issue made after the date of enactment
21 of this clause and before January 1, 2011,
22 clause (ii) shall not apply and the net pro-
23 ceeds from a bond shall be considered to
24 be used to provide a manufacturing facility
25 if such proceeds are used to provide—

1 “(I) a facility which is used in
2 the creation or production of intan-
3 gible property which is described in
4 section 197(d)(1)(C)(iii), or

5 “(II) a facility which is function-
6 ally related and subordinate to a man-
7 ufacturing facility (determined with-
8 out regard to this subclause) if such
9 facility is located on the same site as
10 the manufacturing facility.”.

11 (b) **EFFECTIVE DATE.**—The amendments made by
12 this section shall apply to bonds issued after the date of
13 the enactment of this Act.

14 **SEC. 1302. CREDIT FOR INVESTMENT IN ADVANCED EN-**
15 **ERGY FACILITIES.**

16 (a) **IN GENERAL.**—Section 46 (relating to amount of
17 credit) is amended by striking “and” at the end of para-
18 graph (3), by striking the period at the end of paragraph
19 (4), and by adding at the end the following new para-
20 graph:

21 “(5) the qualifying advanced energy project
22 credit.”.

23 (b) **AMOUNT OF CREDIT.**—Subpart E of part IV of
24 subchapter A of chapter 1 (relating to rules for computing

1 investment credit) is amended by inserting after section
2 48B the following new section:

3 **“SEC. 48C. QUALIFYING ADVANCED ENERGY PROJECT**
4 **CREDIT.**

5 “(a) IN GENERAL.—For purposes of section 46, the
6 qualifying advanced energy project credit for any taxable
7 year is an amount equal to 30 percent of the qualified
8 investment for such taxable year with respect to any quali-
9 fying advanced energy project of the taxpayer.

10 “(b) QUALIFIED INVESTMENT.—

11 “(1) IN GENERAL.—For purposes of subsection
12 (a), the qualified investment for any taxable year is
13 the basis of eligible property placed in service by the
14 taxpayer during such taxable year which is part of
15 a qualifying advanced energy project—

16 “(A)(i) the construction, reconstruction, or
17 erection of which is completed by the taxpayer
18 after October 31, 2008, or

19 “(ii) which is acquired by the taxpayer if
20 the original use of such eligible property com-
21 mences with the taxpayer after October 31,
22 2008, and

23 “(B) with respect to which depreciation (or
24 amortization in lieu of depreciation) is allow-
25 able.

1 “(2) SPECIAL RULE FOR CERTAIN SUBSIDIZED
2 PROPERTY.—Rules similar to section 48(a)(4) (with-
3 out regard to subparagraph (D) thereof) shall apply
4 for purposes of this section.

5 “(3) CERTAIN QUALIFIED PROGRESS EXPENDI-
6 TURES RULES MADE APPLICABLE.—Rules similar to
7 the rules of subsections (c)(4) and (d) of section 46
8 (as in effect on the day before the enactment of the
9 Revenue Reconciliation Act of 1990) shall apply for
10 purposes of this section.

11 “(4) LIMITATION.—The amount which is treat-
12 ed for all taxable years with respect to any quali-
13 fying advanced energy project shall not exceed the
14 amount designated by the Secretary as eligible for
15 the credit under this section.

16 “(c) DEFINITIONS.—

17 “(1) QUALIFYING ADVANCED ENERGY
18 PROJECT.—

19 “(A) IN GENERAL.—The term ‘qualifying
20 advanced energy project’ means a project—

21 “(i) which re-equips, expands, or es-
22 tablishes a manufacturing facility for the
23 production of property which is—

24 “(I) designed to be used to
25 produce energy from the sun, wind,

1 geothermal deposits (within the mean-
2 ing of section 613(e)(2)), or other re-
3 newable resources,

4 “(II) designed to manufacture
5 fuel cells, microturbines, or an energy
6 storage system for use with electric or
7 hybrid-electric motor vehicles,

8 “(III) designed to manufacture
9 electric grids to support the trans-
10 mission of intermittent sources of re-
11 newable energy,

12 “(IV) designed to capture and se-
13 quester carbon dioxide emissions, or

14 “(V) designed to refine or blend
15 renewable fuels or to produce energy
16 conservation technologies (including
17 energy-conserving lighting tech-
18 nologies and smart grid technologies),
19 and

20 “(ii) any portion of the qualified in-
21 vestment of which is certified by the Sec-
22 retary under subsection (d) as eligible for
23 a credit under this section.

24 “(B) EXCEPTION.—Such term shall not in-
25 clude any portion of a project for the produc-

1 tion of any property which is used in the refin-
2 ing or blending of any transportation fuel
3 (other than renewable fuels).

4 “(2) ELIGIBLE PROPERTY.—The term ‘eligible
5 property’ means any property which is part of a
6 qualifying advanced energy project and is necessary
7 for the production of property described in para-
8 graph (1)(A)(i).

9 “(d) QUALIFYING ADVANCED ENERGY PROJECT
10 PROGRAM.—

11 “(1) ESTABLISHMENT.—

12 “(A) IN GENERAL.—Not later than 180
13 days after the date of enactment of this section,
14 the Secretary, in consultation with the Sec-
15 retary of Energy, shall establish a qualifying
16 advanced energy project program to consider
17 and award certifications for qualified invest-
18 ments eligible for credits under this section to
19 qualifying advanced energy project sponsors.

20 “(B) LIMITATION.—The total amount of
21 credits that may be allocated under the pro-
22 gram shall not exceed \$2,000,000,000.

23 “(2) CERTIFICATION.—

24 “(A) APPLICATION PERIOD.—Each appli-
25 cant for certification under this paragraph shall

1 submit an application containing such informa-
2 tion as the Secretary may require during the 3-
3 year period beginning on the date the Secretary
4 establishes the program under paragraph (1).

5 “(B) TIME TO MEET CRITERIA FOR CER-
6 TIFICATION.—Each applicant for certification
7 shall have 2 years from the date of acceptance
8 by the Secretary of the application during
9 which to provide to the Secretary evidence that
10 the requirements of the certification have been
11 met.

12 “(C) PERIOD OF ISSUANCE.—An applicant
13 which receives a certification shall have 5 years
14 from the date of issuance of the certification in
15 order to place the project in service and if such
16 project is not placed in service by that time pe-
17 riod then the certification shall no longer be
18 valid.

19 “(3) SELECTION CRITERIA.—In determining
20 which qualifying advanced energy projects to certify
21 under this section, the Secretary shall take into con-
22 sideration only those projects where there is a rea-
23 sonable expectation of commercial viability.

24 “(4) REVIEW AND REDISTRIBUTION.—

1 “(A) REVIEW.—Not later than 6 years
2 after the date of enactment of this section, the
3 Secretary shall review the credits allocated
4 under this section as of the date which is 6
5 years after the date of enactment of this sec-
6 tion.

7 “(B) REDISTRIBUTION.—The Secretary
8 may reallocate credits awarded under this sec-
9 tion if the Secretary determines that—

10 “(i) there is an insufficient quantity
11 of qualifying applications for certification
12 pending at the time of the review, or

13 “(ii) any certification made pursuant
14 to paragraph (2) has been revoked pursu-
15 ant to paragraph (2)(B) because the
16 project subject to the certification has been
17 delayed as a result of third party opposi-
18 tion or litigation to the proposed project.

19 “(C) REALLOCATION.—If the Secretary de-
20 termines that credits under this section are
21 available for reallocation pursuant to the re-
22 quirements set forth in paragraph (2), the Sec-
23 retary is authorized to conduct an additional
24 program for applications for certification.

1 “(5) DISCLOSURE OF ALLOCATIONS.—The Sec-
 2 retary shall, upon making a certification under this
 3 subsection, publicly disclose the identity of the appli-
 4 cant and the amount of the credit with respect to
 5 such applicant.

6 “(e) DENIAL OF DOUBLE BENEFIT.—A credit shall
 7 not be allowed under this section for any qualified invest-
 8 ment for which a credit is allowed under section 48, 48A,
 9 or 48B.”.

10 (c) CONFORMING AMENDMENTS.—

11 (1) Section 49(a)(1)(C) is amended by striking
 12 “and” at the end of clause (iii), by striking the pe-
 13 riod at the end of clause (iv) and inserting “, and”,
 14 and by adding after clause (iv) the following new
 15 clause:

16 “(v) the basis of any property which
 17 is part of a qualifying advanced energy
 18 project under section 48C.”.

19 (2) The table of sections for subpart E of part
 20 IV of subchapter A of chapter 1 is amended by in-
 21 serting after the item relating to section 48B the fol-
 22 lowing new item:

“48C. Qualifying advanced energy project credit.”.

23 (d) EFFECTIVE DATE.—The amendments made by
 24 this section shall apply to periods after the date of the
 25 enactment of this Act, under rules similar to the rules of

1 section 48(m) of the Internal Revenue Code of 1986 (as
 2 in effect on the day before the date of the enactment of
 3 the Revenue Reconciliation Act of 1990).

4 **Subtitle E—Economic Recovery**
 5 **Tools**

6 **SEC. 1401. RECOVERY ZONE BONDS.**

7 (a) IN GENERAL.—Subchapter Y of chapter 1 is
 8 amended by adding at the end the following new part:

9 **“PART III—RECOVERY ZONE BONDS**

“Sec. 1400U–1. Allocation of recovery zone bonds.

“Sec. 1400U–2. Recovery zone economic development bonds.

“Sec. 1400U–3. Recovery zone facility bonds.

10 **“SEC. 1400U–1. ALLOCATION OF RECOVERY ZONE BONDS.**

11 **“(a) ALLOCATIONS.—**

12 **“(1) IN GENERAL.—**The Secretary shall allo-
 13 cate the national recovery zone economic develop-
 14 ment bond limitation and the national recovery zone
 15 facility bond limitation among the States—

16 **“(A) by allocating 1 percent of each such**
 17 **limitation to each State, and**

18 **“(B) by allocating the remainder of each**
 19 **such limitation among the States in the propor-**
 20 **tion that each State’s 2008 State employment**
 21 **decline bears to the aggregate of the 2008**
 22 **State employment declines for all of the States.**

23 **“(2) 2008 STATE EMPLOYMENT DECLINE.—**For
 24 purposes of this subsection, the term ‘2008 State

1 employment decline' means, with respect to any
2 State, the excess (if any) of—

3 “(A) the number of individuals employed
4 in such State determined for December 2007,
5 over

6 “(B) the number of individuals employed
7 in such State determined for December 2008.

8 “(3) ALLOCATIONS BY STATES.—

9 “(A) IN GENERAL.—Each State with re-
10 spect to which an allocation is made under
11 paragraph (1) shall reallocate such allocation
12 among the counties and large municipalities in
13 such State in the proportion the each such
14 county's or municipality's 2008 employment de-
15 cline bears to the aggregate of the 2008 em-
16 ployment declines for all the counties and mu-
17 nicipalities in such State.

18 “(B) LARGE MUNICIPALITIES.—For pur-
19 poses of subparagraph (A), the term ‘large mu-
20 nicipality’ means a municipality with a popu-
21 lation of more than 100,000.

22 “(C) DETERMINATION OF LOCAL EMPLOY-
23 MENT DECLINES.—For purposes of this para-
24 graph, the employment decline of any munici-
25 pality or county shall be determined in the

1 same manner as determining the State employ-
 2 ment decline under paragraph (2), except that
 3 in the case of a municipality any portion of
 4 which is in a county, such portion shall be
 5 treated as part of such municipality and not
 6 part of such county.

7 “(4) NATIONAL LIMITATIONS.—

8 “(A) RECOVERY ZONE ECONOMIC DEVEL-
 9 OPMENT BONDS.—There is a national recovery
 10 zone economic development bond limitation of
 11 \$10,000,000,000.

12 “(B) RECOVERY ZONE FACILITY BONDS.—
 13 There is a national recovery zone facility bond
 14 limitation of \$15,000,000,000.

15 “(b) RECOVERY ZONE.—For purposes of this part,
 16 the term ‘recovery zone’ means—

17 “(1) any area designated by the issuer as hav-
 18 ing significant poverty, unemployment, rate of home
 19 foreclosures, or general distress, and

20 “(2) any area for which a designation as an em-
 21 powerment zone or renewal community is in effect.

22 **“SEC. 1400U-2. RECOVERY ZONE ECONOMIC DEVELOPMENT**
 23 **BONDS.**

24 “(a) IN GENERAL.—In the case of a recovery zone
 25 economic development bond—

1 “(1) such bond shall be treated as a qualified
2 bond for purposes of section 6431, and

3 “(2) subsection (b) of such section shall be ap-
4 plied by substituting ‘40 percent’ for ‘35 percent’.

5 “(b) RECOVERY ZONE ECONOMIC DEVELOPMENT
6 BOND.—

7 “(1) IN GENERAL.—For purposes of this sec-
8 tion, the term ‘recovery zone economic development
9 bond’ means any build America bond (as defined in
10 section 54AA(d)) issued before January 1, 2011, as
11 part of issue if—

12 “(A) 100 percent of the available project
13 proceeds (as defined in section 54A) of such
14 issue are to be used for one or more qualified
15 economic development purposes, and

16 “(B) the issuer designates such bond for
17 purposes of this section.

18 “(2) LIMITATION ON AMOUNT OF BONDS DES-
19 IGNATED.—The maximum aggregate face amount of
20 bonds which may be designated by any issuer under
21 paragraph (1) shall not exceed the amount of the re-
22 covery zone economic development bond limitation
23 allocated to such issuer under section 1400U–1.

24 “(c) QUALIFIED ECONOMIC DEVELOPMENT PUR-
25 POSE.—For purposes of this section, the term ‘qualified

1 economic development purpose’ means expenditures for
 2 purposes of promoting development or other economic ac-
 3 tivity in a recovery zone, including—

4 “(1) capital expenditures paid or incurred with
 5 respect to property located in such zone,

6 “(2) expenditures for public infrastructure and
 7 construction of public facilities, and

8 “(3) expenditures for job training and edu-
 9 cational programs.

10 **“SEC. 1400U-3. RECOVERY ZONE FACILITY BONDS.**

11 “(a) IN GENERAL.—For purposes of part IV of sub-
 12 chapter B (relating to tax exemption requirements for
 13 State and local bonds), the term ‘exempt facility bond’ in-
 14 cludes any recovery zone facility bond.

15 “(b) RECOVERY ZONE FACILITY BOND.—

16 “(1) IN GENERAL.—For purposes of this sec-
 17 tion, the term ‘recovery zone facility bond’ means
 18 any bond issued as part of an issue if—

19 “(A) 95 percent or more of the net pro-
 20 ceeds (as defined in section 150(a)(3)) of such
 21 issue are to be used for recovery zone property,

22 “(B) such bond is issued before January 1,
 23 2011, and

24 “(C) the issuer designates such bond for
 25 purposes of this section.

1 “(2) LIMITATION ON AMOUNT OF BONDS DES-
2 IGNATED.—The maximum aggregate face amount of
3 bonds which may be designated by any issuer under
4 paragraph (1) shall not exceed the amount of recov-
5 ery zone facility bond limitation allocated to such
6 issuer under section 1400U-1.

7 “(c) RECOVERY ZONE PROPERTY.—For purposes of
8 this section—

9 “(1) IN GENERAL.—The term ‘recovery zone
10 property’ means any property to which section 168
11 applies (or would apply but for section 179) if—

12 “(A) such property was acquired by the
13 taxpayer by purchase (as defined in section
14 179(d)(2)) after the date on which the designa-
15 tion of the recovery zone took effect,

16 “(B) the original use of which in the recov-
17 ery zone commences with the taxpayer, and

18 “(C) substantially all of the use of which
19 is in the recovery zone and is in the active con-
20 duct of a qualified business by the taxpayer in
21 such zone.

22 “(2) QUALIFIED BUSINESS.—The term ‘quali-
23 fied business’ means any trade or business except
24 that—

1 “(A) the rental to others of real property
 2 located in a recovery zone shall be treated as a
 3 qualified business only if the property is not
 4 residential rental property (as defined in section
 5 168(e)(2)), and

6 “(B) such term shall not include any trade
 7 or business consisting of the operation of any
 8 facility described in section 144(c)(6)(B).

9 “(3) SPECIAL RULES FOR SUBSTANTIAL REN-
 10 OVATIONS AND SALE-LEASEBACK.—Rules similar to
 11 the rules of subsections (a)(2) and (b) of section
 12 1397D shall apply for purposes of this subsection.

13 “(d) NONAPPLICATION OF CERTAIN RULES.—Sec-
 14 tions 146 (relating to volume cap) and 147(d) (relating
 15 to acquisition of existing property not permitted) shall not
 16 apply to any recovery zone facility bond.”.

17 (b) CLERICAL AMENDMENT.—The table of parts for
 18 subchapter Y of chapter 1 of such Code is amended by
 19 adding at the end the following new item:

 “PART III. RECOVERY ZONE BONDS.”.

20 (c) EFFECTIVE DATE.—The amendments made by
 21 this section shall apply to obligations issued after the date
 22 of the enactment of this Act.

23 **SEC. 1402. TRIBAL ECONOMIC DEVELOPMENT BONDS.**

24 (a) IN GENERAL.—Section 7871 is amended by add-
 25 ing at the end the following new subsection:

1 “(f) TRIBAL ECONOMIC DEVELOPMENT BONDS.—

2 “(1) ALLOCATION OF LIMITATION.—

3 “(A) IN GENERAL.—The Secretary shall
4 allocate the national tribal economic develop-
5 ment bond limitation among the Indian tribal
6 governments in such manner as the Secretary,
7 in consultation with the Secretary of the Inte-
8 rior, determines appropriate.

9 “(B) NATIONAL LIMITATION.—There is a
10 national tribal economic development bond limi-
11 tation of \$2,000,000,000.

12 “(2) BONDS TREATED AS EXEMPT FROM
13 TAX.—In the case of a tribal economic development
14 bond—

15 “(A) notwithstanding subsection (c), such
16 bond shall be treated for purposes of this title
17 in the same manner as if such bond were issued
18 by a State,

19 “(B) the Indian tribal government issuing
20 such bond and any instrumentality of such In-
21 dian tribal government shall be treated as a
22 State for purposes of section 141, and

23 “(C) section 146 shall not apply.

24 “(3) TRIBAL ECONOMIC DEVELOPMENT
25 BOND.—

1 “(A) IN GENERAL.—For purposes of this
2 section, the term ‘tribal economic development
3 bond’ means any bond issued by an Indian trib-
4 al government—

5 “(i) the interest on which would be ex-
6 empt from tax under section 103 if issued
7 by a State or local government, and

8 “(ii) which is designated by the In-
9 dian tribal government as a tribal eco-
10 nomic development bond for purposes of
11 this subsection.

12 “(B) EXCEPTIONS.—The term tribal eco-
13 nomic development bond shall not include any
14 bond issued as part of an issue if any portion
15 of the proceeds of such issue are used to fi-
16 nance—

17 “(i) any portion of a building in which
18 class II or class III gaming (as defined in
19 section 4 of the Indian Gaming Regulatory
20 Act) is conducted or housed or any other
21 property actually used in the conduct of
22 such gaming, or

23 “(ii) any facility located outside the
24 Indian reservation (as defined in section
25 168(j)(6)).

1 “(C) LIMITATION ON AMOUNT OF BONDS
2 DESIGNATED.—The maximum aggregate face
3 amount of bonds which may be designated by
4 any Indian tribal government under subpara-
5 graph (A) shall not exceed the amount of na-
6 tional tribal economic development bond limita-
7 tion allocated to such government under para-
8 graph (1).”.

9 (b) STUDY.—The Secretary of the Treasury, or the
10 Secretary’s delegate, shall conduct a study of the effects
11 of the amendment made by subsection (a). Not later than
12 1 year after the date of the enactment of this Act, the
13 Secretary of the Treasury, or the Secretary’s delegate,
14 shall report to Congress on the results of the study con-
15 ducted under this paragraph, including the Secretary’s
16 recommendations regarding such amendment.

17 (c) EFFECTIVE DATE.—The amendment made by
18 subsection (a) shall apply to obligations issued after the
19 date of the enactment of this Act.

20 **SEC. 1403. MODIFICATIONS TO NEW MARKETS TAX CREDIT.**

21 (a) INCREASE IN NATIONAL LIMITATION.—

22 (1) IN GENERAL.—Section 45D(f)(1) is amend-
23 ed—

24 (A) by striking “and” at the end of sub-
25 paragraph (C),

1 (B) by striking “, 2007, 2008, and 2009.”
2 in subparagraph (D), and inserting “and
3 2007,”, and

4 (C) by adding at the end the following new
5 subparagraphs:

6 “(E) \$5,000,000,000 for 2008, and

7 “(F) \$5,000,000,000 for 2009.”.

8 (2) SPECIAL RULE FOR ALLOCATION OF IN-
9 CREASED 2008 LIMITATION.—The amount of the in-
10 crease in the new markets tax credit limitation for
11 calendar year 2008 by reason of the amendments
12 made by subsection (a) shall be allocated in accord-
13 ance with section 45D(f)(2) of the Internal Revenue
14 Code of 1986 to qualified community development
15 entities (as defined in section 45D(e) of such Code)
16 which—

17 (A) submitted an allocation application
18 with respect to calendar year 2008, and

19 (B)(i) did not receive an allocation for
20 such calendar year, or

21 (ii) received an allocation for such calendar
22 year in an amount less than the amount re-
23 quested in the allocation application.

24 (b) ALTERNATIVE MINIMUM TAX RELIEF.—

1 (1) IN GENERAL.—Section 38(c)(4)(B) is
2 amended by redesignating clauses (v) through (viii)
3 as clauses (vi) through (ix), respectively, and by in-
4 serting after clause (iv) the following new clause:

5 “(v) the credit determined under sec-
6 tion 45D to the extent that such credit is
7 attributable to a qualified equity invest-
8 ment which is designated as such under
9 section 45D(b)(1)(C) pursuant to an allo-
10 cation of the new markets tax credit limi-
11 tation for calendar year 2009.”.

12 (2) EFFECTIVE DATE.—The amendments made
13 by this subsection shall apply to credits determined
14 under section 45D of the Internal Revenue Code of
15 1986 in taxable years ending after the date of the
16 enactment of this Act, and to carrybacks of such
17 credits.

1 **Subtitle F—Infrastructure**
2 **Financing Tools**

3 **PART I—IMPROVED MARKETABILITY FOR TAX-**
4 **EXEMPT BONDS**

5 **SEC. 1501. DE MINIMIS SAFE HARBOR EXCEPTION FOR TAX-**
6 **EXEMPT INTEREST EXPENSE OF FINANCIAL**
7 **INSTITUTIONS.**

8 (a) IN GENERAL.—Subsection (b) of section 265 is
9 amended by adding at the end the following new para-
10 graph:

11 “(7) DE MINIMIS EXCEPTION FOR BONDS
12 ISSUED DURING 2009 OR 2010.—

13 “(A) IN GENERAL.—In applying paragraph
14 (2)(A), there shall not be taken into account
15 tax-exempt obligations issued during 2009 or
16 2010.

17 “(B) LIMITATION.—The amount of tax-ex-
18 empt obligations not taken into account by rea-
19 son of subparagraph (A) shall not exceed 2 per-
20 cent of the amount determined under para-
21 graph (2)(B).

22 “(C) REFUNDINGS.—For purposes of this
23 paragraph, a refunding bond (whether a current
24 or advance refunding) shall be treated as issued
25 on the date of the issuance of the refunded

1 bond (or in the case of a series of refundings,
2 the original bond).”.

3 (b) TREATMENT AS FINANCIAL INSTITUTION PREF-
4 ERENCE ITEM.—Clause (iv) of section 291(e)(1)(B) is
5 amended by adding at the end the following: “That por-
6 tion of any obligation not taken into account under para-
7 graph (2)(A) of section 265(b) by reason of paragraph (7)
8 of such section shall be treated for purposes of this section
9 as having been acquired on August 7, 1986.”.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to obligations issued after Decem-
12 ber 31, 2008.

13 **SEC. 1502. MODIFICATION OF SMALL ISSUER EXCEPTION**
14 **TO TAX-EXEMPT INTEREST EXPENSE ALLOCA-**
15 **TION RULES FOR FINANCIAL INSTITUTIONS.**

16 (a) IN GENERAL.—Paragraph (3) of section 265(b)
17 (relating to exception for certain tax-exempt obligations)
18 is amended by adding at the end the following new sub-
19 paragraph:

20 “(G) SPECIAL RULES FOR OBLIGATIONS
21 ISSUED DURING 2009 AND 2010.—

22 “(i) INCREASE IN LIMITATION.—In
23 the case of obligations issued during 2009
24 or 2010, subparagraphs (C)(i), (D)(i), and

1 (D)(iii)(II) shall each be applied by sub-
2 stituting ‘\$30,000,000’ for ‘\$10,000,000’.

3 “(ii) QUALIFIED 501(c)(3) BONDS
4 TREATED AS ISSUED BY EXEMPT ORGANI-
5 ZATION.—In the case of a qualified
6 501(c)(3) bond (as defined in section 145)
7 issued during 2009 or 2010, this para-
8 graph shall be applied by treating the
9 501(c)(3) organization for whose benefit
10 such bond was issued as the issuer.

11 “(iii) SPECIAL RULE FOR QUALIFIED
12 FINANCINGS.—In the case of a qualified fi-
13 nancing issue issued during 2009 or
14 2010—

15 “(I) subparagraph (F) shall not
16 apply, and

17 “(II) any obligation issued as a
18 part of such issue shall be treated as
19 a qualified tax-exempt obligation if
20 the requirements of this paragraph
21 are met with respect to each qualified
22 portion of the issue (determined by
23 treating each qualified portion as a
24 separate issue which is issued by the

1 qualified borrower with respect to
2 which such portion relates).

3 “(iv) QUALIFIED FINANCING ISSUE.—
4 For purposes of this subparagraph, the
5 term ‘qualified financing issue’ means any
6 composite, pooled, or other conduit financ-
7 ing issue the proceeds of which are used
8 directly or indirectly to make or finance
9 loans to 1 or more ultimate borrowers each
10 of whom is a qualified borrower.

11 “(v) QUALIFIED PORTION.—For pur-
12 poses of this subparagraph, the term
13 ‘qualified portion’ means that portion of
14 the proceeds which are used with respect
15 to each qualified borrower under the issue.

16 “(vi) QUALIFIED BORROWER.—For
17 purposes of this subparagraph, the term
18 ‘qualified borrower’ means a borrower
19 which is a State or political subdivision
20 thereof or an organization described in sec-
21 tion 501(c)(3) and exempt from taxation
22 under section 501(a).”.

23 (b) EFFECTIVE DATE.—The amendment made by
24 this section shall apply to obligations issued after Decem-
25 ber 31, 2008.

1 **SEC. 1503. TEMPORARY MODIFICATION OF ALTERNATIVE**
2 **MINIMUM TAX LIMITATIONS ON TAX-EXEMPT**
3 **BONDS.**

4 (a) INTEREST ON PRIVATE ACTIVITY BONDS ISSUED
5 DURING 2009 AND 2010 NOT TREATED AS TAX PREF-
6 ERENCE ITEM.—Subparagraph (C) of section 57(a)(5) is
7 amended by adding at the end a new clause:

8 “(vi) EXCEPTION FOR BONDS ISSUED
9 IN 2009 AND 2010.—For purposes of clause
10 (i), the term ‘private activity bond’ shall
11 not include any bond issued after Decem-
12 ber 31, 2008, and before January 1, 2011.
13 For purposes of the preceding sentence, a
14 refunding bond (whether a current or ad-
15 vance refunding) shall be treated as issued
16 on the date of the issuance of the refunded
17 bond (or in the case of a series of
18 refundings, the original bond).”.

19 (b) NO ADJUSTMENT TO ADJUSTED CURRENT
20 EARNINGS FOR INTEREST ON TAX-EXEMPT BONDS
21 ISSUED DURING 2009 AND 2010.—Subparagraph (B) of
22 section 56(g)(4) is amended by adding at the end the fol-
23 lowing new clause:

24 “(iv) TAX EXEMPT INTEREST ON
25 BONDS ISSUED IN 2009 AND 2010.—Clause
26 (i) shall not apply in the case of any inter-

1 est on a bond issued after December 31,
2 2008, and before January 1, 2011. For
3 purposes of the preceding sentence, a re-
4 funding bond (whether a current or ad-
5 vance refunding) shall be treated as issued
6 on the date of the issuance of the refunded
7 bond (or in the case of a series of
8 refundings, the original bond).”.

9 (c) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to obligations issued after Decem-
11 ber 31, 2008.

12 **SEC. 1504. MODIFICATION TO HIGH SPEED INTERCITY RAIL**
13 **FACILITY BONDS.**

14 (a) IN GENERAL.—Paragraph (1) of section 142(i)
15 is amended by striking “operate at speeds in excess of”
16 and inserting “be capable of attaining a maximum speed
17 in excess of”.

18 (b) EFFECTIVE DATE.—The amendment made by
19 this section shall apply to bonds issued after the date of
20 the enactment of this Act.

1 **PART II—DELAY IN APPLICATION OF WITH-**
2 **HOLDING TAX ON GOVERNMENT CONTRAC-**
3 **TORS**

4 **SEC. 1511. DELAY IN APPLICATION OF WITHHOLDING TAX**
5 **ON GOVERNMENT CONTRACTORS.**

6 Subsection (b) of section 511 of the Tax Increase
7 Prevention and Reconciliation Act of 2005 is amended by
8 striking “December 31, 2010” and inserting “December
9 31, 2011”.

10 **PART III—TAX CREDIT BONDS FOR SCHOOLS**

11 **SEC. 1521. QUALIFIED SCHOOL CONSTRUCTION BONDS.**

12 (a) IN GENERAL.—Subpart I of part IV of sub-
13 chapter A of chapter 1 is amended by adding at the end
14 the following new section:

15 **“SEC. 54F. QUALIFIED SCHOOL CONSTRUCTION BONDS.**

16 **“(a) QUALIFIED SCHOOL CONSTRUCTION BOND.—**
17 For purposes of this subchapter, the term ‘qualified school
18 construction bond’ means any bond issued as part of an
19 issue if—

20 “(1) 100 percent of the available project pro-
21 ceeds of such issue are to be used for the construc-
22 tion, rehabilitation, or repair of a public school facil-
23 ity or for the acquisition of land on which such a fa-
24 cility is to be constructed with part of the proceeds
25 of such issue,

1 “(2) the bond is issued by a State or local gov-
2 ernment within the jurisdiction of which such school
3 is located, and

4 “(3) the issuer designates such bond for pur-
5 poses of this section.

6 “(b) LIMITATION ON AMOUNT OF BONDS DES-
7 IGNATED.—The maximum aggregate face amount of
8 bonds issued during any calendar year which may be des-
9 ignated under subsection (a) by any issuer shall not exceed
10 the limitation amount allocated under subsection (d) for
11 such calendar year to such issuer.

12 “(c) NATIONAL LIMITATION ON AMOUNT OF BONDS
13 DESIGNATED.—There is a national qualified school con-
14 struction bond limitation for each calendar year. Such lim-
15 itation is—

16 “(1) \$5,000,000,000 for 2009,

17 “(2) \$5,000,000,000 for 2010, and

18 “(3) except as provided in subsection (e), zero
19 after 2010.

20 “(d) LIMITATION ALLOCATED AMONG STATES.—

21 “(1) IN GENERAL.—The limitation applicable
22 under subsection (c) for any calendar year shall be
23 allocated by the Secretary among the States in pro-
24 portion to the respective numbers of children in each
25 State who have attained age 5 but not age 18 for

1 the most recent fiscal year ending before such cal-
2 endar year. The limitation amount allocated to a
3 State under the preceding sentence shall be allocated
4 by the State to issuers within such State.

5 “(2) MINIMUM ALLOCATIONS TO STATES.—

6 “(A) IN GENERAL.—The Secretary shall
7 adjust the allocations under this subsection for
8 any calendar year for each State to the extent
9 necessary to ensure that the amount allocated
10 to such State under this subsection for such
11 year is not less than an amount equal to such
12 State’s adjusted minimum percentage of the
13 amount to be allocated under paragraph (1) for
14 the calendar year.

15 “(B) MINIMUM PERCENTAGE.—A State’s
16 minimum percentage for any calendar year is
17 equal to the product of—

18 “(i) the quotient of—

19 “(I) the amount the State is eli-
20 gible to receive under section 1124(d)
21 of the Elementary and Secondary
22 Education Act of 1965 (20 U.S.C.
23 6333(d)) for the most recent fiscal
24 year ending before such calendar year,
25 divided by

1 “(II) the amount all States are
2 eligible to receive under section 1124
3 of such Act (20 U.S.C. 6333) for such
4 fiscal year, multiplied by
5 “(ii) 100.

6 “(3) ALLOCATIONS TO CERTAIN POSSES-
7 SIONS.—The amount to be allocated under para-
8 graph (1) to any possession of the United States
9 other than Puerto Rico shall be the amount which
10 would have been allocated if all allocations under
11 paragraph (1) were made on the basis of respective
12 populations of individuals below the poverty line (as
13 defined by the Office of Management and Budget).
14 In making other allocations, the amount to be allo-
15 cated under paragraph (1) shall be reduced by the
16 aggregate amount allocated under this paragraph to
17 possessions of the United States.

18 “(4) ALLOCATIONS FOR INDIAN SCHOOLS.—In
19 addition to the amounts otherwise allocated under
20 this subsection, \$200,000,000 for calendar year
21 2009, and \$200,000,000 for calendar year 2010,
22 shall be allocated by the Secretary of the Interior for
23 purposes of the construction, rehabilitation, and re-
24 pair of schools funded by the Bureau of Indian Af-
25 fairs. In the case of amounts allocated under the

1 preceding sentence, Indian tribal governments (as
2 defined in section 7701(a)(40)) shall be treated as
3 qualified issuers for purposes of this subchapter.

4 “(e) CARRYOVER OF UNUSED LIMITATION.—If for
5 any calendar year—

6 “(1) the amount allocated under subsection (d)
7 to any State, exceeds

8 “(2) the amount of bonds issued during such
9 year which are designated under subsection (a) pur-
10 suant to such allocation,

11 the limitation amount under such subsection for such
12 State for the following calendar year shall be increased
13 by the amount of such excess. A similar rule shall apply
14 to the amounts allocated under subsection (d)(4).”.

