

112TH CONGRESS
1ST SESSION

H. R. 3638

To create American jobs and reduce the deficit, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 13, 2011

Mr. GRIJALVA (for himself and Mr. ELLISON) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Education and the Workforce, Natural Resources, Agriculture, the Judiciary, Science, Space, and Technology, Energy and Commerce, Oversight and Government Reform, Small Business, Transportation and Infrastructure, Financial Services, Veterans' Affairs, the Budget, Armed Services, and Foreign Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To create American jobs and reduce the deficit, and for other purposes.

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

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Restore the American Dream for the 99% Act” or the
6 “Act for the 99%”.

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

Sec. 1. Short title; Table of contents.

TITLE I—EMERGENCY JOB CREATION TO REBUILD AMERICA

Subtitle A—Emergency Jobs to Restore the American Dream Act

Sec. 1001. Short title.

PART 1—SCHOOL IMPROVEMENT CORPS

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Sec. 1012. Definitions.

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PUBLIC SCHOOL FACILITIES

Sec. 1021. Purpose.

Sec. 1022. Allocation of funds.

Sec. 1023. Allowable uses of funds.

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Sec. 1044. Special rules on contracting.

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Sec. 1046. Labor standards; compliance with existing statutes.

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Sec. 1048. Green schools.

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Sec. 1050. Special rules.

Sec. 1051. Promotion of employment experiences.

Sec. 1052. Availability of funds.

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PART 2—STUDENT JOBS CORPS

Sec. 1061. Student Jobs Corps.

PART 3—PUBLIC LANDS CORPS AND CIVILIAN CONSERVATION CORPS

Sec. 1071. Appropriation of additional funds for existing Public Lands Corps.

Sec. 1072. Establishment and operation of new Civilian Conservation Corps.

PART 4—NEIGHBORHOOD HEROES CORPS

Sec. 1081. Teacher Corps.

- Sec. 1082. Appropriation of additional funds for Community Oriented Policing Services.
- Sec. 1083. Firefighters Corps.

PART 5—HEALTH CARE CORPS

- Sec. 1091. Purpose.
- Sec. 1092. Health care and long-term care providers.
- Sec. 1093. Supplement, not supplant.

PART 6—COMMUNITY CORPS

- Sec. 1101. Purpose.
- Sec. 1102. Community Corps.
- Sec. 1103. Application.
- Sec. 1104. Activities of the Community Corps.
- Sec. 1105. Hiring and preferences.
- Sec. 1106. Additional requirements for States and units of general local government.
- Sec. 1107. Employment status and compensation.
- Sec. 1108. Nondisplacement of existing employees.
- Sec. 1109. Dispute resolutions, whistleblower hotline, and enforcement by the Secretary.
- Sec. 1110. Definitions.

PART 7—CHILD DEVELOPMENT CORPS

- Sec. 1121. Purpose.
- Sec. 1122. Child Development Corps.

PART 8—ON-THE-JOB TRAINING

- Sec. 1131. Appropriation.

PART 9—GENERAL PROVISIONS

- Sec. 1141. General requirements for entities receiving funding under this subtitle.
- Sec. 1142. Reporting.
- Sec. 1143. Hiring and preferences.
- Sec. 1144. Flexibility on hiring.
- Sec. 1145. Nondisplacement.
- Sec. 1146. Employment status and compensation in new programs.
- Sec. 1147. Dispute resolutions, whistleblower hotline, and enforcement by the Secretary.
- Sec. 1148. Termination.

Subtitle B—Buy American Enhancement Act of 2011

- Sec. 1201. Short title.
- Sec. 1202. Domestic content requirement for the Buy American Act.
- Sec. 1203. Requirement for indirect contracts to comply with the Buy American Act.
- Sec. 1204. Buy American waiver reporting requirement.
- Sec. 1205. Implementation through the Federal Acquisition Regulation.
- Sec. 1206. Definitions.

Subtitle C—Fairness and Transparency in Contracting Act of 2011

- Sec. 1301. Short title.
- Sec. 1302. Definitions.
- Sec. 1303. Purpose.
- Sec. 1304. Definition of small business concern and status review.
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Subtitle D—National Infrastructure Development Bank Act of 2011

- Sec. 1401. Short title.
- Sec. 1402. Findings.
- Sec. 1403. Definitions.
- Sec. 1404. Establishment of national infrastructure development bank.
- Sec. 1405. Board of directors.
- Sec. 1406. Executive committee.
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- Sec. 1411. Exemption from local taxation.
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- Sec. 1413. Compliance with Davis-Bacon Act.
- Sec. 1414. Applicability of certain State laws.
- Sec. 1415. Audits; Reports to President and Congress.
- Sec. 1416. Capitalization of bank.
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Subtitle E—Wounded Veteran Job Security Act

- Sec. 1501. Short title.
- Sec. 1502. Expansion of definition of service in uniformed services for purposes of USERRA.
- Sec. 1503. Documentation of treatment for purposes of reemployment under USERRA.
- Sec. 1504. Notification of employer of intent to return to a position of employment.
- Sec. 1505. Effective date.

Subtitle F—Emergency Unemployment Compensation Extension Act of 2011

- Sec. 1601. Short title.
- Sec. 1602. Extension of emergency unemployment compensation program.
- Sec. 1603. Temporary extension of extended benefit provisions.

Subtitle G—Emergency Unemployment Compensation Expansion Act of 2011

- Sec. 1701. Short title.
- Sec. 1702. Additional first-tier emergency unemployment compensation.
- Sec. 1703. Regulations.
- Sec. 1704. Effective date.

Subtitle H—Currency Reform for Fair Trade Act

- Sec. 1801. Short title.
- Sec. 1802. Clarification regarding definition of countervailable subsidy.
- Sec. 1803. Report on implementation of subtitle.
- Sec. 1804. Application to goods from Canada and Mexico.

Subtitle I—Prioritize Emergency Job Creation Act

- Sec. 1851. Short title.
- Sec. 1852. Emergency job creation.

Subtitle J—Fair Employment Opportunity Act of 2011

- Sec. 1901. Short title.
- Sec. 1902. Findings and purpose.
- Sec. 1903. Definitions.
- Sec. 1904. Prohibited acts.
- Sec. 1905. Enforcement.

Subtitle K—New Jobs for America Act of 2011

- Sec. 1951. Short title.
- Sec. 1952. Compensated employment training grants.

Subtitle L—Transportation Infrastructure Investment

- Sec. 1961. Transportation infrastructure investment.

Subtitle M—Jobs NOW Act

- Sec. 1971. Short title.
- Sec. 1972. Restoration of TANF Emergency Contingency Fund.

Subtitle N—Discretionary Spending Limits

- Sec. 1981. Repeal of new discretionary spending limits.

Subtitle O—Emergency Job Creation Designation

- Sec. 1991. Congressional Designation.

TITLE II—RESPONSIBLE SAVINGS AND FAIR TAXATION

Subtitle A—Responsible End to the War in Afghanistan Act

- Sec. 2001. Short title.
- Sec. 2002. Statement of policy.
- Sec. 2003. Limitation on use of funds for operations of the Armed Forces in Afghanistan.

Subtitle B—Defense and Deficit Reduction Act

- Sec. 2101. Short title.
- Sec. 2102. Findings.
- Sec. 2103. Reduction and freeze in budget of Department of Defense.

Subtitle C—Reduction in Military End Strength Level in Europe

- Sec. 2201. Reduction in end strength level of members of the United States Armed Forces assigned to permanent duty in Europe and corresponding general end strength reductions.

Sec. 2202. Conforming changes to Armed Forces end strength levels.

Subtitle D—V-22 Osprey Aircraft Program

Sec. 2401. Termination of V-22 Osprey aircraft program.

Subtitle E—Fairness in Taxation

Sec. 2501. Increased tax rates for taxpayers with more than \$1,000,000 taxable income.

Sec. 2502. Recapture of lower capital gains rates for individuals subject to added rate brackets.

Subtitle F—End Big Oil Tax Subsidies Act of 2011

Sec. 2601. Short title.

Sec. 2602. Amortization of geological and geophysical expenditures.

Sec. 2603. Producing oil and gas from marginal wells.

Sec. 2604. Enhanced oil recovery credit.

Sec. 2605. Intangible drilling and development costs in the case of oil and gas wells.

Sec. 2606. Percentage depletion.

Sec. 2607. Tertiary injectants.

Sec. 2608. Passive activity losses and credits limited.

Sec. 2609. Income attributable to domestic production activities.

Sec. 2610. Prohibition on using last-in, first-out accounting for major integrated oil companies.

Sec. 2611. Modifications of foreign tax credit rules applicable to dual capacity taxpayers.

Subtitle G—Superfund Reinvestment Act

Sec. 2701. Short title.

Sec. 2702. Use of Hazardous Substance Superfund for cleanup.

Sec. 2703. Budgetary treatment of Hazardous Substance Superfund.

Sec. 2704. Extension of Superfund taxes.

Sec. 2705. Applicability.

Subtitle H—Wall Street Trading and Speculators Tax Act

Sec. 2801. Short title.

Sec. 2802. Transaction tax.

Subtitle I—Making Work Pay Tax Credit

Sec. 2901. Two-year extension of making work pay credit.

Subtitle J—Employee Misclassification Prevention Act

Sec. 2951. Short title.

Sec. 2952. Classification of employees and non-employees.

Sec. 2953. Misclassification of employees for unemployment compensation purposes.

Sec. 2954. Department of Labor coordination, referral, and regulations.

Sec. 2955. Targeted audits.

Subtitle K—Corporate Assets Should Be Used to Hire Act

Sec. 2961. Short title.

Sec. 2962. Temporary surtax on increases in retained earnings of domestic corporations.

**TITLE III—PROTECT AND STRENGTHEN SOCIAL SECURITY,
MEDICARE, AND MEDICAID**

Subtitle A—Public Option Deficit Reduction Act

Sec. 3001. Short title.

Sec. 3002. Public health insurance option.

Subtitle B—Medicare Prescription Drug Price Negotiation Act of 2011

Sec. 3101. Short title.

Sec. 3102. Negotiation of lower covered part d drug prices on behalf of medicare beneficiaries.

Subtitle C—Medicaid Enhancement and Emergency Job Creation Act of 2011

Sec. 3201. Short title.

Sec. 3202. Extension of ARRA increase in FMAP through fiscal year 2012.

Subtitle D—Keeping Our Social Security Promises Act

Sec. 3301. Short title.

Sec. 3302. Payroll tax on remuneration up to contribution and benefit base and more than \$250,000.

Sec. 3303. Tax on net earnings from self-employment up to contribution and benefit base and more than \$250,000.

1 TITLE I—EMERGENCY JOB CRE-
2 ATION TO REBUILD AMERICA

3 Subtitle A—Emergency Jobs to
4 Restore the American Dream Act

5 SEC. 1001. SHORT TITLE.

6 This subtitle may be cited as the “Emergency Jobs
7 to Restore the American Dream Act”.

8 PART 1—SCHOOL IMPROVEMENT CORPS

9 SEC. 1011. PURPOSE.

10 It is the purpose of this part to provide for the cre-
11 ation of 400,000 construction jobs for the purpose of mod-
12 ernizing, renovating, or repairing public school facilities;

1 and 250,000 maintenance jobs for the purpose of main-
2 taining and improving public school facilities.

3 **SEC. 1012. DEFINITIONS.**

4 In this part:

5 (1) The term “Bureau-funded school” has the
6 meaning given such term in section 1141 of the
7 Education Amendments of 1978 (25 U.S.C. 2021).

8 (2) The term “charter school” has the meaning
9 given such term in section 5210 of the Elementary
10 and Secondary Education Act of 1965 (20 U.S.C.
11 7221i).

12 (3) The term “CHPS Criteria” means the
13 green building rating program developed by the Col-
14 laborative for High Performance Schools.

15 (4) The term “Energy Star” means the Energy
16 Star program of the United States Department of
17 Energy and the United States Environmental Pro-
18 tection Agency.