15 (b) CONFORMING AMENDMENTS.—

16 (1) Paragraph (1) of section 54A(d) is amended
17 by striking “or” at the end of subparagraph (C), by
18 inserting “or” at the end of subparagraph (D), and
19 by inserting after subparagraph (D) the following
20 new subparagraph:

21 “(E) a qualified school construction
22 bond.”.

23 (2) Subparagraph (C) of section 54A(d)(2) is
24 amended by striking “and” at the end of clause (iii),
25 by striking the period at the end of clause (iv) and

1 inserting “, and”, and by adding at the end the fol-
 2 lowing new clause:

3 “(v) in the case of a qualified school
 4 construction bond, a purpose specified in
 5 section 54F(a)(1).”.

6 (3) The table of sections for subpart I of part
 7 IV of subchapter A of chapter 1 is amended by add-
 8 ing at the end the following new item:

“Sec. 54F. Qualified school construction bonds.”.

9 (c) EFFECTIVE DATE.—The amendments made by
 10 this section shall apply to obligations issued after the date
 11 of the enactment of this Act.

12 **SEC. 1522. EXTENSION AND EXPANSION OF QUALIFIED**
 13 **ZONE ACADEMY BONDS.**

14 (a) IN GENERAL.—Section 54E(c)(1) is amended by
 15 striking “and 2009” and inserting “and \$1,400,000,000
 16 for 2009 and 2010”.

17 (b) EFFECTIVE DATE.—The amendment made by
 18 this section shall apply to obligations issued after Decem-
 19 ber 31, 2008.

20 **PART IV—BUILD AMERICA BONDS**

21 **SEC. 1531. BUILD AMERICA BONDS.**

22 (a) IN GENERAL.—Part IV of subchapter A of chap-
 23 ter 1 is amended by adding at the end the following new
 24 subpart:

1 **“Subpart J—Build America Bonds**

“Sec. 54AA. Build America bonds.

2 **“SEC. 54AA. BUILD AMERICA BONDS.**

3 “(a) IN GENERAL.—If a taxpayer holds a build
4 America bond on one or more interest payment dates of
5 the bond during any taxable year, there shall be allowed
6 as a credit against the tax imposed by this chapter for
7 the taxable year an amount equal to the sum of the credits
8 determined under subsection (b) with respect to such
9 dates.

10 “(b) AMOUNT OF CREDIT.—The amount of the credit
11 determined under this subsection with respect to any in-
12 terest payment date for a build America bond is 35 per-
13 cent of the amount of interest payable by the issuer with
14 respect to such date.

15 “(c) LIMITATION BASED ON AMOUNT OF TAX.—

16 “(1) IN GENERAL.—The credit allowed under
17 subsection (a) for any taxable year shall not exceed
18 the excess of—

19 “(A) the sum of the regular tax liability
20 (as defined in section 26(b)) plus the tax im-
21 posed by section 55, over

22 “(B) the sum of the credits allowable
23 under this part (other than subpart C and this
24 subpart).

1 “(2) CARRYOVER OF UNUSED CREDIT.—If the
2 credit allowable under subsection (a) exceeds the
3 limitation imposed by paragraph (1) for such taxable
4 year, such excess shall be carried to the succeeding
5 taxable year and added to the credit allowable under
6 subsection (a) for such taxable year (determined be-
7 fore the application of paragraph (1) for such suc-
8 ceeding taxable year).

9 “(d) BUILD AMERICA BOND.—

10 “(1) IN GENERAL.—For purposes of this sec-
11 tion, the term ‘build America bond’ means any obli-
12 gation (other than a private activity bond) if—

13 “(A) the interest on such obligation would
14 (but for this section) be excludable from gross
15 income under section 103,

16 “(B) such obligation is issued before Janu-
17 ary 1, 2012, and

18 “(C) the issuer makes an irrevocable elec-
19 tion to have this section apply.

20 “(2) APPLICABLE RULES.—For purposes of ap-
21 plying paragraph (1)—

22 “(A) a build America bond shall not be
23 treated as federally guaranteed by reason of the
24 credit allowed under subsection (a) or section
25 6431,

1 “(B) the yield on a build America bond
2 shall be determined without regard to the credit
3 allowed under subsection (a), and

4 “(C) a bond shall not be treated as a build
5 America bond if the issue price has more than
6 a de minimis amount (determined under rules
7 similar to the rules of section 1273(a)(3)) of
8 premium over the stated principal amount of
9 the bond.

10 “(e) INTEREST PAYMENT DATE.—For purposes of
11 this section, the term ‘interest payment date’ means any
12 date on which the holder of record of the build America
13 bond is entitled to a payment of interest under such bond.

14 “(f) SPECIAL RULES.—

15 “(1) INTEREST ON BUILD AMERICA BONDS IN-
16 CLUDIBLE IN GROSS INCOME FOR FEDERAL INCOME
17 TAX PURPOSES.—For purposes of this title, interest
18 on any build America bond shall be includible in
19 gross income.

20 “(2) APPLICATION OF CERTAIN RULES.—Rules
21 similar to the rules of subsections (f), (g), (h), and
22 (i) of section 54A shall apply for purposes of the
23 credit allowed under subsection (a).

1 “(g) SPECIAL RULE FOR QUALIFIED BONDS ISSUED
2 BEFORE 2011.—In the case of a qualified bond issued be-
3 fore January 1, 2011—

4 “(1) ISSUER ALLOWED REFUNDABLE CRED-
5 IT.—In lieu of any credit allowed under this section
6 with respect to such bond, the issuer of such bond
7 shall be allowed a credit as provided in section 6431.

8 “(2) QUALIFIED BOND.—For purposes of this
9 subsection, the term ‘qualified bond’ means any
10 build America bond issued as part of an issue if—

11 “(A) 100 percent of the available project
12 proceeds (as defined in section 54A) of such
13 issue are to be used for capital expenditures,
14 and

15 “(B) the issuer makes an irrevocable elec-
16 tion to have this subsection apply.

17 “(h) REGULATIONS.—The Secretary may prescribe
18 such regulations and other guidance as may be necessary
19 or appropriate to carry out this section and section
20 6431.”.

21 (b) CREDIT FOR QUALIFIED BONDS ISSUED BEFORE
22 2011.—Subchapter B of chapter 65 is amended by adding
23 at the end the following new section:

1 **“SEC. 6431. CREDIT FOR QUALIFIED BONDS ALLOWED TO**
2 **ISSUER.**

3 “(a) IN GENERAL.—In the case of a qualified bond
4 issued before January 1, 2011, the issuer of such bond
5 shall be allowed a credit with respect to each interest pay-
6 ment under such bond which shall be payable by the Sec-
7 retary as provided in subsection (b).

8 “(b) PAYMENT OF CREDIT.—The Secretary shall pay
9 (contemporaneously with each interest payment date
10 under such bond) to the issuer of such bond (or to any
11 person who makes such interest payments on behalf of the
12 issuer) 35 percent of the interest payable under such bond
13 on such date.

14 “(c) APPLICATION OF ARBITRAGE RULES.—For pur-
15 poses of section 148, the yield on a qualified bond shall
16 be reduced by the credit allowed under this section.

17 “(d) INTEREST PAYMENT DATE.—For purposes of
18 this subsection, the term ‘interest payment date’ means
19 each date on which interest is payable by the issuer under
20 the terms of the bond.

21 “(e) QUALIFIED BOND.—For purposes of this sub-
22 section, the term ‘qualified bond’ has the meaning given
23 such term in section 54AA(g).”.

24 (c) CONFORMING AMENDMENTS.—

1 (1) Section 1324(b)(2) of title 31, United
2 States Code, is amended by striking “or 6428” and
3 inserting “6428, or 6431,”.

4 (2) Section 54A(c)(1)(B) is amended by strik-
5 ing “subpart C” and inserting “subparts C and J”.

6 (3) Sections 54(c)(2), 1397E(c)(2), and
7 1400N(l)(3)(B) are each amended by striking “and
8 I” and inserting “, I, and J”.

9 (4) Section 6401(b)(1) is amended by striking
10 “and I” and inserting “I, and J”.

11 (5) The table of subparts for part IV of sub-
12 chapter A of chapter 1 is amended by adding at the
13 end the following new item:

“Subpart J. Build America bonds.”.

14 (6) The table of section for subchapter B of
15 chapter 65 is amended by adding at the end the fol-
16 lowing new item:

“Sec. 6431. Credit for qualified bonds allowed to issuer.”.

17 (d) TRANSITIONAL COORDINATION WITH STATE
18 LAW.—Except as otherwise provided by a State after the
19 date of the enactment of this Act, the interest on any build
20 America bond (as defined in section 54AA of the Internal
21 Revenue Code of 1986, as added by this section) and the
22 amount of any credit determined under such section with
23 respect to such bond shall be treated for purposes of the

1 income tax laws of such State as being exempt from Fed-
2 eral income tax.

3 (e) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to obligations issued after the date
5 of the enactment of this Act.

6 **Subtitle G—Economic Recovery** 7 **Payments to Certain Individuals**

8 **SEC. 1601. ECONOMIC RECOVERY PAYMENT TO RECIPIENTS** 9 **OF SOCIAL SECURITY, SUPPLEMENTAL SECU-** 10 **RITY INCOME, RAILROAD RETIREMENT BENE-** 11 **FITS, AND VETERANS DISABILITY COMPENSA-** 12 **TION OR PENSION BENEFITS.**

13 (a) AUTHORITY TO MAKE PAYMENTS.—

14 (1) ELIGIBILITY.—

15 (A) IN GENERAL.—Subject to paragraph
16 (5)(B), the Secretary of the Treasury shall
17 make a \$300 payment to each individual who,
18 for any month during the 3-month period end-
19 ing with the month which ends prior to the
20 month that includes the date of the enactment
21 of this Act, is entitled to a benefit payment de-
22 scribed in clause (i), (ii), or (iii) of subpara-
23 graph (B) or is eligible for a SSI cash benefit
24 described in subparagraph (C).

1 (B) BENEFIT PAYMENT DESCRIBED.—For
2 purposes of subparagraph (A):

3 (i) TITLE II BENEFIT.—A benefit pay-
4 ment described in this clause is a monthly
5 insurance benefit payable (without regard
6 to sections 202(j)(1) and 223(b) of the So-
7 cial Security Act (42 U.S.C. 402(j)(1),
8 423(b)) under—

9 (I) section 202(a) of such Act
10 (42 U.S.C. 402(a));

11 (II) section 202(b) of such Act
12 (42 U.S.C. 402(b));

13 (III) section 202(c) of such Act
14 (42 U.S.C. 402(c));

15 (IV) section 202(d)(1)(B)(ii) of
16 such Act (42 U.S.C.
17 402(d)(1)(B)(ii));

18 (V) section 202(e) of such Act
19 (42 U.S.C. 402(e));

20 (VI) section 202(f) of such Act
21 (42 U.S.C. 402(f));

22 (VII) section 202(g) of such Act
23 (42 U.S.C. 402(g));

24 (VIII) section 202(h) of such Act
25 (42 U.S.C. 402(h));

1 (IX) section 223(a) of such Act
2 (42 U.S.C. 423(a));

3 (X) section 227 of such Act (42
4 U.S.C. 427); or

5 (XI) section 228 of such Act (42
6 U.S.C. 428).

7 (ii) RAILROAD RETIREMENT BEN-
8 EFIT.—A benefit payment described in this
9 clause is a monthly annuity or pension
10 payment payable (without regard to section
11 5(a)(ii) of the Railroad Retirement Act of
12 1974 (45 U.S.C. 231d(a)(ii)) under—

13 (I) section 2(a)(1) of such Act
14 (45 U.S.C. 231a(a)(1));

15 (II) section 2(c) of such Act (45
16 U.S.C. 231a(c));

17 (III) section 2(d)(1)(i) of such
18 Act (45 U.S.C. 231a(d)(1)(i));

19 (IV) section 2(d)(1)(ii) of such
20 Act (45 U.S.C. 231a(d)(1)(ii));

21 (V) section 2(d)(1)(iii)(C) of such
22 Act to an adult disabled child (45
23 U.S.C. 231a(d)(1)(iii)(C));

24 (VI) section 2(d)(1)(iv) of such
25 Act (45 U.S.C. 231a(d)(1)(iv));

1 (VII) section 2(d)(1)(v) of such
2 Act (45 U.S.C. 231a(d)(1)(v)); or

3 (VIII) section 7(b)(2) of such Act
4 (45 U.S.C. 231f(b)(2)) with respect to
5 any of the benefit payments described
6 in clause (i) of this subparagraph.

7 (iii) VETERANS BENEFIT.—A benefit
8 payment described in this clause is a com-
9 pensation or pension payment payable
10 under—

11 (I) section 1110, 1117, 1121,
12 1131, 1141, or 1151 of title 38,
13 United States Code;

14 (II) section 1310, 1312, 1313,
15 1315, 1316, or 1318 of title 38,
16 United States Code;

17 (III) section 1513, 1521, 1533,
18 1536, 1537, 1541, 1542, or 1562 of
19 title 38, United States Code; or

20 (IV) section 1805, 1815, or 1821
21 of title 38, United States Code,

22 to a veteran, surviving spouse, child, or
23 parent as described in paragraph (2), (3),
24 (4)(A)(ii), or (5) of section 101, title 38,
25 United States Code, who received that ben-

1 efit during any month within the 3 month
2 period ending with the month which ends
3 prior to the month that includes the date
4 of the enactment of this Act.

5 (C) SSI CASH BENEFIT DESCRIBED.—A

6 SSI cash benefit described in this subparagraph
7 is a cash benefit payable under section 1611
8 (other than under subsection (e)(1)(B) of such
9 section) or 1619(a) of the Social Security Act
10 (42 U.S.C. 1382, 1382h).

11 (2) REQUIREMENT.—A payment shall be made

12 under paragraph (1) only to individuals who reside
13 in 1 of the 50 States, the District of Columbia,
14 Puerto Rico, Guam, the United States Virgin Is-
15 lands, American Samoa, or the Northern Mariana
16 Islands. For purposes of the preceding sentence, the
17 determination of the individual's residence shall be
18 based on the current address of record under a pro-
19 gram specified in paragraph (1).

20 (3) NO DOUBLE PAYMENTS.—An individual

21 shall be paid only 1 payment under this section, re-
22 gardless of whether the individual is entitled to, or
23 eligible for, more than 1 benefit or cash payment de-
24 scribed in paragraph (1).

1 (4) LIMITATION.—A payment under this section
2 shall not be made—

3 (A) in the case of an individual entitled to
4 a benefit specified in paragraph (1)(B)(i) or
5 paragraph (1)(B)(ii)(VIII) if, for the most re-
6 cent month of such individual's entitlement in
7 the 3-month period described in paragraph (1),
8 such individual's benefit under such paragraph
9 was not payable by reason of subsection (x) or
10 (y) of section 202 the Social Security Act (42
11 U.S.C. 402) or section 1129A of such Act (42
12 U.S.C. 1320a–8a);

13 (B) in the case of an individual entitled to
14 a benefit specified in paragraph (1)(B)(iii) if,
15 for the most recent month of such individual's
16 entitlement in the 3-month period described in
17 paragraph (1), such individual's benefit under
18 such paragraph was not payable, or was re-
19 duced, by reason of section 1505, 5313, or
20 5313B of title 38, United States Code;

21 (C) in the case of an individual entitled to
22 a benefit specified in paragraph (1)(C) if, for
23 such most recent month, such individual's ben-
24 efit under such paragraph was not payable by
25 reason of subsection (e)(1)(A) or (e)(4) of sec-

1 tion 1611 (42 U.S.C. 1382) or section 1129A
2 of such Act (42 U.S.C. 1320a–8a); or

3 (D) in the case of any individual whose
4 date of death occurs before the date on which
5 the individual is certified under subsection (b)
6 to receive a payment under this section.

7 (5) TIMING AND MANNER OF PAYMENTS.—

8 (A) IN GENERAL.—The Secretary of the
9 Treasury shall commence making payments
10 under this section at the earliest practicable
11 date but in no event later than 120 days after
12 the date of enactment of this Act. The Sec-
13 retary of the Treasury may make any payment
14 electronically to an individual in such manner
15 as if such payment was a benefit payment or
16 cash benefit to such individual under the appli-
17 cable program described in subparagraph (B)
18 or (C) of paragraph (1).

19 (B) DEADLINE.—No payments shall be
20 made under this section after December 31,
21 2010, regardless of any determinations of enti-
22 tlement to, or eligibility for, such payments
23 made after such date.

24 (b) IDENTIFICATION OF RECIPIENTS.—The Commis-
25 sioner of Social Security, the Railroad Retirement Board,

1 and the Secretary of Veterans Affairs shall certify the in-
2 dividuals entitled to receive payments under this section
3 and provide the Secretary of the Treasury with the infor-
4 mation needed to disburse such payments. A certification
5 of an individual shall be unaffected by any subsequent de-
6 termination or redetermination of the individual's entitle-
7 ment to, or eligibility for, a benefit specified in subpara-
8 graph (B) or (C) of subsection (a)(1).

9 (c) TREATMENT OF PAYMENTS.—

10 (1) PAYMENT TO BE DISREGARDED FOR PUR-
11 POSES OF ALL FEDERAL AND FEDERALLY ASSISTED
12 PROGRAMS.—A payment under subsection (a) shall
13 not be regarded as income and shall not be regarded
14 as a resource for the month of receipt and the fol-
15 lowing 9 months, for purposes of determining the
16 eligibility of the recipient (or the recipient's spouse
17 or family) for benefits or assistance, or the amount
18 or extent of benefits or assistance, under any Fed-
19 eral program or under any State or local program fi-
20 nanced in whole or in part with Federal funds.

21 (2) PAYMENT NOT CONSIDERED INCOME FOR
22 PURPOSES OF TAXATION.—A payment under sub-
23 section (a) shall not be considered as gross income
24 for purposes of the Internal Revenue Code of 1986.

1 (3) PAYMENTS PROTECTED FROM ASSIGN-
2 MENT.—The provisions of sections 207 and
3 1631(d)(1) of the Social Security Act (42 U.S.C.
4 407, 1383(d)(1)), section 14(a) of the Railroad Re-
5 tirement Act of 1974 (45 U.S.C. 231m(a)), and sec-
6 tion 5301 of title 38, United States Code, shall
7 apply to any payment made under subsection (a) as
8 if such payment was a benefit payment or cash ben-
9 efit to such individual under the applicable program
10 described in subparagraph (B) or (C) of subsection
11 (a)(1).

12 (4) PAYMENTS SUBJECT TO OFFSET.—Notwith-
13 standing paragraph (3), for purposes of section
14 3716 of title 31, United States Code, any payment
15 made under this section shall not be considered a
16 benefit payment or cash benefit made under the ap-
17 plicable program described in subparagraph (B) or
18 (C) of subsection (a)(1) and all amounts paid shall
19 be subject to offset to collect delinquent debts.

20 (d) PAYMENT TO REPRESENTATIVE PAYEES AND FI-
21 DUCIARIES.—

22 (1) IN GENERAL.—In any case in which an in-
23 dividual who is entitled to a payment under sub-
24 section (a) and whose benefit payment or cash ben-
25 efit described in paragraph (1) of that subsection is

1 paid to a representative payee or fiduciary, the pay-
2 ment under subsection (a) shall be made to the indi-
3 vidual's representative payee or fiduciary and the en-
4 tire payment shall be used only for the benefit of the
5 individual who is entitled to the payment.

6 (2) APPLICABILITY.—

7 (A) PAYMENT ON THE BASIS OF A TITLE
8 II OR SSI BENEFIT.—Section 1129(a)(3) of the
9 Social Security Act (42 U.S.C. 1320a–8(a)(3))
10 shall apply to any payment made on the basis
11 of an entitlement to a benefit specified in para-
12 graph (1)(B)(i) or (1)(C) of subsection (a) in
13 the same manner as such section applies to a
14 payment under title II or XVI of such Act.

15 (B) PAYMENT ON THE BASIS OF A RAIL-
16 ROAD RETIREMENT BENEFIT.—Section 13 of
17 the Railroad Retirement Act (45 U.S.C. 2311)
18 shall apply to any payment made on the basis
19 of an entitlement to a benefit specified in para-
20 graph (1)(B)(ii) of subsection (a) in the same
21 manner as such section applies to a payment
22 under such Act.

23 (C) PAYMENT ON THE BASIS OF A VET-
24 ERANS BENEFIT.—Sections 5502, 6106, and
25 6108 of title 38, United States Code, shall

1 apply to any payment made on the basis of an
2 entitlement to a benefit specified in paragraph
3 (1)(B)(iii) of subsection (a) in the same manner
4 as those sections apply to a payment under that
5 title.

6 (e) APPROPRIATION.—Out of any sums in the Treas-
7 ury of the United States not otherwise appropriated, the
8 following sums are appropriated for the period of fiscal
9 years 2009 and 2010 to carry out this section:

10 (1) For the Secretary of the Treasury—

11 (A) such sums as may be necessary to
12 make payments under this section; and

13 (B) \$57,000,000 for administrative costs
14 incurred in carrying out this section and section
15 36A of the Internal Revenue Code of 1986 (as
16 added by this Act).

17 (2) For the Commissioner of Social Security,
18 \$90,000,000 for the Social Security Administration’s
19 Limitation on Administrative Expenses for costs in-
20 curred in carrying out this section.

21 (3) For the Railroad Retirement Board,
22 \$1,000,000 for administrative costs incurred in car-
23 rying out this section.

24 (4) For the Secretary of Veterans Affairs,
25 \$100,000 for the Information Systems Technology

1 account and \$7,100,000 for the General Operating
2 Expenses account for administrative costs incurred
3 in carrying out this section.

4 **Subtitle H—Trade Adjustment**
5 **Assistance**

6 **SEC. 1701. TEMPORARY EXTENSION OF TRADE ADJUST-**
7 **MENT ASSISTANCE PROGRAM.**

8 (a) ASSISTANCE FOR WORKERS.—

9 (1) IN GENERAL.—Section 245(a) of the Trade
10 Act of 1974 (19 U.S.C. 2317(a)) is amended by
11 striking “December 31, 2007” and inserting “De-
12 cember 31, 2010”.

13 (2) ALTERNATIVE TRADE ADJUSTMENT ASSIST-
14 ANCE.—Section 246(b)(1) of the Trade Act of 1974
15 (19 U.S.C. 2318(b)(1)) is amended by striking “5
16 years” and inserting “7 years”.

17 (b) ASSISTANCE FOR FIRMS.—Section 256(b) of the
18 Trade Act of 1974 (19 U.S.C. 2346(b)) is amended by
19 striking “2007, and \$4,000,000 for the 3-month period
20 beginning on October 1, 2007,” and inserting “December
21 31, 2010”.

22 (c) ASSISTANCE FOR FARMERS.—Section 298(a) of
23 the Trade Act of 1974 (19 U.S.C. 2401g(a)) is amended
24 by striking “through 2007” and all that follows through

1 the end period and inserting “through December 31, 2010
2 to carry out the purposes of this chapter.”.

3 (d) EXTENSION OF TERMINATION DATES.—Section
4 285 of the Trade Act of 1974 (19 U.S.C. 2271 note) is
5 amended by striking “December 31, 2007” each place it
6 appears and inserting “December 31, 2010”.

7 (e) SENSE OF THE SENATE REGARDING ADJUST-
8 MENT ASSISTANCE FOR COMMUNITIES.—It is the sense
9 of the Senate that title II of the Trade Act of 1974 (19
10 U.S.C. 2271 et seq.) should be amended to assist any com-
11 munity impacted by trade with economic adjustment
12 through—

13 (1) the coordination of efforts by State and
14 local governments and economic organizations;

15 (2) the coordination of Federal, State, and local
16 resources;

17 (3) the creation of community-based develop-
18 ment strategies; and

19 (4) the development and provision of training
20 programs.

21 (f) EFFECTIVE DATE.—The amendments made by
22 this section shall be effective as of January 1, 2008.

1 **Subtitle I—Prohibition on Collec-**
2 **tion of Certain Payments Made**
3 **Under the Continued Dumping**
4 **and Subsidy Offset Act of 2000**

5 **SEC. 1801. PROHIBITION ON COLLECTION OF CERTAIN PAY-**
6 **MENTS MADE UNDER THE CONTINUED DUMP-**
7 **ING AND SUBSIDY OFFSET ACT OF 2000.**

8 (a) IN GENERAL.—Notwithstanding any other provi-
9 sion of law, neither the Secretary of Homeland Security
10 nor any other person may—

11 (1) require repayment of, or attempt in any
12 other way to recoup, any payments described in sub-
13 section (b); or

14 (2) offset any past, current, or future distribu-
15 tions of antidumping or countervailing duties as-
16 sessed with respect to imports from countries that
17 are not parties to the North American Free Trade
18 Agreement in an attempt to recoup any payments
19 described in subsection (b).

20 (b) PAYMENTS DESCRIBED.—Payments described in
21 this subsection are payments of antidumping or counter-
22 vailing duties made pursuant to the Continued Dumping
23 and Subsidy Offset Act of 2000 (section 754 of the Tariff
24 Act of 1930 (19 U.S.C. 1675e; repealed by subtitle F of

1 title VII of the Deficit Reduction Act of 2005 (Public Law
2 109–171; 120 Stat. 154)) that were—

3 (1) assessed and paid on imports of goods from
4 countries that are parties to the North American
5 Free Trade Agreement; and

6 (2) distributed on or after January 1, 2001,
7 and before January 1, 2006.

8 (c) PAYMENT OF FUNDS COLLECTED OR WITH-
9 HELD.—Not later than the date that is 60 days after the
10 date of the enactment of this Act, the Secretary of Home-
11 land Security shall—

12 (1) refund any repayments, or any other
13 recoupment, of payments described in subsection (b);
14 and

15 (2) fully distribute any antidumping or counter-
16 vailing duties that the U.S. Customs and Border
17 Protection is withholding as an offset as described in
18 subsection (a)(2).

19 (d) LIMITATION.—Nothing in this section shall be
20 construed to prevent the Secretary of Homeland Security,
21 or any other person, from requiring repayment of, or at-
22 tempting to otherwise recoup, any payments described in
23 subsection (b) as a result of—

24 (1) a finding of false statements or other mis-
25 conduct by a recipient of such a payment; or

1 (2) the reliquidation of an entry with respect to
2 which such a payment was made.

3 **Subtitle J—Other Provisions**

4 **SEC. 1901. APPLICATION OF CERTAIN LABOR STANDARDS** 5 **TO PROJECTS FINANCED WITH CERTAIN TAX-** 6 **FAVORED BONDS.**

7 Subchapter IV of chapter 31 of the title 40, United
8 States Code, shall apply to projects financed with the pro-
9 ceeds of—

10 (1) any new clean renewable energy bond (as
11 defined in section 54C of the Internal Revenue Code
12 of 1986) issued after the date of the enactment of
13 this Act,

14 (2) any qualified energy conservation bond (as
15 defined in section 54D of the Internal Revenue Code
16 of 1986) issued after the date of the enactment of
17 this Act,

18 (3) any qualified zone academy bond (as de-
19 fined in section 54E of the Internal Revenue Code
20 of 1986) issued after the date of the enactment of
21 this Act,

22 (4) any qualified school construction bond (as
23 defined in section 54F of the Internal Revenue Code
24 of 1986), and

1 (5) any recovery zone economic development
2 bond (as defined in section 1400U–2 of the Internal
3 Revenue Code of 1986).

4 **SEC. 1902. INCREASE IN PUBLIC DEBT LIMIT.**

5 Subsection (b) of section 3101 of title 31, United
6 States Code, is amended by striking out the dollar limita-
7 tion contained in such subsection and inserting
8 “\$12,140,000,000,000”.

9 **TITLE II—ASSISTANCE FOR UN-**
10 **EMPLOYED WORKERS AND**
11 **STRUGGLING FAMILIES**

12 **SEC. 2000. SHORT TITLE; TABLE OF CONTENTS.**

13 (a) **SHORT TITLE.**—This title may be cited as the
14 “Assistance for Unemployed Workers and Struggling
15 Families Act”.

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

TITLE II—ASSISTANCE FOR UNEMPLOYED WORKERS AND
STRUGGLING FAMILIES

Sec. 2000. Short title; table of contents.

Subtitle A—Unemployment Insurance

Sec. 2001. Extension of emergency unemployment compensation program.

Sec. 2002. Increase in unemployment compensation benefits.

Sec. 2003. Unemployment compensation modernization.

Sec. 2004. Temporary assistance for States with advances.

Subtitle B—Assistance for Vulnerable Individuals

Sec. 2101. Emergency fund for TANF program.

Sec. 2102. Extension of TANF supplemental grants.

Sec. 2103. Clarification of authority of States to use TANF funds carried over
from prior years to provide TANF benefits and services.

Sec. 2104. Temporary reinstatement of authority to provide Federal matching payments for State spending of child support incentive payments.

1 **Subtitle A—Unemployment** 2 **Insurance**

3 **SEC. 2001. EXTENSION OF EMERGENCY UNEMPLOYMENT** 4 **COMPENSATION PROGRAM.**

5 (a) IN GENERAL.—Section 4007 of the Supplemental
6 Appropriations Act, 2008 (Public Law 110–252; 26
7 U.S.C. 3304 note), as amended by section 4 of the Unem-
8 ployment Compensation Extension Act of 2008 (Public
9 Law 110–449; 122 Stat. 5015), is amended—

10 (1) by striking “March 31, 2009” each place it
11 appears and inserting “December 31, 2009”;

12 (2) in the heading for subsection (b)(2), by
13 striking “MARCH 31, 2009” and inserting “DECEM-
14 BER 31, 2009”; and

15 (3) in subsection (b)(3), by striking “August
16 27, 2009” and inserting “May 31, 2010”.

17 (b) FINANCING PROVISIONS.—Section 4004 of such
18 Act is amended by adding at the end the following:

19 “(e) TRANSFER OF FUNDS.—Notwithstanding any
20 other provision of law, the Secretary of the Treasury shall
21 transfer from the general fund of the Treasury (from
22 funds not otherwise appropriated)—

23 “(1) to the extended unemployment compensa-
24 tion account (as established by section 905 of the

1 Social Security Act) such sums as the Secretary of
 2 Labor estimates to be necessary to make payments
 3 to States under this title by reason of the amend-
 4 ments made by section 2001(a) of the Assistance for
 5 Unemployed Workers and Struggling Families Act;
 6 and

7 “(2) to the employment security administration
 8 account (as established by section 901 of the Social
 9 Security Act) such sums as the Secretary of Labor
 10 estimates to be necessary for purposes of assisting
 11 States in meeting administrative costs by reason of
 12 the amendments referred to in paragraph (1).

13 There are appropriated from the general fund of the
 14 Treasury, without fiscal year limitation, the sums referred
 15 to in the preceding sentence and such sums shall not be
 16 required to be repaid.”.

17 **SEC. 2002. INCREASE IN UNEMPLOYMENT COMPENSATION**
 18 **BENEFITS.**

19 (a) **FEDERAL-STATE AGREEMENTS.**—Any State
 20 which desires to do so may enter into and participate in
 21 an agreement under this section with the Secretary of
 22 Labor (hereinafter in this section referred to as the “Sec-
 23 retary”). Any State which is a party to an agreement
 24 under this section may, upon providing 30 days’ written
 25 notice to the Secretary, terminate such agreement.

1 (b) PROVISIONS OF AGREEMENT.—

2 (1) ADDITIONAL COMPENSATION.—Any agree-
3 ment under this section shall provide that the State
4 agency of the State will make payments of regular
5 compensation to individuals in amounts and to the
6 extent that they would be determined if the State
7 law of the State were applied, with respect to any
8 week for which the individual is (disregarding this
9 section) otherwise entitled under the State law to re-
10 ceive regular compensation, as if such State law had
11 been modified in a manner such that the amount of
12 regular compensation (including dependents' allow-
13 ances) payable for any week shall be equal to the
14 amount determined under the State law (before the
15 application of this paragraph) plus an additional
16 \$25.

17 (2) ALLOWABLE METHODS OF PAYMENT.—Any
18 additional compensation provided for in accordance
19 with paragraph (1) shall be payable either—

20 (A) as an amount which is paid at the
21 same time and in the same manner as any reg-
22 ular compensation otherwise payable for the
23 week involved; or

24 (B) at the option of the State, by pay-
25 ments which are made separately from, but on

1 the same weekly basis as, any regular com-
2 pensation otherwise payable.

3 (c) NONREDUCTION RULE.—An agreement under
4 this section shall not apply (or shall cease to apply) with
5 respect to a State upon a determination by the Secretary
6 that the method governing the computation of regular
7 compensation under the State law of that State has been
8 modified in a manner such that—

9 (1) the average weekly benefit amount of reg-
10 ular compensation which will be payable during the
11 period of the agreement (determined disregarding
12 any additional amounts attributable to the modifica-
13 tion described in subsection (b)(1)) will be less than

14 (2) the average weekly benefit amount of reg-
15 ular compensation which would otherwise have been
16 payable during such period under the State law, as
17 in effect on December 31, 2008.

18 (d) PAYMENTS TO STATES.—

19 (1) IN GENERAL.—

20 (A) FULL REIMBURSEMENT.—There shall
21 be paid to each State which has entered into an
22 agreement under this section an amount equal
23 to 100 percent of—

24 (i) the total amount of additional
25 compensation (as described in subsection

1 (b)(1)) paid to individuals by the State
2 pursuant to such agreement; and

3 (ii) any additional administrative ex-
4 penses incurred by the State by reason of
5 such agreement (as determined by the Sec-
6 retary).

7 (B) TERMS OF PAYMENTS.—Sums payable
8 to any State by reason of such State's having
9 an agreement under this section shall be pay-
10 able, either in advance or by way of reimburse-
11 ment (as determined by the Secretary), in such
12 amounts as the Secretary estimates the State
13 will be entitled to receive under this section for
14 each calendar month, reduced or increased, as
15 the case may be, by any amount by which the
16 Secretary finds that his estimates for any prior
17 calendar month were greater or less than the
18 amounts which should have been paid to the
19 State. Such estimates may be made on the
20 basis of such statistical, sampling, or other
21 method as may be agreed upon by the Secretary
22 and the State agency of the State involved.