19 (5) The term “Green Globes” means the Green
20 Building Initiative environmental design and rating
21 system referred to as Green Globes.

22 (6) The term “LEED Green Building Rating
23 System” means the United States Green Building
24 Council Leadership in Energy and Environmental

1 Design green building rating standard referred to as
2 LEED Green Building Rating System.

3 (7) The term “local educational agency”—

4 (A) has the meaning given such term in
5 section 9101 of the Elementary and Secondary
6 Education Act of 1965 (20 U.S.C. 7801);

7 (B) includes any public charter school that
8 constitutes a local educational agency under
9 State law; and

10 (C) includes the Recovery School District
11 of Louisiana.

12 (8) The term “outlying area”—

13 (A) means the United States Virgin Is-
14 lands, Guam, American Samoa, and the Com-
15 monwealth of the Northern Mariana Islands;
16 and

17 (B) includes the Republic of Palau.

18 (9) The term “public school facilities” means
19 existing public elementary or secondary school facili-
20 ties, including public charter school facilities and
21 other existing facilities planned for adaptive reuse as
22 public charter school facilities.

23 (10) The term “Secretary” means the Secretary
24 of Education.

1 (11) The term “State” means each of the 50
2 States, the District of Columbia, and the Common-
3 wealth of Puerto Rico.

4 **Subpart A—Grants for Modernization, Renovation,**
5 **or Repair of Public School Facilities**

6 **SEC. 1021. PURPOSE.**

7 Grants under this subpart shall be for the purpose
8 of modernizing, renovating, or repairing public school fa-
9 cilities (including early learning facilities, as appropriate),
10 based on the need of the facilities for such improvements,
11 to ensure that public school facilities are safe, healthy,
12 high-performing, and technologically up-to-date.

13 **SEC. 1022. ALLOCATION OF FUNDS.**

14 (a) RESERVATION.—

15 (1) IN GENERAL.—From the amount appro-
16 priated to carry out this subpart for each fiscal year
17 pursuant to section 1052(a)(1), the Secretary shall
18 reserve 2 percent of such amount, consistent with
19 the purpose described in section 1052(a)(1)—

20 (A) to provide assistance to the outlying
21 areas; and

22 (B) for payments to the Secretary of the
23 Interior to provide assistance to Bureau-funded
24 schools.

1 (2) USE OF RESERVED FUNDS.—In each fiscal
2 year, the amount reserved under paragraph (1) shall
3 be divided between the uses described in subpara-
4 graphs (A) and (B) of such paragraph in the same
5 proportion as the amount reserved under section
6 1121(a) of the Elementary and Secondary Edu-
7 cation Act of 1965 (20 U.S.C. 6331(a)) is divided
8 between the uses described in paragraphs (1) and
9 (2) of such section 1121(a) in such fiscal year.

10 (3) DISTRESSED AREAS AND NATURAL DISAS-
11 TERS.—From the amount appropriated to carry out
12 this subpart for each fiscal year pursuant to section
13 1052(a), the Secretary shall reserve 5 percent of
14 such amount for grants to—

15 (A) local educational agencies serving geo-
16 graphic areas with significant economic distress,
17 to be used consistent with the purpose de-
18 scribed in section 1021 and the allowable uses
19 of funds described in section 1023;

20 (B) local educational agencies serving geo-
21 graphic areas recovering from a natural dis-
22 aster; and

23 (C) local educational agencies serving geo-
24 graphic areas that contain a military installa-
25 tion selected for closure under the base closure

1 and realignment process pursuant to the De-
2 fense Base Closure and Realignment Act of
3 1990 (part A of title XXIX of Public Law 101–
4 510; 10 U.S.C. 2687 note).

5 (b) ALLOCATION TO STATES.—

6 (1) STATE-BY-STATE ALLOCATION.—Of the
7 amount appropriated to carry out this subpart for
8 each fiscal year pursuant to section 1052(a)(1), and
9 not reserved under subsection (a), each State shall
10 be allocated an amount in proportion to the amount
11 received by all local educational agencies in the State
12 under part A of title I of the Elementary and Sec-
13 ondary Education Act of 1965 (20 U.S.C. 6311 et
14 seq.) for the previous fiscal year relative to the total
15 amount received by all local educational agencies in
16 every State under such part for such fiscal year.

17 (2) STATE ADMINISTRATION.—A State may re-
18 serve up to 1 percent of its allocation under para-
19 graph (1) to carry out its responsibilities under this
20 subpart, which include—

21 (A) providing technical assistance to local
22 educational agencies;

23 (B) developing an online, publicly search-
24 able database that includes an inventory of pub-
25 lic school facilities in the State, including for

1 each such facility, its design, condition, mod-
2 ernization, renovation and repair needs, utiliza-
3 tion, energy use, and carbon footprint; and

4 (C) creating voluntary guidelines for high-
5 performing school buildings, including guide-
6 lines concerning the following:

7 (i) Site location, storm water manage-
8 ment, outdoor surfaces, outdoor lighting,
9 and transportation, including public transit
10 and pedestrian and bicycle accessibility.

11 (ii) Outdoor water systems, land-
12 scaping to minimize water use, including
13 elimination of irrigation systems for land-
14 scaping, and indoor water use reduction.

15 (iii) Energy efficiency (including min-
16 imum and superior standards, such as for
17 heating, ventilation, and air conditioning
18 systems), use of alternative energy sources,
19 commissioning, and training.

20 (iv) Use of durable, sustainable mate-
21 rials, including life-cycle cost effectiveness,
22 and waste reduction.

23 (v) Indoor environmental quality, such
24 as day lighting in classrooms, lighting
25 quality, indoor air quality (including with

1 reference to reducing the incidence and ef-
2 fects of asthma and other respiratory ill-
3 nesses), acoustics, and thermal comfort.

4 (vi) Operations and management,
5 such as use of energy-efficient equipment,
6 indoor environmental management plan,
7 maintenance plan, and pest management.

8 (3) GRANTS TO LOCAL EDUCATIONAL AGEN-
9 CIES.—From the amount allocated to a State under
10 paragraph (1), each eligible local educational agency
11 in the State shall receive an amount in proportion
12 to the amount received by such local educational
13 agency under part A of title I of the Elementary and
14 Secondary Education Act of 1965 (20 U.S.C. 6311
15 et seq.) for the previous fiscal year relative to the
16 total amount received by all local educational agen-
17 cies in the State under such part for such fiscal
18 year, except that no local educational agency that re-
19 ceived funds under such part for such fiscal year
20 shall receive a grant of less than \$5,000 in any fiscal
21 year under this subpart.

22 (4) SPECIAL RULE.—Section 1122(c)(3) of the
23 Elementary and Secondary Education Act of 1965
24 (20 U.S.C. 6332(c)(3)) shall not apply to paragraph
25 (1) or (3).

1 (c) SPECIAL RULES.—

2 (1) DISTRIBUTIONS BY SECRETARY.—The Sec-
3 retary shall make and distribute the reservations
4 and allocations described in subsections (a) and (b)
5 not later than 90 days after an appropriation of
6 funds for this subpart is made.

7 (2) DISTRIBUTIONS BY STATES.—A State shall
8 make and distribute the allocations described in sub-
9 section (b)(3) within 60 days of receiving such funds
10 from the Secretary.

11 **SEC. 1023. ALLOWABLE USES OF FUNDS.**

12 (a) IN GENERAL.—A local educational agency receiv-
13 ing a grant under this subpart shall use the grant for mod-
14 ernization, renovation, or repair of public school facilities
15 (including early learning facilities and charter schools, as
16 appropriate), including—

17 (1) repair, replacement, or installation of roofs,
18 including extensive, intensive or semi-intensive green
19 roofs, electrical wiring, water supply and plumbing
20 systems, sewage systems, storm water runoff sys-
21 tems, lighting systems, building envelope, windows,
22 ceilings, flooring, or doors, including security doors;

23 (2) repair, replacement, or installation of heat-
24 ing, ventilation, or air conditioning systems, includ-

1 ing insulation, and conducting indoor air quality as-
2 sessments;

3 (3) compliance with fire, health, seismic, and
4 safety codes, including professional installation of
5 fire and life safety alarms, and modernizations, ren-
6 ovations, and repairs that ensure that schools are
7 prepared for emergencies, such as improving build-
8 ing infrastructure to accommodate security measures
9 and installing or upgrading technology to ensure
10 that schools are able to respond to emergencies such
11 as acts of terrorism, campus violence, and natural
12 disasters;

13 (4) retrofitting necessary to increase the energy
14 efficiency and water efficiency of public school facili-
15 ties;

16 (5) modifications necessary to make facilities
17 accessible in compliance with the Americans with
18 Disabilities Act of 1990 (42 U.S.C. 12101 et seq.)
19 and section 504 of the Rehabilitation Act of 1973
20 (29 U.S.C. 794);

21 (6) abatement, removal, or interim controls of
22 asbestos, polychlorinated biphenyls, mold, mildew,
23 lead-based hazards, including lead-based paint haz-
24 ards, or a proven carcinogen;

1 (7) measures designed to reduce or eliminate
2 human exposure to classroom noise and environ-
3 mental noise pollution;

4 (8) modernization, renovation, or repair nec-
5 essary to reduce the consumption of coal, electricity,
6 land, natural gas, oil, or water;

7 (9) installation or upgrading of educational
8 technology infrastructure;

9 (10) modernization, renovation, or repair of
10 science and engineering laboratories, libraries, and
11 career and technical education facilities, and im-
12 provements to building infrastructure to accommo-
13 date bicycle and pedestrian access;

14 (11) installation or upgrading of renewable en-
15 ergy generation and heating systems, including
16 solar, photovoltaic, wind, biomass (including wood
17 pellet and woody biomass), waste-to-energy, and
18 solar-thermal and geothermal systems, and for en-
19 ergy audits;

20 (12) measures designed to reduce or eliminate
21 human exposure to airborne particles such as dust,
22 sand, and pollens;

23 (13) creating greenhouses, gardens (including
24 trees), and other facilities for environmental, sci-

1 entific, or other educational purposes, or to produce
2 energy savings;

3 (14) modernizing, renovating, or repairing
4 physical education facilities for students, including
5 upgrading or installing recreational structures made
6 from post-consumer recovered materials in accord-
7 ance with the comprehensive procurement guidelines
8 prepared by the Administrator of the Environmental
9 Protection Agency under section 6002(e) of the
10 Solid Waste Disposal Act (42 U.S.C. 6962(e));

11 (15) other modernization, renovation, or repair
12 of public school facilities to—

13 (A) improve teachers' ability to teach and
14 students' ability to learn;

15 (B) ensure the health and safety of stu-
16 dents and staff;

17 (C) make them more energy efficient; or

18 (D) reduce class size; and

19 (16) required environmental remediation related
20 to modernization, renovation, or repair described in
21 paragraphs (1) through (15).

22 (b) ADMINISTRATIVE COSTS.—A local educational
23 agency receiving a grant under this part may not use more
24 than 1 percent of such grant funds for administrative
25 costs.

1 **SEC. 1024. PRIORITY PROJECTS.**

2 In selecting a project under section 113, a local edu-
3 cational agency may give priority to projects involving the
4 abatement, removal, or interim controls of asbestos, poly-
5 chlorinated biphenyls, mold, mildew, lead-based hazards,
6 including lead-based paint hazards, or a proven car-
7 cinogen.

8 **Subpart B—Grants for Maintenance Costs**

9 **SEC. 1031. ALLOCATION TO STATES.**

10 (a) STATE-BY-STATE ALLOCATION.—Of the amount
11 appropriated to carry out this subpart for each fiscal year
12 pursuant to section 1052(a)(2), each State shall be allo-
13 cated an amount in proportion to the amount received by
14 all local educational agencies in the State under part A
15 of title I of the Elementary and Secondary Education Act
16 of 1965 (20 U.S.C. 6311 et seq.) for the previous fiscal
17 year relative to the total amount received by all local edu-
18 cational agencies in every State under such part for such
19 fiscal year.

20 (b) GRANTS TO LOCAL EDUCATIONAL AGENCIES.—
21 From the amount allocated to a State under subsection
22 (a), each eligible local educational agency in the State
23 shall receive an amount in proportion to the amount re-
24 ceived by such local educational agency under part A of
25 title I of the Elementary and Secondary Education Act
26 of 1965 (20 U.S.C. 6311 et seq.) for the previous fiscal

1 year relative to the total amount received by all local edu-
2 cational agencies in the State under such part for such
3 fiscal year.

4 **SEC. 1032. ALLOWABLE USES OF FUNDS.**

5 (a) **REQUIRED USE OF FUNDS.**—A local educational
6 agency receiving a grant under this subpart shall use the
7 grant for payment of maintenance costs, including routine
8 repairs classified as current expenditures under State or
9 local law.

10 (b) **ADMINISTRATIVE COSTS.**—A local educational
11 agency receiving a grant under this subpart may not use
12 more than 1 percent of such grant funds for administra-
13 tive costs.

14 **Subpart C—General Provisions**

15 **SEC. 1041. SUPPLEMENT, NOT SUPPLANT.**

16 A local educational agency receiving a grant under
17 this part shall use such Federal funds only to supplement
18 and not supplant the amount of funds that would, in the
19 absence of such Federal funds, be available for moderniza-
20 tion, renovation, repair, maintenance, and construction of
21 public school facilities.

22 **SEC. 1042. PROHIBITION REGARDING STATE AID.**

23 A State shall not take into consideration payments
24 under this part in determining the eligibility of any local
25 educational agency in that State for State aid, or the

1 amount of State aid, with respect to free public education
2 of children.

3 **SEC. 1043. MAINTENANCE OF EFFORT.**

4 (a) IN GENERAL.—A local educational agency may
5 receive a grant under this part for any fiscal year only
6 if either the combined fiscal effort per student or the ag-
7 gregate expenditures of the agency and the State involved
8 with respect to the provision of free public education by
9 the agency for the preceding fiscal year was not less than
10 90 percent of the combined fiscal effort or aggregate ex-
11 penditures for the second preceding fiscal year.

12 (b) WAIVER.—The Secretary shall waive the require-
13 ments of this section if the Secretary determines that a
14 waiver would be equitable due to—

15 (1) exceptional or uncontrollable circumstances,
16 such as a natural disaster; or

17 (2) a precipitous decline in the financial re-
18 sources of the local educational agency.

19 **SEC. 1044. SPECIAL RULES ON CONTRACTING.**

20 (a) LOCAL EDUCATIONAL AGENCY REQUIRE-
21 MENTS.—

22 (1) IN GENERAL.—Each local educational agen-
23 cy receiving a grant under this part shall ensure
24 that, if the agency carries out modernization, ren-
25 ovation, repair, maintenance, or construction

1 through a contract, the process for any such con-
2 tract ensures the maximum number of qualified bid-
3 ders, including local, small, minority, and women-
4 and veteran-owned businesses, through full and open
5 competition.

6 (2) REVIEW OF APPLICATIONS.—In reviewing
7 awarding contracts under paragraph (1), a local
8 educational agency shall give preference to busi-
9 nesses that demonstrate—

10 (A) current and past compliance with Fed-
11 eral and State labor laws, including laws con-
12 cerning wage and hour, labor relations, family
13 and medical leave, occupational safety and
14 health, and living wage standards; and

15 (B) terms and conditions of employment
16 including payment of living wage; availability of
17 sick, vacation and retirement benefits; and ex-
18 istence of grievance procedures and labor-man-
19 agement committees.

20 (b) CERTIFICATION BY BUSINESSES.—Any business
21 competing for a contract with a local educational agency
22 receiving funds under this part shall certify to the local
23 educational agency that the business has a record of com-
24 pliance and is currently in compliance with Federal, State,
25 and local labor and workplace laws, including statutes con-

1 cerning wage and hour, labor relations, family and medical
2 leave, occupational safety and health, and living wage
3 standards.

4 **SEC. 1045. USE OF AMERICAN IRON, STEEL, AND MANUFAC-**
5 **TURED GOODS.**

6 (a) IN GENERAL.—None of the funds appropriated
7 or otherwise made available by this part may be used for
8 a project for the modernization, renovation, repair, main-
9 tenance, or construction of a public school facility unless
10 all of the iron, steel, and manufactured goods used in the
11 project are produced in the United States.

12 (b) EXCEPTIONS.—Subsection (a) shall not apply in
13 any case or category of cases in which the Secretary finds
14 that—

15 (1) applying subsection (a) would be incon-
16 sistent with the public interest;

17 (2) iron, steel, and the relevant manufactured
18 goods are not produced in the United States in suffi-
19 cient and reasonably available quantities and of a
20 satisfactory quality; or

21 (3) inclusion of iron, steel, and manufactured
22 goods produced in the United States will increase
23 the cost of the overall project by more than 25 per-
24 cent.

1 (c) PUBLICATION OF JUSTIFICATION.—If the Sec-
2 retary determines that it is necessary to waive the applica-
3 tion of subsection (a) based on a finding under subsection
4 (b), the Secretary shall publish in the Federal Register
5 a detailed written justification of the determination.

6 (d) CONSTRUCTION.—This section shall be applied in
7 a manner consistent with United States obligations under
8 international agreements.

9 **SEC. 1046. LABOR STANDARDS; COMPLIANCE WITH EXIST-**
10 **ING STATUTES.**

11 (a) IN GENERAL.—The grant programs under this
12 subpart are applicable programs (as that term is defined
13 in section 400 of the General Education Provisions Act
14 (20 U.S.C. 1221)) subject to section 439 of such Act (20
15 U.S.C. 1232b).

16 (b) COMPLIANCE WITH EXISTING STATUTES.—Each
17 local educational agency receiving a grant under this part
18 shall comply with all applicable Federal, State, and local
19 health, safety, labor, and civil rights laws.

20 **SEC. 1047. CHARTER SCHOOLS.**

21 A local educational agency receiving a grant under
22 this part may reserve an amount of that grant for charter
23 schools within its jurisdiction for modernization, renova-
24 tion, repair, and construction, or maintenance of charter

1 school facilities (including early learning facilities, as ap-
2 propriate).

3 **SEC. 1048. GREEN SCHOOLS.**

4 (a) IN GENERAL.—A local educational agency receiv-
5 ing a grant under this part shall, to the maximum extent
6 practicable, use such funds for public school moderniza-
7 tion, renovation, repair, or construction or maintenance
8 that are certified, verified, or consistent with any applica-
9 ble provisions of—

10 (1) the LEED Green Building Rating System;

11 (2) Energy Star;

12 (3) the CHPS Criteria;

13 (4) Green Globes; or

14 (5) an equivalent program adopted by the
15 State, or another jurisdiction with authority over the
16 local educational agency, that includes a verifiable
17 method to demonstrate compliance with such pro-
18 gram.

19 (b) RULE OF CONSTRUCTION.—Nothing in this sec-
20 tion shall be construed to prohibit a local educational
21 agency from using sustainable, domestic hardwood lumber
22 as ascertained through the forest inventory and analysis
23 program of the Forest Service of the Department of Agri-
24 culture under the Forest and Rangeland Renewable Re-
25 sources Research Act of 1978 (16 U.S.C. 1641 et seq.)

1 for public school modernization, renovation, repairs, or
2 construction.

3 (c) TECHNICAL ASSISTANCE.—The Secretary, in con-
4 sultation with the Secretary of Energy and the Adminis-
5 trator of the Environmental Protection Agency, shall pro-
6 vide outreach and technical assistance to States and local
7 educational agencies concerning the best practices in
8 school modernization, renovation, repair, and construc-
9 tion, including those related to student academic achieve-
10 ment, student and staff health, energy efficiency, and envi-
11 ronmental protection.

12 **SEC. 1049. REPORTING.**

13 (a) REPORTS BY LOCAL EDUCATIONAL AGENCIES.—
14 Local educational agencies receiving a grant under this
15 part shall annually compile a report describing the
16 projects for which such funds were used, including—

17 (1) the number and identity of public schools in
18 the agency, including the number of charter schools,
19 and for each school, the total number of students,
20 and the number of students counted under section
21 1113(a)(5) of the Elementary and Secondary Edu-
22 cation Act of 1965 (20 U.S.C. 6313(a)(5));

23 (2) the total amount of funds received by the
24 local educational agency under this part, and for
25 each public school in the agency, including each

1 charter school, the amount of such funds expended,
2 and the types of modernization, renovation, repair,
3 or construction projects for which such funds were
4 used;

5 (3) the number of students impacted by such
6 projects, including the number of students so im-
7 pacted who are counted under section 1113(a)(5) of
8 the Elementary and Secondary Education Act of
9 1965 (20 U.S.C. 6313(a)(5));

10 (4) the number of public schools in the agency
11 with a metro-centric locale code of 41, 42, or 43 as
12 determined by the National Center for Education
13 Statistics and the percentage of funds received by
14 the agency under subpart A or subpart B of this
15 part that were used for projects at such schools;

16 (5) the number of public schools in the agency
17 that are eligible for schoolwide programs under sec-
18 tion 1114 of the Elementary and Secondary Edu-
19 cation Act of 1965 (20 U.S.C. 6314) and the per-
20 centage of funds received by the agency under sub-
21 part A or subpart B of this part that were used for
22 projects at such schools;

23 (6) for each project—

24 (A) the cost;

1 (B) the standard described in section
2 128(a) with which the use of the funds com-
3 plied or, if the use of funds did not comply with
4 a standard described in section 128(a), the rea-
5 son such funds were not able to be used in com-
6 pliance with such standards and the agency's
7 efforts to use such funds in an environmentally
8 sound manner; and

9 (C) any demonstrable or expected benefits
10 as a result of the project (such as energy sav-
11 ings, improved indoor environmental quality,
12 student and staff health, including the reduc-
13 tion of the incidence and effects of asthma and
14 other respiratory illnesses, and improved cli-
15 mate for teaching and learning);

16 (7) the total number and amount of contracts
17 awarded, and the number and amount of contracts
18 awarded to local, small, minority, women, and vet-
19 eran-owned businesses; and

20 (8) the total number of jobs created by funding
21 under this part by—

22 (A) the local educational agency; and

23 (B) contractors who performed work for
24 the local educational agency under this part.

1 (b) AVAILABILITY OF REPORTS.—A local educational
2 agency shall—

3 (1) submit the report described in subsection
4 (a) to the State educational agency, which shall com-
5 pile such information and report it annually to the
6 Secretary; and

7 (2) make the report described in subsection (a)
8 publicly available, including on the agency’s Web
9 site.

10 (c) REPORTS BY SECRETARY.—Not later than March
11 31 of each fiscal year, the Secretary shall submit to the
12 Committee on Education and the Workforce of the House
13 of Representatives and the Committee on Health, Edu-
14 cation, Labor and Pensions of the Senate, and make avail-
15 able on the Department of Education’s Web site, a report
16 on grants made under this subpart, including the informa-
17 tion from the reports described in subsection (b)(1).

18 **SEC. 1050. SPECIAL RULES.**

19 Notwithstanding any other provision of this subpart,
20 none of the funds authorized by this part may be—

21 (1) used to employ workers in violation of sec-
22 tion 274A of the Immigration and Nationality Act
23 (8 U.S.C. 1324a); or

1 (2) distributed to a local educational agency
2 that does not have a policy that requires a criminal
3 background check on all employees of the agency.