23 (2) CERTIFICATIONS.—The Secretary shall
24 from time to time certify to the Secretary of the

1 Treasury for payment to each State the sums pay-
2 able to such State under this section.

3 (3) APPROPRIATION.—There are appropriated
4 from the general fund of the Treasury, without fiscal
5 year limitation, such sums as may be necessary for
6 purposes of this subsection.

7 (e) APPLICABILITY.—

8 (1) IN GENERAL.—An agreement entered into
9 under this section shall apply to weeks of unemploy-
10 ment—

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

13 (B) ending before January 1, 2010.

14 (2) TRANSITION RULE FOR INDIVIDUALS RE-
15 MAINING ENTITLED TO REGULAR COMPENSATION AS
16 OF JANUARY 1, 2010.—In the case of any individual
17 who, as of the date specified in paragraph (1)(B),
18 has not yet exhausted all rights to regular com-
19 pensation under the State law of a State with re-
20 spect to a benefit year that began before such date,
21 additional compensation (as described in subsection
22 (b)(1)) shall continue to be payable to such indi-
23 vidual for any week beginning on or after such date
24 for which the individual is otherwise eligible for reg-
25 ular compensation with respect to such benefit year.

1 (3) TERMINATION.—Notwithstanding any other
2 provision of this subsection, no additional compensa-
3 tion (as described in subsection (b)(1)) shall be pay-
4 able for any week beginning after June 30, 2010.

5 (f) FRAUD AND OVERPAYMENTS.—The provisions of
6 section 4005 of the Supplemental Appropriations Act,
7 2008 (Public Law 110–252; 122 Stat. 2356) shall apply
8 with respect to additional compensation (as described in
9 subsection (b)(1)) to the same extent and in the same
10 manner as in the case of emergency unemployment com-
11 pensation.

12 (g) APPLICATION TO OTHER UNEMPLOYMENT BENE-
13 FITS.—

14 (1) IN GENERAL.—Each agreement under this
15 section shall include provisions to provide that the
16 purposes of the preceding provisions of this section
17 shall be applied with respect to unemployment bene-
18 fits described in subsection (i)(3) to the same extent
19 and in the same manner as if those benefits were
20 regular compensation.

21 (2) ELIGIBILITY AND TERMINATION RULES.—
22 Additional compensation (as described in subsection
23 (b)(1))—

24 (A) shall not be payable, pursuant to this
25 subsection, with respect to any unemployment

1 benefits described in subsection (i)(3) for any
2 week beginning on or after the date specified in
3 subsection (e)(1)(B), except in the case of an
4 individual who was eligible to receive additional
5 compensation (as so described) in connection
6 with any regular compensation or any unem-
7 ployment benefits described in subsection (i)(3)
8 for any period of unemployment ending before
9 such date; and

10 (B) shall in no event be payable for any
11 week beginning after the date specified in sub-
12 section (e)(3).

13 (h) DISREGARD OF ADDITIONAL COMPENSATION FOR
14 PURPOSES OF MEDICAID AND SCHIP.—A State that en-
15 ters into an agreement under this section shall disregard
16 the monthly equivalent of \$25 per week for any individual
17 who receives additional compensation under subsection
18 (b)(1) in considering the amount of income of the indi-
19 vidual for any purposes under the Medicaid program
20 under title XIX of the Social Security Act and the State
21 Children’s Health Insurance Program under title XXI of
22 such Act.

23 (i) DEFINITIONS.—For purposes of this section—

24 (1) the terms “compensation”, “regular com-
25 pensation”, “benefit year”, “State”, “State agency”,

1 “State law”, and “week” have the respective mean-
2 ings given such terms under section 205 of the Fed-
3 eral-State Extended Unemployment Compensation
4 Act of 1970 (26 U.S.C. 3304 note);

5 (2) the term “emergency unemployment com-
6 pensation” means emergency unemployment com-
7 pensation under title IV of the Supplemental Appro-
8 priations Act, 2008 (Public Law 110–252; 122 Stat.
9 2353); and

10 (3) any reference to unemployment benefits de-
11 scribed in this paragraph shall be considered to refer
12 to—

13 (A) extended compensation (as defined by
14 section 205 of the Federal-State Extended Un-
15 employment Compensation Act of 1970); and

16 (B) unemployment compensation (as de-
17 fined by section 85(b) of the Internal Revenue
18 Code of 1986) provided under any program ad-
19 ministered by a State under an agreement with
20 the Secretary.

21 **SEC. 2003. UNEMPLOYMENT COMPENSATION MODERNIZA-**
22 **TION.**

23 (a) IN GENERAL.—Section 903 of the Social Security
24 Act (42 U.S.C. 1103) is amended by adding at the end
25 the following:

1 “Special Transfers for Modernization

2 “(f)(1)(A) In addition to any other amounts, the Sec-
3 retary of Labor shall provide for the making of unemploy-
4 ment compensation modernization incentive payments
5 (hereinafter ‘incentive payments’) to the accounts of the
6 States in the Unemployment Trust Fund, by transfer from
7 amounts reserved for that purpose in the Federal unem-
8 ployment account, in accordance with succeeding provi-
9 sions of this subsection.

10 “(B) The maximum incentive payment allowable
11 under this subsection with respect to any State shall, as
12 determined by the Secretary of Labor, be equal to the
13 amount obtained by multiplying \$7,000,000,000 by the
14 same ratio as would apply under subsection (a)(2)(B) for
15 purposes of determining such State’s share of any excess
16 amount (as described in subsection (a)(1)) that would
17 have been subject to transfer to State accounts, as of Oc-
18 tober 1, 2008, under the provisions of subsection (a).

19 “(C) Of the maximum incentive payment determined
20 under subparagraph (B) with respect to a State—

21 “(i) one-third shall be transferred to the ac-
22 count of such State upon a certification under para-
23 graph (4)(B) that the State law of such State meets
24 the requirements of paragraph (2); and

1 “(ii) the remainder shall be transferred to the
2 account of such State upon a certification under
3 paragraph (4)(B) that the State law of such State
4 meets the requirements of paragraph (3).

5 “(2) The State law of a State meets the requirements
6 of this paragraph if such State law—

7 “(A) uses a base period that includes the most
8 recently completed calendar quarter before the start
9 of the benefit year for purposes of determining eligi-
10 bility for unemployment compensation; or

11 “(B) provides that, in the case of an individual
12 who would not otherwise be eligible for unemploy-
13 ment compensation under the State law because of
14 the use of a base period that does not include the
15 most recently completed calendar quarter before the
16 start of the benefit year, eligibility shall be deter-
17 mined using a base period that includes such cal-
18 endar quarter.

19 “(3) The State law of a State meets the requirements
20 of this paragraph if such State law includes provisions to
21 carry out at least 2 of the following subparagraphs:

22 “(A) An individual shall not be denied regular
23 unemployment compensation under any State law
24 provisions relating to availability for work, active
25 search for work, or refusal to accept work, solely be-

1 cause such individual is seeking only part-time (and
2 not full-time) work, except that the State law provi-
3 sions carrying out this subparagraph may exclude an
4 individual if a majority of the weeks of work in such
5 individual's base period do not include part-time
6 work.

7 “(B) An individual shall not be disqualified
8 from regular unemployment compensation for sepa-
9 rating from employment if that separation is for any
10 compelling family reason. For purposes of this sub-
11 paragraph, the term ‘compelling family reason’
12 means the following:

13 “(i) Domestic violence, verified by such
14 reasonable and confidential documentation as
15 the State law may require, which causes the in-
16 dividual reasonably to believe that such individ-
17 ual's continued employment would jeopardize
18 the safety of the individual or of any member
19 of the individual's immediate family (as defined
20 by the Secretary of Labor).

21 “(ii) The illness or disability of a member
22 of the individual's immediate family (as defined
23 by the Secretary of Labor).

24 “(iii) The need for the individual to accom-
25 pany such individual's spouse—

1 “(I) to a place from which it is im-
2 practical for such individual to commute;
3 and

4 “(II) due to a change in location of
5 the spouse’s employment.

6 “(C) Weekly unemployment compensation is
7 payable under this subparagraph to any individual
8 who is unemployed (as determined under the State
9 unemployment compensation law), has exhausted all
10 rights to regular unemployment compensation under
11 the State law, and is enrolled and making satisfac-
12 tory progress in a State-approved training program
13 or in a job training program authorized under the
14 Workforce Investment Act of 1998. Such programs
15 shall prepare individuals who have been separated
16 from a declining occupation, or who have been invol-
17 untarily and indefinitely separated from employment
18 as a result of a permanent reduction of operations
19 at the individual’s place of employment, for entry
20 into a high-demand occupation. The amount of un-
21 employment compensation payable under this sub-
22 paragraph to an individual for a week of unemploy-
23 ment shall be equal to the individual’s average week-
24 ly benefit amount (including dependents’ allowances)
25 for the most recent benefit year, and the total

1 amount of unemployment compensation payable
2 under this subparagraph to any individual shall be
3 equal to at least 26 times the individual's average
4 weekly benefit amount (including dependents' allow-
5 ances) for the most recent benefit year.

6 “(D) Dependents' allowances are provided, in
7 the case of any individual who is entitled to receive
8 regular unemployment compensation and who has
9 any dependents (as defined by State law), in an
10 amount equal to at least \$15 per dependent per
11 week, subject to any aggregate limitation on such al-
12 lowances which the State law may establish (but
13 which aggregate limitation on the total allowance for
14 dependents paid to an individual may not be less
15 than \$50 for each week of unemployment or 50 per-
16 cent of the individual's weekly benefit amount for
17 the benefit year, whichever is less).

18 “(4)(A) Any State seeking an incentive payment
19 under this subsection shall submit an application therefor
20 at such time, in such manner, and complete with such in-
21 formation as the Secretary of Labor may within 60 days
22 after the date of the enactment of this subsection prescribe
23 (whether by regulation or otherwise), including informa-
24 tion relating to compliance with the requirements of para-
25 graph (2) or (3), as well as how the State intends to use

1 the incentive payment to improve or strengthen the State's
2 unemployment compensation program. The Secretary of
3 Labor shall, within 30 days after receiving a complete ap-
4 plication, notify the State agency of the State of the Sec-
5 retary's findings with respect to the requirements of para-
6 graph (2) or (3) (or both).

7 “(B)(i) If the Secretary of Labor finds that the State
8 law provisions (disregarding any State law provisions
9 which are not then currently in effect as permanent law
10 or which are subject to discontinuation) meet the require-
11 ments of paragraph (2) or (3), as the case may be, the
12 Secretary of Labor shall thereupon make a certification
13 to that effect to the Secretary of the Treasury, together
14 with a certification as to the amount of the incentive pay-
15 ment to be transferred to the State account pursuant to
16 that finding. The Secretary of the Treasury shall make
17 the appropriate transfer within 7 days after receiving such
18 certification.

19 “(ii) For purposes of clause (i), State law provisions
20 which are to take effect within 12 months after the date
21 of their certification under this subparagraph shall be con-
22 sidered to be in effect as of the date of such certification.

23 “(C)(i) No certification of compliance with the re-
24 quirements of paragraph (2) or (3) may be made with re-
25 spect to any State whose State law is not otherwise eligible

1 for certification under section 303 or approvable under
2 section 3304 of the Federal Unemployment Tax Act.

3 “(ii) No certification of compliance with the require-
4 ments of paragraph (3) may be made with respect to any
5 State whose State law is not in compliance with the re-
6 quirements of paragraph (2).

7 “(iii) No application under subparagraph (A) may be
8 considered if submitted before the date of the enactment
9 of this subsection or after the latest date necessary (as
10 specified by the Secretary of Labor) to ensure that all in-
11 centive payments under this subsection are made before
12 October 1, 2010. In the case of a State in which the first
13 day of the first regularly scheduled session of the State
14 legislature beginning after the date of enactment of this
15 subsection begins after December 31, 2010, the preceding
16 sentence shall be applied by substituting ‘October 1, 2011’
17 for ‘October 1, 2010’ .

18 “(5)(A) Except as provided in subparagraph (B), any
19 amount transferred to the account of a State under this
20 subsection may be used by such State only in the payment
21 of cash benefits to individuals with respect to their unem-
22 ployment (including for dependents’ allowances and for
23 unemployment compensation under paragraph (3)(C)), ex-
24 clusive of expenses of administration.

1 “(B) A State may, subject to the same conditions as
2 set forth in subsection (c)(2) (excluding subparagraph (B)
3 thereof, and deeming the reference to ‘subsections (a) and
4 (b)’ in subparagraph (D) thereof to include this sub-
5 section), use any amount transferred to the account of
6 such State under this subsection for the administration
7 of its unemployment compensation law and public employ-
8 ment offices.

9 “(6) Out of any money in the Federal unemployment
10 account not otherwise appropriated, the Secretary of the
11 Treasury shall reserve \$7,000,000,000 for incentive pay-
12 ments under this subsection. Any amount so reserved shall
13 not be taken into account for purposes of any determina-
14 tion under section 902, 910, or 1203 of the amount in
15 the Federal unemployment account as of any given time.
16 Any amount so reserved for which the Secretary of the
17 Treasury has not received a certification under paragraph
18 (4)(B) by the deadline described in paragraph (4)(C)(iii)
19 shall, upon the close of fiscal year 2011, become unre-
20 stricted as to use as part of the Federal unemployment
21 account.

22 “(7) For purposes of this subsection, the terms ‘ben-
23 efit year’, ‘base period’, and ‘week’ have the respective
24 meanings given such terms under section 205 of the Fed-

1 eral-State Extended Unemployment Compensation Act of
2 1970 (26 U.S.C. 3304 note).

3 “Special Transfer in Fiscal Year 2009 for Administration

4 “(g)(1) In addition to any other amounts, the Sec-
5 retary of the Treasury shall transfer from the employment
6 security administration account to the account of each
7 State in the Unemployment Trust Fund, within 30 days
8 after the date of the enactment of this subsection, the
9 amount determined with respect to such State under para-
10 graph (2).

11 “(2) The amount to be transferred under this sub-
12 section to a State account shall (as determined by the Sec-
13 retary of Labor and certified by such Secretary to the Sec-
14 retary of the Treasury) be equal to the amount obtained
15 by multiplying \$500,000,000 by the same ratio as deter-
16 mined under subsection (f)(1)(B) with respect to such
17 State.

18 “(3) Any amount transferred to the account of a
19 State as a result of the enactment of this subsection may
20 be used by the State agency of such State only in the pay-
21 ment of expenses incurred by it for—

22 “(A) the administration of the provisions of its
23 State law carrying out the purposes of subsection
24 (f)(2) or any subparagraph of subsection (f)(3);

1 “(ii) no interest shall accrue on any advance or
2 advances made under section 1201 to a State during
3 such period.

4 “(B) The provisions of subparagraph (A) shall have
5 no effect on the requirement for interest payments under
6 this subsection after the period described in such subpara-
7 graph or on the accrual of interest under this subsection
8 after such period.”.

9 **Subtitle B—Assistance for**
10 **Vulnerable Individuals**

11 **SEC. 2101. EMERGENCY FUND FOR TANF PROGRAM.**

12 (a) TEMPORARY FUND.—

13 (1) IN GENERAL.—Section 403 of the Social
14 Security Act (42 U.S.C. 603) is amended by adding
15 at the end the following:

16 “(c) EMERGENCY FUND.—

17 “(1) ESTABLISHMENT.—There is established in
18 the Treasury of the United States a fund which
19 shall be known as the ‘Emergency Contingency
20 Fund for State Temporary Assistance for Needy
21 Families Programs’ (in this subsection referred to as
22 the ‘Emergency Fund’).

23 “(2) DEPOSITS INTO FUND.—

24 “(A) IN GENERAL.—Out of any money in
25 the Treasury of the United States not otherwise

1 appropriated, there are appropriated for fiscal
2 year 2009, \$3,000,000,000 for payment to the
3 Emergency Fund.

4 “(B) AVAILABILITY AND USE OF FUNDS.—
5 The amounts appropriated to the Emergency
6 Fund under subparagraph (A) shall remain
7 available through fiscal year 2010 and shall be
8 used to make grants to States in each of fiscal
9 years 2009 and 2010 in accordance with the re-
10 quirements of paragraph (3).

11 “(C) LIMITATION.—In no case may the
12 Secretary make a grant from the Emergency
13 Fund for a fiscal year after fiscal year 2010.

14 “(3) GRANTS.—

15 “(A) GRANT RELATED TO CASELOAD IN-
16 CREASES.—

17 “(i) IN GENERAL.—For each calendar
18 quarter in fiscal year 2009 or 2010, the
19 Secretary shall make a grant from the
20 Emergency Fund to each State that—

21 “(I) requests a grant under this
22 subparagraph for the quarter; and

23 “(II) meets the requirement of
24 clause (ii) for the quarter.

1 “(ii) CASELOAD INCREASE REQUIRE-
2 MENT.—A State meets the requirement of
3 this clause for a quarter if the average
4 monthly assistance caseload of the State
5 for the quarter exceeds the average month-
6 ly assistance caseload of the State for the
7 corresponding quarter in the emergency
8 fund base year of the State.

9 “(iii) AMOUNT OF GRANT.—Subject to
10 paragraph (5), the amount of the grant to
11 be made to a State under this subpara-
12 graph for a quarter shall be 80 percent of
13 the amount (if any) by which the total ex-
14 penditures of the State for basic assistance
15 (as defined by the Secretary) in the quar-
16 ter, whether under the State program
17 funded under this part or as qualified
18 State expenditures, exceeds the total ex-
19 penditures of the State for such assistance
20 for the corresponding quarter in the emer-
21 gency fund base year of the State.

22 “(B) GRANT RELATED TO INCREASED EX-
23 PENDITURES FOR NON-RECURRENT SHORT
24 TERM BENEFITS.—

1 “(i) IN GENERAL.—For each calendar
2 quarter in fiscal year 2009 or 2010, the
3 Secretary shall make a grant from the
4 Emergency Fund to each State that—

5 “(I) requests a grant under this
6 subparagraph for the quarter; and

7 “(II) meets the requirement of
8 clause (ii) for the quarter.

9 “(ii) NON-RECURRENT SHORT-TERM
10 EXPENDITURE REQUIREMENT.—A State
11 meets the requirement of this clause for a
12 quarter if the total expenditures of the
13 State for non-recurrent short-term benefits
14 in the quarter, whether under the State
15 program funded under this part or as
16 qualified State expenditures, exceeds the
17 total such expenditures of the State for
18 non-recurrent short-term benefits in the
19 corresponding quarter in the emergency
20 fund base year of the State.

21 “(iii) AMOUNT OF GRANT.—Subject to
22 paragraph (5), the amount of the grant to
23 be made to a State under this subpara-
24 graph for a quarter shall be an amount

1 equal to 80 percent of the excess described
2 in clause (ii).

3 “(C) GRANT RELATED TO INCREASED EX-
4 PENDITURES FOR SUBSIDIZED EMPLOYMENT.—

5 “(i) IN GENERAL.—For each calendar
6 quarter in fiscal year 2009 or 2010, the
7 Secretary shall make a grant from the
8 Emergency Fund to each State that—

9 “(I) requests a grant under this
10 subparagraph for the quarter; and

11 “(II) meets the requirement of
12 clause (ii) for the quarter.

13 “(ii) SUBSIDIZED EMPLOYMENT EX-
14 PENDITURE REQUIREMENT.—A State
15 meets the requirement of this clause for a
16 quarter if the total expenditures of the
17 State for subsidized employment in the
18 quarter, whether under the State program
19 funded under this part or as qualified
20 State expenditures, exceeds the total of
21 such expenditures of the State in the cor-
22 responding quarter in the emergency fund
23 base year of the State.

24 “(iii) AMOUNT OF GRANT.—Subject to
25 paragraph (5), the amount of the grant to

1 be made to a State under this subpara-
2 graph for a quarter shall be an amount
3 equal to 80 percent of the excess described
4 in clause (ii).

5 “(4) AUTHORITY TO MAKE NECESSARY ADJUST-
6 MENTS TO DATA AND COLLECT NEEDED DATA.—In
7 determining the size of the caseload of a State and
8 the expenditures of a State for basic assistance, non-
9 recurrent short-term benefits, and subsidized em-
10 ployment, during any period for which the State re-
11 quests funds under this subsection, and during the
12 emergency fund base year of the State, the Sec-
13 retary may make appropriate adjustments to the
14 data to ensure that the data reflect expenditures
15 under the State program funded under this part and
16 qualified State expenditures. The Secretary may de-
17 velop a mechanism for collecting expenditure data,
18 including procedures which allow States to make
19 reasonable estimates, and may set deadlines for
20 making revisions to the data.

21 “(5) LIMITATION.—The total amount payable
22 to a single State under subsection (b) and this sub-
23 section for a fiscal year shall not exceed 25 percent
24 of the State family assistance grant.

1 “(6) LIMITATIONS ON USE OF FUNDS.—A State
2 to which an amount is paid under this subsection
3 may use the amount only as authorized by section
4 404.

5 “(7) TIMING OF IMPLEMENTATION.—The Sec-
6 retary shall implement this subsection as quickly as
7 reasonably possible, pursuant to appropriate guid-
8 ance to States.

9 “(8) DEFINITIONS.—In this subsection:

10 “(A) AVERAGE MONTHLY ASSISTANCE
11 CASELOAD DEFINED.—The term ‘average
12 monthly assistance caseload’ means, with re-
13 spect to a State and a quarter, the number of
14 families receiving assistance during the quarter
15 under the State program funded under this
16 part or as qualified State expenditures, subject
17 to adjustment under paragraph (4).

18 “(B) EMERGENCY FUND BASE YEAR.—

19 “(i) IN GENERAL.—The term ‘emer-
20 gency fund base year’ means, with respect
21 to a State and a category described in
22 clause (ii), whichever of fiscal year 2007 or
23 2008 is the fiscal year in which the
24 amount described by the category with re-
25 spect to the State is the lesser.

1 “(ii) CATEGORIES DESCRIBED.—The
2 categories described in this clause are the
3 following:

4 “(I) The average monthly assist-
5 ance caseload of the State.

6 “(II) The total expenditures of
7 the State for non-recurrent short-term
8 benefits, whether under the State pro-
9 gram funded under this part or as
10 qualified State expenditures.

11 “(III) The total expenditures of
12 the State for subsidized employment,
13 whether under the State program
14 funded under this part or as qualified
15 State expenditures.

16 “(C) QUALIFIED STATE EXPENDITURES.—
17 The term ‘qualified State expenditures’ has the
18 meaning given the term in section 409(a)(7).”.

19 (2) REPEAL.—Effective October 1, 2010, sub-
20 section (c) of section 403 of the Social Security Act
21 (42 U.S.C. 603) (as added by paragraph (1)) is re-
22 pealed.

23 (b) TEMPORARY MODIFICATION OF CASELOAD RE-
24 Duction CREDIT.—Section 407(b)(3)(A)(i) of such Act
25 (42 U.S.C. 607(b)(3)(A)(i)) is amended by inserting “(or

1 if the immediately preceding fiscal year is fiscal year 2008,
2 2009, or 2010, then, at State option, during the emer-
3 gency fund base year of the State with respect to the aver-
4 age monthly assistance caseload of the State (within the
5 meaning of section 403(c)(8)(B), except that, if a State
6 elects such option for fiscal year 2008, the emergency fund
7 base year of the State with respect to such caseload shall
8 be fiscal year 2007))” before “under the State”.

9 (c) DISREGARD FROM LIMITATION ON TOTAL PAY-
10 MENTS TO TERRITORIES.—Section 1108(a)(2) of the So-
11 cial Security Act (42 U.S.C. 1308(a)(2)) is amended by
12 inserting “403(c)(3),” after “403(a)(5),”.

13 (d) EFFECTIVE DATE.—The amendments made by
14 this section shall take effect on the date of the enactment
15 of this Act.

16 **SEC. 2102. EXTENSION OF TANF SUPPLEMENTAL GRANTS.**

17 (a) EXTENSION THROUGH FISCAL YEAR 2010.—Sec-
18 tion 7101(a) of the Deficit Reduction Act of 2005 (Public
19 Law 109–171; 120 Stat. 135), as amended by section
20 301(a) of the Medicare Improvements for Patients and
21 Providers Act of 2008 (Public Law 110–275), is amended
22 by striking “fiscal year 2009” and inserting “fiscal year
23 2010”.

1 (b) CONFORMING AMENDMENT.—Section
 2 403(a)(3)(H)(ii) of the Social Security Act (42 U.S.C.
 3 603(a)(3)(H)(ii)) is amended to read as follows:

4 “(ii) subparagraph (G) shall be ap-
 5 plied as if ‘fiscal year 2010’ were sub-
 6 stituted for ‘fiscal year 2001’; and”.

7 **SEC. 2103. CLARIFICATION OF AUTHORITY OF STATES TO**
 8 **USE TANF FUNDS CARRIED OVER FROM**
 9 **PRIOR YEARS TO PROVIDE TANF BENEFITS**
 10 **AND SERVICES.**

11 Section 404(e) of the Social Security Act (42 U.S.C.
 12 604(e)) is amended to read as follows:

13 “(e) AUTHORITY TO CARRY OVER CERTAIN
 14 AMOUNTS FOR BENEFITS OR SERVICES OR FOR FUTURE
 15 CONTINGENCIES.—A State or tribe may use a grant made
 16 to the State or tribe under this part for any fiscal year
 17 to provide, without fiscal year limitation, any benefit or
 18 service that may be provided under the State or tribal pro-
 19 gram funded under this part.”.

20 **SEC. 2104. TEMPORARY REINSTATEMENT OF AUTHORITY**
 21 **TO PROVIDE FEDERAL MATCHING PAYMENTS**
 22 **FOR STATE SPENDING OF CHILD SUPPORT**
 23 **INCENTIVE PAYMENTS.**

24 During the period that begins on October 1, 2008,
 25 and ends on December 31, 2010, section 455(a)(1) of the

1 Social Security Act (42 U.S.C. 655(a)(1)) shall be applied
 2 without regard to the amendment made by section
 3 7309(a) of the Deficit Reduction Act of 2005 (Public Law
 4 109–171, 120 Stat. 147).

5 **TITLE III—HEALTH INSURANCE**
 6 **ASSISTANCE**

7 **SEC. 3000. TABLE OF CONTENTS OF TITLE.**

8 The table of contents for this title is as follows:

TITLE III—HEALTH INSURANCE ASSISTANCE

Sec. 3000. Table of contents of title.

Subtitle A—Premium Subsidies for COBRA Continuation Coverage for
 Unemployed Workers

Sec. 3001. Premium assistance for COBRA benefits.

Subtitle B—Transitional Medical Assistance (TMA)

Sec. 3101. Extension of transitional medical assistance (TMA).

Subtitle C—Extension of the Qualified Individual (QI) Program

Sec. 3201. Extension of the qualifying individual (QI) program.

Subtitle D—Other Provisions

Sec. 3301. Premiums and cost sharing protections under Medicaid, eligibility
 determinations under Medicaid and CHIP, and protection of
 certain Indian property from Medicaid estate recovery.

Sec. 3302. Rules applicable under Medicaid and CHIP to managed care entities
 with respect to Indian enrollees and Indian health care pro-
 viders and Indian managed care entities.

Sec. 3303. Consultation on Medicaid, CHIP, and other health care programs
 funded under the Social Security Act involving Indian Health
 Programs and Urban Indian Organizations.

Sec. 3304. Application of prompt pay requirements to nursing facilities.

Sec. 3305. Period of application; sunset.

1 **Subtitle A—Premium Subsidies for**
 2 **COBRA Continuation Coverage**
 3 **for Unemployed Workers**

4 **SEC. 3001. PREMIUM ASSISTANCE FOR COBRA BENEFITS.**

5 (a) TABLE OF CONTENTS OF SUBTITLE.—The table
 6 of contents of this subtitle is as follows:

Sec. 3001. Premium assistance for COBRA benefits.

7 (b) PREMIUM ASSISTANCE FOR COBRA CONTINU-
 8 ATION COVERAGE FOR UNEMPLOYED WORKERS AND
 9 THEIR FAMILIES.—

10 (1) PROVISION OF PREMIUM ASSISTANCE.—

11 (A) REDUCTION OF PREMIUMS PAY-
 12 ABLE.—In the case of any premium for a
 13 month of coverage beginning after the date of
 14 the enactment of the Act for COBRA continu-
 15 ation coverage with respect to any assistance el-
 16 igible individual, such individual shall be treated
 17 for purposes of any COBRA continuation provi-
 18 sion as having paid the amount of such pre-
 19 mium if such individual pays 35 percent of the
 20 amount of such premium (as determined with-
 21 out regard to this subsection).

22 (B) PLAN ENROLLMENT OPTION.—

23 (i) IN GENERAL.—Notwithstanding
 24 the COBRA continuation provisions, an as-

1 assistance eligible individual may, not later
2 than 90 days after the date of notice of the
3 plan enrollment option described in this
4 subparagraph, elect to enroll in coverage
5 under a plan offered by the employer in-
6 volved, or the employee organization in-
7 volved (including, for this purpose, a joint
8 board of trustees of a multiemployer trust
9 affiliated with one or more multiemployer
10 plans), that is different than coverage
11 under the plan in which such individual
12 was enrolled at the time the qualifying
13 event occurred, and such coverage shall be
14 treated as COBRA continuation coverage
15 for purposes of the applicable COBRA con-
16 tinuation coverage provision.

17 (ii) REQUIREMENTS.—An assistance
18 eligible individual may elect to enroll in
19 different coverage as described in clause (i)
20 only if—

21 (I) the employer involved has
22 made a determination that such em-
23 ployer will permit assistance eligible
24 individuals to enroll in different cov-

1 erage as provided for this subpara-
2 graph;

3 (II) the premium for such dif-
4 ferent coverage does not exceed the
5 premium for coverage in which the in-
6 dividual was enrolled at the time the
7 qualifying event occurred;

8 (III) the different coverage in
9 which the individual elects to enroll is
10 coverage that is also offered to the ac-
11 tive employees of the employer at the
12 time at which such election is made;
13 and

14 (IV) the different coverage is
15 not—

16 (aa) coverage that provides
17 only dental, vision, counseling, or
18 referral services (or a combina-
19 tion of such services);

20 (bb) a health flexible spend-
21 ing account or health reimburse-
22 ment arrangement; or

23 (cc) coverage that provides
24 coverage for services or treat-
25 ments furnished in an on-site

1 medical facility maintained by
2 the employer and that consists
3 primarily of first-aid services,
4 prevention and wellness care, or
5 similar care (or a combination of
6 such care).

7 (C) PREMIUM REIMBURSEMENT.—For pro-
8 visions providing the balance of such premium,
9 see section 6432 of the Internal Revenue Code
10 of 1986, as added by paragraph (12).

11 (2) LIMITATION OF PERIOD OF PREMIUM AS-
12 SISTANCE.—

13 (A) IN GENERAL.—Paragraph (1)(A) shall
14 not apply with respect to any assistance eligible
15 individual for months of coverage beginning on
16 or after the earlier of—

17 (i) the first date that such individual
18 is eligible for coverage under any other
19 group health plan (other than coverage
20 consisting of only dental, vision, coun-
21 seling, or referral services (or a combina-
22 tion thereof), coverage under a health re-
23 imbursement arrangement or a health
24 flexible spending arrangement, or coverage
25 of treatment that is furnished in an on-site

1 medical facility maintained by the em-
2 ployer and that consists primarily of first-
3 aid services, prevention and wellness care,
4 or similar care (or a combination thereof))
5 or is eligible for benefits under title XVIII
6 of the Social Security Act; or

7 (ii) the earliest of—

8 (I) the date which is 9 months
9 after the first day of first month that
10 paragraph (1)(A) applies with respect
11 to such individual,

12 (II) the date following the expira-
13 tion of the maximum period of con-
14 tinuation coverage required under the
15 applicable COBRA continuation cov-
16 erage provision, or

17 (III) the date following the expi-
18 ration of the period of continuation
19 coverage allowed under paragraph
20 (4)(B)(ii).

21 (B) TIMING OF ELIGIBILITY FOR ADDI-
22 TIONAL COVERAGE.—For purposes of subpara-
23 graph (A)(i), an individual shall not be treated
24 as eligible for coverage under a group health

1 plan before the first date on which such indi-
2 vidual could be covered under such plan.

3 (C) NOTIFICATION REQUIREMENT.—An
4 assistance eligible individual shall notify in writ-
5 ing the group health plan with respect to which
6 paragraph (1)(A) applies if such paragraph
7 ceases to apply by reason of subparagraph
8 (A)(i). Such notice shall be provided to the
9 group health plan in such time and manner as
10 may be specified by the Secretary of Labor.

11 (3) ASSISTANCE ELIGIBLE INDIVIDUAL.—For
12 purposes of this section, the term “assistance eligible
13 individual” means any qualified beneficiary if—

14 (A) at any time during the period that be-
15 gins with September 1, 2008, and ends with
16 December 31, 2009, such qualified beneficiary
17 is eligible for COBRA continuation coverage,

18 (B) such qualified beneficiary elects such
19 coverage, and

20 (C) the qualifying event with respect to the
21 COBRA continuation coverage consists of the
22 involuntary termination of the covered employ-
23 ee’s employment and occurred during such pe-
24 riod.

1 (4) EXTENSION OF ELECTION PERIOD AND EF-
2 FECT ON COVERAGE.—

3 (A) IN GENERAL.—Notwithstanding sec-
4 tion 605(a) of the Employee Retirement Income
5 Security Act of 1974, section 4980B(f)(5)(A) of
6 the Internal Revenue Code of 1986, section
7 2205(a) of the Public Health Service Act, and
8 section 8905a(c)(2) of title 5, United States
9 Code, in the case of an individual who is a
10 qualified beneficiary described in paragraph
11 (3)(A) as of the date of the enactment of this
12 Act and has not made the election referred to
13 in paragraph (3)(B) as of such date, such indi-
14 vidual may elect the COBRA continuation cov-
15 erage under the COBRA continuation coverage
16 provisions containing such sections during the
17 60-day period commencing with the date on
18 which the notification required under paragraph
19 (7)(C) is provided to such individual.