4 **SEC. 1051. PROMOTION OF EMPLOYMENT EXPERIENCES.**

5 The Secretary of Education, in consultation with the
6 Secretary of Labor, shall work with recipients of funds
7 under this subpart to promote appropriate opportunities
8 to gain employment experience working on modernization,
9 renovation, repair, maintenance, and construction projects
10 funded under this subpart for—

11 (1) participants in a YouthBuild program (as
12 defined in section 173A of the Workforce Investment
13 Act of 1998 (29 U.S.C. 2918a));

14 (2) individuals enrolled in the Job Corps pro-
15 gram carried out under subtitle C of title I of the
16 Workforce Investment Act of 1998 (29 U.S.C. 2881
17 et seq.);

18 (3) individuals enrolled in a junior or commu-
19 nity college (as defined in section 312(f) of the
20 Higher Education Act of 1965 (20 U.S.C. 1088(f))
21 certificate or degree program relating to projects de-
22 scribed in section 128(a); and

23 (4) participants in preapprenticeship programs
24 that have direct linkages with apprenticeship pro-
25 grams that are registered with the Department of

1 Labor or a State Apprenticeship Agency under the
2 National Apprenticeship Act of 1937 (29 U.S.C. 50
3 et seq.).

4 **SEC. 1052. AVAILABILITY OF FUNDS.**

5 (a) AUTHORIZATION AND APPROPRIATION.—There
6 are authorized to be appropriated, and there are appro-
7 priated, for each of fiscal years 2012 and 2013—

8 (1) to carry out subpart A (in addition to any
9 other amounts appropriated to carry out such title
10 and out of any money in the Treasury not otherwise
11 appropriated), \$40,000,000,000; and

12 (2) to carry out subpart B (in addition to any
13 other amounts appropriated to carry out such title
14 and out of any money in the Treasury not otherwise
15 appropriated), \$10,000,000,000.

16 (b) PROHIBITION ON EARMARKS.—None of the funds
17 appropriated under this section may be used for a Con-
18 gressional earmark as defined in clause 9(d) of rule XXI
19 of the Rules of the House of Representatives for the 112th
20 Congress.

21 (c) SUNSET.—The authority to award grants under
22 this part shall expire at the end of fiscal year 2013.

23 **SEC. 1053. ALTERNATE DISTRIBUTION OF FUNDS.**

24 If, within 30 days after the date of the enactment
25 of this Act, a local educational agency has submitted to

1 the Secretary a certification that they are refusing funds
2 they are eligible to receive under this part, the Secretary
3 shall provide for funds allocated to that local educational
4 agency to be distributed to another entity or other entities
5 in the State, under such terms and conditions as the Sec-
6 retary may establish, provided that all terms and condi-
7 tions that apply to funds appropriated under this section
8 shall apply to such funds distributed to such entity or enti-
9 ties.

10 **PART 2—STUDENT JOBS CORPS**

11 **SEC. 1061. STUDENT JOBS CORPS.**

12 (a) PURPOSE.—It is the purpose of this section to
13 provide for an additional 250,000 part-time work-study
14 jobs through the Federal Work-Study Program under part
15 C of title IV of the Higher Education Act of 1965 (20
16 U.S.C. 2751 et seq.).

17 (b) APPROPRIATION OF ADDITIONAL AMOUNTS.—
18 There are authorized to be appropriated, and there are
19 hereby appropriated, out of amounts in the Treasury not
20 otherwise appropriated, to the Secretary of Education
21 \$425,000,000 for each of the fiscal years 2012 and 2013
22 for grants to institutions of higher education under part
23 C of title IV of the Higher Education Act of 1965 (20
24 U.S.C. 2751 et seq.) for payments to students partici-

1 pating in work-study programs in accordance with such
2 part.

3 (c) RELATION TO OTHER FUNDS.—Amounts appro-
4 priated by subsection (b) are in addition to amounts ap-
5 propriated pursuant to the authorization of appropriations
6 in section 441(b) of the Higher Education Act of 1965
7 (20 U.S.C. 2751(b)) and amounts otherwise made avail-
8 able by any other Act for the Federal Work-Study pro-
9 gram under part C of such Act of 1965.

10 (d) MATCHING FUNDS NOT REQUIRED.—Notwith-
11 standing section 443(b)(5) of the Higher Education Act
12 of 1965 (20 U.S.C. 2753(b)(5)) or an agreement made
13 pursuant to such section 443, an institution of higher edu-
14 cation shall not be required to provide matching funds for
15 any funds made available to the institution by this section.

16 **PART 3—PUBLIC LANDS CORPS AND CIVILIAN**
17 **CONSERVATION CORPS**

18 **SEC. 1071. APPROPRIATION OF ADDITIONAL FUNDS FOR**
19 **EXISTING PUBLIC LANDS CORPS.**

20 (a) PURPOSE.—It is the purpose of this section to
21 provide for the creation of an additional 100,000 positions
22 in the Public Lands Corps established under section 204
23 of the Public Lands Corps Act of 1993 (16 U.S.C. 1723).

24 (b) AUTHORIZATION AND APPROPRIATION OF ADDI-
25 TIONAL FUNDS.—

1 (1) FOREST SERVICE.—There are authorized to
2 be appropriated, and there are hereby appropriated,
3 out of amounts in the Treasury not otherwise appro-
4 priated, to the Secretary of Agriculture
5 \$125,000,000 for each of fiscal years 2012 and
6 2013—

7 (A) to carry out the Public Lands Corps
8 established in the Department of Agriculture
9 under section 204 of the Public Lands Corps
10 Act of 1993 (16 U.S.C. 1723);

11 (B) to support qualified youth or conserva-
12 tion corps to perform conservation projects re-
13 ferred to in subsection (d) of such section; and

14 (C) to support resource assistants selected
15 under section 206 of such Act (16 U.S.C.
16 1725).

17 (2) DEPARTMENT OF THE INTERIOR.—There
18 are authorized to be appropriated, and there are
19 hereby appropriated, out of amounts in the Treasury
20 not otherwise appropriated, to the Secretary of the
21 Interior \$125,000,000 for each of fiscal years 2012
22 and 2013—

23 (A) to carry out the Public Lands Corps
24 established in the Department of the Interior

1 under section 204 of the Public Lands Corps
2 Act of 1993 (16 U.S.C. 1723);

3 (B) to support qualified youth or conserva-
4 tion corps to perform conservation projects re-
5 ferred to in subsection (d) of such section; and

6 (C) to support resource assistants selected
7 under section 206 of such Act (16 U.S.C.
8 1725).

9 (c) RELATION TO OTHER FUNDS FOR PUBLIC LANDS
10 CORPS.—Amounts appropriated by subsection (b) are in
11 addition to amounts appropriated pursuant to the author-
12 ization of appropriations in section 211 of the Public
13 Lands Corps Act of 1993 (16 U.S.C. 1730) and amounts
14 allocated to the Public Lands Corps through other Federal
15 programs or projects.

16 (d) EXPEDITED OBLIGATION OF FUNDS.—Not later
17 than 90 days after the date of the enactment of this Act,
18 the Secretary of Agriculture and the Secretary of the Inte-
19 rior shall commence obligation of the funds appropriated
20 by subsection (b) for fiscal year 2012 by utilizing the pool
21 of remaining applications for fiscal year 2011 assistance
22 under the Public Lands Corps Act of 1993 (16 U.S.C.
23 1721 et seq.). If the number of fiscal year 2011 applica-
24 tions is insufficient to use the entire amount of the addi-
25 tional funds appropriated for fiscal year 2012, the Secre-

1 taries shall announce an open solicitation process for new
2 applications for assistance.

3 (e) WAIVER OF COST-SHARING REQUIREMENTS.—

4 The cost-sharing requirements of sections 206(b) and 210
5 of the Public Lands Corps Act of 1993 (16 U.S.C. 1725,
6 1730) shall not apply with respect to the expenditure of
7 amounts appropriated by subsection (b).

8 **SEC. 1072. ESTABLISHMENT AND OPERATION OF NEW CI-**
9 **VILIAN CONSERVATION CORPS.**

10 (a) ESTABLISHMENT AND PURPOSE.—The President
11 may establish and operate a Civilian Conservation Corps
12 to employ citizens of the United States in the construction,
13 maintenance, and carrying on of additional works of a
14 public nature in connection with—

15 (1) the forestation of lands belonging to the
16 United States or a State;

17 (2) the prevention of forest fires, floods, and
18 soil erosion;

19 (3) plant pest and disease control;

20 (4) the construction, maintenance, or repair of
21 paths, trails, and fire-lanes in units of the National
22 Park System, public lands, and other lands under
23 the jurisdiction of the Secretary of the Interior and
24 units of the National Forest System; and

1 (5) such other work on Federal or State land
2 incidental to or necessary in connection with any
3 projects of the character enumerated in paragraphs
4 (1) through (4) that the President determines to be
5 desirable.

6 (b) **ROLE OF FEDERAL AGENCIES.**—To operate the
7 Civilian Conservation Corps, the President may utilize ex-
8 isting Federal departments and agencies, including the
9 Department of Labor, the Department of Defense, the
10 National Guard Bureau, the Department of Interior, the
11 Department of Agriculture, the Army Corps of Engineers,
12 the Department of Transportation, the Department of En-
13 ergy, the Environmental Protection Agency, and Federal
14 governmental corporations.

15 (c) **CONTRACT AUTHORITY.**—For the purpose of car-
16 rying out the Civilian Conservation Corps, the President
17 may enter into such contracts or agreements with States
18 as may be necessary, including provisions for utilization
19 of existing State administrative agencies.

20 (d) **ACQUISITION OF REAL PROPERTY.**—The Presi-
21 dent, or the head of any department or agency authorized
22 by the President to construct any project or to carry on
23 any public works through the Civilian Conservation Corps,
24 may acquire real property for such project or public work
25 by purchase, donation, condemnation, or otherwise.

1 (e) EMPLOYMENT PREFERENCE.—If amounts appro-
2 priated to carry out a Civilian Conservation Corps for a
3 fiscal year will be insufficient to employ all of the citizens
4 of the United States who are seeking or likely to seek em-
5 ployment in the Civilian Conservation Corps, while also
6 continuing the employment of current employees who de-
7 sire to remain in the Civilian Conservation Corps, the
8 President shall employ additional persons in the Civilian
9 Conservation Corps in the following order of preference:

10 (1) Unemployed veterans of the Armed Forces
11 and unemployed members of the reserve components
12 of the Armed Forces.

13 (2) Unemployed citizens who have exhausted
14 their entitlement to unemployment compensation.

15 (3) Unemployed citizens, who immediately be-
16 fore employment in the Civilian Conservation Corps,
17 are eligible for unemployment compensation payable
18 under any State law or Federal unemployment com-
19 pensation law, including any additional compensa-
20 tion or extended compensation under such laws.

21 (4) Other interested citizens.

22 (f) AUTHORIZATION OF APPROPRIATIONS.—

23 (1) AUTHORIZATION OF APPROPRIATIONS.—

24 There are authorized to be appropriated to the
25 President \$16,000,000,000 for each of fiscal years

1 2012 through 2015 to establish and operate a Civil-
2 ian Conservation Corps.

3 (2) USE OF UNOBLIGATED FUNDS APPRO-
4 PRIATED FOR PUBLIC WORKS.—

5 (A) USE OF EXISTING FUNDS.—The Presi-
6 dent may use any moneys previously appro-
7 priated for public works and unobligated as of
8 the date of the enactment of this Act to estab-
9 lish and operate a Civilian Conservation Corps.

10 (B) USE TO RELIEVE UNEMPLOYMENT.—
11 Not less than 80 percent of the funds utilized
12 pursuant to subparagraph (A) must be used to
13 provide for the employment of individuals in the
14 Civilian Conservation Corps.

15 (C) EXCEPTIONS.—Subparagraph (A) does
16 not apply to—

17 (i) unobligated moneys appropriated
18 for public works on which actual construc-
19 tion has been commenced as of the date of
20 the enactment of this Act or may be com-
21 menced within 90 days after that date; and

22 (ii) maintenance funds for river and
23 harbor improvements already allocated as
24 of the date of the enactment of this Act.

1 (3) DURATION OF AVAILABILITY.—Amounts ap-
2 propriated pursuant to the authorization of appro-
3 priations in paragraph (1) or made available under
4 paragraph (2) shall remain available until expended.