20 (B) COMMENCEMENT OF COVERAGE; NO
21 REACH-BACK.—Any COBRA continuation cov-
22 erage elected by a qualified beneficiary during
23 an extended election period under subparagraph
24 (A)—

1 (i) shall commence on the date of the
2 enactment of this Act, and

3 (ii) shall not extend beyond the period
4 of COBRA continuation coverage that
5 would have been required under the appli-
6 cable COBRA continuation coverage provi-
7 sion if the coverage had been elected as re-
8 quired under such provision.

9 (C) PREEXISTING CONDITIONS.—With re-
10 spect to a qualified beneficiary who elects
11 COBRA continuation coverage pursuant to sub-
12 paragraph (A), the period—

13 (i) beginning on the date of the quali-
14 fying event, and

15 (ii) ending with the day before the
16 date of the enactment of this Act,

17 shall be disregarded for purposes of deter-
18 mining the 63-day periods referred to in section
19 701)(2) of the Employee Retirement Income
20 Security Act of 1974, section 9801(c)(2) of the
21 Internal Revenue Code of 1986, and section
22 2701(c)(2) of the Public Health Service Act.

23 (5) EXPEDITED REVIEW OF DENIALS OF PRE-
24 MIUM ASSISTANCE.—In any case in which an indi-
25 vidual requests treatment as an assistance eligible

1 individual and is denied such treatment by the group
2 health plan by reason of such individual's ineligi-
3 bility for COBRA continuation coverage, the Sec-
4 retary of Labor (or the Secretary of Health and
5 Human services in connection with COBRA continu-
6 ation coverage which is provided other than pursu-
7 ant to part 6 of subtitle B of title I of the Employee
8 Retirement Income Security Act of 1974), in con-
9 sultation with the Secretary of the Treasury, shall
10 provide for expedited review of such denial. An indi-
11 vidual shall be entitled to such review upon applica-
12 tion to such Secretary in such form and manner as
13 shall be provided by such Secretary. Such Secretary
14 shall make a determination regarding such individ-
15 ual's eligibility within 10 business days after receipt
16 of such individual's application for review under this
17 paragraph.

18 (6) DISREGARD OF SUBSIDIES FOR PURPOSES
19 OF FEDERAL AND STATE PROGRAMS.—Notwith-
20 standing any other provision of law, any premium
21 reduction with respect to an assistance eligible indi-
22 vidual under this subsection shall not be considered
23 income or resources in determining eligibility for, or
24 the amount of assistance or benefits provided under,
25 any other public benefit provided under Federal law

1 or the law of any State or political subdivision there-
2 of.

3 (7) NOTICES TO INDIVIDUALS.—

4 (A) GENERAL NOTICE.—

5 (i) IN GENERAL.—In the case of no-
6 tices provided under section 606(4) of the
7 Employee Retirement Income Security Act
8 of 1974 (29 U.S.C. 1166(4)), section
9 4980B(f)(6)(D) of the Internal Revenue
10 Code of 1986, section 2206(4) of the Pub-
11 lic Health Service Act (42 U.S.C. 300bb-
12 6(4)), or section 8905a(f)(2)(A) of title 5,
13 United States Code, with respect to indi-
14 viduals who, during the period described in
15 paragraph (3)(A), become entitled to elect
16 COBRA continuation coverage, such no-
17 tices shall include an additional notifica-
18 tion to the recipient of—

19 (I) the availability of premium
20 reduction with respect to such cov-
21 erage under this subsection; and

22 (II) the option to enroll in dif-
23 ferent coverage if an employer that
24 permits assistance eligible individuals
25 to elect enrollment in different cov-

1 erage (as described in paragraph
2 (1)(B)).

3 (ii) ALTERNATIVE NOTICE.—In the
4 case of COBRA continuation coverage to
5 which the notice provision under such sec-
6 tions does not apply, the Secretary of
7 Labor, in consultation with the Secretary
8 of the Treasury and the Secretary of
9 Health and Human Services, shall, in co-
10 ordination with administrators of the
11 group health plans (or other entities) that
12 provide or administer the COBRA continu-
13 ation coverage involved, provide rules re-
14 quiring the provision of such notice.

15 (iii) FORM.—The requirement of the
16 additional notification under this subpara-
17 graph may be met by amendment of exist-
18 ing notice forms or by inclusion of a sepa-
19 rate document with the notice otherwise
20 required.

21 (B) SPECIFIC REQUIREMENTS.—Each ad-
22 ditional notification under subparagraph (A)
23 shall include—

1 (i) the forms necessary for estab-
2 lishing eligibility for premium reduction
3 under this subsection,

4 (ii) the name, address, and telephone
5 number necessary to contact the plan ad-
6 ministrator and any other person main-
7 taining relevant information in connection
8 with such premium reduction,

9 (iii) a description of the extended elec-
10 tion period provided for in paragraph
11 (4)(A),

12 (iv) a description of the obligation of
13 the qualified beneficiary under paragraph
14 (2)(C) to notify the plan providing continu-
15 ation coverage of eligibility for subsequent
16 coverage under another group health plan
17 or eligibility for benefits under title XVIII
18 of the Social Security Act and the penalty
19 provided for failure to so notify the plan,

20 (v) a description, displayed in a
21 prominent manner, of the qualified bene-
22 ficiary's right to a reduced premium and
23 any conditions on entitlement to the re-
24 duced premium; and

1 (vi) a description of the option of the
2 qualified beneficiary to enroll in different
3 coverage if the employer permits such ben-
4 eficiary to elect to enroll in such different
5 coverage under paragraph (1)(B).

6 (C) NOTICE RELATING TO RETROACTIVE
7 COVERAGE.—In the case of an individual de-
8 scribed in paragraph (3)(A) who has elected
9 COBRA continuation coverage as of the date of
10 enactment of this Act or an individual described
11 in paragraph (4)(A), the administrator of the
12 group health plan (or other person) involved
13 shall provide (within 60 days after the date of
14 enactment of this Act) for the additional notifi-
15 cation required to be provided under subpara-
16 graph (A).

17 (D) MODEL NOTICES.—Not later than 30
18 days after the date of enactment of this Act,
19 the Secretary of the Labor, in consultation with
20 the Secretary of the Treasury and the Secretary
21 of Health and Human Services, shall prescribe
22 models for the additional notification required
23 under this paragraph.

24 (8) SAFEGUARDS.—The Secretary of the Treas-
25 ury shall provide such rules, procedures, regulations,

1 and other guidance as may be necessary and appro-
2 priate to prevent fraud and abuse under this sub-
3 section.

4 (9) OUTREACH.—The Secretary of Labor, in
5 consultation with the Secretary of the Treasury and
6 the Secretary of Health and Human Services, shall
7 provide outreach consisting of public education and
8 enrollment assistance relating to premium reduction
9 provided under this subsection. Such outreach shall
10 target employers, group health plan administrators,
11 public assistance programs, States, insurers, and
12 other entities as determined appropriate by such
13 Secretaries. Such outreach shall include an initial
14 focus on those individuals electing continuation cov-
15 erage who are referred to in paragraph (7)(C). In-
16 formation on such premium reduction, including en-
17 rollment, shall also be made available on website of
18 the Departments of Labor, Treasury, and Health
19 and Human Services.

20 (10) DEFINITIONS.—For purposes of this sub-
21 section—

22 (A) ADMINISTRATOR.—The term “admin-
23 istrator” has the meaning given such term in
24 section 3(16) of the Employee Retirement In-
25 come Security Act of 1974.

1 (B) COBRA CONTINUATION COVERAGE.—
2 The term “COBRA continuation coverage”
3 means continuation coverage provided pursuant
4 to part 6 of subtitle B of title I of the Em-
5 ployee Retirement Income Security Act of 1974
6 (other than under section 609), title XXII of
7 the Public Health Service Act, section 4980B of
8 the Internal Revenue Code of 1986 (other than
9 subsection (f)(1) of such section insofar as it
10 relates to pediatric vaccines), or section 8905a
11 of title 5, United States Code, or under a State
12 program that provides continuation coverage
13 comparable to such continuation coverage. Such
14 term does not include coverage under a health
15 flexible spending arrangement.

16 (C) COBRA CONTINUATION PROVISION.—
17 The term “COBRA continuation provision”
18 means the provisions of law described in sub-
19 paragraph (B).

20 (D) COVERED EMPLOYEE.—The term
21 “covered employee” has the meaning given such
22 term in section 607(2) of the Employee Retirement
23 Income Security Act of 1974.

24 (E) QUALIFIED BENEFICIARY.—The term
25 “qualified beneficiary” has the meaning given

1 such term in section 607(3) of the Employee
2 Retirement Income Security Act of 1974.

3 (F) GROUP HEALTH PLAN.—The term
4 “group health plan” has the meaning given
5 such term in section 607(1) of the Employee
6 Retirement Income Security Act of 1974.

7 (G) STATE.—The term “State” includes
8 the District of Columbia, the Commonwealth of
9 Puerto Rico, the Virgin Islands, Guam, Amer-
10 ican Samoa, and the Commonwealth of the
11 Northern Mariana Islands.

12 (11) REPORTS.—

13 (A) INTERIM REPORT.—The Secretary of
14 the Treasury shall submit an interim report to
15 the Committee on Education and Labor, the
16 Committee on Ways and Means, and the Com-
17 mittee on Energy and Commerce of the House
18 of Representatives and the Committee on
19 Health, Education, Labor, and Pensions and
20 the Committee on Finance of the Senate re-
21 garding the premium reduction provided under
22 this subsection that includes—

23 (i) the number of individuals provided
24 such assistance as of the date of the re-
25 port; and

1 (ii) the total amount of expenditures
2 incurred (with administrative expenditures
3 noted separately) in connection with such
4 assistance as of the date of the report.

5 (B) FINAL REPORT.—As soon as prac-
6 ticable after the last period of COBRA continu-
7 ation coverage for which premium reduction is
8 provided under this section, the Secretary of the
9 Treasury shall submit a final report to each
10 Committee referred to in subparagraph (A) that
11 includes—

12 (i) the number of individuals provided
13 premium reduction under this section;

14 (ii) the average dollar amount
15 (monthly and annually) of premium reduc-
16 tions provided to such individuals; and

17 (iii) the total amount of expenditures
18 incurred (with administrative expenditures
19 noted separately) in connection with pre-
20 mium reduction under this section.

21 (12) COBRA PREMIUM ASSISTANCE.—

22 (A) IN GENERAL.—Subchapter B of chap-
23 ter 65 of the Internal Revenue Code of 1986 is
24 amended by adding at the end the following
25 new section:

1 **“SEC. 6432. COBRA PREMIUM ASSISTANCE.**

2 “(a) IN GENERAL.—The person to whom premiums
3 are payable under COBRA continuation coverage shall be
4 reimbursed for the amount of premiums not paid by plan
5 beneficiaries by reason of section 3001(b) of the American
6 Recovery and Reinvestment Act of 2009. Such amount
7 shall be treated as a credit against the requirement of such
8 person to make deposits of payroll taxes and the liability
9 of such person for payroll taxes. To the extent that such
10 amount exceeds the amount of such taxes, the Secretary
11 shall pay to such person the amount of such excess. No
12 payment may be made under this subsection to a person
13 with respect to any assistance eligible individual until after
14 such person has received the reduced premium from such
15 individual required under section 3001(a)(1)(A) of such
16 Act.

17 “(b) PAYROLL TAXES.—For purposes of this section,
18 the term ‘payroll taxes’ means—

19 “(1) amounts required to be deducted and with-
20 held for the payroll period under section 3401 (relat-
21 ing to wage withholding),

22 “(2) amounts required to be deducted for the
23 payroll period under section 3102 (relating to FICA
24 employee taxes), and

1 “(3) amounts of the taxes imposed for the pay-
2 roll period under section 3111 (relating to FICA em-
3 ployer taxes).

4 “(c) TREATMENT OF CREDIT.—Except as otherwise
5 provided by the Secretary, the credit described in sub-
6 section (a) shall be applied as though the employer had
7 paid to the Secretary, on the day that the qualified bene-
8 ficiary’s premium payment is received, an amount equal
9 to such credit.

10 “(d) TREATMENT OF PAYMENT.—For purposes of
11 section 1324(b)(2) of title 31, United States Code, any
12 payment under this subsection shall be treated in the same
13 manner as a refund of the credit under section 35.

14 “(e) REPORTING.—

15 “(1) IN GENERAL.—Each person entitled to re-
16 imbursement under subsection (a) for any period
17 shall submit such reports as the Secretary may re-
18 quire, including—

19 “(A) an attestation of involuntary termi-
20 nation of employment for each covered em-
21 ployee on the basis of whose termination entitle-
22 ment to reimbursement is claimed under sub-
23 section (a), and

24 “(B) a report of the amount of payroll
25 taxes offset under subsection (a) for the report-

1 ing period and the estimated offsets of such
2 taxes for the subsequent reporting period in
3 connection with reimbursements under sub-
4 section (a).

5 “(2) TIMING OF REPORTS RELATING TO
6 AMOUNT OF PAYROLL TAXES.—Reports required
7 under paragraph (1)(B) shall be submitted at the
8 same time as deposits of taxes imposed by chapters
9 21, 22, and 24 or at such time as is specified by the
10 Secretary.

11 “(f) REGULATIONS.—The Secretary may issue such
12 regulations or other guidance as may be necessary or ap-
13 propriate to carry out this section, including the require-
14 ment to report information or the establishment of other
15 methods for verifying the correct amounts of payments
16 and credits under this section, and the application of this
17 section to group health plans which are multiemployer
18 plans.”.

19 (B) SOCIAL SECURITY TRUST FUNDS HELD
20 HARMLESS.—In determining any amount trans-
21 ferred or appropriated to any fund under the
22 Social Security Act, section 6432 of the Inter-
23 nal Revenue Code of 1986 shall not be taken
24 into account.

1 (C) CLERICAL AMENDMENT.—The table of
2 sections for subchapter B of chapter 65 of the
3 Internal Revenue Code of 1986 is amended by
4 adding at the end the following new item:

“Sec. 6432. COBRA premium assistance.”.

5 (D) EFFECTIVE DATE.—The amendments
6 made by this paragraph shall apply to pre-
7 miums to which subsection (a)(1)(A) applies.

8 (E) SPECIAL RULE.—

9 (i) IN GENERAL.—In the case of an
10 assistance eligible individual who pays the
11 full premium amount required for COBRA
12 continuation coverage for any month dur-
13 ing the 60-day period beginning on the
14 first day of the first month after the date
15 of enactment of this Act, the person to
16 whom such payment is made shall—

17 (I) make a reimbursement pay-
18 ment to such individual for the
19 amount of such premium paid in ex-
20 cess of the amount required to be paid
21 under subsection (b)(1)(A); or

22 (II) provide credit to the indi-
23 vidual for such amount in a manner
24 that reduces one or more subsequent
25 premium payments that the individual

1 is required to pay under such sub-
2 section for the coverage involved.

3 (ii) REIMBURSING EMPLOYER.—A
4 person to which clause (i) applies shall be
5 reimbursed as provided for in section 6432
6 of the Internal Revenue Code of 1986 for
7 any payment made, or credit provided, to
8 the employee under such clause.

9 (iii) PAYMENT OR CREDITS.—Unless
10 it is reasonable to believe that the credit
11 for the excess payment in clause (i)(II) will
12 be used by the assistance eligible individual
13 within 180 days of the date on which the
14 person receives from the individual the
15 payment of the full premium amount, a
16 person to which clause (i) applies shall
17 make the payment required under such
18 clause to the individual within 60 days of
19 such payment of the full premium amount.
20 If, as of any day within the 180-day pe-
21 riod, it is no longer reasonable to believe
22 that the credit will be used during that pe-
23 riod, payment equal to the remainder of
24 the credit outstanding shall be made to the
25 individual within 60 days of such day.

1 (13) PENALTY FOR FAILURE TO NOTIFY
2 HEALTH PLAN OF CESSATION OF ELIGIBILITY FOR
3 PREMIUM ASSISTANCE.—

4 (A) IN GENERAL.—Part I of subchapter B
5 of chapter 68 of the Internal Revenue Code of
6 1986 is amended by adding at the end the fol-
7 lowing new section:

8 **“SEC. 6720C. PENALTY FOR FAILURE TO NOTIFY HEALTH**
9 **PLAN OF CESSATION OF ELIGIBILITY FOR**
10 **COBRA PREMIUM ASSISTANCE.**

11 “(a) IN GENERAL.—Any person required to notify a
12 group health plan under section 3001(a)(2)(C) of the
13 American Recovery and Reinvestment Act of 2009 who
14 fails to make such a notification at such time and in such
15 manner as the Secretary of Labor may require shall pay
16 a penalty of 110 percent of the premium reduction pro-
17 vided under such section after termination of eligibility
18 under such subsection.

19 “(b) REASONABLE CAUSE EXCEPTION.—No penalty
20 shall be imposed under subsection (a) with respect to any
21 failure if it is shown that such failure is due to reasonable
22 cause and not to willful neglect.”.

23 (B) CLERICAL AMENDMENT.—The table of
24 sections of part I of subchapter B of chapter 68

1 of such Code is amended by adding at the end
2 the following new item:

“Sec. 6720C. Penalty for failure to notify health plan of cessation of eligibility for COBRA premium assistance.”.

3 (C) EFFECTIVE DATE.—The amendments
4 made by this paragraph shall apply to failures
5 occurring after the date of the enactment of
6 this Act.

7 (14) COORDINATION WITH HCTC.—

8 (A) IN GENERAL.—Subsection (g) of sec-
9 tion 35 of the Internal Revenue Code of 1986
10 is amended by redesignating paragraph (9) as
11 paragraph (10) and inserting after paragraph
12 (8) the following new paragraph:

13 “(9) COBRA PREMIUM ASSISTANCE.—In the
14 case of an assistance eligible individual who receives
15 premium reduction for COBRA continuation cov-
16 erage under section 3001(a) of the American Recov-
17 ery and Reinvestment Act of 2009 for any month
18 during the taxable year, such individual shall not be
19 treated as an eligible individual, a certified indi-
20 vidual, or a qualifying family member for purposes
21 of this section or section 7527 with respect to such
22 month.”.

23 (B) EFFECTIVE DATE.—The amendment
24 made by subparagraph (A) shall apply to tax-

1 able years ending after the date of the enact-
2 ment of this Act.

3 (15) EXCLUSION OF COBRA PREMIUM ASSIST-
4 ANCE FROM GROSS INCOME.—

5 (A) IN GENERAL.—Part III of subchapter
6 B of chapter 1 of the Internal Revenue Code of
7 1986 is amended by inserting after section
8 139B the following new section:

9 **“SEC. 139C. COBRA PREMIUM ASSISTANCE.**

10 “In the case of an assistance eligible individual (as
11 defined in section 3001 of the American Recovery and Re-
12 investment Act of 2009), gross income does not include
13 any premium reduction provided under subsection (a) of
14 such section.”.

15 (B) CLERICAL AMENDMENT.—The table of
16 sections for part III of subchapter B of chapter
17 1 of such Code is amended by inserting after
18 the item relating to section 139B the following
19 new item:

 “Sec. 139C. COBRA premium assistance.”.

20 (C) EFFECTIVE DATE.—The amendments
21 made by this paragraph shall apply to taxable
22 years ending after the date of the enactment of
23 this Act.

1 **Subtitle B—Transitional Medical**
2 **Assistance (TMA)**

3 **SEC. 3101. EXTENSION OF TRANSITIONAL MEDICAL ASSIST-**
4 **ANCE (TMA).**

5 (a) 18-MONTH EXTENSION.—

6 (1) IN GENERAL.—Sections 1902(e)(1)(B) and
7 1925(f) of the Social Security Act (42 U.S.C.
8 1396a(e)(1)(B), 1396r–6(f)) are each amended by
9 striking “September 30, 2003” and inserting “De-
10 cember 31, 2010”.

11 (2) EFFECTIVE DATE.—The amendments made
12 by this subsection shall take effect on July 1, 2009.

13 (b) STATE OPTION OF INITIAL 12-MONTH ELIGI-
14 BILITY.—Section 1925 of the Social Security Act (42
15 U.S.C. 1396r–6) is amended—

16 (1) in subsection (a)(1), by inserting “but sub-
17 ject to paragraph (5)” after “Notwithstanding any
18 other provision of this title”;

19 (2) by adding at the end of subsection (a) the
20 following:

21 “(5) OPTION OF 12-MONTH INITIAL ELIGIBILITY
22 PERIOD.—A State may elect to treat any reference
23 in this subsection to a 6-month period (or 6 months)
24 as a reference to a 12-month period (or 12 months).

1 In the case of such an election, subsection (b) shall
2 not apply.”; and

3 (3) in subsection (b)(1), by inserting “but sub-
4 ject to subsection (a)(5)” after “Notwithstanding
5 any other provision of this title”.

6 (c) REMOVAL OF REQUIREMENT FOR PREVIOUS RE-
7 CEIPT OF MEDICAL ASSISTANCE.—Section 1925(a)(1) of
8 such Act (42 U.S.C. 1396r–6(a)(1)), as amended by sub-
9 section (b)(1), is further amended—

10 (1) by inserting “subparagraph (B) and” before
11 “paragraph (5)”;

12 (2) by redesignating the matter after “RE-
13 QUIREMENT.—” as a subparagraph (A) with the
14 heading “IN GENERAL.—” and with the same inden-
15 tation as subparagraph (B) (as added by paragraph
16 (3)); and

17 (3) by adding at the end the following:

18 “(B) STATE OPTION TO WAIVE REQUIRE-
19 MENT FOR 3 MONTHS BEFORE RECEIPT OF
20 MEDICAL ASSISTANCE.—A State may, at its op-
21 tion, elect also to apply subparagraph (A) in
22 the case of a family that was receiving such aid
23 for fewer than three months or that had applied
24 for and was eligible for such aid for fewer than

1 3 months during the 6 immediately preceding
2 months described in such subparagraph.”.

3 (d) CMS REPORT ON ENROLLMENT AND PARTICIPA-
4 TION RATES UNDER TMA.—Section 1925 of such Act (42
5 U.S.C. 1396r-6), as amended by this section, is further
6 amended by adding at the end the following new sub-
7 section:

8 “(g) COLLECTION AND REPORTING OF PARTICIPA-
9 TION INFORMATION.—

10 “(1) COLLECTION OF INFORMATION FROM
11 STATES.—Each State shall collect and submit to the
12 Secretary (and make publicly available), in a format
13 specified by the Secretary, information on average
14 monthly enrollment and average monthly participa-
15 tion rates for adults and children under this section
16 and of the number and percentage of children who
17 become ineligible for medical assistance under this
18 section whose medical assistance is continued under
19 another eligibility category or who are enrolled under
20 the State’s child health plan under title XXI. Such
21 information shall be submitted at the same time and
22 frequency in which other enrollment information
23 under this title is submitted to the Secretary.

24 “(2) ANNUAL REPORTS TO CONGRESS.—Using
25 the information submitted under paragraph (1), the

1 Secretary shall submit to Congress annual reports
2 concerning enrollment and participation rates de-
3 scribed in such paragraph.”.

4 (e) EFFECTIVE DATE.—The amendments made by
5 subsections (b) through (d) shall take effect on July 1,
6 2009.

7 **Subtitle C—Extension of the**
8 **Qualified Individual (QI) Program**

9 **SEC. 3201. EXTENSION OF THE QUALIFYING INDIVIDUAL**
10 **(QI) PROGRAM.**

11 (a) EXTENSION.—Section 1902(a)(10)(E)(iv) of the
12 Social Security Act (42 U.S.C. 1396a(a)(10)(E)(iv)) is
13 amended by striking “December 2009” and inserting “De-
14 cember 2010”.

15 (b) EXTENDING TOTAL AMOUNT AVAILABLE FOR
16 ALLOCATION.—Section 1933(g) of such Act (42 U.S.C.
17 1396u–3(g)) is amended—

18 (1) in paragraph (2)—

19 (A) by striking “and” at the end of sub-
20 paragraph (K);

21 (B) in subparagraph (L), by striking the
22 period at the end and inserting a semicolon;
23 and

24 (C) by adding at the end the following new
25 subparagraphs:

1 “(M) for the period that begins on Janu-
 2 ary 1, 2010, and ends on September 30, 2010,
 3 the total allocation amount is \$412,500,000;
 4 and

5 “(N) for the period that begins on October
 6 1, 2010, and ends on December 31, 2010, the
 7 total allocation amount is \$150,000,000.”; and

8 (2) in paragraph (3), in the matter preceding
 9 subparagraph (A), by striking “or (L)” and insert-
 10 ing “(L), or (N)”.

11 **Subtitle D—Other Provisions**

12 **SEC. 3301. PREMIUMS AND COST SHARING PROTECTIONS**

13 **UNDER MEDICAID, ELIGIBILITY DETERMINA-** 14 **TIONS UNDER MEDICAID AND CHIP, AND** 15 **PROTECTION OF CERTAIN INDIAN PROPERTY** 16 **FROM MEDICAID ESTATE RECOVERY.**

17 (a) PREMIUMS AND COST SHARING PROTECTION 18 UNDER MEDICAID.—

19 (1) IN GENERAL.—Section 1916 of the Social
 20 Security Act (42 U.S.C. 1396o) is amended—

21 (A) in subsection (a), in the matter pre-
 22 ceding paragraph (1), by striking “and (i)” and
 23 inserting “, (i), and (j)”; and

24 (B) by adding at the end the following new
 25 subsection:

1 “(j) NO PREMIUMS OR COST SHARING FOR INDIANS
2 FURNISHED ITEMS OR SERVICES DIRECTLY BY INDIAN
3 HEALTH PROGRAMS OR THROUGH REFERRAL UNDER
4 CONTRACT HEALTH SERVICES.—

5 “(1) NO COST SHARING FOR ITEMS OR SERV-
6 ICES FURNISHED TO INDIANS THROUGH INDIAN
7 HEALTH PROGRAMS.—

8 “(A) IN GENERAL.—No enrollment fee,
9 premium, or similar charge, and no deduction,
10 copayment, cost sharing, or similar charge shall
11 be imposed against an Indian who is furnished
12 an item or service directly by the Indian Health
13 Service, an Indian Tribe, Tribal Organization,
14 or Urban Indian Organization or through refer-
15 ral under contract health services for which
16 payment may be made under this title.

17 “(B) NO REDUCTION IN AMOUNT OF PAY-
18 MENT TO INDIAN HEALTH PROVIDERS.—Pay-
19 ment due under this title to the Indian Health
20 Service, an Indian Tribe, Tribal Organization,
21 or Urban Indian Organization, or a health care
22 provider through referral under contract health
23 services for the furnishing of an item or service
24 to an Indian who is eligible for assistance under
25 such title, may not be reduced by the amount

1 of any enrollment fee, premium, or similar
2 charge, or any deduction, copayment, cost shar-
3 ing, or similar charge that would be due from
4 the Indian but for the operation of subpara-
5 graph (A).

6 “(2) RULE OF CONSTRUCTION.—Nothing in
7 this subsection shall be construed as restricting the
8 application of any other limitations on the imposi-
9 tion of premiums or cost sharing that may apply to
10 an individual receiving medical assistance under this
11 title who is an Indian.”.

12 (2) CONFORMING AMENDMENT.—Section
13 1916A(b)(3) of such Act (42 U.S.C. 1396o–1(b)(3))
14 is amended—

15 (A) in subparagraph (A), by adding at the
16 end the following new clause:

17 “(vi) An Indian who is furnished an
18 item or service directly by the Indian
19 Health Service, an Indian Tribe, Tribal
20 Organization or Urban Indian Organiza-
21 tion or through referral under contract
22 health services.”; and

23 (B) in subparagraph (B), by adding at the
24 end the following new clause:

1 “(ix) Items and services furnished to
2 an Indian directly by the Indian Health
3 Service, an Indian Tribe, Tribal Organiza-
4 tion or Urban Indian Organization or
5 through referral under contract health
6 services.”.

7 (b) TREATMENT OF CERTAIN PROPERTY FROM RE-
8 SOURCES FOR MEDICAID AND CHIP ELIGIBILITY.—

9 (1) MEDICAID.—Section 1902 of the Social Se-
10 curity Act (42 U.S.C. 1396a) is amended by adding
11 at the end the following new subsection:

12 “(dd) Notwithstanding any other requirement of this
13 title or any other provision of Federal or State law, a State
14 shall disregard the following property from resources for
15 purposes of determining the eligibility of an individual who
16 is an Indian for medical assistance under this title:

17 “(1) Property, including real property and im-
18 provements, that is held in trust, subject to Federal
19 restrictions, or otherwise under the supervision of
20 the Secretary of the Interior, located on a reserva-
21 tion, including any federally recognized Indian
22 Tribe’s reservation, pueblo, or colony, including
23 former reservations in Oklahoma, Alaska Native re-
24 gions established by the Alaska Native Claims Set-
25 tlement Act, and Indian allotments on or near a res-

1 ervation as designated and approved by the Bureau
2 of Indian Affairs of the Department of the Interior.

3 “(2) For any federally recognized Tribe not de-
4 scribed in paragraph (1), property located within the
5 most recent boundaries of a prior Federal reserva-
6 tion.

7 “(3) Ownership interests in rents, leases, royalti-
8 ties, or usage rights related to natural resources (in-
9 cluding extraction of natural resources or harvesting
10 of timber, other plants and plant products, animals,
11 fish, and shellfish) resulting from the exercise of fed-
12 erally protected rights.

13 “(4) Ownership interests in or usage rights to
14 items not covered by paragraphs (1) through (3)
15 that have unique religious, spiritual, traditional, or
16 cultural significance or rights that support subsist-
17 ence or a traditional lifestyle according to applicable
18 tribal law or custom.”.

19 (2) APPLICATION TO CHIP.—Section 2107(e)(1)
20 of such Act (42 U.S.C. 1397gg(e)(1)) is amended—

21 (A) by redesignating subparagraphs (B)
22 through (E), as subparagraphs (C) through
23 (F), respectively; and

24 (B) by inserting after subparagraph (A),
25 the following new subparagraph:

1 “(B) Section 1902(dd) (relating to dis-
2 regard of certain property for purposes of mak-
3 ing eligibility determinations).”.

4 (c) CONTINUATION OF CURRENT LAW PROTECTIONS
5 OF CERTAIN INDIAN PROPERTY FROM MEDICAID ESTATE
6 RECOVERY.—Section 1917(b)(3) of the Social Security
7 Act (42 U.S.C. 1396p(b)(3)) is amended—

8 (1) by inserting “(A)” after “(3)”; and
9 (2) by adding at the end the following new sub-
10 paragraph:

11 “(B) The standards specified by the Sec-
12 retary under subparagraph (A) shall require
13 that the procedures established by the State
14 agency under subparagraph (A) exempt income,
15 resources, and property that are exempt from
16 the application of this subsection as of April 1,
17 2003, under manual instructions issued to carry
18 out this subsection (as in effect on such date)
19 because of the Federal responsibility for Indian
20 Tribes and Alaska Native Villages. Nothing in
21 this subparagraph shall be construed as pre-
22 venting the Secretary from providing additional
23 estate recovery exemptions under this title for
24 Indians.”.

1 **SEC. 3302. RULES APPLICABLE UNDER MEDICAID AND CHIP**
2 **TO MANAGED CARE ENTITIES WITH RESPECT**
3 **TO INDIAN ENROLLEES AND INDIAN HEALTH**
4 **CARE PROVIDERS AND INDIAN MANAGED**
5 **CARE ENTITIES.**

6 (a) IN GENERAL.—Section 1932 of the Social Secu-
7 rity Act (42 U.S.C. 1396u–2) is amended by adding at
8 the end the following new subsection:

9 “(h) SPECIAL RULES WITH RESPECT TO INDIAN EN-
10 ROLLEES, INDIAN HEALTH CARE PROVIDERS, AND IN-
11 DIAN MANAGED CARE ENTITIES.—

12 “(1) ENROLLEE OPTION TO SELECT AN INDIAN
13 HEALTH CARE PROVIDER AS PRIMARY CARE PRO-
14 VIDER.—In the case of a non-Indian Medicaid man-
15 aged care entity that—

16 “(A) has an Indian enrolled with the enti-
17 ty; and

18 “(B) has an Indian health care provider
19 that is participating as a primary care provider
20 within the network of the entity,

21 insofar as the Indian is otherwise eligible to receive
22 services from such Indian health care provider and
23 the Indian health care provider has the capacity to
24 provide primary care services to such Indian, the
25 contract with the entity under section 1903(m) or
26 under section 1905(t)(3) shall require, as a condi-

1 tion of receiving payment under such contract, that
2 the Indian shall be allowed to choose such Indian
3 health care provider as the Indian’s primary care
4 provider under the entity.

5 “(2) ASSURANCE OF PAYMENT TO INDIAN
6 HEALTH CARE PROVIDERS FOR PROVISION OF COV-
7 ERED SERVICES.—Each contract with a managed
8 care entity under section 1903(m) or under section
9 1905(t)(3) shall require any such entity, as a condi-
10 tion of receiving payment under such contract, to
11 satisfy the following requirements:

12 “(A) DEMONSTRATION OF ACCESS TO IN-
13 DIAN HEALTH CARE PROVIDERS AND APPLICA-
14 TION OF ALTERNATIVE PAYMENT ARRANGE-
15 MENTS.—Subject to subparagraph (C), to—

16 “(i) demonstrate that the number of
17 Indian health care providers that are par-
18 ticipating providers with respect to such
19 entity are sufficient to ensure timely access
20 to covered Medicaid managed care services
21 for those Indian enrollees who are eligible
22 to receive services from such providers; and

23 “(ii) agree to pay Indian health care
24 providers, whether such providers are par-
25 ticipating or nonparticipating providers

1 with respect to the entity, for covered Med-
2 icaid managed care services provided to
3 those Indian enrollees who are eligible to
4 receive services from such providers at a
5 rate equal to the rate negotiated between
6 such entity and the provider involved or, if
7 such a rate has not been negotiated, at a
8 rate that is not less than the level and
9 amount of payment which the entity would
10 make for the services if the services were
11 furnished by a participating provider which
12 is not an Indian health care provider.

13 “(B) PROMPT PAYMENT.—To agree to
14 make prompt payment (consistent with rule for
15 prompt payment of providers under section
16 1932(f)) to Indian health care providers that
17 are participating providers with respect to such
18 entity or, in the case of an entity to which sub-
19 paragraph (A)(ii) or (C) applies, that the entity
20 is required to pay in accordance with that sub-
21 paragraph.

22 “(C) APPLICATION OF SPECIAL PAYMENT
23 REQUIREMENTS FOR FEDERALLY-QUALIFIED
24 HEALTH CENTERS AND FOR SERVICES PRO-

1 VIDE BY CERTAIN INDIAN HEALTH CARE PRO-
2 VIDERS.—

3 “(i) FEDERALLY-QUALIFIED HEALTH
4 CENTERS.—

5 “(I) MANAGED CARE ENTITY
6 PAYMENT REQUIREMENT.—To agree
7 to pay any Indian health care provider
8 that is a federally-qualified health
9 center under this title but not a par-
10 ticipating provider with respect to the
11 entity, for the provision of covered
12 Medicaid managed care services by
13 such provider to an Indian enrollee of
14 the entity at a rate equal to the
15 amount of payment that the entity
16 would pay a federally-qualified health
17 center that is a participating provider
18 with respect to the entity but is not
19 an Indian health care provider for
20 such services.

21 “(II) CONTINUED APPLICATION
22 OF STATE REQUIREMENT TO MAKE
23 SUPPLEMENTAL PAYMENT.—Nothing
24 in subclause (I) or subparagraph (A)
25 or (B) shall be construed as waiving

1 the application of section 1902(bb)(5)
2 regarding the State plan requirement
3 to make any supplemental payment
4 due under such section to a federally-
5 qualified health center for services
6 furnished by such center to an en-
7 rollee of a managed care entity (re-
8 gardless of whether the federally-
9 qualified health center is or is not a
10 participating provider with the entity).

11 “(ii) PAYMENT RATE FOR SERVICES
12 PROVIDED BY CERTAIN INDIAN HEALTH
13 CARE PROVIDERS.—If the amount paid by
14 a managed care entity to an Indian health
15 care provider that is not a federally-quali-
16 fied health center for services provided by
17 the provider to an Indian enrollee with the
18 managed care entity is less than the rate
19 that applies to the provision of such serv-
20 ices by the provider under the State plan,
21 the plan shall provide for payment to the
22 Indian health care provider, whether the
23 provider is a participating or nonpartici-
24 pating provider with respect to the entity,
25 of the difference between such applicable

1 rate and the amount paid by the managed
2 care entity to the provider for such serv-
3 ices.

4 “(D) CONSTRUCTION.—Nothing in this
5 paragraph shall be construed as waiving the ap-
6 plication of section 1902(a)(30)(A) (relating to
7 application of standards to assure that pay-
8 ments are consistent with efficiency, economy,
9 and quality of care).

10 “(3) SPECIAL RULE FOR ENROLLMENT FOR IN-
11 DIAN MANAGED CARE ENTITIES.—Regarding the ap-
12 plication of a Medicaid managed care program to In-
13 dian Medicaid managed care entities, an Indian
14 Medicaid managed care entity may restrict enroll-
15 ment under such program to Indians and to mem-
16 bers of specific Tribes in the same manner as Indian
17 Health Programs may restrict the delivery of serv-
18 ices to such Indians and tribal members.

19 “(4) DEFINITIONS.—For purposes of this sub-
20 section:

21 “(A) INDIAN HEALTH CARE PROVIDER.—
22 The term ‘Indian health care provider’ means
23 an Indian Health Program or an Urban Indian
24 Organization.

1 “(B) INDIAN MEDICAID MANAGED CARE
2 ENTITY.—The term ‘Indian Medicaid managed
3 care entity’ means a managed care entity that
4 is controlled (within the meaning of the last
5 sentence of section 1903(m)(1)(C)) by the In-
6 dian Health Service, a Tribe, Tribal Organiza-
7 tion, or Urban Indian Organization, or a con-
8 sortium, which may be composed of 1 or more
9 Tribes, Tribal Organizations, or Urban Indian
10 Organizations, and which also may include the
11 Service.

12 “(C) NON-INDIAN MEDICAID MANAGED
13 CARE ENTITY.—The term ‘non-Indian Medicaid
14 managed care entity’ means a managed care en-
15 tity that is not an Indian Medicaid managed
16 care entity.

17 “(D) COVERED MEDICAID MANAGED CARE
18 SERVICES.—The term ‘covered Medicaid man-
19 aged care services’ means, with respect to an
20 individual enrolled with a managed care entity,
21 items and services for which benefits are avail-
22 able with respect to the individual under the
23 contract between the entity and the State in-
24 volved.

1 “(E) MEDICAID MANAGED CARE PRO-
 2 GRAM.—The term ‘Medicaid managed care pro-
 3 gram’ means a program under sections
 4 1903(m), 1905(t), and 1932 and includes a
 5 managed care program operating under a waiv-
 6 er under section 1915(b) or 1115 or other-
 7 wise.”.

8 (b) APPLICATION TO CHIP.—Subject to section
 9 __013(d), section 2107(e)(1) of such Act (42 U.S.C.
 10 1397gg(1)) is amended by adding at the end the following
 11 new subparagraph:

12 “(E) Subsections (a)(2)(C) and (h) of sec-
 13 tion 1932.”.

14 **SEC. 3303. CONSULTATION ON MEDICAID, CHIP, AND**
 15 **OTHER HEALTH CARE PROGRAMS FUNDED**
 16 **UNDER THE SOCIAL SECURITY ACT INVOLV-**
 17 **ING INDIAN HEALTH PROGRAMS AND URBAN**
 18 **INDIAN ORGANIZATIONS.**

19 (a) CONSULTATION WITH TRIBAL TECHNICAL ADVI-
 20 SORY GROUP (TTAG).—The Secretary of Health and
 21 Human Services shall maintain within the Centers for
 22 Medicaid & Medicare Services (CMS) a Tribal Technical
 23 Advisory Group (TTAG), which was first established in
 24 accordance with requirements of the charter dated Sep-
 25 tember 30, 2003, and the Secretary of Health and Human

1 Services shall include in such Group a representative of
2 a national urban Indian health organization and a rep-
3 resentative of the Indian Health Service. The inclusion of
4 a representative of a national urban Indian health organi-
5 zation in such Group shall not affect the nonapplication
6 of the Federal Advisory Committee Act (5 U.S.C. App.)
7 to such Group.

8 (b) SOLICITATION OF ADVICE UNDER MEDICAID AND
9 CHIP.—

10 (1) MEDICAID STATE PLAN AMENDMENT.—

11 Subject to subsection (d), section 1902(a) of the So-
12 cial Security Act (42 U.S.C. 1396a(a)) is amend-
13 ed—

14 (A) in paragraph (70), by striking “and”
15 at the end;

16 (B) in paragraph (71), by striking the pe-
17 riod at the end and inserting “; and”; and

18 (C) by inserting after paragraph (71), the
19 following new paragraph:

20 “(72) in the case of any State in which 1 or
21 more Indian Health Programs or Urban Indian Or-
22 ganizations furnishes health care services, provide
23 for a process under which the State seeks advice on
24 a regular, ongoing basis from designees of such In-
25 dian Health Programs and Urban Indian Organiza-

1 tions on matters relating to the application of this
2 title that are likely to have a direct effect on such
3 Indian Health Programs and Urban Indian Organi-
4 zations and that—

5 “(A) shall include solicitation of advice
6 prior to submission of any plan amendments,
7 waiver requests, and proposals for demonstra-
8 tion projects likely to have a direct effect on In-
9 dians, Indian Health Programs, or Urban In-
10 dian Organizations; and

11 “(B) may include appointment of an advi-
12 sory committee and of a designee of such In-
13 dian Health Programs and Urban Indian Orga-
14 nizations to the medical care advisory com-
15 mittee advising the State on its State plan
16 under this title.”.

17 (2) APPLICATION TO CHIP.—Subject to sub-
18 section (d), section 2107(e)(1) of such Act (42
19 U.S.C. 1397gg(e)(1)), as amended by section
20 3302(b)(2), is amended—

21 (A) by redesignating subparagraphs (B)
22 through (E) as subparagraphs (C) through (F),
23 respectively; and

24 (B) by inserting after subparagraph (A),
25 the following new subparagraph:

1 “(B) Section 1902(a)(72) (relating to re-
2 quiring certain States to seek advice from des-
3 ignees of Indian Health Programs and Urban
4 Indian Organizations).”.

5 (c) RULE OF CONSTRUCTION.—Nothing in the
6 amendments made by this section shall be construed as
7 superseding existing advisory committees, working groups,
8 guidance, or other advisory procedures established by the
9 Secretary of Health and Human Services or by any State
10 with respect to the provision of health care to Indians.

11 (d) CONTINGENCY RULE.—If the Children’s Health
12 Insurance Program Reauthorization Act of 2009 (in this
13 subsection referred to as “CHIPRA”) has been enacted
14 as of the date of enactment of this Act, the following shall
15 apply:

16 (1) Subparagraph (I) of section 2107(e) of the
17 Social Security Act (as redesignated by CHIPRA) is
18 redesignated as subparagraph (K) and the subpara-
19 graph (E) added to section 2107(e) of the Social Se-
20 curity Act by section __013(b) is redesignated as
21 subparagraph (J).

22 (2) Subparagraphs (D) through (H) of section
23 2107(e) of the Social Security Act (as added and re-
24 designated by CHIPRA) are redesignated as sub-
25 paragraphs (E) through (I), respectively and the

1 subparagraph (B) of section 2107(e) of the Social
2 Security Act added by subsection (b)(2) of this sec-
3 tion is redesignated as subparagraph (D) and
4 amended by striking “1902(a)(72)” and inserting
5 “1902(a)(73)”.

6 (3) Section 1902(a) of the Social Security Act
7 (as amended by CHIPRA) is amended by striking
8 “and” at the end of paragraph (71), by striking the
9 period at the end of the paragraph (72) added by
10 CHIPRA and inserting “; and” and by redesignated
11 the paragraph (72) added to such section by sub-
12 section (b)(1) of this section as paragraph (73).

13 **SEC. 3304. APPLICATION OF PROMPT PAY REQUIREMENTS**
14 **TO NURSING FACILITIES.**

15 Section 1902(a)(37)(A) of the Social Security Act
16 (42 U.S.C. 1396a(a)(37)(A)) is amended by inserting “,
17 or by nursing facilities,” after “health facilities”

18 **SEC. 3305. PERIOD OF APPLICATION; SUNSET.**

19 This subtitle and the amendments made by this sub-
20 title shall be in effect only during the period that begins
21 on April 1, 2009, and ends on December 31, 2010. On
22 and after January 1, 2011, the Social Security Act shall
23 be applied as if this subtitle and the amendments made
24 by this subtitle had not been enacted.

1 **TITLE IV—HEALTH**
 2 **INFORMATION TECHNOLOGY**

3 **SEC. 4001. SHORT TITLE; TABLE OF CONTENTS OF TITLE.**

4 (a) **SHORT TITLE.**—This title may be cited as the
 5 “Health Information Technology for Economic and Clin-
 6 ical Health Act” or the “HITECH Act”.

7 (b) **TABLE OF CONTENTS OF TITLE.**—The table of
 8 contents for this title is as follows:

TITLE IV—HEALTH INFORMATION TECHNOLOGY

Sec. 4001. Short title; table of contents of title.

Subtitle A—Promotion of Health Information Technology

Sec. 4101. ONCHIT; standards development and adoption.

“Sec. 3000. Definitions.

“Sec. 3001. Office of the National Coordinator for Health Information
 Technology.

“Sec. 3002. HIT Policy Committee.

“Sec. 3003. HIT Standards Committee.

“Sec. 3004. Process for adoption of endorsed recommendations; adoption
 of initial set of standards, implementation specifications,
 and certification criteria.

“Sec. 3005. Transitions.

Subtitle B—Incentives for the Use of Health Information Technology

PART I—MEDICARE PROGRAM

Sec. 4201. Incentives for eligible professionals.

Sec. 4202. Incentives for hospitals.

Sec. 4203. Premium hold harmless and implementation funding.

Sec. 4204. Non-application of phased-out indirect medical education (IME) ad-
 justment factor for fiscal year 2009.

Sec. 4205. Study on application of EHR payment incentives for providers not
 receiving other incentive payments.

Sec. 4206. Study on availability of open source health information technology
 systems.

PART II—MEDICAID FUNDING

Sec. 4211. Medicaid provider EHR adoption and operation payments; imple-
 mentation funding.

1 **Subtitle A—Promotion of Health**
 2 **Information Technology**

3 **SEC. 4101. ONCHIT; STANDARDS DEVELOPMENT AND ADOP-**
 4 **TION.**

5 The Public Health Service Act (42 U.S.C. 201 et
 6 seq.) is amended by adding at the end the following:

7 **“TITLE XXX—HEALTH INFORMA-**
 8 **TION TECHNOLOGY AND**
 9 **QUALITY**

10 **“SEC. 3000. DEFINITIONS.**

11 “In this title:

12 “(1) CERTIFIED EHR TECHNOLOGY.—The term
 13 ‘certified EHR technology’ means a qualified elec-
 14 tronic health record that is certified pursuant to sec-
 15 tion 3001(c)(5) as meeting standards adopted under
 16 section 3004 that are applicable to the type of
 17 record involved (as determined by the Secretary,
 18 such as an ambulatory electronic health record for
 19 office-based physicians or an inpatient hospital elec-
 20 tronic health record for hospitals).

21 “(2) ENTERPRISE INTEGRATION.—The term
 22 ‘enterprise integration’ means the electronic linkage
 23 of health care providers, health plans, the govern-
 24 ment, and other interested parties, to enable the
 25 electronic exchange and use of health information

1 among all the components in the health care infra-
2 structure in accordance with applicable law, and
3 such term includes related application protocols and
4 other related standards.

5 “(3) HEALTH CARE PROVIDER.—The term
6 ‘health care provider’ means a hospital, skilled nurs-
7 ing facility, nursing facility, home health entity or
8 other long term care facility, health care clinic, Fed-
9 erally qualified health center, group practice (as de-
10 fined in section 1877(h)(4) of the Social Security
11 Act), a pharmacist, a pharmacy, a laboratory, a phy-
12 sician (as defined in section 1861(r) of the Social
13 Security Act), a practitioner (as described in section
14 1842(b)(18)(C) of the Social Security Act), a pro-
15 vider operated by, or under contract with, the Indian
16 Health Service or by an Indian tribe (as defined in
17 the Indian Self-Determination and Education Assist-
18 ance Act), tribal organization, or urban Indian orga-
19 nization (as defined in section 4 of the Indian
20 Health Care Improvement Act), a rural health clinic,
21 a covered entity under section 340B, and any other
22 category of facility or clinician determined appro-
23 priate by the Secretary.

1 “(4) HEALTH INFORMATION.—The term ‘health
2 information’ has the meaning given such term in
3 section 1171(4) of the Social Security Act.

4 “(5) HEALTH INFORMATION TECHNOLOGY.—
5 The term ‘health information technology’ means
6 hardware, software, integrated technologies and re-
7 lated licenses, intellectual property, upgrades, and
8 packaged solutions sold as services that are specifi-
9 cally designed for use by health care entities for the
10 electronic creation, maintenance, or exchange of
11 health information.

12 “(6) HEALTH PLAN.—The term ‘health plan’
13 has the meaning given such term in section 1171(5)
14 of the Social Security Act.

15 “(7) HIT POLICY COMMITTEE.—The term ‘HIT
16 Policy Committee’ means such Committee estab-
17 lished under section 3002(a).

18 “(8) HIT STANDARDS COMMITTEE.—The term
19 ‘HIT Standards Committee’ means such Committee
20 established under section 3003(a).

21 “(9) INDIVIDUALLY IDENTIFIABLE HEALTH IN-
22 FORMATION.—The term ‘individually identifiable
23 health information’ has the meaning given such term
24 in section 1171(6) of the Social Security Act.

1 “(10) LABORATORY.—The term ‘laboratory’
2 has the meaning given such term in section 353(a).

3 “(11) NATIONAL COORDINATOR.—The term
4 ‘National Coordinator’ means the head of the Office
5 of the National Coordinator for Health Information
6 Technology established under section 3001(a).

7 “(12) PHARMACIST.—The term ‘pharmacist’
8 has the meaning given such term in section 804(2)
9 of the Federal Food, Drug, and Cosmetic Act.

10 “(13) QUALIFIED ELECTRONIC HEALTH
11 RECORD.—The term ‘qualified electronic health
12 record’ means an electronic record of health-related
13 information on an individual that—

14 “(A) includes patient demographic and
15 clinical health information, such as medical his-
16 tory and problem lists; and

17 “(B) has the capacity—

18 “(i) to provide clinical decision sup-
19 port;

20 “(ii) to support physician order entry;

21 “(iii) to capture and query informa-
22 tion relevant to health care quality; and

23 “(iv) to exchange electronic health in-
24 formation with, and integrate such infor-
25 mation from other sources.

1 “(14) STATE.—The term ‘State’ means each of
2 the several States, the District of Columbia, Puerto
3 Rico, the Virgin Islands, Guam, American Samoa,
4 and the Northern Mariana Islands.

5 **“SEC. 3001. OFFICE OF THE NATIONAL COORDINATOR FOR**
6 **HEALTH INFORMATION TECHNOLOGY.**

7 “(a) ESTABLISHMENT.—There is established within
8 the Department of Health and Human Services an Office
9 of the National Coordinator for Health Information Tech-
10 nology (referred to in this section as the ‘Office’). The Of-
11 fice shall be headed by a National Coordinator who shall
12 be appointed by the Secretary and shall report directly to
13 the Secretary.

14 “(b) PURPOSE.—The National Coordinator shall per-
15 form the duties under subsection (c) in a manner con-
16 sistent with the development of a nationwide health infor-
17 mation technology infrastructure that allows for the elec-
18 tronic use and exchange of information and that—

19 “(1) ensures that each patient’s health informa-
20 tion is secure and protected, in accordance with ap-
21 plicable law;

22 “(2) improves health care quality, reduces med-
23 ical errors, and advances the delivery of patient-cen-
24 tered medical care;

1 “(3) reduces health care costs resulting from
2 inefficiency, medical errors, inappropriate care, du-
3 plicative care, and incomplete information;

4 “(4) provides appropriate information to help
5 guide medical decisions at the time and place of
6 care;

7 “(5) ensures the inclusion of meaningful public
8 input in such development of such infrastructure;

9 “(6) improves the coordination of care and in-
10 formation among hospitals, laboratories, physician
11 offices, and other entities through an effective infra-
12 structure for the secure and authorized exchange of
13 health care information;

14 “(7) improves public health activities and facili-
15 tates the early identification and rapid response to
16 public health threats and emergencies, including bio-
17 terror events and infectious disease outbreaks;

18 “(8) facilitates health and clinical research and
19 health care quality;

20 “(9) promotes prevention of chronic diseases;

21 “(10) promotes a more effective marketplace,
22 greater competition, greater systems analysis, in-
23 creased consumer choice, and improved outcomes in
24 health care services; and

1 “(11) improves efforts to reduce health dispari-
2 ties.

3 “(c) DUTIES OF THE NATIONAL COORDINATOR.—

4 “(1) STANDARDS.—The National Coordinator
5 shall review and determine whether to endorse each
6 standard, implementation specification, and certifi-
7 cation criterion for the electronic exchange and use
8 of health information that is recommended by the
9 HIT Standards Committee under section 3003 for
10 purposes of adoption under section 3004. The Coor-
11 dinator shall make such determination, and report to
12 the Secretary such determination, not later than 45
13 days after the date the recommendation is received
14 by the Coordinator.

15 “(2) HIT POLICY COORDINATION.—

16 “(A) IN GENERAL.—The National Coordi-
17 nator shall coordinate health information tech-
18 nology policy and programs of the Department
19 with those of other relevant executive branch
20 agencies with a goal of avoiding duplication of
21 efforts and of helping to ensure that each agen-
22 cy undertakes health information technology ac-
23 tivities primarily within the areas of its greatest
24 expertise and technical capability and in a man-
25 ner towards a coordinated national goal.

1 “(B) HIT POLICY AND STANDARDS COM-
2 MITTEES.—The National Coordinator shall be a
3 leading member in the establishment and oper-
4 ations of the HIT Policy Committee and the
5 HIT Standards Committee and shall serve as a
6 liaison among those two Committees and the
7 Federal Government.

8 “(3) STRATEGIC PLAN.—

9 “(A) IN GENERAL.—The National Coordi-
10 nator shall, in consultation with other appro-
11 priate Federal agencies (including the National
12 Institute of Standards and Technology), update
13 the Federal Health IT Strategic Plan (devel-
14 oped as of June 3, 2008) to include specific ob-
15 jectives, milestones, and metrics with respect to
16 the following:

17 “(i) The electronic exchange and use
18 of health information and the enterprise
19 integration of such information.

20 “(ii) The utilization of an electronic
21 health record for each person in the United
22 States by 2014.

23 “(iii) The incorporation of privacy and
24 security protections for the electronic ex-

1 change of an individual’s individually iden-
2 tifiable health information.

3 “(iv) Ensuring security methods to
4 ensure appropriate authorization and elec-
5 tronic authentication of health information
6 and specifying technologies or methodolo-
7 gies for rendering health information unus-
8 able, unreadable, or indecipherable.

9 “(v) Specifying a framework for co-
10 ordination and flow of recommendations
11 and policies under this title among the
12 Secretary, the National Coordinator, the
13 HIT Policy Committee, the HIT Standards
14 Committee, and other health information
15 exchanges and other relevant entities.

16 “(vi) Methods to foster the public un-
17 derstanding of health information tech-
18 nology.

19 “(vii) Strategies to enhance the use of
20 health information technology in improving
21 the quality of health care, reducing medical
22 errors, reducing health disparities, improv-
23 ing public health, and improving the con-
24 tinuity of care among health care settings.

1 “(B) COLLABORATION.—The strategic
2 plan shall be updated through collaboration of
3 public and private entities.

4 “(C) MEASURABLE OUTCOME GOALS.—
5 The strategic plan update shall include measur-
6 able outcome goals.

7 “(D) PUBLICATION.—The National Coordi-
8 nator shall republish the strategic plan, in-
9 cluding all updates.

10 “(4) WEBSITE.—The National Coordinator
11 shall maintain and frequently update an Internet
12 website on which there is posted information on the
13 work, schedules, reports, recommendations, and
14 other information to ensure transparency in pro-
15 motion of a nationwide health information tech-
16 nology infrastructure.

17 “(5) CERTIFICATION.—

18 “(A) IN GENERAL.—The National Coordi-
19 nator, in consultation with the Director of the
20 National Institute of Standards and Tech-
21 nology, shall develop a program (either directly
22 or by contract) for the voluntary certification of
23 health information technology as being in com-
24 pliance with applicable certification criteria
25 adopted under this title.

1 “(B) CERTIFICATION CRITERIA DE-
2 SCRIBED.—In this title, the term ‘certification
3 criteria’ means, with respect to standards and
4 implementation specifications for health infor-
5 mation technology, criteria to establish that the
6 technology meets such standards and implemen-
7 tation specifications.

8 “(6) REPORTS AND PUBLICATIONS.—

9 “(A) REPORT ON ADDITIONAL FUNDING
10 OR AUTHORITY NEEDED.—Not later than 12
11 months after the date of the enactment of this
12 title, the National Coordinator shall submit to
13 the appropriate committees of jurisdiction of
14 the House of Representatives and the Senate a
15 report on any additional funding or authority
16 the Coordinator or the HIT Policy Committee
17 or HIT Standards Committee requires to evalu-
18 ate and develop standards, implementation
19 specifications, and certification criteria, or to
20 achieve full participation of stakeholders in the
21 adoption of a nationwide health information
22 technology infrastructure that allows for the
23 electronic use and exchange of health informa-
24 tion.

1 “(B) IMPLEMENTATION REPORT.—The
2 National Coordinator shall prepare a report
3 that identifies lessons learned from major pub-
4 lic and private health care systems in their im-
5 plementation of health information technology,
6 including information on whether the tech-
7 nologies and practices developed by such sys-
8 tems may be applicable to and usable in whole
9 or in part by other health care providers.

10 “(C) ASSESSMENT OF IMPACT OF HIT ON
11 COMMUNITIES WITH HEALTH DISPARITIES AND
12 UNINSURED, UNDERINSURED, AND MEDICALLY
13 UNDERSERVED AREAS.—The National Coordi-
14 nator shall assess and publish the impact of
15 health information technology in communities
16 with health disparities and in areas with a high
17 proportion of individuals who are uninsured,
18 underinsured, and medically underserved indi-
19 viduals (including urban and rural areas) and
20 identify practices to increase the adoption of
21 such technology by health care providers in
22 such communities.

23 “(D) EVALUATION OF BENEFITS AND
24 COSTS OF THE ELECTRONIC USE AND EX-
25 CHANGE OF HEALTH INFORMATION.—The Na-

1 tional Coordinator shall evaluate and publish
2 evidence on the benefits and costs of the elec-
3 tronic use and exchange of health information
4 and assess to whom these benefits and costs ac-
5 crue.

6 “(E) RESOURCE REQUIREMENTS.—The
7 National Coordinator shall estimate and publish
8 resources required annually to reach the goal of
9 utilization of an electronic health record for
10 each person in the United States by 2014, in-
11 cluding the required level of Federal funding,
12 expectations for regional, State, and private in-
13 vestment, and the expected contributions by vol-
14 unteers to activities for the utilization of such
15 records.

16 “(7) ASSISTANCE.—The National Coordinator
17 may provide financial assistance to consumer advoca-
18 cacy groups and not-for-profit entities that work in
19 the public interest for purposes of defraying the cost
20 to such groups and entities to participate under,
21 whether in whole or in part, the National Tech-
22 nology Transfer Act of 1995 (15 U.S.C. 272 note).

23 “(8) GOVERNANCE FOR NATIONWIDE HEALTH
24 INFORMATION NETWORK.—The National Coordi-

1 nator shall establish a governance mechanism for the
2 nationwide health information network.

3 “(d) **DETAIL OF FEDERAL EMPLOYEES.**—

4 “(1) **IN GENERAL.**—Upon the request of the
5 National Coordinator, the head of any Federal agen-
6 cy is authorized to detail, with or without reimburse-
7 ment from the Office, any of the personnel of such
8 agency to the Office to assist it in carrying out its
9 duties under this section.

10 “(2) **EFFECT OF DETAIL.**—Any detail of per-
11 sonnel under paragraph (1) shall—

12 “(A) not interrupt or otherwise affect the
13 civil service status or privileges of the Federal
14 employee; and

15 “(B) be in addition to any other staff of
16 the Department employed by the National Co-
17 ordinator.

18 “(3) **ACCEPTANCE OF DETAILEES.**—Notwith-
19 standing any other provision of law, the Office may
20 accept detailed personnel from other Federal agen-
21 cies without regard to whether the agency described
22 under paragraph (1) is reimbursed.

23 “(e) **CHIEF PRIVACY OFFICER OF THE OFFICE OF**
24 **THE NATIONAL COORDINATOR.**—Not later than 12
25 months after the date of the enactment of this title, the

1 Secretary shall appoint a Chief Privacy Officer of the Of-
2 fice of the National Coordinator, whose duty it shall be
3 to advise the National Coordinator on privacy, security,
4 and data stewardship of electronic health information and
5 to coordinate with other Federal agencies (and similar pri-
6 vacy officers in such agencies), with State and regional
7 efforts, and with foreign countries with regard to the pri-
8 vacy, security, and data stewardship of electronic individ-
9 ually identifiable health information.

10 **“SEC. 3002. HIT POLICY COMMITTEE.**

11 “(a) ESTABLISHMENT.—There is established a HIT
12 Policy Committee to make policy recommendations to the
13 National Coordinator relating to the implementation of a
14 nationwide health information technology infrastructure,
15 including implementation of the strategic plan described
16 in section 3001(e)(3).

17 “(b) DUTIES.—

18 “(1) RECOMMENDATIONS ON HEALTH INFOR-
19 MATION TECHNOLOGY INFRASTRUCTURE.—The HIT
20 Policy Committee shall recommend a policy frame-
21 work for the development and adoption of a nation-
22 wide health information technology infrastructure
23 that permits the electronic exchange and use of
24 health information as is consistent with the strategic
25 plan under section 3001(e)(3) and that includes the

1 recommendations under paragraph (2). The Com-
2 mittee shall update such recommendations and make
3 new recommendations as appropriate.

4 “(2) SPECIFIC AREAS OF STANDARD DEVELOP-
5 MENT.—

6 “(A) IN GENERAL.—The HIT Policy Com-
7 mittee shall recommend the areas in which
8 standards, implementation specifications, and
9 certification criteria are needed for the elec-
10 tronic exchange and use of health information
11 for purposes of adoption under section 3004
12 and shall recommend an order of priority for
13 the development, harmonization, and recogni-
14 tion of such standards, specifications, and cer-
15 tification criteria among the areas so rec-
16 ommended. Such standards and implementation
17 specifications shall include named standards,
18 architectures, and software schemes for the au-
19 thentication and security of individually identifi-
20 able health information and other information
21 as needed to ensure the reproducible develop-
22 ment of common solutions across disparate en-
23 tities.

24 “(B) AREAS REQUIRED FOR CONSIDER-
25 ATION.—For purposes of subparagraph (A), the

1 HIT Policy Committee shall make recommenda-
2 tions for at least the following areas:

3 “(i) Technologies that protect the pri-
4 vacy of health information and promote se-
5 curity in a qualified electronic health
6 record, including for the segmentation and
7 protection from disclosure of specific and
8 sensitive individually identifiable health in-
9 formation with the goal of minimizing the
10 reluctance of patients to seek care (or dis-
11 close information about a condition) be-
12 cause of privacy concerns, in accordance
13 with applicable law, and for the use and
14 disclosure of limited data sets of such in-
15 formation.

16 “(ii) A nationwide health information
17 technology infrastructure that allows for
18 the electronic use and accurate exchange of
19 health information.

20 “(iii) The utilization of a certified
21 electronic health record for each person in
22 the United States by 2014.

23 “(iv) Technologies that as a part of a
24 qualified electronic health record allow for
25 an accounting of disclosures made by a

1 covered entity (as defined for purposes of
2 regulations promulgated under section
3 264(e) of the Health Insurance Portability
4 and Accountability Act of 1996) for pur-
5 poses of treatment, payment, and health
6 care operations (as such terms are defined
7 for purposes of such regulations).

8 “(v) The use of certified electronic
9 health records to improve the quality of
10 health care, such as by promoting the co-
11 ordination of health care and improving
12 continuity of health care among health
13 care providers, by reducing medical errors,
14 by improving population health, and by ad-
15 vancing research and education.

16 “(C) OTHER AREAS FOR CONSIDER-
17 ATION.—In making recommendations under
18 subparagraph (A), the HIT Policy Committee
19 may consider the following additional areas:

20 “(i) The appropriate uses of a nation-
21 wide health information infrastructure, in-
22 cluding for purposes of—

23 “(I) the collection of quality data
24 and public reporting;

1 “(II) biosurveillance and public
2 health;

3 “(III) medical and clinical re-
4 search; and

5 “(IV) drug safety.

6 “(ii) Self-service technologies that fa-
7 cilitate the use and exchange of patient in-
8 formation and reduce wait times.

9 “(iii) Telemedicine technologies, in
10 order to reduce travel requirements for pa-
11 tients in remote areas.

12 “(iv) Technologies that facilitate home
13 health care and the monitoring of patients
14 recuperating at home.

15 “(v) Technologies that help reduce
16 medical errors.

17 “(vi) Technologies that facilitate the
18 continuity of care among health settings.

19 “(vii) Technologies that meet the
20 needs of diverse populations.

21 “(viii) Any other technology that the
22 HIT Policy Committee finds to be among
23 the technologies with the greatest potential
24 to improve the quality and efficiency of
25 health care.

1 “(3) FORUM.—The HIT Policy Committee shall
2 serve as a forum for broad stakeholder input with
3 specific expertise in policies relating to the matters
4 described in paragraphs (1) and (2).

5 “(c) MEMBERSHIP AND OPERATIONS.—

6 “(1) IN GENERAL.—The National Coordinator
7 shall provide leadership in the establishment and op-
8 erations of the HIT Policy Committee.

9 “(2) MEMBERSHIP.—The membership of the
10 HIT Policy Committee shall at least reflect pro-
11 viders, ancillary health care workers, consumers,
12 purchasers, health plans, technology vendors, re-
13 searchers, relevant Federal agencies, and individuals
14 with technical expertise on health care quality, pri-
15 vacy and security, and on the electronic exchange
16 and use of health information.

17 “(3) CONSIDERATION.—The National Coordi-
18 nator shall ensure that the relevant recommenda-
19 tions and comments from the National Committee
20 on Vital and Health Statistics are considered in the
21 development of policies.

22 “(d) APPLICATION OF FACA.—The Federal Advisory
23 Committee Act (5 U.S.C. App.), other than section 14 of
24 such Act, shall apply to the HIT Policy Committee.

1 “(e) PUBLICATION.—The Secretary shall provide for
2 publication in the Federal Register and the posting on the
3 Internet website of the Office of the National Coordinator
4 for Health Information Technology of all policy rec-
5 ommendations made by the HIT Policy Committee under
6 this section.

7 **“SEC. 3003. HIT STANDARDS COMMITTEE.**

8 “(a) ESTABLISHMENT.—There is established a com-
9 mittee to be known as the HIT Standards Committee to
10 recommend to the National Coordinator standards, imple-
11 mentation specifications, and certification criteria for the
12 electronic exchange and use of health information for pur-
13 poses of adoption under section 3004, consistent with the
14 implementation of the strategic plan described in section
15 3001(c)(3) and beginning with the areas listed in section
16 3002(b)(2)(B) in accordance with policies developed by
17 the HIT Policy Committee.

18 “(b) DUTIES.—

19 “(1) STANDARD DEVELOPMENT.—

20 “(A) IN GENERAL.—The HIT Standards
21 Committee shall recommend to the National
22 Coordinator standards, implementation speci-
23 fications, and certification criteria described in
24 subsection (a) that have been developed, har-
25 monized, or recognized by the HIT Standards

1 Committee. The HIT Standards Committee
2 shall update such recommendations and make
3 new recommendations as appropriate, including
4 in response to a notification sent under section
5 3004(b)(2). Such recommendations shall be
6 consistent with the latest recommendations
7 made by the HIT Policy Committee.