5 **PART 4—NEIGHBORHOOD HEROES CORPS**

6 **SEC. 1081. TEACHER CORPS.**

7 (a) PURPOSE.—It is the purpose of this section to
8 provide for the retention, rehiring, and hiring of 300,000
9 education jobs.

10 (b) AUTHORIZATION AND APPROPRIATION.—There
11 are authorized to be appropriated and there are appro-
12 priated out of any money in the Treasury not otherwise
13 obligated for necessary expenses for a Teacher Corps,
14 \$20,000,000,000 for each of fiscal years 2012 and 2013:
15 *Provided*, That the amount under this section shall be ad-
16 ministered under the terms and conditions of sections
17 14001 through 14013 and title XV of division A of the
18 American Recovery and Reinvestment Act of 2009 (Public
19 Law 111–5) except as follows:

20 (1) ALLOCATION OF FUNDS.—

21 (A) Funds appropriated under this section
22 shall be available only for allocation by the Sec-
23 retary of Education (in this section referred to
24 as the Secretary) in accordance with sub-
25 sections (a), (b), (d), (e), and (f) of section

1 14001 of division A of Public Law 111–5 and
2 subparagraph (B) of this paragraph, except
3 that the amount reserved under such subsection
4 (b) shall not exceed \$4,000,000 and such sub-
5 section (f) shall be applied by substituting one
6 year for two years.

7 (B) Prior to allocating funds to States
8 under section 14001(d) of division A of Public
9 Law 111–5, the Secretary shall allocate 0.5
10 percent to the Secretary of the Interior for
11 schools operated or funded by the Bureau of In-
12 dian Affairs on the basis of the schools’ respec-
13 tive needs for activities consistent with this sec-
14 tion under such terms and conditions as the
15 Secretary of the Interior may determine.

16 (2) RESERVATION.—A State that receives an
17 allocation of funds appropriated under this section
18 may reserve not more than 1 percent for the admin-
19 istrative costs of carrying out its responsibilities with
20 respect to those funds.

21 (3) AWARDS TO LOCAL EDUCATIONAL AGEN-
22 CIES.—

23 (A) Except as specified in paragraph (2),
24 an allocation of funds to a State shall be used
25 only for awards to local educational agencies for

1 the support of elementary and secondary edu-
2 cation in accordance with paragraph (5) for the
3 2011–2012 and 2012–2013 school years.

4 (B) Funds used to support elementary and
5 secondary education shall be distributed
6 through a State’s primary elementary and sec-
7 ondary funding formulae or based on local edu-
8 cational agencies’ relative shares of funds under
9 part A of title I of the Elementary and Sec-
10 ondary Education Act of 1965 (20 U.S.C. 6311
11 et seq.) for the most recent fiscal year for which
12 data are available.

13 (C) Subsections (a) and (b) of section
14 14002 of division A of Public Law 111–5 shall
15 not apply to funds appropriated under this sec-
16 tion.

17 (4) COMPLIANCE WITH EDUCATION REFORM AS-
18 SURANCES.—For purposes of awarding funds appro-
19 priated under this section, any State that has an ap-
20 proved application for Phase II of the State Fiscal
21 Stabilization Fund that was submitted in accordance
22 with the application notice published in the Federal
23 Register on November 17, 2009 (74 Fed. Reg.
24 59142) shall be deemed to be in compliance with
25 subsection (b) and paragraphs (2) through (5) of

1 subsection (d) of section 14005 of division A of Pub-
2 lic Law 111–5.

3 (5) REQUIREMENT TO USE FUNDS TO RETAIN
4 OR CREATE EDUCATION JOBS.—Notwithstanding
5 section 14003(a) of division A of Public Law 111–
6 5, funds awarded to local educational agencies under
7 paragraph (3)—

8 (A) may be used only for compensation
9 and benefits and other expenses, such as sup-
10 port services, necessary to retain existing em-
11 ployees, to recall or rehire former employees,
12 and to hire new employees, in order to provide
13 early childhood, elementary, or secondary edu-
14 cational and related services; and

15 (B) may not use more than 1 percent of
16 such grant funds for administrative costs.

17 (6) PROHIBITION ON USE OF FUNDS FOR
18 RAINY-DAY FUNDS OR DEBT RETIREMENT.—A State
19 that receives an allocation may not use such funds,
20 directly or indirectly, to—

21 (A) establish, restore, or supplement a
22 rainy-day fund;

23 (B) supplant State funds in a manner that
24 has the effect of establishing, restoring, or
25 supplementing a rainy-day fund;

1 (C) reduce or retire debt obligations in-
2 curred by the State; or

3 (D) supplant State funds in a manner that
4 has the effect of reducing or retiring debt obli-
5 gations incurred by the State.

6 (7) SUPPLEMENT, NOT SUPPLANT.—Funds
7 made available under this section shall be used to
8 supplement, not supplant, the amount of funds that
9 would, in the absence of the Federal funds made
10 available under this section, be made available from
11 local, State, and Federal sources to provide com-
12 pensation and other expenses such as support serv-
13 ices, necessary to retain existing employees, to recall
14 or rehire former employees, and to hire new employ-
15 ees, in order to provide early childhood, elementary,
16 or secondary educational and related services.

17 (8) DEADLINE FOR AWARD.—The Secretary
18 shall award funds appropriated under this section
19 not later than 45 days after the date of the enact-
20 ment of this Act to States that have submitted ap-
21 plications meeting the requirements applicable to
22 funds under this section. The Secretary shall not re-
23 quire information in applications beyond what is
24 necessary to determine compliance with applicable
25 provisions of law.

1 (9) ALTERNATE DISTRIBUTION OF FUNDS.—If,
2 within 30 days after the date of the enactment of
3 this Act, a Governor has not submitted an approv-
4 able application, the Secretary shall provide for
5 funds allocated to that State to be distributed to an-
6 other entity or other entities in the State (notwith-
7 standing section 14001(e) of division A of Public
8 Law 111–5) for support of elementary and sec-
9 ondary education, under such terms and conditions
10 as the Secretary may establish, provided that all
11 terms and conditions that apply to funds appro-
12 priated under this section shall apply to such funds
13 distributed to such entity or entities. No distribution
14 shall be made to a State under this paragraph, how-
15 ever, unless the Secretary has determined (on the
16 basis of such information as may be available) that
17 the requirements of paragraph (11) are likely to be
18 met, notwithstanding the lack of an application from
19 the Governor of that State.

20 (10) LOCAL EDUCATIONAL AGENCY APPLICA-
21 TION.—Section 442 of the General Education Provi-
22 sions Act shall not apply to a local educational agen-
23 cy that has previously submitted an application to
24 the State under title XIV of division A of Public
25 Law 111–5. The assurances provided under that ap-

1 plication shall continue to apply to funds awarded
2 under this section.

3 (11) MAINTENANCE OF EFFORT.—

4 (A) IN GENERAL.—Subject to subpara-
5 graph (B), a local educational agency may re-
6 ceive a grant under this part for any fiscal year
7 only if either the combined fiscal effort per stu-
8 dent or the aggregate expenditures of the agen-
9 cy and the State involved with respect to the
10 provision of free public education by the agency
11 for the preceding fiscal year was not less than
12 90 percent of the combined fiscal effort or ag-
13 gregate expenditures for the second preceding
14 fiscal year.

15 (B) WAIVER.—The Secretary shall waive
16 the requirements of this section if the Secretary
17 determines that a waiver would be equitable due
18 to—

19 (i) exceptional or uncontrollable cir-
20 cumstances, such as a natural disaster; or

21 (ii) a precipitous decline in the finan-
22 cial resources of the local educational agen-
23 cy.

24 (C) ARRA PROVISION NOT APPLICABLE.—

25 Section 14005(d)(1) and subsections (a)

1 through (c) of section 14012 of division A of
2 Public Law 111–5 shall not apply to funds ap-
3 propriated under this section.

4 **SEC. 1082. APPROPRIATION OF ADDITIONAL FUNDS FOR**
5 **COMMUNITY ORIENTED POLICING SERVICES.**

6 (a) PURPOSE.—It is the purpose of this section to
7 provide for the hiring and rehiring of an additional 40,000
8 State, local, and tribal career law enforcement officers
9 through the Community Oriented Policing Services pro-
10 gram under part Q of title I of the Omnibus Crime Control
11 and Safe Streets Act of 1968 (42 U.S.C. 3796dd et seq.).

12 (b) AUTHORIZATION AND APPROPRIATION OF ADDI-
13 TIONAL AMOUNTS.—There are authorized to be appro-
14 priated, and there are hereby appropriated, out of
15 amounts in the Treasury not otherwise appropriated, to
16 the Attorney General \$5,000,000,000 for each of the fiscal
17 years 2012 and 2013 for grants under section 1701(b)(1)
18 and (2) of title I of the Omnibus Crime Control and Safe
19 Streets Act of 1968 (42 U.S.C. 3796dd(b)(1) and (2)) for
20 hiring and rehiring of additional career law enforcement
21 officers under part Q of such title, notwithstanding sub-
22 section (i) of such section.

23 (c) RELATION TO OTHER FUNDS FOR COPS.—
24 Amounts appropriated by subsection (b) are in addition
25 to amounts appropriated pursuant to the authorization of

1 appropriations in section 1001(a)(11) of the Omnibus
2 Crime Control and Safe Streets Act of 1968 (42 U.S.C.
3 3793(a)(11)) and amounts otherwise made available for
4 grants under section 1701 of such Act (42 U.S.C. 3796dd)
5 by any other Act.

6 (d) EXPEDITED OBLIGATION OF FUNDS.—Not later
7 than 90 days after the date of the enactment of this Act,
8 the Attorney General shall commence obligation of the
9 funds appropriated by subsection (b) for fiscal year 2012
10 by utilizing the pool of applicants who submitted applica-
11 tions for fiscal year 2011 grants under part Q of title I
12 of the Omnibus Crime Control and Safe Streets Act of
13 1968 (42 U.S.C. 3796dd et seq.) but did not receive fund-
14 ing under such part for such fiscal year for hiring and
15 rehiring of additional career law enforcement officers. If
16 the number of such fiscal year 2011 applicants is insuffi-
17 cient to use the entire amount of the additional funds ap-
18 propriated for fiscal year 2012, the Attorney General shall
19 announce an open solicitation process for new applications
20 for grants, to be submitted in accordance with the require-
21 ments of section 1702 of such Act (42 U.S.C. 3796dd–
22 1).

23 (e) WAIVER OF CERTAIN REQUIREMENTS.—Notwith-
24 standing any other provision of law, subsection (g) of sec-
25 tion 1701 of the Omnibus Crime Control and Safe Streets

1 Act of 1968 (42 U.S.C. 3796dd(g)) and subsection (c) of
2 section 1704 of such Act (42 U.S.C. 3796dd-3(c)) shall
3 not apply with respect to grants awarded using any funds
4 made available under this section.

5 **SEC. 1083. FIREFIGHTERS CORPS.**

6 (a) PURPOSE.—It is the purpose of this section to
7 provide for the hiring and rehiring of an additional 12,000
8 firefighters through section 34 of the Federal Fire Preven-
9 tion and Control Act of 1974 (15 U.S.C. 2229a).

10 (b) AMENDMENT AUTHORIZING FUNDS.—Section
11 34(i) of the Federal Fire Prevention and Control Act of
12 1974 (15 U.S.C. 2229a(i)) is amended—

13 (1) in paragraph (6) by striking “and”;

14 (2) in paragraph (7) by striking the period at
15 the end and inserting a semicolon; and

16 (3) by adding at the end the following:

17 “(8) \$1,200,000,000 for fiscal year 2012; and

18 “(9) \$1,200,000,000 for fiscal year 2013.”.

19 (c) APPROPRIATION.—

20 (1) IN GENERAL.—There is hereby appro-
21 priated out of any money in the Treasury not other-
22 wise appropriated \$1,200,000,000 for each of the
23 fiscal years 2012 and 2013 to carry out section 34
24 of the Federal Fire Prevention and Control Act of
25 1974 (15 U.S.C. 2229a).

1 (2) LIMITATION.—None of the funds made
2 available under paragraph (1) of this subsection may
3 be used to enforce the requirements of subpara-
4 graphs (A), (B), or (E) of subsection (a)(1) or para-
5 graphs (1), (2), or (4)(A) of subsection (c) of such
6 section 34.

7 (d) EXPEDITED OBLIGATION OF FUNDS.—Not later
8 than 90 days after the date of the enactment of this Act,
9 the Secretary of Homeland Security shall commence obli-
10 gation of the funds appropriated by subsection (c) for fis-
11 cal year 2012 by utilizing the pool of applicants who sub-
12 mitted applications for fiscal year 2011 grants under sec-
13 tion 34 of the Federal Fire Prevention and Control Act
14 of 1974 but did not receive funding under such section
15 for such fiscal year for hiring and rehiring of additional
16 firefighters. If the number of such fiscal year 2011 appli-
17 cants is insufficient to use the entire amount of the addi-
18 tional funds appropriated for fiscal year 2012, the Sec-
19 retary of Homeland Security shall announce an open solici-
20 tation process for new applications for grants, to be sub-
21 mitted in accordance with the requirements of such section
22 34.

1 **PART 5—HEALTH CARE CORPS**

2 **SEC. 1091. PURPOSE.**

3 It is the purpose of this part to provide for the cre-
4 ation of a grant to hire at least 40,000 health care and
5 long-term care professionals to expand access to care.

6 **SEC. 1092. HEALTH CARE AND LONG-TERM CARE PRO-**
7 **VIDERS.**

8 Part D of title III of the Public Health Service Act
9 is amended by inserting after subpart III (42 U.S.C. 2541
10 et seq.) the following:

11 **“Subpart IV—Hiring and Retaining Additional**
12 **Health Care and Long-Term Care Professionals**

13 **“SEC. 338N. HIRING AND RETAINING ADDITIONAL HEALTH**
14 **CARE AND LONG-TERM CARE PROFES-**
15 **SIONALS.**

16 “(a) IN GENERAL.—The Secretary may provide fi-
17 nancial assistance to health care or long-term care pro-
18 viders to pay all or part of the costs of hiring and retaining
19 health care or long-term care professionals in addition to
20 the professionals who, but for such assistance, would be
21 hired and retained.

22 “(b) ELIGIBLE ASSISTANCE RECIPIENTS.—Health
23 care and long-term care providers eligible for assistance
24 under subsection (a) include the following:

1 “(1) A health care or long-term care provider
2 serving a health professional shortage area des-
3 ignated under section 332.

4 “(2) A Federally qualified health center (as de-
5 fined in section 1861(aa) of the Social Security Act).

6 “(3) A rural health clinic.

7 “(4) A health care or long-term care provider
8 that receives payment under title XVIII of the Social
9 Security Act or under a State plan or State child
10 health plan under title XIX or XXI, respectively, of
11 such Act.

12 “(5) A public hospital.

13 “(6) A public health agency.

14 “(7) A nursing home or long-term care facility.

15 “(8) An intermediate care or developmentally
16 disabled facility.

17 “(9) A critical access hospital.

18 “(10) A school-based health center.

19 “(11) A university or college mental health fa-
20 cility.

21 “(12) An Indian health program or facility op-
22 erated by an Indian tribe or tribal organization.

23 “(13) A correctional facility.

24 “(c) ELIGIBLE HEALTH PROFESSIONALS.—Health
25 care and long-term care professionals who may be hired

1 or retained using assistance provided under this section
2 include the following:

3 “(1) Dentists.

4 “(2) Certified nurse midwives.

5 “(3) Psychologists.

6 “(4) Licensed clinical social workers.

7 “(5) Licensed professional counselors.

8 “(6) Marriage and family therapists.

9 “(7) Nurse practitioners, including those spe-
10 cializing in psychiatry.

11 “(8) Nurses, including advanced practice
12 nurses.

13 “(9) Physicians, including osteopathic physi-
14 cians.

15 “(10) Physician assistants, including those spe-
16 cializing in psychiatry.

17 “(11) Psychiatric nurse specialists.

18 “(12) Registered dental hygienists.

19 “(13) Community health workers.

20 “(14) Occupational and physical therapists.

21 “(15) Optometrists.

22 “(16) Certified nursing assistants.

23 “(17) Direct care workers.

24 “(d) APPLICATION PROCESS.—

25 “(1) IN GENERAL.—The Secretary shall—

1 “(A) not later than 60 days after the date
2 of the enactment of this section, solicit applica-
3 tions for financial assistance under this section;

4 “(B) require that any such application be
5 submitted—

6 “(i) not later than 90 days after the
7 date of the enactment of this section; and

8 “(ii) in such manner and containing
9 such information as the Secretary may re-
10 quire; and

11 “(C) not later than 120 days after the date
12 of the enactment of this section, determine
13 which such applications will be approved and
14 provide notice of such determination to the ap-
15 plicants.

16 “(2) COMPLIANCE WITH LABOR AND WORK-
17 PLACE LAWS.—As a condition on eligibility for fi-
18 nancial assistance under this section, an application
19 under paragraph (1) shall demonstrate to the Sec-
20 retary’s satisfaction that the applicant has a record
21 of compliance, and is currently in compliance, with
22 Federal, State, and local labor and workplace laws,
23 including Federal, State, and local laws—

1 “(A) relevant to hiring and retaining
2 health care or long-term care professionals,
3 such as laws—

4 “(i) requiring background checks in
5 connection with hiring;

6 “(ii) requiring such professionals to be
7 licensed or certified; or

8 “(iii) limiting the scope of practice;

9 “(B) concerning wage and hour, labor rela-
10 tions, family and medical leave, occupational
11 safety and health, or living wage standards; or

12 “(C) concerning other terms and condi-
13 tions of employment such as the availability of
14 sick, vacation, and retirement benefits and the
15 existence of grievance procedures and labor-
16 management committees.

17 “(e) AUTHORIZATION AND APPROPRIATION OF ADDI-
18 TIONAL AMOUNTS.—To carry out this section, there are
19 authorized to be appropriated, and there are hereby appro-
20 priated to the Department of Health and Human Services,
21 out of amounts in the Treasury not otherwise appro-
22 priated, \$4,000,000,000 for each of fiscal years 2012 and
23 2013.”.

1 **SEC. 1093. SUPPLEMENT, NOT SUPPLANT.**

2 A health care or long-term care provider receiving a
3 grant under this part shall use such Federal funds only
4 to supplement and not supplant the amount of funds that
5 would, in the absence of such Federal funds, be available
6 for hiring and retaining health care or long-term care pro-
7 fessionals.

8 **PART 6—COMMUNITY CORPS**

9 **SEC. 1101. PURPOSE.**

10 It is the purpose of this part to provide for the cre-
11 ation of an additional 750,000 jobs through funding to
12 States and units of general local government to establish
13 and administer a Community Corps.

14 **SEC. 1102. COMMUNITY CORPS.**

15 (a) FUNDING.—There are authorized to be appro-
16 priated and there are appropriated out of any money in
17 the Treasury not otherwise obligated for necessary ex-
18 penses to the Secretary of Labor, in consultation with the
19 Secretary of Housing and Urban Development, to provide
20 to States and units of general local government to estab-
21 lish and administer a Community Corps, \$30,000,000,000
22 for each of fiscal years 2012 and 2013.

23 (b) ALLOTMENT FORMULA.—

24 (1) RESERVATIONS BY THE SECRETARY.—Of
25 the amount appropriated under subsection (a) for
26 each fiscal year, the Secretary may reserve—

1 (A) not more than 1 percent to administer
2 this part;

3 (B) not more than 0.5 percent to award
4 grants, on a competitive basis, to Indian tribes
5 for purposes of this part.

6 (2) MAKING FUNDS AVAILABLE FOR ALLOT-
7 MENT BY THE SECRETARY.—Of the amounts appro-
8 priated under subsection (a) and not reserved under
9 paragraph (1) of this subsection, the Secretary shall
10 allot the amounts for each fiscal year as follows:

11 (A) Seventy percent to entitlement commu-
12 nities, of which the Secretary shall allot—

13 (i) 25 percent by allotting to each en-
14 titlement community an amount which
15 bears the same ratio to the total amount to
16 be allotted under this clause as the popu-
17 lation of the entitlement community bears
18 to the total population of all entitlement
19 communities;

20 (ii) 25 percent by allotting each enti-
21 tlement community an amount which bears
22 the same ratio to the total amount to be
23 allotted under this clause as the extent of
24 poverty in the entitlement community

1 bears to the extent of poverty in all entitle-
2 ment communities; and

3 (iii) 50 percent by allotting to each
4 entitlement community in an amount
5 which bears the same ratio to the total to
6 be allotted under this clause as the number
7 of unemployed individuals in the entitle-
8 ment community bears to the total number
9 of unemployed individuals in all entitle-
10 ment communities.

11 (B) Thirty percent to States, of which the
12 Secretary shall allot—

13 (i) 25 percent by allotting to each
14 State an amount which bears the same
15 ratio to the total amount to be allotted
16 under this clause as the population of the
17 State bears to the total population of all
18 States;

19 (ii) 25 percent by allotting to each
20 State an amount which bears the same
21 ratio to the total amount to be allotted
22 under this clause as the extent of poverty
23 in the State bears to the extent of poverty
24 in all States; and

1 (iii) 50 percent by allotting to each
2 State an amount which bears the same
3 ratio to the total amount to be allotted
4 under this clause as the number of unem-
5 ployed individuals in the State bears to the
6 total number of unemployed individuals in
7 all States.

8 (3) RESERVATION AND ALLOTMENTS BY
9 STATES.—

10 (A) RESERVATION.—Of the amount of
11 funds allotted to a State under paragraph
12 (2)(B) for each fiscal year, a State may reserve
13 not more than 50 percent to carry out a State-
14 wide Community Corps.

15 (B) ALLOTMENTS BY STATES.—A State
16 shall provide all of the funds allotted to the
17 State under paragraph (2)(B) that are not re-
18 served under subparagraph (A) to units of gen-
19 eral local government located in nonentitlement
20 areas of the State to employ individuals under
21 the Community Corps program, of which the
22 State shall allot—

23 (i) 25 percent to each such unit in an
24 amount which bears the same ratio to the
25 total amount made available under this

1 clause as the population of the unit bears
2 to the total population of all such units;

3 (ii) 25 percent to each such unit in an
4 amount which bears the same ratio to the
5 total amount made available under this
6 clause as the extent of poverty in the unit
7 bears to the extent of poverty in such
8 units; and

9 (iii) 50 percent to each such unit in
10 an amount which bears the same ratio to
11 the total amount made available under this
12 clause as the number of unemployed indi-
13 viduals in the unit bears to the total num-
14 ber of unemployed individuals in all such
15 units.

16 (4) REALLOCATION.—If a State or entitlement
17 community does not apply for an allotment under
18 this section for any fiscal year, or if a State's or en-
19 titlement community's application is not approved,
20 the Secretary shall reallocate such amount to the re-
21 maining States or entitlement in accordance with
22 paragraph (2).

23 **SEC. 1103. APPLICATION.**

24 (a) IN GENERAL.—Each State or entitlement com-
25 munity desiring to establish a Community Corps under

1 this part shall submit an application to the Secretary at
2 such time, in such manner, and containing such informa-
3 tion as the Secretary may require.

4 (b) FISCAL YEAR 2012 REQUIREMENTS.—For fiscal
5 year 2012—

6 (1) application requirements shall be released
7 by Secretary within 30 days of enactment of this
8 Act;

9 (2) States and entitlement communities desiring
10 to receive funds under this part for such fiscal year
11 shall submit to the Secretary an application within
12 60 days of the date of enactment of this Act; and

13 (3) the first allotments under this part shall be
14 awarded by the Secretary not later than 90 days
15 after the date of enactment of this Act.