8 “(B) PILOT TESTING OF STANDARDS AND
9 IMPLEMENTATION SPECIFICATIONS.—In the de-
10 velopment, harmonization, or recognition of
11 standards and implementation specifications,
12 the HIT Standards Committee shall, as appro-
13 priate, provide for the testing of such standards
14 and specifications.

15 “(C) CONSISTENCY.—The standards, im-
16 plementation specifications, and certification
17 criteria recommended under this subsection
18 shall be consistent with the standards for infor-
19 mation transactions and data elements adopted
20 pursuant to section 1173 of the Social Security
21 Act.

22 “(2) FORUM.—The HIT Standards Committee
23 shall serve as a forum for the participation of a
24 broad range of stakeholders to provide input on the
25 development, harmonization, and recognition of

1 standards, implementation specifications, and certifi-
2 cation criteria necessary for the development and
3 adoption of a nationwide health information tech-
4 nology infrastructure that allows for the electronic
5 use and exchange of health information.

6 “(3) SCHEDULE.—Not later than 90 days after
7 the date of the enactment of this title, the HIT
8 Standards Committee shall develop a schedule for
9 the assessment of policy recommendations developed
10 by the HIT Policy Committee under section 3002.
11 The HIT Standards Committee shall update such
12 schedule annually. The Secretary shall publish such
13 schedule in the Federal Register.

14 “(4) PUBLIC INPUT.—The HIT Standards
15 Committee shall conduct open public meetings and
16 develop a process to allow for public comment on the
17 schedule described in paragraph (3) and rec-
18 ommendations described in this subsection. Under
19 such process comments shall be submitted in a time-
20 ly manner after the date of publication of a rec-
21 ommendation under this subsection.

22 “(c) MEMBERSHIP AND OPERATIONS.—

23 “(1) IN GENERAL.—The National Coordinator
24 shall provide leadership in the establishment and op-
25 erations of the HIT Standards Committee.

1 “(2) MEMBERSHIP.—The membership of the
2 HIT Standards Committee shall at least reflect pro-
3 viders, ancillary healthcare workers, consumers, pur-
4 chasers, health plans, technology vendors, research-
5 ers, relevant Federal agencies, and individuals with
6 technical expertise on health care quality, privacy
7 and security, and on the electronic exchange and use
8 of health information.

9 “(3) CONSIDERATION.—The National Coordi-
10 nator shall ensure that the relevant recommenda-
11 tions and comments from the National Committee
12 on Vital and Health Statistics are considered in the
13 development of standards.

14 “(4) ASSISTANCE.—For the purposes of car-
15 rying out this section, the Secretary may provide or
16 ensure that financial assistance is provided by the
17 HIT Standards Committee to defray in whole or in
18 part any membership fees or dues charged by such
19 Committee to those consumer advocacy groups and
20 not for profit entities that work in the public inter-
21 est as a part of their mission.

22 “(d) APPLICATION OF FACA.—The Federal Advisory
23 Committee Act (5 U.S.C. App.), other than section 14,
24 shall apply to the HIT Standards Committee.

1 “(e) PUBLICATION.—The Secretary shall provide for
2 publication in the Federal Register and the posting on the
3 Internet website of the Office of the National Coordinator
4 for Health Information Technology of all recommenda-
5 tions made by the HIT Standards Committee under this
6 section.

7 **“SEC. 3004. PROCESS FOR ADOPTION OF ENDORSED REC-**
8 **COMMENDATIONS; ADOPTION OF INITIAL SET**
9 **OF STANDARDS, IMPLEMENTATION SPECI-**
10 **FICATIONS, AND CERTIFICATION CRITERIA.**

11 “(a) PROCESS FOR ADOPTION OF ENDORSED REC-
12 OMMENDATIONS.—

13 “(1) REVIEW OF ENDORSED STANDARDS, IM-
14 PLEMENTATION SPECIFICATIONS, AND CERTIFI-
15 CATION CRITERIA.—Not later than 90 days after the
16 date of receipt of standards, implementation speci-
17 fications, or certification criteria endorsed under sec-
18 tion 3001(c), the Secretary, in consultation with rep-
19 resentatives of other relevant Federal agencies, shall
20 jointly review such standards, implementation speci-
21 fications, or certification criteria and shall determine
22 whether or not to propose adoption of such stand-
23 ards, implementation specifications, or certification
24 criteria.

1 “(2) DETERMINATION TO ADOPT STANDARDS,
2 IMPLEMENTATION SPECIFICATIONS, AND CERTIFI-
3 CATION CRITERIA.—If the Secretary determines—

4 “(A) to propose adoption of any grouping
5 of such standards, implementation specifica-
6 tions, or certification criteria, the Secretary
7 shall, by regulation, determine whether or not
8 to adopt such grouping of standards, implemen-
9 tation specifications, or certification criteria; or

10 “(B) not to propose adoption of any group-
11 ing of standards, implementation specifications,
12 or certification criteria, the Secretary shall no-
13 tify the National Coordinator and the HIT
14 Standards Committee in writing of such deter-
15 mination and the reasons for not proposing the
16 adoption of such recommendation.

17 “(3) PUBLICATION.—The Secretary shall pro-
18 vide for publication in the Federal Register of all de-
19 terminations made by the Secretary under para-
20 graph (1).

21 “(b) ADOPTION OF INITIAL SET OF STANDARDS, IM-
22 PLEMENTATION SPECIFICATIONS, AND CERTIFICATION
23 CRITERIA.—

24 “(1) IN GENERAL.—Not later than December
25 31, 2009, the Secretary shall, through the rule-

1 making process described in section 3003, adopt an
2 initial set of standards, implementation specifica-
3 tions, and certification criteria for the areas required
4 for consideration under section 3002(b)(2)(B).

5 “(2) APPLICATION OF CURRENT STANDARDS,
6 IMPLEMENTATION SPECIFICATIONS, AND CERTIFI-
7 CATION CRITERIA.—The standards, implementation
8 specifications, and certification criteria adopted be-
9 fore the date of the enactment of this title through
10 the process existing through the Office of the Na-
11 tional Coordinator for Health Information Tech-
12 nology may be applied towards meeting the require-
13 ment of paragraph (1).

14 **“SEC. 3005. TRANSITIONS.**

15 “(a) ONCHIT.—To the extent consistent with sec-
16 tion 3001, all functions, personnel, assets, liabilities, and
17 administrative actions applicable to the National Coordi-
18 nator for Health Information Technology appointed under
19 Executive Order 13335 or the Office of such National Co-
20 ordinator on the date before the date of the enactment
21 of this title shall be transferred to the National Coordi-
22 nator appointed under section 3001(a) and the Office of
23 such National Coordinator as of the date of the enactment
24 of this title.

25 “(b) AHIC.—

1 “(1) To the extent consistent with sections
2 3002 and 3003, all functions, personnel, assets, and
3 liabilities applicable to the AHIC Successor, Inc.
4 doing business as the National eHealth Collaborative
5 as of the day before the date of the enactment of
6 this title shall be transferred to the HIT Policy
7 Committee or the HIT Standards Committee, estab-
8 lished under section 3002(a) or 3003(a), as appro-
9 priate, as of the date of the enactment of this title.

10 “(2) In carrying out section 3003(b)(1)(A),
11 until recommendations are made by the HIT Policy
12 Committee, recommendations of the HIT Standards
13 Committee shall be consistent with the most recent
14 recommendations made by such AHIC Successor,
15 Inc.

16 “(c) RULES OF CONSTRUCTION.—

17 “(1) ONCHIT.—Nothing in section 3001 or
18 subsection (a) shall be construed as requiring the
19 creation of a new entity to the extent that the Office
20 of the National Coordinator for Health Information
21 Technology established pursuant to Executive Order
22 13335 is consistent with the provisions of section
23 3001.

24 “(2) AHIC.—Nothing in sections 3002 or 3003
25 or subsection (b) shall be construed as prohibiting

1 the AHIC Successor, Inc. doing business as the Na-
 2 tional eHealth Collaborative from modifying its char-
 3 ter, duties, membership, and any other structure or
 4 function required to be consistent with section 3002
 5 and 3003 in a manner that would permit the Sec-
 6 retary to choose to recognize such Community as the
 7 HIT Policy Committee or the HIT Standards Com-
 8 mittee.”.

9 **Subtitle B—Incentives for the Use**
 10 **of Health Information Technology**

11 **PART I—MEDICARE PROGRAM**

12 **SEC. 4201. INCENTIVES FOR ELIGIBLE PROFESSIONALS.**

13 (a) INCENTIVE PAYMENTS.—Section 1848 of the So-
 14 cial Security Act (42 U.S.C. 1395w-4) is amended by add-
 15 ing at the end the following new subsection:

16 “(o) INCENTIVES FOR ADOPTION AND MEANINGFUL
 17 USE OF CERTIFIED EHR TECHNOLOGY.—

18 “(1) INCENTIVE PAYMENTS.—

19 “(A) IN GENERAL.—

20 “(i) IN GENERAL.—Subject to clause
 21 (ii) and the succeeding subparagraphs of
 22 this paragraph, with respect to covered
 23 professional services furnished by an eligi-
 24 ble professional during a payment year (as
 25 defined in subparagraph (E)), if the eligi-

1 ble professional is a meaningful EHR user
2 (as determined under paragraph (2)) for
3 the reporting period with respect to such
4 year, in addition to the amount otherwise
5 paid under this part, there also shall be
6 paid to the eligible professional (or to an
7 employer or facility in the cases described
8 in clause (A) of section 1842(b)(6)), from
9 the Federal Supplementary Medical Insur-
10 ance Trust Fund established under section
11 1841 an amount equal to 75 percent of the
12 Secretary's estimate (based on claims sub-
13 mitted not later than 2 months after the
14 end of the payment year) of the allowed
15 charges under this part for all such cov-
16 ered professional services furnished by the
17 eligible professional during such year.

18 “(ii) NO INCENTIVE PAYMENTS WITH
19 RESPECT TO YEARS AFTER 2015.—No in-
20 centive payments may be made under this
21 subsection with respect to a year after
22 2015.

23 “(B) LIMITATIONS ON AMOUNTS OF IN-
24 CENTIVE PAYMENTS.—

1 “(i) IN GENERAL.—In no case shall
2 the amount of the incentive payment pro-
3 vided under this paragraph for an eligible
4 professional for a payment year exceed the
5 applicable amount specified under this sub-
6 paragraph with respect to such eligible
7 professional and such year.

8 “(ii) AMOUNT.—Subject to clauses
9 (iii) through (v), the applicable amount
10 specified in this subparagraph for an eligi-
11 ble professional is as follows:

12 “(I) For the first payment year
13 for such professional, \$15,000 (or, if
14 the first payment year for such eligi-
15 ble professional is 2011 or 2012,
16 \$18,000).

17 “(II) For the second payment
18 year for such professional, \$12,000.

19 “(III) For the third payment
20 year for such professional, \$8,000.

21 “(IV) For the fourth payment
22 year for such professional, \$4,000.

23 “(V) For the fifth payment year
24 for such professional, \$2,000.

1 “(VI) For any succeeding pay-
2 ment year for such professional, \$0.

3 “(iii) PHASE DOWN FOR ELIGIBLE
4 PROFESSIONALS FIRST ADOPTING EHR IN
5 2014.—If the first payment year for an eli-
6 gible professional is 2014, then the amount
7 specified in this subparagraph for a pay-
8 ment year for such professional is the
9 same as the amount specified in clause (ii)
10 for such payment year for an eligible pro-
11 fessional whose first payment year is 2013.

12 “(iv) INCREASE FOR CERTAIN RURAL
13 ELIGIBLE PROFESSIONALS.—In the case of
14 an eligible professional who predominantly
15 furnishes services under this part in a
16 rural area that is designated by the Sec-
17 retary (under section 332(a)(1)(A) of the
18 Public Health Service Act) as a health pro-
19 fessional shortage area, the amount that
20 would otherwise apply for a payment year
21 for such professional under subclauses (I)
22 through (V) of clause (ii) shall be in-
23 creased by 25 percent. In implementing
24 the preceding sentence, the Secretary may,
25 as determined appropriate, apply provi-

1 sions of subsections (m) and (u) of section
2 1833 in a similar manner as such provi-
3 sions apply under such subsection.

4 “(v) NO INCENTIVE PAYMENT IF
5 FIRST ADOPTING AFTER 2014.—If the first
6 payment year for an eligible professional is
7 after 2014 then the applicable amount
8 specified in this subparagraph for such
9 professional for such year and any subse-
10 quent year shall be \$0.

11 “(C) NON-APPLICATION TO HOSPITAL-
12 BASED ELIGIBLE PROFESSIONALS.—

13 “(i) IN GENERAL.—No incentive pay-
14 ment may be made under this paragraph
15 in the case of a hospital-based eligible pro-
16 fessional.

17 “(ii) HOSPITAL-BASED ELIGIBLE PRO-
18 FESSIONAL.—For purposes of clause (i),
19 the term ‘hospital-based eligible profes-
20 sional’ means, with respect to covered pro-
21 fessional services furnished by an eligible
22 professional during the reporting period for
23 a payment year, an eligible professional,
24 such as a pathologist, anesthesiologist, or
25 emergency physician, who furnishes sub-

1 stantially all of such services in a hospital
2 setting (whether inpatient or outpatient)
3 and through the use of the facilities and
4 equipment, including qualified electronic
5 health records, of the hospital.

6 “(D) PAYMENT.—

7 “(i) FORM OF PAYMENT.—The pay-
8 ment under this paragraph may be in the
9 form of a single consolidated payment or
10 in the form of such periodic installments
11 as the Secretary may specify.

12 “(ii) COORDINATION OF APPLICATION
13 OF LIMITATION FOR PROFESSIONALS IN
14 DIFFERENT PRACTICES.—In the case of an
15 eligible professional furnishing covered pro-
16 fessional services in more than one practice
17 (as specified by the Secretary), the Sec-
18 retary shall establish rules to coordinate
19 the incentive payments, including the ap-
20 plication of the limitation on amounts of
21 such incentive payments under this para-
22 graph, among such practices.

23 “(iii) COORDINATION WITH MED-
24 ICAID.—The Secretary shall seek, to the
25 maximum extent practicable, to avoid du-

1 plicative requirements from Federal and
2 State Governments to demonstrate mean-
3 ingful use of certified EHR technology
4 under this title and title XIX. In doing so,
5 the Secretary may deem satisfaction of
6 State requirements for such meaningful
7 use for a payment year under title XIX to
8 be sufficient to qualify as meaningful use
9 under this subsection and subsection (a)(7)
10 and vice versa. The Secretary may also ad-
11 just the reporting periods under such title
12 and such subsections in order to carry out
13 this clause.

14 “(E) PAYMENT YEAR DEFINED.—

15 “(i) IN GENERAL.—For purposes of
16 this subsection, the term ‘payment year’
17 means a year beginning with 2011.

18 “(ii) FIRST, SECOND, ETC. PAYMENT
19 YEAR.—The term ‘first payment year’
20 means, with respect to covered professional
21 services furnished by an eligible profes-
22 sional, the first year for which an incentive
23 payment is made for such services under
24 this subsection. The terms ‘second pay-
25 ment year’, ‘third payment year’, ‘fourth

1 payment year’, and ‘fifth payment year’
2 mean, with respect to covered professional
3 services furnished by such eligible profes-
4 sional, each successive year immediately
5 following the first payment year for such
6 professional.

7 “(2) MEANINGFUL EHR USER.—

8 “(A) IN GENERAL.—For purposes of para-
9 graph (1), an eligible professional shall be
10 treated as a meaningful EHR user for a report-
11 ing period for a payment year (or, for purposes
12 of subsection (a)(7), for a reporting period
13 under such subsection for a year) if each of the
14 following requirements is met:

15 “(i) MEANINGFUL USE OF CERTIFIED
16 EHR TECHNOLOGY.—The eligible profes-
17 sional demonstrates to the satisfaction of
18 the Secretary, in accordance with subpara-
19 graph (C)(i), that during such period the
20 professional is using certified EHR tech-
21 nology in a meaningful manner, which
22 shall include the use of electronic pre-
23 scribing as determined to be appropriate
24 by the Secretary.

1 “(ii) INFORMATION EXCHANGE.—The
2 eligible professional demonstrates to the
3 satisfaction of the Secretary, in accordance
4 with subparagraph (C)(i), that during such
5 period such certified EHR technology is
6 connected in a manner that provides, in
7 accordance with law and standards appli-
8 cable to the exchange of information, for
9 the electronic exchange of health informa-
10 tion to improve the quality of health care,
11 such as promoting care coordination.

12 “(iii) REPORTING ON MEASURES
13 USING EHR.—Subject to subparagraph
14 (B)(ii) and using such certified EHR tech-
15 nology, the eligible professional submits in-
16 formation for such period, in a form and
17 manner specified by the Secretary, on such
18 clinical quality measures and such other
19 measures as selected by the Secretary
20 under subparagraph (B)(i).

21 The Secretary may provide for the use of alter-
22 native means for meeting the requirements of
23 clauses (i), (ii), and (iii) in the case of an eligi-
24 ble professional furnishing covered professional
25 services in a group practice (as defined by the

1 Secretary). The Secretary shall seek to improve
2 the use of electronic health records and health
3 care quality over time by requiring more strin-
4 gent measures of meaningful use selected under
5 this paragraph.

6 “(B) REPORTING ON MEASURES.—

7 “(i) SELECTION.—The Secretary shall
8 select measures for purposes of subpara-
9 graph (A)(iii) but only consistent with the
10 following:

11 “(I) The Secretary shall provide
12 preference to clinical quality measures
13 that have been endorsed by the entity
14 with a contract with the Secretary
15 under section 1890(a).

16 “(II) Prior to any measure being
17 selected under this subparagraph, the
18 Secretary shall publish in the Federal
19 Register such measure and provide for
20 a period of public comment on such
21 measure.

22 “(ii) LIMITATION.—The Secretary
23 may not require the electronic reporting of
24 information on clinical quality measures
25 under subparagraph (A)(iii) unless the

1 Secretary has the capacity to accept the in-
2 formation electronically, which may be on
3 a pilot basis.

4 “(iii) COORDINATION OF REPORTING
5 OF INFORMATION.—In selecting such
6 measures, and in establishing the form and
7 manner for reporting measures under sub-
8 paragraph (A)(iii), the Secretary shall seek
9 to avoid redundant or duplicative reporting
10 otherwise required, including reporting
11 under subsection (k)(2)(C).

12 “(C) DEMONSTRATION OF MEANINGFUL
13 USE OF CERTIFIED EHR TECHNOLOGY AND IN-
14 FORMATION EXCHANGE.—

15 “(i) IN GENERAL.—A professional
16 may satisfy the demonstration requirement
17 of clauses (i) and (ii) of subparagraph (A)
18 through means specified by the Secretary,
19 which may include—

20 “(I) an attestation;

21 “(II) the submission of claims
22 with appropriate coding (such as a
23 code indicating that a patient encoun-
24 ter was documented using certified
25 EHR technology);

1 “(III) a survey response;
2 “(IV) reporting under subpara-
3 graph (A)(iii); and
4 “(V) other means specified by the
5 Secretary.

6 “(ii) USE OF PART D DATA.—Not-
7 withstanding sections 1860D–15(d)(2)(B)
8 and 1860D–15(f)(2), the Secretary may
9 use data regarding drug claims submitted
10 for purposes of section 1860D–15 that are
11 necessary for purposes of subparagraph
12 (A).

13 “(3) APPLICATION.—

14 “(A) PHYSICIAN REPORTING SYSTEM
15 RULES.—Paragraphs (5), (6), and (8) of sub-
16 section (k) shall apply for purposes of this sub-
17 section in the same manner as they apply for
18 purposes of such subsection.

19 “(B) COORDINATION WITH OTHER PAY-
20 MENTS.—The provisions of this subsection shall
21 not be taken into account in applying the provi-
22 sions of subsection (m) of this section and of
23 section 1833(m) and any payment under such
24 provisions shall not be taken into account in

1 computing allowable charges under this sub-
2 section.

3 “(C) LIMITATIONS ON REVIEW.—There
4 shall be no administrative or judicial review
5 under section 1869, section 1878, or otherwise
6 of the determination of any incentive payment
7 under this subsection and the payment adjust-
8 ment under subsection (a)(7), including the de-
9 termination of a meaningful EHR user under
10 paragraph (2), a limitation under paragraph
11 (1)(B), and the exception under subsection
12 (a)(7)(B).

13 “(D) POSTING ON WEBSITE.—The Sec-
14 retary shall post on the Internet website of the
15 Centers for Medicare & Medicaid Services, in an
16 easily understandable format, a list of the
17 names, business addresses, and business phone
18 numbers of the eligible professionals who are
19 meaningful EHR users and, as determined ap-
20 propriate by the Secretary, of group practices
21 receiving incentive payments under paragraph
22 (1).

23 “(4) CERTIFIED EHR TECHNOLOGY DEFINED.—
24 For purposes of this section, the term ‘certified
25 EHR technology’ means a qualified electronic health

1 record (as defined in 3000(13) of the Public Health
2 Service Act) that is certified pursuant to section
3 3001(c)(5) of such Act as meeting standards adopt-
4 ed under section 3004 of such Act that are applica-
5 ble to the type of record involved (as determined by
6 the Secretary, such as an ambulatory electronic
7 health record for office-based physicians or an inpa-
8 tient hospital electronic health record for hospitals).

9 “(5) DEFINITIONS.—For purposes of this sub-
10 section:

11 “(A) COVERED PROFESSIONAL SERV-
12 ICES.—The term ‘covered professional services’
13 has the meaning given such term in subsection
14 (k)(3).

15 “(B) ELIGIBLE PROFESSIONAL.—The term
16 ‘eligible professional’ means a physician, as de-
17 fined in section 1861(r).

18 “(C) REPORTING PERIOD.—The term ‘re-
19 porting period’ means any period (or periods),
20 with respect to a payment year, as specified by
21 the Secretary.”.

22 (b) INCENTIVE PAYMENT ADJUSTMENT.—Section
23 1848(a) of the Social Security Act (42 U.S.C. 1395w-
24 4(a)) is amended by adding at the end the following new
25 paragraph:

1 “(7) INCENTIVES FOR MEANINGFUL USE OF
2 CERTIFIED EHR TECHNOLOGY.—

3 “(A) ADJUSTMENT.—

4 “(i) IN GENERAL.—Subject to sub-
5 paragraphs (B) and (D), with respect to
6 covered professional services furnished by
7 an eligible professional during 2015 or any
8 subsequent payment year, if the eligible
9 professional is not a meaningful EHR user
10 (as determined under subsection (o)(2)) for
11 a reporting period for the year, the fee
12 schedule amount for such services fur-
13 nished by such professional during the year
14 (including the fee schedule amount for pur-
15 poses of determining a payment based on
16 such amount) shall be equal to the applica-
17 ble percent of the fee schedule amount that
18 would otherwise apply to such services
19 under this subsection (determined after ap-
20 plication of paragraph (3) but without re-
21 gard to this paragraph).

22 “(ii) APPLICABLE PERCENT.—Subject
23 to clause (iii), for purposes of clause (i),
24 the term ‘applicable percent’ means—

1 “(I) for 2015, 99 percent (or, in
2 the case of an eligible professional
3 who was subject to the application of
4 the payment adjustment under section
5 1848(a)(5) for 2014, 98 percent);

6 “(II) for 2016, 98 percent; and

7 “(III) for 2017 and each subse-
8 quent year, 97 percent.

9 “(iii) AUTHORITY TO DECREASE AP-
10 PLICABLE PERCENTAGE FOR 2018 AND
11 SUBSEQUENT YEARS.—For 2018 and each
12 subsequent year, if the Secretary finds that
13 the proportion of eligible professionals who
14 are meaningful EHR users (as determined
15 under subsection (o)(2)) is less than 75
16 percent, the applicable percent shall be de-
17 creased by 1 percentage point from the ap-
18 plicable percent in the preceding year, but
19 in no case shall the applicable percent be
20 less than 95 percent.

21 “(B) SIGNIFICANT HARDSHIP EXCEP-
22 TION.—The Secretary may, on a case-by-case
23 basis, exempt an eligible professional from the
24 application of the payment adjustment under
25 subparagraph (A) if the Secretary determines,

1 subject to annual renewal, that compliance with
2 the requirement for being a meaningful EHR
3 user would result in a significant hardship, such
4 as in the case of an eligible professional who
5 practices in a rural area without sufficient
6 Internet access. In no case may an eligible pro-
7 fessional be granted an exemption under this
8 subparagraph for more than 5 years.

9 “(C) APPLICATION OF PHYSICIAN REPORT-
10 ING SYSTEM RULES.—Paragraphs (5), (6), and
11 (8) of subsection (k) shall apply for purposes of
12 this paragraph in the same manner as they
13 apply for purposes of such subsection.

14 “(D) NON-APPLICATION TO HOSPITAL-
15 BASED ELIGIBLE PROFESSIONALS.—No pay-
16 ment adjustment may be made under subpara-
17 graph (A) in the case of hospital-based eligible
18 professionals (as defined in subsection
19 (o)(1)(C)(ii)).

20 “(E) DEFINITIONS.—For purposes of this
21 paragraph:

22 “(i) COVERED PROFESSIONAL SERV-
23 ICES.—The term ‘covered professional
24 services’ has the meaning given such term
25 in subsection (k)(3).

1 “(ii) ELIGIBLE PROFESSIONAL.—The
2 term ‘eligible professional’ means a physi-
3 cian, as defined in section 1861(r).

4 “(iii) REPORTING PERIOD.—The term
5 ‘reporting period’ means, with respect to a
6 year, a period specified by the Secretary.”.

7 (c) APPLICATION TO CERTAIN MA-AFFILIATED ELI-
8 GIBLE PROFESSIONALS.—Section 1853 of the Social Secu-
9 rity Act (42 U.S.C. 1395w–23) is amended by adding at
10 the end the following new subsection:

11 “(1) APPLICATION OF ELIGIBLE PROFESSIONAL IN-
12 CENTIVES FOR CERTAIN MA ORGANIZATIONS FOR ADOP-
13 TION AND MEANINGFUL USE OF CERTIFIED EHR TECH-
14 NOLOGY.—

15 “(1) IN GENERAL.—Subject to paragraphs (3)
16 and (4), in the case of a qualifying MA organization,
17 the provisions of sections 1848(o) and 1848(a)(7)
18 shall apply with respect to eligible professionals de-
19 scribed in paragraph (2) of the organization who the
20 organization attests under paragraph (6) to be
21 meaningful EHR users in a similar manner as they
22 apply to eligible professionals under such sections.
23 Incentive payments under paragraph (3) shall be
24 made to and payment adjustments under paragraph
25 (4) shall apply to such qualifying organizations.

1 “(2) ELIGIBLE PROFESSIONAL DESCRIBED.—

2 With respect to a qualifying MA organization, an eli-
3 gible professional described in this paragraph is an
4 eligible professional (as defined for purposes of sec-
5 tion 1848(o)) who—

6 “(A)(i) is employed by the organization; or

7 “(ii)(I) is employed by, or is a partner of,
8 an entity that through contract with the organi-
9 zation furnishes at least 80 percent of the enti-
10 ty’s patient care services to enrollees of such or-
11 ganization; and

12 “(II) furnishes at least 75 percent of the
13 professional services of the eligible professional
14 to enrollees of the organization; and

15 “(B) furnishes, on average, at least 20
16 hours per week of patient care services.

17 “(3) ELIGIBLE PROFESSIONAL INCENTIVE PAY-
18 MENTS.—

19 “(A) IN GENERAL.—In applying section
20 1848(o) under paragraph (1), instead of the ad-
21 ditional payment amount under section
22 1848(o)(1)(A) and subject to subparagraph
23 (B), the Secretary may substitute an amount
24 determined by the Secretary to the extent fea-
25 sible and practical to be similar to the esti-

1 mated amount in the aggregate that would be
2 payable if payment for services furnished by
3 such professionals was payable under part B in-
4 stead of this part.

5 “(B) AVOIDING DUPLICATION OF PAY-
6 MENTS.—

7 “(i) IN GENERAL.—If an eligible pro-
8 fessional described in paragraph (2) is eli-
9 gible for the maximum incentive payment
10 under section 1848(o)(1)(A) for the same
11 payment period, the payment incentive
12 shall be made only under such section and
13 not under this subsection.

14 “(ii) METHODS.—In the case of an el-
15 igible professional described in paragraph
16 (2) who is eligible for an incentive payment
17 under section 1848(o)(1)(A) but is not de-
18 scribed in clause (i) for the same payment
19 period, the Secretary shall develop a proc-
20 ess—

21 “(I) to ensure that duplicate pay-
22 ments are not made with respect to
23 an eligible professional both under
24 this subsection and under section
25 1848(o)(1)(A); and

1 “(II) to collect data from Medi-
2 care Advantage organizations to en-
3 sure against such duplicate payments.

4 “(C) FIXED SCHEDULE FOR APPLICATION
5 OF LIMITATION ON INCENTIVE PAYMENTS FOR
6 ALL ELIGIBLE PROFESSIONALS.—In applying
7 section 1848(o)(1)(B)(ii) under subparagraph
8 (A), in accordance with rules specified by the
9 Secretary, a qualifying MA organization shall
10 specify a year (not earlier than 2011) that shall
11 be treated as the first payment year for all eli-
12 gible professionals with respect to such organi-
13 zation.

14 “(D) CAP FOR ECONOMIES OF SCALE.—In
15 no case may an incentive payment be made
16 under this subsection, including under subpara-
17 graph (A), to a qualifying MA organization with
18 respect to more than 5,000 eligible profes-
19 sionals of the organization.

20 “(4) PAYMENT ADJUSTMENT.—

21 “(A) IN GENERAL.—In applying section
22 1848(a)(7) under paragraph (1), instead of the
23 payment adjustment being an applicable per-
24 cent of the fee schedule amount for a year
25 under such section, subject to subparagraph

1 (D), the payment adjustment under paragraph
2 (1) shall be equal to the percent specified in
3 subparagraph (B) for such year of the payment
4 amount otherwise provided under this section
5 for such year.

6 “(B) SPECIFIED PERCENT.—The percent
7 specified under this subparagraph for a year is
8 100 percent minus a number of percentage
9 points equal to the product of—

10 “(i) a percentage equal to 100 percent
11 reduced by the applicable percent (under
12 section 1848(a)(7)(A)(ii)) for the year; and

13 “(ii) a percentage equal to the Sec-
14 retary’s estimate of the proportion for the
15 year, of the expenditures under parts A
16 and B that are not attributable to this
17 part, that are attributable to expenditures
18 for physicians’ services.

19 “(C) APPLICATION OF PAYMENT ADJUST-
20 MENT.—In the case that a qualifying MA orga-
21 nization attests that not all eligible profes-
22 sionals of the organization are meaningful EHR
23 users with respect to a year, the Secretary shall
24 apply the payment adjustment under this para-
25 graph based on the proportion of all eligible

1 professionals of the organization that are not
2 meaningful EHR users for such year. If the
3 number of eligible professionals of the organiza-
4 tion that are not meaningful EHR users for
5 such year exceeds 5,000, such number shall be
6 reduced to 5,000 for purposes of determining
7 the proportion under the preceding sentence.

8 “(5) QUALIFYING MA ORGANIZATION DE-
9 FINED.—In this subsection and subsection (m), the
10 term ‘qualifying MA organization’ means a Medicare
11 Advantage organization that is organized as a health
12 maintenance organization (as defined in section
13 2791(b)(3) of the Public Health Service Act).

14 “(6) MEANINGFUL EHR USER ATTESTATION.—
15 For purposes of this subsection and subsection (m),
16 a qualifying MA organization shall submit an attes-
17 tation, in a form and manner specified by the Sec-
18 retary which may include the submission of such at-
19 testation as part of submission of the initial bid
20 under section 1854(a)(1)(A)(iv), identifying—

21 “(A) whether each eligible professional de-
22 scribed in paragraph (2), with respect to such
23 organization is a meaningful EHR user (as de-
24 fined in section 1848(o)(2)) for a year specified
25 by the Secretary; and

1 “(B) whether each eligible hospital de-
2 scribed in subsection (m)(1), with respect to
3 such organization, is a meaningful EHR user
4 (as defined in section 1886(n)(3)) for an appli-
5 cable period specified by the Secretary.

6 “(7) POSTING ON WEBSITE.—The Secretary
7 shall post on the Internet website of the Centers for
8 Medicare & Medicaid Services, in an easily under-
9 standable format, a list of the names, business ad-
10 dresses, and business phone numbers of—

11 “(A) each qualifying MA organization re-
12 ceiving an incentive payment under this sub-
13 section for eligible professionals of the organiza-
14 tion; and

15 “(B) the eligible professionals of such or-
16 ganization for which such incentive payment is
17 based.”.

18 (d) CONFORMING AMENDMENTS.—Section 1853 of
19 the Social Security Act (42 U.S.C. 1395w–23) is amend-
20 ed—

21 (1) in subsection (a)(1)(A), by striking “and
22 (i)” and inserting “(i), and (l)”;

23 (2) in subsection (c)—

1 (A) in paragraph (1)(D)(i), by striking
2 “section 1886(h)” and inserting “sections
3 1848(o) and 1886(h)”; and

4 (B) in paragraph (6)(A), by inserting after
5 “under part B,” the following: “excluding ex-
6 penditures attributable to subsections (a)(7)
7 and (o) of section 1848,”; and

8 (3) in subsection (f), by inserting “and for pay-
9 ments under subsection (l)” after “with the organi-
10 zation”.

11 (e) CONFORMING AMENDMENTS TO E-PRE-
12 SCRIBING.—

13 (1) Section 1848(a)(5)(A) of the Social Security
14 Act (42 U.S.C. 1395w-4(a)(5)(A)) is amended—

15 (A) in clause (i), by striking “or any sub-
16 sequent year” and inserting “, 2013, or 2014”;
17 and

18 (B) in clause (ii), by striking “and each
19 subsequent year”.

20 (2) Section 1848(m)(2) of such Act (42 U.S.C.
21 1395w-4(m)(2)) is amended—

22 (A) in subparagraph (A), by striking “For
23 2009” and inserting “Subject to subparagraph
24 (D), for 2009”; and

1 (B) by adding at the end the following new
2 subparagraph:

3 “(D) LIMITATION WITH RESPECT TO EHR
4 INCENTIVE PAYMENTS.—The provisions of this
5 paragraph shall not apply to an eligible profes-
6 sional (or, in the case of a group practice under
7 paragraph (3)(C), to the group practice) if, for
8 the reporting period the eligible professional (or
9 group practice) receives an incentive payment
10 under subsection (o)(1)(A) with respect to a
11 certified EHR technology (as defined in sub-
12 section (o)(4)) that has the capability of elec-
13 tronic prescribing.”.