16 **SEC. 1104. ACTIVITIES OF THE COMMUNITY CORPS.**

17 (a) CONSULTATION.—A chief executive officer of a
18 unit of general local government shall consult with the
19 local community and labor organizations representing em-
20 ployees of such unit in determining the Community Corps
21 positions that should be funded under this part for such
22 unit for each fiscal year.

23 (b) ACTIVITIES.—Each Community Corps funded
24 under this part shall employ individuals to carry out 1
25 or more of the following activities.

1 (1) ENERGY AUDITS AND CONSERVATION UP-
2 GRADES.—Perform energy audits of private homes
3 and offer to weatherize them and install attic and
4 crawl-space insulation, low-flow plumbing fixtures,
5 and low-energy lighting fixtures. Provide home-
6 owners with objective information concerning the
7 cost and benefits of more complicated conservation
8 upgrades the homeowners could contract with pri-
9 vate firms to install.

10 (2) RECYCLING AND DEMANUFACTURING.—Col-
11 lect categories of recyclables that currently are
12 under-collected (such as electronic components and
13 household paints and chemicals) and perform initial
14 demanufacturing work to reclaim reusable materials.

15 (3) URBAN LAND RECLAMATION AND ADDRESS-
16 ING BLIGHT.—Address the needs of distressed, fore-
17 closure-affected, and natural-disaster affected areas.
18 For vacant or foreclosed buildings, conduct mainte-
19 nance, board up, or tear down, where appropriate.
20 Salvage materials for recycling. Reclaim vacant land
21 in urban areas for use as neighborhood parks and
22 gardens. Test for the presence of hazardous mate-
23 rials, undertake necessary clean-up work, construct
24 park and/or garden facilities, and establish mainte-
25 nance programs involving the local community. For

1 community gardens, operate model plantings to pro-
2 mote the project, involve local residents in the work,
3 and provide instruction in urban gardening and
4 farming.

5 (4) RURAL CONSERVATION WORK.—In collabo-
6 ration with activities under the Park Improvement
7 Corps under title III, perform conservation work.
8 Repair and upgrade trail systems in parklands. Con-
9 struct shelters, bathrooms and recreational facilities.
10 Undertake watercourse cleaning and reclamation
11 projects. With proper training, conduct emergency
12 work in cases of floods or wildfires, or other natural
13 disasters.

14 (5) PUBLIC PROPERTY MAINTENANCE AND
15 BEAUTIFICATION.—Under the direction of public en-
16 tities that own public property (including building
17 interiors and exteriors and landscapes, and including
18 community centers, playgrounds, and libraries), con-
19 duct maintenance, beautification, and other improve-
20 ment projects. Where appropriate, collaborate with
21 projects funded under part 1 of this subtitle (School
22 Improvement Corps).

23 (6) HOUSING REHABILITATION.—

24 (A) IN GENERAL.—Make improvements in
25 privately owned rental housing units necessary

1 to improve such units so that they comply with
2 the housing quality standards applicable to
3 units assisted under section 8(o) of the United
4 States Housing Act of 1937 (42 U.S.C.
5 1437f(o)), but only if the owner of the unit en-
6 ters into an agreement sufficient to ensure that
7 the owner—

8 (i) pays the cost of materials used in
9 the renovation work; and

10 (ii) charges rent for the unit, during
11 the 5-year period beginning upon comple-
12 tion of the rehabilitation pursuant to this
13 paragraph, in an amount not exceeding the
14 fair market rental established under sec-
15 tion 8(e) of such Act for a dwelling unit of
16 the same size located in the same market
17 area.

18 (B) FREE OF CHARGE.—The Community
19 Corps shall provide all labor required for any
20 rehabilitation pursuant to this paragraph free
21 of charge, except in the case of any major re-
22 pairs that the Corps lacks the capacity to per-
23 form.

24 (7) NEW HOUSING CONSTRUCTION.—Construct
25 new homes on abandoned land in poorer commu-

1 nities or the rehabilitate abandoned properties for
2 use as residences, using the self-help homeowner
3 participation model employed by Habitat for Hu-
4 manity International under which prospective home-
5 owners contribute a significant amount of sweat eq-
6 uity in the construction or rehabilitation of the
7 home. Participating homeowners shall be selected on
8 the basis of inability to otherwise purchase a home
9 in the regular housing market and willingness and
10 capability to assume the responsibilities of homeown-
11 ership. Construction materials shall be included in
12 the cost of homeownership, but all construction labor
13 shall be furnished free of charge by the Community
14 Corps.

15 (8) OTHER COMMUNITY IMPROVEMENT ACTIVI-
16 TIES.—Other community improvement activities as
17 authorized by the Secretary.

18 **SEC. 1105. HIRING AND PREFERENCES.**

19 (a) IN GENERAL.—In hiring individuals for a Com-
20 munity Corps position under this part, a State or unit of
21 general local may only employ unemployed individuals, ex-
22 cept in a case of a position (including a managerial posi-
23 tion) for which no qualified unemployed individual has ap-
24 plied.

1 (b) PRIORITIES IN RECRUITMENT AND HIRING.—In
2 recruiting and hiring unemployed individuals for positions
3 funded under this part, States and units of general local
4 government shall target recruitment efforts and prioritize
5 hiring with respect to individuals who are—

6 (1) unemployed individuals who have exhausted
7 their entitlement to unemployment compensation;

8 (2) unemployed veterans of the Armed Forces
9 and unemployed members of the reserve components
10 of the Armed Forces;

11 (3) unemployed individuals, who immediately
12 before employment in the Community Corps, are eli-
13 gible for unemployment compensation payable under
14 any State law or Federal unemployment compensa-
15 tion law, including any additional compensation or
16 extended compensation under such laws;

17 (4) unemployed individuals who are not eligible
18 to receive unemployment compensation because they
19 do not have sufficient wages to meet the minimum
20 qualifications for such compensation; or

21 (5) unemployed young people, including those
22 who have not previously been employed.

23 (c) STATE EMPLOYMENT AGENCIES.—In hiring for
24 Community Corps positions under this part, a State or
25 unit of general local government shall utilize, among other

1 methods, a State or local employment agencies, such as
2 a one-stop career center or one-stop partner.

3 (d) NOTICE.—Each listing for a position for a Com-
4 munity Corps shall be posted on a State or local employ-
5 ment web site.

6 **SEC. 1106. ADDITIONAL REQUIREMENTS FOR STATES AND**
7 **UNITS OF GENERAL LOCAL GOVERNMENT.**

8 (a) ADMINISTRATIVE EXPENSES.—Each State or
9 unit of general local government receiving an allotment
10 under section 1102 may not use more than 5 percent of
11 the allotment for administrative purposes.

12 (b) COMPLIANCE WITH LOCAL LAWS AND CON-
13 TRACTS.—In hiring individuals for positions funded under
14 this part, or using administrative funds under this part
15 to continue to provide employee compensation for existing
16 employees, a State or unit of general local government
17 shall comply with all applicable Federal, State, and local
18 laws, personnel policies and regulations, and collective bar-
19 gaining agreements, as if such individual were hired, or
20 such employee compensation was provided, without assist-
21 ance under this part.

22 (c) COORDINATION.—To the maximum extent prac-
23 ticable, each State or unit of general local government re-
24 ceiving an allotment under section 1102, shall—

1 (1) integrate education and job skills training,
2 including basic skills instruction and secondary edu-
3 cation services;

4 (2) coordinate to the maximum extent feasible
5 with pre-apprenticeship and apprenticeship pro-
6 grams; and

7 (3) provide jobs in sectors where job growth is
8 most likely, as determined by the Secretary, and in
9 which career advancement opportunities exist to
10 maximize long-term, sustainable employment for in-
11 dividuals after employment funded under this sub-
12 title ends.

13 (d) SUPPLEMENT, NOT SUPPLANT.—A State or unit
14 of general local government receiving funding under this
15 part shall use such Federal funds only to supplement and
16 not supplant the amount of funds that would, in the ab-
17 sence of such Federal funds, be available to pay the cost
18 of employing individuals to perform the types of work au-
19 thorized under this part.

20 **SEC. 1107. EMPLOYMENT STATUS AND COMPENSATION.**

21 (a) EMPLOYEE STATUS.—

22 (1) IN GENERAL.—An individual hired for a po-
23 sition funded under this part shall—

1 (A) be considered an employee of the State
2 or unit of general local government by which
3 such individual was hired;

4 (B) receive the same employee compensa-
5 tion, have the same rights (including health in-
6 surance benefits and paid holidays and vaca-
7 tions) and responsibilities and job classifica-
8 tions, and be subject to the same job standards,
9 employer policies, and collective bargaining
10 agreements as if such individual was hired with-
11 out assistance under this part; and

12 (C) fill a position that offers full-time, full-
13 year employment.

14 (2) DEFINITIONS.—For purposes of this sub-
15 section—

16 (A) the term “full-time” when used in rela-
17 tion to employment has the meaning already es-
18 tablished or, if the meaning has not been estab-
19 lished, determined to be appropriate for pur-
20 poses of this part, by the State or unit of gen-
21 eral local government hiring an individual under
22 this part; and

23 (B) the term “full-year” when used in rela-
24 tion to employment means a position that pro-
25 vides employment for a 12-month period, except

1 that in the case of a position that provides a
2 service required by a State or unit of general
3 local government for only the duration of a
4 school year, the term means a position that pro-
5 vides employment for such duration.

6 (b) LIMIT ON NUMBER OF EXECUTIVE, ADMINISTRA-
7 TIVE, OR PROFESSIONAL POSITIONS.—

8 (1) UNITS.—Of the total number of positions
9 funded under this part for a fiscal year for each
10 State or unit of general local government—

11 (A) not more than 20 percent shall be in
12 a bona fide executive, administrative, or profes-
13 sional capacity; and

14 (B) at least 80 percent shall not be in a
15 bona fide executive, administrative, or profes-
16 sional capacity.

17 (2) DEFINITIONS.—For purposes of this sub-
18 section, the terms “bona fide executive”, “bona fide
19 administrative”, and “bona fide professional” when
20 used in relation to capacity shall have the meanings
21 given such terms under section 13(a)(1) of the Fair
22 Labor Standards Act of 1938 (29 U.S.C.
23 213(a)(1)).

24 (c) TOTAL AMOUNT OF COMPENSATION.—For each
25 fiscal year for which funds are appropriated to carry out

1 this part, each State or unit of general local government
2 that receives funds under this part for any such fiscal year
3 shall use such funds to provide an amount equal to the
4 total amount of employee compensation for individuals
5 hired under this part.

6 (d) LIMIT ON PERIOD OF EMPLOYMENT.—Notwith-
7 standing any agreement or other provision of law (other
8 than those provisions of law pertaining to civil rights in
9 employment), a State or unit of general local government
10 shall not be obligated to employ the individuals hired
11 under this part or retain the positions filled by such indi-
12 viduals beyond the period for which the State or unit re-
13 ceives funding under this part.

14 **SEC. 1108. NONDISPLACEMENT OF EXISTING EMPLOYEES.**

15 (a) IN GENERAL.—A State or unit of general local
16 government may not employ an individual for a position
17 funded under this part, if—

18 (1) employing such individual will result in the
19 layoff or partial displacement (such as a reduction
20 in hours, wages, or employee benefits) of an existing
21 employee of the unit; or

22 (2) such individual will perform the same or
23 substantially similar work that had previously been
24 performed by an employee of the unit who—

1 (A) has been laid off or partially displaced
2 (as such term is described in paragraph (1));
3 and

4 (B) has not been offered by the unit, to be
5 restored to the position the employee had imme-
6 diately prior to being laid off or partially dis-
7 placed.

8 (b) **ELIMINATION OF POSITION.**—For the purposes
9 of this subsection, a position shall be considered to have
10 been eliminated by a State or unit of general local govern-
11 ment if the position has remained unfilled and the unit
12 has not sought to fill such position for at least a period
13 of one month.