14 (f) PROVIDING ASSISTANCE TO ELIGIBLE PROFES-
15 SIONALS AND CERTAIN HOSPITALS.—

16 (1) IN GENERAL.—The Secretary of Health and
17 Human Services shall provide assistance to eligible
18 professionals (as defined in section 1848(o)(5), as
19 added by subsection (a)), Medicaid providers (as de-
20 fined in section 1903(t)(2) of such Act, as added by
21 section 4211(a)), and eligible hospitals (as defined in
22 section 1886(n)(6)(A) of such Act, as added by sec-
23 tion 4202(a)) located in rural or other medically un-
24 derserved areas to successfully choose, implement,
25 and use certified EHR technology (as defined in sec-

1 tion 1848(o)(4) of the Social Security Act, as added
2 by section 4201(a)).

3 (2) USE OF ENTITIES WITH EXPERTISE.—To
4 the extent practicable, the Secretary shall provide
5 such assistance through entities that have expertise
6 in the choice, implementation, and use of such cer-
7 tified EHR technology.

8 **SEC. 4202. INCENTIVES FOR HOSPITALS.**

9 (a) INCENTIVE PAYMENT.—Section 1886 of the So-
10 cial Security Act (42 U.S.C. 1395ww) is amended by add-
11 ing at the end the following new subsection:

12 “(n) INCENTIVES FOR ADOPTION AND MEANINGFUL
13 USE OF CERTIFIED EHR TECHNOLOGY.—

14 “(1) IN GENERAL.—Subject to the succeeding
15 provisions of this subsection, with respect to inpa-
16 tient hospital services furnished by an eligible hos-
17 pital during a payment year (as defined in para-
18 graph (2)(G)), if the eligible hospital is a meaningful
19 EHR user (as determined under paragraph (3)) for
20 the reporting period with respect to such year, in ad-
21 dition to the amount otherwise paid under this sec-
22 tion, there also shall be paid to the eligible hospital,
23 from the Federal Hospital Insurance Trust Fund es-
24 tablished under section 1817, an amount equal to

1 the applicable amount specified in paragraph (2)(A)
2 for the hospital for such payment year.

3 “(2) PAYMENT AMOUNT.—

4 “(A) IN GENERAL.—Subject to the suc-
5 ceeding subparagraphs of this paragraph, the
6 applicable amount specified in this subpara-
7 graph for an eligible hospital for a payment
8 year is equal to the product of the following:

9 “(i) INITIAL AMOUNT.—The sum of—

10 “(I) the base amount specified in
11 subparagraph (B); plus

12 “(II) the discharge related
13 amount specified in subparagraph (C)
14 for a 12-month period selected by the
15 Secretary with respect to such pay-
16 ment year.

17 “(ii) MEDICARE SHARE.—The Medi-
18 care share as specified in subparagraph
19 (D) for the hospital for a period selected
20 by the Secretary with respect to such pay-
21 ment year.

22 “(iii) TRANSITION FACTOR.—The
23 transition factor specified in subparagraph
24 (E) for the hospital for the payment year.

1 “(B) BASE AMOUNT.—The base amount
2 specified in this subparagraph is \$2,000,000.

3 “(C) DISCHARGE RELATED AMOUNT.—The
4 discharge related amount specified in this sub-
5 paragraph for a 12-month period selected by
6 the Secretary shall be determined as the sum of
7 the amount, based upon total discharges (re-
8 gardless of any source of payment) for the pe-
9 riod, for each discharge up to the 23,000th dis-
10 charge as follows:

11 “(i) For the 1,150th through the
12 9,200th discharge, \$200.

13 “(ii) For the 9,201st through the
14 13,800th discharge, 50 percent of the
15 amount specified in clause (i).

16 “(iii) For the 13,801st through the
17 23,000th discharge, 30 percent of the
18 amount specified in clause (i).

19 “(D) MEDICARE SHARE.—The Medicare
20 share specified under this subparagraph for a
21 hospital for a period selected by the Secretary
22 for a payment year is equal to the fraction—

23 “(i) the numerator of which is the
24 sum (for such period and with respect to
25 the hospital) of—

1 “(I) the number of inpatient-bed-
2 days (as established by the Secretary)
3 which are attributable to individuals
4 with respect to whom payment may be
5 made under part A; and

6 “(II) the number of inpatient-
7 bed-days (as so established) which are
8 attributable to individuals who are en-
9 rolled with a Medicare Advantage or-
10 ganization under part C; and

11 “(ii) the denominator of which is the
12 product of—

13 “(I) the total number of inpa-
14 tient-bed-days with respect to the hos-
15 pital during such period; and

16 “(II) the total amount of the hos-
17 pital’s charges during such period, not
18 including any charges that are attrib-
19 utable to charity care (as such term is
20 used for purposes of hospital cost re-
21 porting under this title), divided by
22 the total amount of the hospital’s
23 charges during such period.

24 Insofar as the Secretary determines that data
25 are not available on charity care necessary to

1 calculate the portion of the formula specified in
2 clause (ii)(II), the Secretary shall use data on
3 uncompensated care and may adjust such data
4 so as to be an appropriate proxy for charity
5 care including a downward adjustment to elimi-
6 nate bad debt data from uncompensated care
7 data. In the absence of the data necessary, with
8 respect to a hospital, for the Secretary to com-
9 pute the amount described in clause (ii)(II), the
10 amount under such clause shall be deemed to
11 be 1. In the absence of data, with respect to a
12 hospital, necessary to compute the amount de-
13 scribed in clause (i)(II), the amount under such
14 clause shall be deemed to be 0.

15 “(E) TRANSITION FACTOR SPECIFIED.—

16 “(i) IN GENERAL.—Subject to clause
17 (ii), the transition factor specified in this
18 subparagraph for an eligible hospital for a
19 payment year is as follows:

20 “(I) For the first payment year
21 for such hospital, 1.

22 “(II) For the second payment
23 year for such hospital, $\frac{3}{4}$.

24 “(III) For the third payment
25 year for such hospital, $\frac{1}{2}$.

1 “(IV) For the fourth payment
2 year for such hospital, $\frac{1}{4}$.

3 “(V) For any succeeding pay-
4 ment year for such hospital, 0.

5 “(ii) PHASE DOWN FOR ELIGIBLE
6 HOSPITALS FIRST ADOPTING EHR AFTER
7 2013.—If the first payment year for an eli-
8 gible hospital is after 2013, then the tran-
9 sition factor specified in this subparagraph
10 for a payment year for such hospital is the
11 same as the amount specified in clause (i)
12 for such payment year for an eligible hos-
13 pital for which the first payment year is
14 2013. If the first payment year for an eli-
15 gible hospital is after 2015 then the transi-
16 tion factor specified in this subparagraph
17 for such hospital and for such year and
18 any subsequent year shall be 0.

19 “(F) FORM OF PAYMENT.—The payment
20 under this subsection for a payment year may
21 be in the form of a single consolidated payment
22 or in the form of such periodic installments as
23 the Secretary may specify.

24 “(G) PAYMENT YEAR DEFINED.—

1 “(i) IN GENERAL.—For purposes of
2 this subsection, the term ‘payment year’
3 means a fiscal year beginning with fiscal
4 year 2011.

5 “(ii) FIRST, SECOND, ETC. PAYMENT
6 YEAR.—The term ‘first payment year’
7 means, with respect to inpatient hospital
8 services furnished by an eligible hospital,
9 the first fiscal year for which an incentive
10 payment is made for such services under
11 this subsection. The terms ‘second pay-
12 ment year’, ‘third payment year’, and
13 ‘fourth payment year’ mean, with respect
14 to an eligible hospital, each successive year
15 immediately following the first payment
16 year for that hospital.

17 “(3) MEANINGFUL EHR USER.—

18 “(A) IN GENERAL.—For purposes of para-
19 graph (1), an eligible hospital shall be treated
20 as a meaningful EHR user for a reporting pe-
21 riod for a payment year (or, for purposes of
22 subsection (b)(3)(B)(ix), for a reporting period
23 under such subsection for a fiscal year) if each
24 of the following requirements are met:

1 “(i) MEANINGFUL USE OF CERTIFIED
2 EHR TECHNOLOGY.—The eligible hospital
3 demonstrates to the satisfaction of the Sec-
4 retary, in accordance with subparagraph
5 (C)(i), that during such period the hospital
6 is using certified EHR technology in a
7 meaningful manner.

8 “(ii) INFORMATION EXCHANGE.—The
9 eligible hospital demonstrates to the satis-
10 faction of the Secretary, in accordance
11 with subparagraph (C)(i), that during such
12 period such certified EHR technology is
13 connected in a manner that provides, in
14 accordance with law and standards appli-
15 cable to the exchange of information, for
16 the electronic exchange of health informa-
17 tion to improve the quality of health care,
18 such as promoting care coordination.

19 “(iii) REPORTING ON MEASURES
20 USING EHR.—Subject to subparagraph
21 (B)(ii) and using such certified EHR tech-
22 nology, the eligible hospital submits infor-
23 mation for such period, in a form and
24 manner specified by the Secretary, on such
25 clinical quality measures and such other

1 measures as selected by the Secretary
2 under subparagraph (B)(i).

3 The Secretary shall seek to improve the use of
4 electronic health records and health care quality
5 over time by requiring more stringent measures
6 of meaningful use selected under this para-
7 graph.

8 “(B) REPORTING ON MEASURES.—

9 “(i) SELECTION.—The Secretary shall
10 select measures for purposes of subpara-
11 graph (A)(iii) but only consistent with the
12 following:

13 “(I) The Secretary shall provide
14 preference to clinical quality measures
15 that have been selected for purposes
16 of applying subsection (b)(3)(B)(viii)
17 or that have been endorsed by the en-
18 tity with a contract with the Secretary
19 under section 1890(a).

20 “(II) Prior to any measure (other
21 than a clinical quality measure that
22 has been selected for purposes of ap-
23 plying subsection (b)(3)(B)(viii))
24 being selected under this subpara-
25 graph, the Secretary shall publish in

1 the Federal Register such measure
2 and provide for a period of public
3 comment on such measure.

4 “(ii) LIMITATIONS.—The Secretary
5 may not require the electronic reporting of
6 information on clinical quality measures
7 under subparagraph (A)(iii) unless the
8 Secretary has the capacity to accept the in-
9 formation electronically, which may be on
10 a pilot basis.

11 “(iii) COORDINATION OF REPORTING
12 OF INFORMATION.—In selecting such
13 measures, and in establishing the form and
14 manner for reporting measures under sub-
15 paragraph (A)(iii), the Secretary shall seek
16 to avoid redundant or duplicative reporting
17 with reporting otherwise required, includ-
18 ing reporting under subsection
19 (b)(3)(B)(viii).

20 “(C) DEMONSTRATION OF MEANINGFUL
21 USE OF CERTIFIED EHR TECHNOLOGY AND IN-
22 FORMATION EXCHANGE.—

23 “(i) IN GENERAL.—A hospital may
24 satisfy the demonstration requirement of
25 clauses (i) and (ii) of subparagraph (A)

1 through means specified by the Secretary,
2 which may include—

3 “(I) an attestation;

4 “(II) the submission of claims
5 with appropriate coding (such as a
6 code indicating that inpatient care
7 was documented using certified EHR
8 technology);

9 “(III) a survey response;

10 “(IV) reporting under subpara-
11 graph (A)(iii); and

12 “(V) other means specified by the
13 Secretary.

14 “(ii) USE OF PART D DATA.—Not-
15 withstanding sections 1860D–15(d)(2)(B)
16 and 1860D–15(f)(2), the Secretary may
17 use data regarding drug claims submitted
18 for purposes of section 1860D–15 that are
19 necessary for purposes of subparagraph
20 (A).

21 “(4) APPLICATION.—

22 “(A) LIMITATIONS ON REVIEW.—There
23 shall be no administrative or judicial review
24 under section 1869, section 1878, or otherwise
25 of the determination of any incentive payment

1 under this subsection and the payment adjust-
2 ment under subsection (b)(3)(B)(ix), including
3 the determination of a meaningful EHR user
4 under paragraph (3), determination of meas-
5 ures applicable to services furnished by eligible
6 hospitals under this subsection, and the excep-
7 tion under subsection (b)(3)(B)(ix)(II).

8 “(B) POSTING ON WEBSITE.—The Sec-
9 retary shall post on the Internet website of the
10 Centers for Medicare & Medicaid Services, in an
11 easily understandable format, a list of the
12 names of the eligible hospitals that are mean-
13 ingful EHR users under this subsection or sub-
14 section (b)(3)(B)(ix) and other relevant data as
15 determined appropriate by the Secretary. The
16 Secretary shall ensure that a hospital has the
17 opportunity to review the other relevant data
18 that are to be made public with respect to the
19 hospital prior to such data being made public.

20 “(5) CERTIFIED EHR TECHNOLOGY DEFINED.—
21 The term ‘certified EHR technology’ has the mean-
22 ing given such term in section 1848(o)(4).

23 “(6) DEFINITIONS.—For purposes of this sub-
24 section:

1 “(A) ELIGIBLE HOSPITAL.—The term ‘eli-
2 gible hospital’ means—

3 “(i) a subsection (d) hospital; and

4 “(ii) a critical access hospital (as de-
5 fined in section 1861(mm)(1)).

6 “(B) REPORTING PERIOD.—The term ‘re-
7 porting period’ means any period (or periods),
8 with respect to a payment year, as specified by
9 the Secretary.”.

10 (b) INCENTIVE MARKET BASKET ADJUSTMENT.—

11 (1) IN GENERAL.—Section 1886(b)(3)(B) of
12 the Social Security Act (42 U.S.C.
13 1395ww(b)(3)(B)) is amended—

14 (A) in clause (viii)(I), by inserting “(or,
15 beginning with fiscal year 2016, by one-quar-
16 ter)” after “2.0 percentage points”; and

17 (B) by adding at the end the following new
18 clause:

19 “(ix)(I) For purposes of clause (i) for fiscal year
20 2015 and each subsequent fiscal year, in the case of an
21 eligible hospital (as defined in subsection (n)(6)(A)) that
22 is not a meaningful EHR user (as defined in subsection
23 (n)(3)) for the reporting period for such fiscal year, three-
24 quarters of the applicable percentage increase otherwise
25 applicable under clause (i) for such fiscal year shall be

1 reduced by $33\frac{1}{3}$ percent for fiscal year 2015, $66\frac{2}{3}$ per-
2 cent for fiscal year 2016, and 100 percent for fiscal year
3 2017 and each subsequent fiscal year. Such reduction
4 shall apply only with respect to the fiscal year involved
5 and the Secretary shall not take into account such reduc-
6 tion in computing the applicable percentage increase under
7 clause (i) for a subsequent fiscal year.

8 “(II) The Secretary may, on a case-by-case basis, ex-
9 empt a subsection (d) hospital from the application of sub-
10 clause (I) with respect to a fiscal year if the Secretary
11 determines, subject to annual renewal, that requiring such
12 hospital to be a meaningful EHR user during such fiscal
13 year would result in a significant hardship, such as in the
14 case of a hospital in a rural area without sufficient Inter-
15 net access. In no case may a hospital be granted an ex-
16 emption under this subclause for more than 5 years.

17 “(III) For fiscal year 2015 and each subsequent fis-
18 cal year, a State in which hospitals are paid for services
19 under section 1814(b)(3) shall adjust the payments to
20 each subsection (d) hospital in the State that is not a
21 meaningful EHR user (as defined in subsection (n)(3))
22 in a manner that is designed to result in an aggregate
23 reduction in payments to hospitals in the State that is
24 equivalent to the aggregate reduction that would have oc-
25 curred if payments had been reduced to each subsection

1 (d) hospital in the State in a manner comparable to the
2 reduction under the previous provisions of this clause. The
3 State shall report to the Secretary the methodology it will
4 use to make the payment adjustment under the previous
5 sentence.

6 “(IV) For purposes of this clause, the term ‘reporting
7 period’ means, with respect to a fiscal year, any period
8 (or periods), with respect to the fiscal year, as specified
9 by the Secretary.”.

10 (2) CRITICAL ACCESS HOSPITALS.—Section
11 1814(l) of the Social Security Act (42 U.S.C.
12 1395f(l)) is amended—

13 (A) in subparagraph (1), by striking
14 “paragraph (2)” and inserting “paragraphs (2)
15 and (3)”; and

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

18 “(3)(A) Subject to subparagraph (B), for fiscal year
19 2015 and each subsequent fiscal year, in the case of a
20 critical access hospital that is not a meaningful EHR user
21 (as defined in section 1886(n)(3)) for the reporting period
22 for such fiscal year, paragraph (1) shall be applied by sub-
23 stituting the applicable percent under subparagraph (C)
24 for the percent described in such paragraph (1).

1 “(B) The Secretary may, on a case-by-case basis, ex-
2 empt a critical access hospital from the application of sub-
3 paragraph (A) with respect to a fiscal year if the Secretary
4 determines, subject to annual renewal, that requiring such
5 hospital to be a meaningful EHR user during such fiscal
6 year would result in a significant hardship, such as in the
7 case of a hospital in a rural area without sufficient Inter-
8 net access. In no case may a hospital be granted an ex-
9 emption under this subparagraph for more than 5 years.

10 “(C) The percent described in this subparagraph is—

11 “(i) for fiscal year 2015, 100.66 percent;

12 “(ii) for fiscal year 2016, 100.33 percent; and

13 “(iii) for fiscal year 2017 and each subsequent
14 fiscal year, 100 percent.”.

15 (c) APPLICATION TO CERTAIN MA-AFFILIATED ELI-
16 GIBLE HOSPITALS.—Section 1853 of the Social Security
17 Act (42 U.S.C. 1395w–23), as amended by section
18 4201(e), is further amended by adding at the end the fol-
19 lowing new subsection:

20 “(m) APPLICATION OF ELIGIBLE HOSPITAL INCEN-
21 TIVES FOR CERTAIN MA ORGANIZATIONS FOR ADOPTION
22 AND MEANINGFUL USE OF CERTIFIED EHR TECH-
23 NOLOGY.—

24 “(1) APPLICATION.—Subject to paragraphs (3)
25 and (4), in the case of a qualifying MA organization,

1 the provisions of sections 1814(l)(3), 1886(n), and
2 1886(b)(3)(B)(ix) shall apply with respect to eligible
3 hospitals described in paragraph (2) of the organiza-
4 tion which the organization attests under subsection
5 (l)(6) to be meaningful EHR users in a similar man-
6 ner as they apply to eligible hospitals under such
7 sections. Incentive payments under paragraph (3)
8 shall be made to and payment adjustments under
9 paragraph (4) shall apply to such qualifying organi-
10 zations.

11 “(2) ELIGIBLE HOSPITAL DESCRIBED.—With
12 respect to a qualifying MA organization, an eligible
13 hospital described in this paragraph is an eligible
14 hospital (as defined in section 1886(n)(6)(A)) that is
15 under common corporate governance with such orga-
16 nization and serves individuals enrolled under an
17 MA plan offered by such organization.

18 “(3) ELIGIBLE HOSPITAL INCENTIVE PAY-
19 MENTS.—

20 “(A) IN GENERAL.—In applying section
21 1886(n)(2) under paragraph (1), instead of the
22 additional payment amount under section
23 1886(n)(2), there shall be substituted an
24 amount determined by the Secretary to be simi-
25 lar to the estimated amount in the aggregate

1 that would be payable if payment for services
2 furnished by such hospitals was payable under
3 part A instead of this part. In implementing the
4 previous sentence, the Secretary—

5 “(i) shall, insofar as data to deter-
6 mine the discharge related amount under
7 section 1886(n)(2)(C) for an eligible hos-
8 pital are not available to the Secretary, use
9 such alternative data and methodology to
10 estimate such discharge related amount as
11 the Secretary determines appropriate; and

12 “(ii) shall, insofar as data to deter-
13 mine the medicare share described in sec-
14 tion 1886(n)(2)(D) for an eligible hospital
15 are not available to the Secretary, use such
16 alternative data and methodology to esti-
17 mate such share, which data and method-
18 ology may include use of the inpatient bed
19 days (or discharges) with respect to an eli-
20 gible hospital during the appropriate pe-
21 riod which are attributable to both individ-
22 uals for whom payment may be made
23 under part A or individuals enrolled in an
24 MA plan under a Medicare Advantage or-
25 ganization under this part as a proportion

1 of the total number of patient-bed-days (or
2 discharges) with respect to such hospital
3 during such period.

4 “(B) AVOIDING DUPLICATION OF PAY-
5 MENTS.—

6 “(i) IN GENERAL.—In the case of a
7 hospital that for a payment year is an eli-
8 gible hospital described in paragraph (2)
9 and for which at least one-third of their
10 discharges (or bed-days) of Medicare pa-
11 tients for the year are covered under part
12 A, payment for the payment year shall be
13 made only under section 1886(n) and not
14 under this subsection.

15 “(ii) METHODS.—In the case of a
16 hospital that is an eligible hospital de-
17 scribed in paragraph (2) and also is eligi-
18 ble for an incentive payment under section
19 1886(n) but is not described in clause (i)
20 for the same payment period, the Secretary
21 shall develop a process—

22 “(I) to ensure that duplicate pay-
23 ments are not made with respect to
24 an eligible hospital both under this

1 subsection and under section 1886(n);
2 and

3 “(II) to collect data from Medi-
4 care Advantage organizations to en-
5 sure against such duplicate payments.

6 “(4) PAYMENT ADJUSTMENT.—

7 “(A) Subject to paragraph (3), in the case
8 of a qualifying MA organization (as defined in
9 section 1853(l)(5)), if, according to the attesta-
10 tion of the organization submitted under sub-
11 section (l)(6) for an applicable period, one or
12 more eligible hospitals (as defined in section
13 1886(n)(6)(A)) that are under common cor-
14 porate governance with such organization and
15 that serve individuals enrolled under a plan of-
16 fered by such organization are not meaningful
17 EHR users (as defined in section 1886(n)(3))
18 with respect to a period, the payment amount
19 payable under this section for such organization
20 for such period shall be the percent specified in
21 subparagraph (B) for such period of the pay-
22 ment amount otherwise provided under this sec-
23 tion for such period.

24 “(B) SPECIFIED PERCENT.—The percent
25 specified under this subparagraph for a year is

1 100 percent minus a number of percentage
2 points equal to the product of—

3 “(i) the number of the percentage
4 point reduction effected under section
5 1886(b)(3)(B)(ix)(I) for the period; and

6 “(ii) the Medicare hospital expendi-
7 ture proportion specified in subparagraph
8 (C) for the year.

9 “(C) MEDICARE HOSPITAL EXPENDITURE
10 PROPORTION.—The Medicare hospital expendi-
11 ture proportion under this subparagraph for a
12 year is the Secretary’s estimate of the propor-
13 tion, of the expenditures under parts A and B
14 that are not attributable to this part, that are
15 attributable to expenditures for inpatient hos-
16 pital services.

17 “(D) APPLICATION OF PAYMENT ADJUST-
18 MENT.—In the case that a qualifying MA orga-
19 nization attests that not all eligible hospitals
20 are meaningful EHR users with respect to an
21 applicable period, the Secretary shall apply the
22 payment adjustment under this paragraph
23 based on a methodology specified by the Sec-
24 retary, taking into account the proportion of
25 such eligible hospitals, or discharges from such

1 hospitals, that are not meaningful EHR users
2 for such period.

3 “(5) POSTING ON WEBSITE.—The Secretary
4 shall post on the Internet website of the Centers for
5 Medicare & Medicaid Services, in an easily under-
6 standable format, —

7 “(A) a list of the names, business address-
8 es, and business phone numbers of each quali-
9 fying MA organization receiving an incentive
10 payment under this subsection for eligible hos-
11 pitals described in paragraph (2); and

12 “(B) a list of the names of the eligible hos-
13 pitals for which such incentive payment is
14 based.”.

15 (d) CONFORMING AMENDMENTS.—

16 (1) Section 1814(b) of the Social Security Act
17 (42 U.S.C. 1395f(b)) is amended—

18 (A) in paragraph (3), in the matter pre-
19 ceding subparagraph (A), by inserting “, sub-
20 ject to section 1886(d)(3)(B)(ix)(III),” after
21 “then”; and

22 (B) by adding at the end the following:
23 “For purposes of applying paragraph (3), there
24 shall be taken into account incentive payments,

1 and payment adjustments under subsection
2 (b)(3)(B)(ix) or (n) of section 1886.”.

3 (2) Section 1851(i)(1) of the Social Security
4 Act (42 U.S.C. 1395w-21(i)(1)) is amended by
5 striking “and 1886(h)(3)(D)” and inserting
6 “1886(h)(3)(D), and 1853(m)”.

7 (3) Section 1853 of the Social Security Act (42
8 U.S.C. 1395w-23), as amended by section
9 4311(d)(1), is amended—

10 (A) in subsection (c)—

11 (i) in paragraph (1)(D)(i), by striking
12 “1848(o)” and inserting “, 1848(o), and
13 1886(n)”;

14 (ii) in paragraph (6)(A), by inserting
15 “and subsections (b)(3)(B)(ix) and (n) of
16 section 1886” after “section 1848”; and

17 (B) in subsection (f), by inserting “and
18 subsection (m)” after “under subsection (l)”.

19 **SEC. 4203. PREMIUM HOLD HARMLESS AND IMPLEMENTA-**
20 **TION FUNDING.**

21 (a) PREMIUM HOLD HARMLESS.—

22 (1) IN GENERAL.—Section 1839(a)(1) of the
23 Social Security Act (42 U.S.C. 1395r(a)(1)) is
24 amended by adding at the end the following: “In ap-
25 plying this paragraph there shall not be taken into

1 account additional payments under section 1848(o)
2 and section 1853(l)(3) and the Government con-
3 tribution under section 1844(a)(3).”.

4 (2) PAYMENT.—Section 1844(a) of such Act
5 (42 U.S.C. 1395w(a)) is amended—

6 (A) in paragraph (2), by striking the pe-
7 riod at the end and inserting “; plus”; and

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

10 “(3) a Government contribution equal to the
11 amount of payment incentives payable under sec-
12 tions 1848(o) and 1853(l)(3).”.

13 (b) IMPLEMENTATION FUNDING.—In addition to
14 funds otherwise available, out of any funds in the Treas-
15 ury not otherwise appropriated, there are appropriated to
16 the Secretary of Health and Human Services for the Cen-
17 ter for Medicare & Medicaid Services Program Manage-
18 ment Account, \$100,000,000 for each of fiscal years 2009
19 through 2015 and \$45,000,000 for each succeeding fiscal
20 year through fiscal year 2018, which shall be available for
21 purposes of carrying out the provisions of (and amend-
22 ments made by) this part. Amounts appropriated under
23 this subsection for a fiscal year shall be available until ex-
24 pended.

1 **SEC. 4204. NON-APPLICATION OF PHASED-OUT INDIRECT**
2 **MEDICAL EDUCATION (IME) ADJUSTMENT**
3 **FACTOR FOR FISCAL YEAR 2009.**

4 (a) IN GENERAL.—Section 412.322 of title 42, Code
5 of Federal Regulations, shall be applied without regard to
6 paragraph (c) of such section, and the Secretary of Health
7 and Human Services shall recompute payments for dis-
8 charges occurring on or after October 1, 2008, as if such
9 paragraph had never been in effect.

10 (b) NO EFFECT ON SUBSEQUENT YEARS.—Nothing
11 in subsection (a) shall be construed as having any effect
12 on the application of paragraph (d) of section 412.322 of
13 title 42, Code of Federal Regulations.

14 **SEC. 4205. STUDY ON APPLICATION OF EHR PAYMENT IN-**
15 **CENTIVES FOR PROVIDERS NOT RECEIVING**
16 **OTHER INCENTIVE PAYMENTS.**

17 (a) STUDY.—

18 (1) IN GENERAL.—The Secretary of Health and
19 Human Services shall conduct a study to determine
20 the extent to which and manner in which payment
21 incentives (such as under title XVIII or XIX of the
22 Social Security Act) and other funding for purposes
23 of implementing and using certified EHR technology
24 (as defined in section 1848(o)(4) of the Social Secu-
25 rity Act, as added by section 4311(a)) should be
26 made available to health care providers who are re-

1 ceiving minimal or no payment incentives or other
2 funding under this Act, under title XVIII or XIX of
3 such Act, or otherwise, for such purposes.

4 (2) DETAILS OF STUDY.—Such study shall in-
5 clude an examination of—

6 (A) the adoption rates of certified EHR
7 technology (as so defined) by such health care
8 providers;

9 (B) the clinical utility of such technology
10 by such health care providers;

11 (C) whether the services furnished by such
12 health care providers are appropriate for or
13 would benefit from the use of such technology;

14 (D) the extent to which such health care
15 providers work in settings that might otherwise
16 receive an incentive payment or other funding
17 under this Act, title XVIII or XIX of the Social
18 Security Act, or otherwise;

19 (E) the potential costs and the potential
20 benefits of making payment incentives and
21 other funding available to such health care pro-
22 viders; and

23 (F) any other issues the Secretary deems
24 to be appropriate.

1 (b) REPORT.—Not later than June 30, 2010, the
2 Secretary shall submit to Congress a report on the find-
3 ings and conclusions of the study conducted under sub-
4 section (a).

5 **SEC. 4206. STUDY ON AVAILABILITY OF OPEN SOURCE**
6 **HEALTH INFORMATION TECHNOLOGY SYS-**
7 **TEMS.**

8 (a) IN GENERAL.—

9 (1) STUDY.—The Secretary of Health and
10 Human Services shall, in consultation with the
11 Under Secretary for Health of the Veterans Health
12 Administration, the Director of the Indian Health
13 Service, the Secretary of Defense, the Director of
14 the Agency for Healthcare Research and Quality,
15 the Administrator of the Health Resources and Serv-
16 ices Administration, and the Chairman of the Fed-
17 eral Communications Commission, conduct a study
18 on—

19 (A) the current availability of open source
20 health information technology systems to Fed-
21 eral safety net providers (including small, rural
22 providers);

23 (B) the total cost of ownership of such sys-
24 tems in comparison to the cost of proprietary
25 commercial products available;

1 (C) the ability of such systems to respond
2 to the needs of, and be applied to, various pop-
3 ulations (including children and disabled indi-
4 viduals); and

5 (D) the capacity of such systems to facili-
6 tate interoperability.

7 (2) CONSIDERATIONS.—In conducting the study
8 under paragraph (1), the Secretary of Health and
9 Human Services shall take into account the cir-
10 cumstances of smaller health care providers, health
11 care providers located in rural or other medically un-
12 derserved areas, and safety net providers that deliver
13 a significant level of health care to uninsured indi-
14 viduals, Medicaid beneficiaries, SCHIP beneficiaries,
15 and other vulnerable individuals.

16 (b) REPORT.—Not later than October 1, 2010, the
17 Secretary of Health and Human Services shall submit to
18 Congress a report on the findings and the conclusions of
19 the study conducted under subsection (a), together with
20 recommendations for such legislation and administrative
21 action as the Secretary determines appropriate.

PART II—MEDICAID FUNDING**SEC. 4211. MEDICAID PROVIDER EHR ADOPTION AND OPERATION PAYMENTS; IMPLEMENTATION FUNDING.**

(a) IN GENERAL.—Section 1903 of the Social Security Act (42 U.S.C. 1396b) is amended—

(1) in subsection (a)(3)—

(A) by striking “and” at the end of subparagraph (D);

(B) by striking “plus” at the end of subparagraph (E) and inserting “and”; and

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

“(F)(i) 100 percent of so much of the sums expended during such quarter as are attributable to payments for certified EHR technology (and support services including maintenance and training that is for, or is necessary for the adoption and operation of, such technology) by Medicaid providers described in subsection (t)(1); and

“(ii) 90 percent of so much of the sums expended during such quarter as are attributable to payments for reasonable administrative expenses related to the administration of payments described in clause (i) if the State meets

1 the condition described in subsection (t)(9);
2 plus”; and

3 (2) by inserting after subsection (s) the fol-
4 lowing new subsection:

5 “(t)(1)(A) For purposes of subsection (a)(3)(F), the
6 payments for certified EHR technology (and support serv-
7 ices including maintenance that is for, or is necessary for
8 the operation of, such technology) by Medicaid providers
9 described in this paragraph are payments made by the
10 State in accordance with this subsection of the applicable
11 percent of the net allowable costs of Medicaid providers
12 (as defined in paragraph (2)) for such technology (and
13 support services).

14 “(B) For purposes of subparagraph (A), the term
15 ‘applicable percent’ means—

16 “(i) in the case of a Medicaid provider de-
17 scribed in paragraph (2)(A), 85 percent;

18 “(ii) in the case of a Medicaid provider de-
19 scribed in clause (i) or (ii) of paragraph (2)(B), 100
20 percent; and

21 “(iii) in the case of a Medicaid provider de-
22 scribed in clause (iii) of paragraph (2)(B), a percent
23 specified by the Secretary, but not less than 85 per-
24 cent.

1 “(2) In this subsection and subsection (a)(3)(F), the
2 term ‘Medicaid provider’ means—

3 “(A) an eligible professional (as defined in
4 paragraph (3)(B)) who is not hospital-based and has
5 at least 30 percent of the professional’s patient vol-
6 ume (as estimated in accordance with standards es-
7 tablished by the Secretary) attributable to individ-
8 uals who are receiving medical assistance under this
9 title; and

10 “(B)(i) a children’s hospital,

11 “(ii) an acute-care hospital that is not described in
12 clause (i) and that has at least 10 percent of the hospital’s
13 patient volume (as estimated in accordance with standards
14 established by the Secretary) attributable to individuals
15 who are receiving medical assistance under this title, or

16 “(iii) Federally-qualified health center or rural health
17 clinic that has at least 30 percent of the center’s or clinic’s
18 patient volume (as estimated in accordance with standards
19 established by the Secretary) attributable to individuals
20 who are receiving medical assistance under this title.

21 An eligible professional shall not qualify as a Medicaid
22 provider under this subsection unless the professional has
23 waived, in a manner specified by the Secretary, any right
24 to payment under section 1848(o) with respect to the
25 adoption or support of certified EHR technology by the

1 eligible professional. In applying clauses (ii) and (iii) of
2 subparagraph (B), the standards established by the Sec-
3 retary for patient volume shall include individuals enrolled
4 in a Medicaid managed care plan (under section 1903(m)
5 or section 1932).

6 “(3) In this subsection and subsection (a)(3)(F):

7 “(A) The term ‘certified EHR technology’
8 means a qualified electronic health record (as de-
9 fined in 3000(13) of the Public Health Service Act)
10 that is certified pursuant to section 3001(c)(5) of
11 such Act as meeting standards adopted under sec-
12 tion 3004 of such Act that are applicable to the type
13 of record involved (as determined by the Secretary,
14 such as an ambulatory electronic health record for
15 office-based physicians or an inpatient hospital elec-
16 tronic health record for hospitals).

17 “(B) The term ‘eligible professional’ means a
18 physician as defined in paragraphs (1) and (2) of
19 section 1861(r), and includes a nurse mid-wife and
20 a nurse practitioner.

21 “(C) The term ‘hospital-based’ means, with re-
22 spect to an eligible professional, a professional (such
23 as a pathologist, anesthesiologist, or emergency phy-
24 sician) who furnishes substantially all of the individ-
25 ual’s professional services in a hospital setting

1 (whether inpatient or outpatient) and through the
2 use of the facilities and equipment, including quali-
3 fied electronic health records, of the hospital.

4 “(4)(A) The term ‘allowable costs’ means, with re-
5 spect to certified EHR technology of a Medicaid provider,
6 costs of such technology (and support services including
7 maintenance and training that is for, or is necessary for
8 the adoption and operation of, such technology) as deter-
9 mined by the Secretary to be reasonable.

10 “(B) The term ‘net allowable costs’ means allowable
11 costs reduced by any payment that is made to the Med-
12 icaid provider involved from any other source that is di-
13 rectly attributable to payment for certified EHR tech-
14 nology or services described in subparagraph (A).

15 “(C) In no case shall—

16 “(i) the aggregate allowable costs under this
17 subsection (covering one or more years) with respect
18 to a Medicaid provider described in paragraph
19 (2)(A) for purchase and initial implementation of
20 certified EHR technology (and services described in
21 subparagraph (A)) exceed \$25,000 or include costs
22 over a period of longer than 5 years;

23 “(ii) for costs not described in clause (i) relat-
24 ing to the operation, maintenance, or use of certified
25 EHR technology, the annual allowable costs under

1 this subsection with respect to such a Medicaid pro-
2 vider for costs not described in clause (i) for any
3 year exceed \$10,000;

4 “(iii) payment described in paragraph (1) for
5 costs described in clause (ii) be made with respect
6 to such a Medicaid provider over a period of more
7 than 5 years;

8 “(iv) the aggregate allowable costs under this
9 subsection with respect to such a Medicaid provider
10 for all costs exceed \$75,000; or

11 “(v) the allowable costs, whether for purchase
12 and initial implementation, maintenance, or other-
13 wise, for a Medicaid provider described in paragraph
14 (2)(B)(iii) exceed such aggregate or annual limita-
15 tion as the Secretary shall establish, based on an
16 amount determined by the Secretary as being ade-
17 quate to adopt and maintain certified EHR tech-
18 nology, consistent with paragraph (6).

19 “(5) Payments described in paragraph (1) are not in
20 accordance with this subsection unless the following re-
21 quirements are met:

22 “(A) The State provides assurances satisfactory
23 to the Secretary that amounts received under sub-
24 section (a)(3)(F) with respect to costs of a Medicaid

1 provider are paid directly to such provider without
2 any deduction or rebate.

3 “(B) Such Medicaid provider is responsible for
4 payment of the costs described in such paragraph
5 that are not provided under this title.

6 “(C) With respect to payments to such Med-
7 icaid provider for costs other than costs related to
8 the initial adoption of certified EHR technology, the
9 Medicaid provider demonstrates meaningful use of
10 certified EHR technology through a means that is
11 approved by the State and acceptable to the Sec-
12 retary, and that may be based upon the methodolo-
13 gies applied under section 1848(o) or 1886(n). In
14 establishing such means, which may include the re-
15 porting of clinical quality measures to the State, the
16 State shall ensure that populations with unique
17 needs, such as children, are appropriately addressed.

18 “(D) To the extent specified by the Secretary,
19 the certified EHR technology is compatible with
20 State or Federal administrative management sys-
21 tems.

22 “(6)(A) In no case shall the payments described in
23 paragraph (1), with respect to a hospital, exceed in the
24 aggregate the product of—

1 “(i) the overall hospital EHR amount for the
2 hospital computed under subparagraph (B); and

3 “(ii) the Medicaid share for such hospital com-
4 puted under subparagraph (C).

5 “(B) For purposes of this paragraph, the overall hos-
6 pital EHR amount, with respect to a hospital, is the sum
7 of the applicable amounts specified in section
8 1886(n)(2)(A) for such hospital for the first 4 payment
9 years (as estimated by the Secretary) determined as if the
10 Medicare share specified in clause (ii) of such section were
11 1. The Secretary shall publish in the Federal Register the
12 overall hospital EHR amount for each hospital eligible for
13 payments under this subsection. In computing amounts
14 under clause (ii) for payment years after the first payment
15 year, the Secretary shall assume that in subsequent pay-
16 ment years discharges increase at the average annual rate
17 of growth of the most recent three years for which dis-
18 charge data are available.

19 “(C) The Medicaid share computed under this sub-
20 paragraph, for a hospital for a period specified by the Sec-
21 retary, shall be calculated in the same manner as the
22 Medicare share under section 1886(n)(2)(D) for such a
23 hospital and period, except that there shall be substituted
24 for the numerator under clause (i) of such section the
25 amount that is equal to the number of inpatient-bed-days

1 (as established by the Secretary) which are attributable
2 to individuals who are receiving medical assistance under
3 this title and who are not described in section
4 1886(n)(2)(D)(i). In computing inpatient-bed-days under
5 the previous sentence, the Secretary shall take into ac-
6 count inpatient-bed-days attributable to inpatient-bed-
7 days that are paid for individuals enrolled in a Medicaid
8 managed care plan (under section 1903(m) or section
9 1932).

10 “(7) With respect to health care providers other than
11 hospitals, the Secretary shall establish and implement a
12 detailed process to ensure coordination of the different
13 programs for payment of such health care providers for
14 adoption or use of health information technology (includ-
15 ing certified EHR technology), as well as payments for
16 such health care providers provided under this title or title
17 XVIII, to assure no duplication of funding. The Secretary
18 shall promulgate regulations to carry out the preceding
19 sentence.

20 “(8) In carrying out paragraph (5)(C), the State and
21 Secretary shall seek, to the maximum extent practicable,
22 to avoid duplicative requirements from Federal and State
23 Governments to demonstrate meaningful use of certified
24 EHR technology under this title and title XVIII. In doing
25 so, the Secretary may deem satisfaction of requirements

1 for such meaningful use for a payment year under title
2 XVIII to be sufficient to qualify as meaningful use under
3 this subsection. The Secretary may also specify the report-
4 ing periods under this subsection in order to carry out this
5 paragraph.

6 “(9) In order to be provided Federal financial partici-
7 pation under subsection (a)(3)(F)(ii), a State must dem-
8 onstrate to the satisfaction of the Secretary, that the
9 State—

10 “(A) is using the funds provided for the pur-
11 poses of administering payments under this sub-
12 section, including tracking of meaningful use by
13 Medicaid providers;

14 “(B) is conducting adequate oversight of the
15 program under this subsection, including routine
16 tracking of meaningful use attestations and report-
17 ing mechanisms; and

18 “(C) is pursuing initiatives to encourage the
19 adoption of certified EHR technology to promote
20 health care quality and the exchange of health care
21 information under this title, subject to applicable
22 laws and regulations governing such exchange.

23 “(10) The Secretary shall periodically submit reports
24 to the Committee on Energy and Commerce of the House
25 of Representatives and the Committee on Finance of the

1 Senate on status, progress, and oversight of payments
2 under paragraph (1).”.

3 (b) IMPLEMENTATION FUNDING.—In addition to
4 funds otherwise available, out of any funds in the Treas-
5 ury not otherwise appropriated, there are appropriated to
6 the Secretary of Health and Human Services for the Cen-
7 ter for Medicare & Medicaid Services Program Manage-
8 ment Account, \$40,000,000 for each of fiscal years 2009
9 through 2015 and \$20,000,000 for each succeeding fiscal
10 year through fiscal year 2018, which shall be available for
11 purposes of carrying out the provisions of (and the amend-
12 ments made by) this part. Amounts appropriated under
13 this subsection for a fiscal year shall be available until ex-
14 pended.

15 (c) HHS REPORT ON IMPLEMENTATION OF DE-
16 TAILED PROCESS TO ASSURE NO DUPLICATION OF
17 FUNDING.—Not later than July 1, 2012, the Secretary
18 of Health and Human Services shall submit to Congress
19 a report on the establishment and implementation of the
20 detailed process under section 1903(t)(7) of the Social Se-
21 curity Act, as added by subsection (a), together with rec-
22 ommendations for such legislation and administrative ac-
23 tion as the Secretary determines appropriate.

1 **TITLE V—STATE FISCAL RELIEF**

2 **SEC. 5000. PURPOSES; TABLE OF CONTENTS.**

3 (a) PURPOSES.—The purposes of this title are as fol-
4 lows:

5 (1) To provide fiscal relief to States in a period
6 of economic downturn.

7 (2) To protect and maintain State Medicaid
8 programs during a period of economic downturn, in-
9 cluding by helping to avert cuts to provider payment
10 rates and benefits or services, and to prevent con-
11 strictions of income eligibility requirements for such
12 programs, but not to promote increases in such re-
13 quirements.

14 (b) TABLE OF CONTENTS.—The table of contents for
15 this title is as follows:

TITLE V—STATE FISCAL RELIEF

Sec. 5000. Purposes; table of contents.

Sec. 5001. Temporary increase of Medicaid FMAP.

Sec. 5002. Extension and update of special rule for increase of Medicaid DSH
allotments for low DSH States.

Sec. 5003. Payment of Medicare liability to States as a result of the Special
Disability Workload Project.

Sec. 5004. Funding for the Department of Health and Human Services Office
of the Inspector General.

Sec. 5005. GAO study and report regarding State needs during periods of na-
tional economic downturn.

16 **SEC. 5001. TEMPORARY INCREASE OF MEDICAID FMAP.**

17 (a) PERMITTING MAINTENANCE OF FMAP.—Subject
18 to subsections (e), (f), and (g), if the FMAP determined
19 without regard to this section for a State for—

1 (1) fiscal year 2009 is less than the FMAP as
2 so determined for fiscal year 2008, the FMAP for
3 the State for fiscal year 2008 shall be substituted
4 for the State's FMAP for fiscal year 2009, before
5 the application of this section;

6 (2) fiscal year 2010 is less than the FMAP as
7 so determined for fiscal year 2008 or fiscal year
8 2009 (after the application of paragraph (1)), the
9 greater of such FMAP for the State for fiscal year
10 2008 or fiscal year 2009 shall be substituted for the
11 State's FMAP for fiscal year 2010, before the appli-
12 cation of this section; and

13 (3) fiscal year 2011 is less than the FMAP as
14 so determined for fiscal year 2008, fiscal year 2009
15 (after the application of paragraph (1)), or fiscal
16 year 2010 (after the application of paragraph (2)),
17 the greatest of such FMAP for the State for fiscal
18 year 2008, fiscal year 2009, or fiscal year 2010 shall
19 be substituted for the State's FMAP for fiscal year
20 2011, before the application of this section, but only
21 for the first calendar quarter in fiscal year 2011.

22 (b) GENERAL 7.6 PERCENTAGE POINT INCREASE.—
23 Subject to subsections (e), (f), and (g), for each State for
24 calendar quarters during the recession adjustment period
25 (as defined in subsection (h)(2)), the FMAP (after the ap-

1 plication of subsection (a)) shall be increased (without re-
2 gard to any limitation otherwise specified in section
3 1905(b) of the Social Security Act) by 7.6 percentage
4 points.

5 (c) ADDITIONAL RELIEF BASED ON INCREASE IN
6 UNEMPLOYMENT.—

7 (1) IN GENERAL.—Subject to subsections (e),
8 (f), and (g), if a State is a qualifying State under
9 paragraph (2) for a calendar quarter occurring dur-
10 ing the recession adjustment period, the FMAP for
11 the State shall be further increased by the number
12 of percentage points equal to the product of the
13 State percentage applicable for the State under sec-
14 tion 1905(b) of the Social Security Act (42 U.S.C.
15 1396d(b)) after the application of subsections (a)
16 and (b) and the applicable percent determined in
17 paragraph (3) for the calendar quarter (or, if great-
18 er, for a previous such calendar quarter, subject to
19 paragraph (4)) .

20 (2) QUALIFYING CRITERIA.—

21 (A) IN GENERAL.—For purposes of para-
22 graph (1), a State qualifies for additional relief
23 under this subsection for a calendar quarter oc-
24 ccurring during the recession adjustment period
25 if the State is 1 of the 50 States or the District

1 of Columbia and the State satisfies any of the
2 following criteria for the quarter:

3 (i) An increase of at least 1.5 percent-
4 age points, but less than 2.5 percentage
5 points, in the average monthly unemploy-
6 ment rate, seasonally adjusted, for the
7 State or District, as determined by com-
8 paring months in the most recent previous
9 3-consecutive-month period for which data
10 are available for the State or District to
11 the lowest average monthly unemployment
12 rate, seasonally adjusted, for the State or
13 District for any 3-consecutive-month pe-
14 riod preceding that period and beginning
15 on or after January 1, 2006 (based on the
16 most recently available monthly publica-
17 tions of the Bureau of Labor Statistics of
18 the Department of Labor).

19 (ii) An increase of at least 2.5 per-
20 centage points, but less than 3.5 percent-
21 age points, in the average monthly unem-
22 ployment rate, seasonally adjusted, for the
23 State or District (as so determined).

24 (iii) An increase of at least 3.5 per-
25 centage points for the State or District, in

1 the average monthly unemployment rate,
2 seasonally adjusted, for the State or Dis-
3 trict (as so determined).

4 (B) MAINTENANCE OF STATUS.—If a
5 State qualifies for additional relief under this
6 subsection for a calendar quarter, it shall be
7 deemed to have qualified for such relief for each
8 subsequent calendar quarter ending before July
9 1, 2010.

10 (3) APPLICABLE PERCENT.—For purposes of
11 paragraph (1), the applicable percent is—

12 (A) 2.5 percent, if the State satisfies the
13 criteria described in paragraph (2)(A)(i) for the
14 calendar quarter;

15 (B) 4.5 percent if the State satisfies the
16 criteria described in paragraph (2)(A)(ii) for
17 the calendar quarter; and

18 (C) 6.5 percent if the State satisfies the
19 criteria described in paragraph (2)(A)(iii) for
20 the calendar quarter.

21 (4) MAINTENANCE OF HIGHER PERCENTAGE
22 REDUCTION FOR PERIOD AFTER LOWER PERCENT-
23 AGE DEDUCTION WOULD OTHERWISE TAKE EF-
24 FECT.—

1 (A) HOLD HARMLESS PERIOD.—If the per-
2 centage reduction applied to a State under
3 paragraph (3) for any calendar quarter in the
4 recession adjustment period beginning on or
5 after January 1, 2009, and ending before July
6 1, 2010, (determined without regard to this
7 paragraph) is less than the percentage reduc-
8 tion applied for the preceding quarter (as so de-
9 termined), the higher percentage reduction shall
10 continue in effect for each subsequent calendar
11 quarter ending before July 1, 2010.

12 (B) NOTICE OF DECREASE IN PERCENT-
13 AGE REDUCTION.—The Secretary shall notify a
14 State at least 3 months prior to applying any
15 lower percentage reduction to the State under
16 paragraph (3).

17 (d) INCREASE IN CAP ON MEDICAID PAYMENTS TO
18 TERRITORIES.—Subject to subsections (f) and (g), with
19 respect to entire fiscal years occurring during the reces-
20 sion adjustment period and with respect to fiscal years
21 only a portion of which occurs during such period (and
22 in proportion to the portion of the fiscal year that occurs
23 during such period), the amounts otherwise determined for
24 Puerto Rico, the Virgin Islands, Guam, the Northern Mar-
25 iana Islands, and American Samoa under subsections (f)

1 and (g) of section 1108 of the Social Security Act (42
2 6 U.S.C. 1308) shall each be increased by 15.2 percent.

3 (e) SCOPE OF APPLICATION.—The increases in the
4 FMAP for a State under this section shall apply for pur-
5 poses of title XIX of the Social Security Act and shall
6 not apply with respect to—

7 (1) disproportionate share hospital payments
8 described in section 1923 of such Act (42 U.S.C.
9 1396r-4);

10 (2) payments under title IV of such Act (42
11 U.S.C. 601 et seq.) (except that the increases under
12 subsections (a) and (b) shall apply to payments
13 under part E of title IV of such Act (42 U.S.C. 670
14 et seq.));

15 (3) payments under title XXI of such Act (42
16 U.S.C. 1397aa et seq.);

17 (4) any payments under title XIX of such Act
18 that are based on the enhanced FMAP described in
19 section 2105(b) of such Act (42 U.S.C. 1397ee(b));
20 or

21 (5) any payments under title XIX of such Act
22 that are attributable to expenditures for medical as-
23 sistance provided to individuals made eligible under
24 a State plan under title XIX of the Social Security
25 Act (including under any waiver under such title or

1 under section 1115 of such Act (42 U.S.C. 1315))
2 because of income standards (expressed as a per-
3 centage of the poverty line) for eligibility for medical
4 assistance that are higher than the income stand-
5 ards (as so expressed) for such eligibility as in effect
6 on July 1, 2008.

7 (f) STATE INELIGIBILITY.—

8 (1) MAINTENANCE OF ELIGIBILITY REQUIRE-
9 MENTS.—

10 (A) IN GENERAL.—Subject to subpara-
11 graphs (B) and (C), a State is not eligible for
12 an increase in its FMAP under subsection (a),
13 (b), or (c), or an increase in a cap amount
14 under subsection (d), if eligibility standards,
15 methodologies, or procedures under its State
16 plan under title XIX of the Social Security Act
17 (including any waiver under such title or under
18 section 1115 of such Act (42 U.S.C. 1315)) are
19 more restrictive than the eligibility standards,
20 methodologies, or procedures, respectively,
21 under such plan (or waiver) as in effect on July
22 1, 2008.

23 (B) STATE REINSTATEMENT OF ELIGI-
24 BILITY PERMITTED.—Subject to subparagraph
25 (C), a State that has restricted eligibility stand-

1 ards, methodologies, or procedures under its
2 State plan under title XIX of the Social Secu-
3 rity Act (including any waiver under such title
4 or under section 1115 of such Act (42 U.S.C.
5 1315)) after July 1, 2008, is no longer ineli-
6 gible under subparagraph (A) beginning with
7 the first calendar quarter in which the State
8 has reinstated eligibility standards, methodolo-
9 gies, or procedures that are no more restrictive
10 than the eligibility standards, methodologies, or
11 procedures, respectively, under such plan (or
12 waiver) as in effect on July 1, 2008.

13 (C) SPECIAL RULES.—A State shall not be
14 ineligible under subparagraph (A)—

15 (i) for the calendar quarters before
16 July 1, 2009, on the basis of a restriction
17 that was applied after July 1, 2008, and
18 before the date of the enactment of this
19 Act, if the State prior to July 1, 2009, has
20 reinstated eligibility standards, methodolo-
21 gies, or procedures that are no more re-
22 strictive than the eligibility standards,
23 methodologies, or procedures, respectively,
24 under such plan (or waiver) as in effect on
25 July 1, 2008; or

1 (ii) on the basis of a restriction that
2 was directed to be made under State law
3 as of July 1, 2008, and would have been
4 in effect as of such date, but for a delay
5 in the request for, and approval of, a waiv-
6 er under section 1115 of such Act with re-
7 spect to such restriction.

8 (2) COMPLIANCE WITH PROMPT PAY REQUIRE-
9 MENTS.—No State shall be eligible for an increased
10 FMAP rate as provided under this section for any
11 claim submitted by a provider subject to the terms
12 of section 1902(a)(37)(A) of the Social Security Act
13 (42 U.S.C. 1396a(a)(37)(A)) during any period in
14 which that State has failed to pay claims in accord-
15 ance with section 1902(a)(37)(A) of such Act. Each
16 State shall report to the Secretary, no later than 30
17 days following the 1st day of the month, its compli-
18 ance with the requirements of section
19 1902(a)(37)(A) of the Social Security Act as they
20 pertain to claims made for covered services during
21 the preceding month.

22 (3) NO WAIVER AUTHORITY.—The Secretary
23 may not waive the application of this subsection or
24 subsection (g) under section 1115 of the Social Se-
25 curity Act or otherwise.

1 (g) REQUIREMENTS.—

2 (1) IN GENERAL.—A State may not deposit or
3 credit the additional Federal funds paid to the State
4 as a result of this section to any reserve or rainy day
5 fund maintained by the State.

6 (2) STATE REPORTS.—Each State that is paid
7 additional Federal funds as a result of this section
8 shall, not later than September 30, 2011, submit a
9 report to the Secretary, in such form and such man-
10 ner as the Secretary shall determine, regarding how
11 the additional Federal funds were expended.

12 (3) ADDITIONAL REQUIREMENT FOR CERTAIN
13 STATES.—In the case of a State that requires polit-
14 ical subdivisions within the State to contribute to-
15 ward the non-Federal share of expenditures under
16 the State Medicaid plan required under section
17 1902(a)(2) of the Social Security Act (42 U.S.C.
18 1396a(a)(2)), the State is not eligible for an in-
19 crease in its FMAP under subsection (b) or (c), or
20 an increase in a cap amount under subsection (d),
21 if it requires that such political subdivisions pay for
22 quarters during the recession adjustment period a
23 greater percentage of the non-Federal share of such
24 expenditures, or a greater percentage of the non-
25 Federal share of payments under section 1923, than

1 the respective percentage that would have been re-
2 quired by the State under such plan on September
3 30, 2008, prior to application of this section.

4 (h) DEFINITIONS.—In this section, except as other-
5 wise provided:

6 (1) FMAP.—The term “FMAP” means the
7 Federal medical assistance percentage, as defined in
8 section 1905(b) of the Social Security Act (42
9 U.S.C. 1396d(b)), as determined without regard to
10 this section except as otherwise specified.

11 (2) POVERTY LINE.—The term “poverty line”
12 has the meaning given such term in section 673(2)
13 of the Community Services Block Grant Act (42
14 U.S.C. 9902(2)), including any revision required by
15 such section.

16 (3) RECESSION ADJUSTMENT PERIOD.—The
17 term “recession adjustment period” means the pe-
18 riod beginning on October 1, 2008, and ending on
19 December 31, 2010.

20 (4) SECRETARY.—The term “Secretary” means
21 the Secretary of Health and Human Services.

22 (5) STATE.—The term “State” has the mean-
23 ing given such term for purposes of title XIX of the
24 Social Security Act (42 U.S.C. 1396 et seq.).

1 (i) SUNSET.—This section shall not apply to items
 2 and services furnished after the end of the recession ad-
 3 justment period.

4 **SEC. 5002. EXTENSION AND UPDATE OF SPECIAL RULE FOR**
 5 **INCREASE OF MEDICAID DSH ALLOTMENTS**
 6 **FOR LOW DSH STATES.**

7 Section 1923(f)(5) of the Social Security Act (42
 8 U.S.C. 1396r-4(f)(5)) is amended—

9 (1) in subparagraph (B)—

10 (A) in the subparagraph heading, by strik-
 11 ing “YEAR 2004 AND SUBSEQUENT FISCAL
 12 YEARS” and inserting “YEARS 2004 THROUGH
 13 2008”;

14 (B) in clause (i), by inserting “and” after
 15 the semicolon;

16 (C) in clause (ii), by striking “; and” and
 17 inserting a period; and

18 (D) by striking clause (iii); and

19 (2) by adding at the end the following subpara-
 20 graph:

21 “(C) FOR FISCAL YEAR 2009 AND SUBSE-
 22 QUENT FISCAL YEARS.—In the case of a State
 23 in which the total expenditures under the State
 24 plan (including Federal and State shares) for
 25 disproportionate share hospital adjustments

1 under this section for fiscal year 2006, as re-
2 ported to the Administrator of the Centers for
3 Medicare & Medicaid Services as of August 31,
4 2009, is greater than 0 but less than 3 percent
5 of the State's total amount of expenditures
6 under the State plan for medical assistance
7 during the fiscal year, the DSH allotment for
8 the State with respect to—

9 “(i) fiscal year 2009, shall be the
10 DSH allotment for the State for fiscal year
11 2008 increased by 16 percent;

12 “(ii) fiscal year 2010, shall be the
13 DSH allotment for the State for fiscal year
14 2009 increased by 16 percent;

15 “(iii) fiscal year 2011 for the period
16 ending on December 31, 2010, shall be $\frac{1}{4}$
17 of the DSH allotment for the State for fis-
18 cal year 2010 increased by 16 percent;

19 “(iv) fiscal year 2011 for the period
20 beginning on January 1, 2011, and ending
21 on September 30, 2011, shall be $\frac{3}{4}$ of the
22 DSH allotment that would have been de-
23 termined under this subsection for the
24 State for fiscal year 2010 if this subpara-
25 graph had not been enacted;

1 “(v) fiscal year 2012, shall be the
2 DSH allotment that would have been de-
3 termined under this subsection for the
4 State for fiscal year 2010 if this subpara-
5 graph had not been enacted; and

6 “(vi) fiscal year 2013 and any subse-
7 quent fiscal year, shall be the DSH allot-
8 ment for the State for the previous fiscal
9 year subject to an increase for inflation as
10 provided in paragraph (3)(A).”.

11 **SEC. 5003. PAYMENT OF MEDICARE LIABILITY TO STATES**
12 **AS A RESULT OF THE SPECIAL DISABILITY**
13 **WORKLOAD PROJECT.**

14 (a) **IN GENERAL.**—The Secretary, in consultation
15 with the Commissioner, shall work with each State to
16 reach an agreement, not later than 3 months after the
17 date of enactment of this Act, on the amount of a payment
18 for the State related to the Medicare program liability as
19 a result of the Special Disability Workload project, subject
20 to the requirements of subsection (c).

21 (b) **PAYMENTS.**—

22 (1) **DEADLINE FOR MAKING PAYMENTS.**—Not
23 later than 30 days after reaching an agreement with
24 a State under subsection (a), the Secretary shall pay

1 the State, from the amounts appropriated under
2 paragraph (2), the payment agreed to for the State.

3 (2) APPROPRIATION.—Out of any money in the
4 Treasury not otherwise appropriated, there is appro-
5 priated \$3,000,000,000 for fiscal year 2009 for
6 making payments to States under paragraph (1).

7 (3) LIMITATIONS.—In no case may—

8 (A) the aggregate amount of payments
9 made by the Secretary to States under para-
10 graph (1) exceed \$3,000,000,000; or

11 (B) any payments be provided by the Sec-
12 retary under this section after the first day of
13 the first month that begins 4 months after the
14 date of enactment of this Act.

15 (c) REQUIREMENTS.—The requirements of this sub-
16 section are the following:

17 (1) FEDERAL DATA USED TO DETERMINE
18 AMOUNT OF PAYMENTS.—The amount of the pay-
19 ment under subsection (a) for each State is deter-
20 mined on the basis of the most recent Federal data
21 available, including the use of proxies and reasonable
22 estimates as necessary, for determining expeditiously
23 the amount of the payment that shall be made to
24 each State that enters into an agreement under this

1 section. The payment methodology shall consider the
2 following factors:

3 (A) The number of SDW cases found to
4 have been eligible for benefits under the Medi-
5 care program and the month of the initial
6 Medicare program eligibility for such cases.

7 (B) The applicable non-Federal share of
8 expenditures made by a State under the Med-
9 icaid program during the time period for SDW
10 cases.

11 (C) Such other factors as the Secretary
12 and the Commissioner, in consultation with the
13 States, determine appropriate.

14 (2) CONDITIONS FOR PAYMENTS.—A State
15 shall not receive a payment under this section unless
16 the State—

17 (A) waives the right to file a civil action
18 (or to be a party to any action) in any Federal
19 or State court in which the relief sought in-
20 cludes a payment from the United States to the
21 State related to the Medicare liability under
22 title XVIII of the Social Security Act (42
23 U.S.C. 1395 et seq.) as a result of the Special
24 Disability Workload project; and

1 (B) releases the United States from any
2 further claims for reimbursement of State ex-
3 penditures as a result of the Special Disability
4 Workload project.

5 (3) NO INDIVIDUAL STATE CLAIMS DATA RE-
6 QUIRED.—No State shall be required to submit indi-
7 vidual claims evidencing payment under the Medi-
8 caid program as a condition for receiving a payment
9 under this section.

10 (4) INELIGIBLE STATES.—No State that is a
11 party to a civil action in any Federal or State court
12 in which the relief sought includes a payment from
13 the United States to the State related to the Medi-
14 care liability under title XVIII of the Social Security
15 Act (42 U.S.C. 1395 et seq.) as a result of the Spe-
16 cial Disability Workload project shall be eligible to
17 receive a payment under this section while such an
18 action is pending or if such an action is resolved in
19 favor of the State.

20 (d) DEFINITIONS.—In this section:

21 (1) COMMISSIONER.—The term “Commis-
22 sioner” means the Commissioner of Social Security.

23 (2) MEDICAID PROGRAM.—The term “Medicaid
24 program” means the program of medical assistance
25 established under title XIX of the Social Security

1 Act (42 U.S.C. 1396a et seq.) and includes medical
2 assistance provided under any waiver of that pro-
3 gram approved under section 1115 or 1915 of such
4 Act (42 U.S.C. 1315, 1396n) or otherwise.

5 (3) MEDICARE PROGRAM.—The term “Medicare
6 program” means the program established under title
7 XVIII of the Social Security Act (42 U.S.C. 1395 et
8 seq.).

9 (4) SECRETARY.—The term “Secretary” means
10 the Secretary of Health and Human Services.

11 (5) SDW CASE.—The term “SDW case” means
12 a case in the Special Disability Workload project in-
13 volving an individual determined by the Commis-
14 sioner to have been eligible for benefits under title
15 II of the Social Security Act (42 U.S.C. 401 et seq.)
16 for a period during which such benefits were not
17 provided to the individual and who was, during all
18 or part of such period, enrolled in a State Medicaid
19 program.

20 (6) SPECIAL DISABILITY WORKLOAD
21 PROJECT.—The term “Special Disability Workload
22 project” means the project described in the 2008
23 Annual Report of the Board of Trustees of the Fed-
24 eral Old-Age and Survivors Insurance and Federal

1 Disability Insurance Trust Funds, H.R. Doc. No.
2 110–104, 110th Cong. (2008).

3 (7) STATE.—The term “State” means each of
4 the 50 States and the District of Columbia.

5 **SEC. 5004. FUNDING FOR THE DEPARTMENT OF HEALTH**
6 **AND HUMAN SERVICES OFFICE OF THE IN-**
7 **SPECTOR GENERAL.**

8 For purposes of ensuring the proper expenditure of
9 Federal funds under title XIX of the Social Security Act
10 (42 U.S.C. 1396 et seq.), there is appropriated to the Of-
11 fice of the Inspector General of the Department of Health
12 and Human Services, out of any money in the Treasury
13 not otherwise appropriated and without further appropria-
14 tion, \$31,250,000 for the recession adjustment period (as
15 defined in section 5001(h)(3)). Amounts appropriated
16 under this section shall remain available for expenditure
17 until expended and shall be in addition to any other
18 amounts appropriated or made available to such Office for
19 such purposes.

20 **SEC. 5005. GAO STUDY AND REPORT REGARDING STATE**
21 **NEEDS DURING PERIODS OF NATIONAL ECO-**
22 **NOMIC DOWNTURN.**

23 (a) IN GENERAL.—The Comptroller General of the
24 United States shall study the period of national economic
25 downturn in effect on the date of enactment of this Act,

1 as well as previous periods of national economic downturn
2 since 1974, for the purpose of developing recommenda-
3 tions for addressing the needs of States during such peri-
4 ods. As part of such analysis, the Comptroller General
5 shall study the past and projected effects of temporary in-
6 creases in the Federal medical assistance percentage
7 under the Medicaid program with respect to such periods.

8 (b) REPORT.—Not later than April 1, 2011, the
9 Comptroller General of the United States shall submit a
10 report to the appropriate committees of Congress on the
11 results of the study conducted under paragraph (1). Such
12 report shall include the following:

13 (1) Such recommendations as the Comptroller
14 General determines appropriate for modifying the
15 national economic downturn assistance formula for
16 temporary adjustment of the Federal medical assist-
17 ance percentage under Medicaid (also referred to as
18 a “countercyclical FMAP”) described in GAO report
19 number GAO–07–97 to improve the effectiveness of
20 the application of such percentage in addressing the
21 needs of States during periods of national economic
22 downturn, including recommendations for—

23 (A) improvements to the factors that would
24 begin and end the application of such percent-
25 age;

1 (B) how the determination of the amount
2 of such percentage could be adjusted to address
3 State and regional economic variations during
4 such periods; and

5 (C) how the determination of the amount
6 of such percentage could be adjusted to be more
7 responsive to actual Medicaid costs incurred by
8 States during such periods.

9 (2) An analysis of the impact on States during
10 such periods of—

11 (A) declines in private health benefits cov-
12 erage;

13 (B) declines in State revenues; and

14 (C) caseload maintenance and growth
15 under Medicaid, the State Children's Health In-
16 surance Program, or any other publicly funded
17 programs to provide health benefits coverage
18 for State residents.

19 (3) Identification of, and recommendations for
20 addressing, the effects on States of any other spe-
21 cific economic indicators that the Comptroller Gen-
22 eral determines appropriate.

Calendar No. 20

111TH CONGRESS
1ST Session

S. 350

A BILL

To provide for a portion of the economic recovery package relating to revenue measures, unemployment, and health.

JANUARY 29, 2009

Read twice and placed on the calendar