14 (c) **PROMOTIONAL OPPORTUNITIES.**—An individual
15 may not be hired for a position funded under this part
16 in a manner that infringes upon the promotional opportu-
17 nities of an existing employee (as of the date of such hir-
18 ing) of a unit receiving funding under this part.

19 **SEC. 1109. DISPUTE RESOLUTIONS, WHISTLEBLOWER HOT-**
20 **LINE, AND ENFORCEMENT BY THE SEC-**
21 **RETARY.**

22 (a) **ESTABLISHMENT OF ARBITRATION PROCE-**
23 **DURE.**—

24 (1) **IN GENERAL.**—Each unit of general local
25 government that is an entitlement community and

1 each State that receives funding under this part
2 shall agree to the arbitration procedure described in
3 this subsection to resolve disputes described in sub-
4 sections (b) and (c).

5 (2) WRITTEN GRIEVANCES.—

6 (A) IN GENERAL.—If an employee (or an
7 employee representative) wishes to use the arbi-
8 tration procedure described in this subsection,
9 such party shall file a written grievance within
10 the time period required under subsection (b) or
11 (c), as applicable, simultaneously with the chief
12 executive officer of a unit or State involved in
13 the dispute and the Secretary.

14 (B) IN-PERSON MEETING.—Not later than
15 10 days after the date of the filing of the griev-
16 ance, the chief executive officer (or the designee
17 of the chief executive officer) shall have an in-
18 person meeting with the party to resolve the
19 grievance.

20 (3) ARBITRATION.—

21 (A) SUBMISSION.—If the grievance is not
22 resolved within the time period described in
23 paragraph (2)(B), a party, by written notice to
24 the other party involved, may submit such
25 grievance to binding arbitration before a quali-

1 fied arbitrator who is jointly selected and inde-
2 pendent of the parties.

3 (B) APPOINTMENT BY SECRETARY.—If the
4 parties cannot agree on an arbitrator within 5
5 days of submitting the grievance to binding ar-
6 bitration under subparagraph (A), one of the
7 parties may submit a request to the Secretary
8 to appoint a qualified and independent arbi-
9 trator. The Secretary shall appoint a qualified
10 and independent arbitrator within 15 days after
11 receiving the request.

12 (C) HEARING.—Unless the parties mutu-
13 ally agree otherwise, the arbitrator shall con-
14 duct a hearing on the grievance and issue a de-
15 cision not later than 30 days after the date
16 such arbitrator is selected or appointed.

17 (D) COSTS.—

18 (i) IN GENERAL.—Except as provided
19 in clause (ii), the cost of an arbitration
20 proceeding shall be divided evenly between
21 the parties to the arbitration.

22 (ii) EXCEPTION.—If a grievant pre-
23 vails under an arbitration proceeding, the
24 unit of general local government or State
25 involved in the dispute shall pay the cost

1 of such proceeding, including attorneys'
2 fees.

3 (b) DISPUTES CONCERNING THE ALLOTMENT OF
4 FUNDS.—In the case where a dispute arises as to whether
5 a unit of general local government that is an entitlement
6 community or State has improperly requested funds for
7 services, an employee or employee representative of the
8 unit or State may file a grievance under subsection (a)
9 not later than 15 days after public notice of an intent to
10 submit an application under section 1103 is published in
11 accordance with paragraph (1)(C) of such section. Upon
12 receiving a copy of the grievance, the Secretary shall with-
13 hold the funds subject to such grievance, unless and until
14 the grievance is resolved under subsection (a), by the par-
15 ties or an arbitrator in favor of providing such funding.

16 (c) ALL OTHER DISPUTES.—

17 (1) IN GENERAL.—In the case of a dispute not
18 covered under subsection (b) concerning compliance
19 with the requirements of this part by a unit of gen-
20 eral local government that is an entitlement commu-
21 nity or State receiving funds under this part, an em-
22 ployee or employee representative of the unit or
23 State may file a grievance under subsection (a) not
24 later than 90 days after the dispute arises. In such
25 cases, an arbitrator may award such remedies as are

1 necessary to make the grievant whole, including the
2 reinstatement of a displaced employee or the pay-
3 ment of back wages, and may submit recommenda-
4 tions to the Secretary to ensure further compliance
5 with the requirements of this part, including rec-
6 ommendations to suspend or terminate funding, or
7 to require the repayment of funds received under
8 this part during any period of noncompliance.

9 (2) EXISTING GRIEVANCE PROCEDURES.—A
10 party to a dispute described in paragraph (1) may
11 use the existing grievance procedure of a unit or
12 State involved in such dispute, or the arbitration
13 procedure described in this subsection, to resolve
14 such dispute.

15 (d) PARTY DEFINED.—For purposes of subsections
16 (a), (b), and (c), the term “party” means an employee,
17 employee representative, unit of general local government,
18 or State, involved in a dispute described in subsection (b)
19 or (c).

20 (e) WHISTLEBLOWER HOTLINE; ENFORCEMENT BY
21 THE SECRETARY.—

22 (1) WHISTLEBLOWER HOTLINE.—The Sec-
23 retary shall post on a publicly accessible Internet
24 Web site of the Department of Labor the contact in-
25 formation for reporting noncompliance with this part

1 by a State or unit of general local government or in-
2 dividual receiving funding under this part.

3 (2) ENFORCEMENT BY THE SECRETARY.—

4 (A) IN GENERAL.—If the Secretary re-
5 ceives a complaint alleging noncompliance with
6 this part, the Secretary may conduct an inves-
7 tigation and after notice and an opportunity for
8 a hearing, may order such remedies as the Sec-
9 retary determines appropriate, including—

10 (i) withholding further funds under
11 this part to a noncompliant entity;

12 (ii) requiring the entity to make an
13 injured party whole; or

14 (iii) requiring the entity to repay to
15 the Secretary any funds received under
16 this part during any period of noncompli-
17 ance.

18 (B) DEFINITION.—For purposes of this
19 paragraph, the term “entity” means State, unit
20 of general local government, or individual.

21 (C) RECOMMENDATION BY AN ARBI-
22 TRATOR.—A remedy described in subparagraph
23 (A) may also be ordered by the Secretary upon
24 recommendation by an arbitrator appointed or
25 selected under this section.

1 **SEC. 1110. DEFINITIONS.**

2 In this part:

3 (1) IN GENERAL.—The terms “city”; “extent of
4 poverty”; “metropolitan city”; “urban county”;
5 “nonentitlement area”; “population”; and “State”
6 have the meanings given the terms in section 102 of
7 the Housing and Community Development Act of
8 1974 (42 U.S.C. 5302).

9 (2) BENEFITS.—The term “benefits” has the
10 meaning given the term “employment benefits” in
11 section 101 of the Family and Medical Leave Act of
12 1993 (29 U.S.C. 2611).

13 (3) EMPLOYEE COMPENSATION.—The term
14 “employee compensation” includes wages and bene-
15 fits.

16 (4) ENTITLEMENT COMMUNITIES.—The term
17 “entitlement communities” includes metropolitan cit-
18 ies and urban counties.

19 (5) INDIAN TRIBE.—The term “Indian tribe”
20 has the meaning given the term in section 4(e) of
21 the Indian Self-Determination and Education Assist-
22 ance Act (25 U.S.C. 450b(e)).

23 (6) SECRETARY.—The term “Secretary” means
24 the Secretary of Labor.

25 (7) UNEMPLOYED INDIVIDUAL.—The term “un-
26 employed individual” has the meaning given such

1 term in section 101 of the Workforce Investment
2 Act of 1998 (29 U.S.C. 2801).

3 (8) UNIT OF GENERAL LOCAL GOVERNMENT.—
4 The term “unit of general local government” means
5 any city, county, town, township, parish, village, or
6 other general purpose political subdivision of a
7 State; Guam, the Northern Mariana Islands, the
8 Virgin Islands, and American Samoa, or a general
9 purpose political subdivision thereof; a combination
10 of such political subdivisions that is recognized by
11 the Secretary; and the District of Columbia.

12 (9) VETERAN.—The term “veteran” has the
13 meaning given such term in section 101 of the
14 Workforce Investment Act (29 U.S.C. 2801).

15 (10) WAGE.—The term “wage” has the mean-
16 ing given such term in section 3 of the Fair Labor
17 Standards Act of 1938 (29 U.S.C. 203).

18 **PART 7—CHILD DEVELOPMENT CORPS**

19 **SEC. 1121. PURPOSE.**

20 It is the purpose of this part to provide for the cre-
21 ation of an additional 100,000 jobs through the Head
22 Start Act.

23 **SEC. 1122. CHILD DEVELOPMENT CORPS.**

24 (a) AMENDMENTS TO THE HEAD START ACT.—The
25 Head Start Act (42 U.S.C. 9831 et seq.) is amended—

1 (1) by inserting after section 639 the following:

2 **“SEC. 639A. AUTHORIZATION OF APPROPRIATIONS FOR EM-**
3 **PLOYING EARLY HEAD START PROFESSIONAL**
4 **EMPLOYEES.**

5 “There is authorized to be appropriated
6 \$3,000,000,000 for each of the fiscal years 2012 and 2013
7 to carry out section 640A.”; and

8 (2) by inserting after section 640 the following:

9 **“SEC. 640A. EMPLOYMENT OF ADDITIONAL INFANT AND**
10 **TODDLER SPECIALISTS.**

11 “(a) EMPLOYMENT OF ADDITIONAL FULL-TIME IN-
12 FANT AND TODDLER SPECIALISTS.—Not later than 90
13 days after the date of the enactment of this Act, the Sec-
14 retary shall provide funds appropriated under section
15 639A to Early Head Start programs to pay the cost of
16 employing additional full-time infant and toddler special-
17 ists.

18 “(b) FUNDS TO SUPPLEMENT NOT SUPPLANT.—An
19 Early Head Start program that receives funds under sub-
20 section (a) shall use such funds only to supplement and
21 not supplant the amount of funds that would, in the ab-
22 sence of such Federal funds, be available to pay the cost
23 of employing additional full-time infant and toddler spe-
24 cialists.”.

1 (b) APPROPRIATION.—There is hereby appropriated
2 out of any money in the Treasury not otherwise appro-
3 priated \$3,000,000,000 for each of the fiscal years 2012
4 and 2013 to carry out section 640A of the Head Start
5 Act.

6 **PART 8—ON-THE-JOB TRAINING**

7 **SEC. 1131. APPROPRIATION.**

8 The following sums are appropriated, out of any
9 money in the Treasury not otherwise appropriated, and
10 for the following purposes, namely:

11 DEPARTMENT OF LABOR

12 EMPLOYMENT AND TRAINING ADMINISTRATION

13 TRAINING AND EMPLOYMENT SERVICES

14 For an additional amount for “Training and Employ-
15 ment Services” for activities under the Workforce Invest-
16 ment Act of 1998 (“WIA”), \$500,000,000 which shall be
17 available for obligation on the date of enactment of this
18 Act, *Provided*, That such funds shall be used solely for
19 on-the-job training (as such term is defined in section
20 101(31) of the WIA): *Provided further*, That
21 \$250,000,000 of such amount shall be for such on-the-
22 job training for individuals who reside in local areas
23 that—

1 (1) have a poverty rate of 12 percent or more
2 for each Public Use Microdata Area (PUMA) in
3 such local area; or

4 (2) have an unemployment rate that is 2 per-
5 cent higher than the national unemployment rate.

6 **PART 9—GENERAL PROVISIONS**

7 **SEC. 1141. GENERAL REQUIREMENTS FOR ENTITIES RE-**
8 **CEIVING FUNDING UNDER THIS SUBTITLE.**

9 (a) COMPLIANCE WITH EXISTING LAWS AND CON-
10 TRACTS.—In hiring individuals for positions funded under
11 this subtitle, or using funds under this subtitle to continue
12 to provide employee compensation for existing employees,
13 a State, unit of general local government, community-
14 based organization, or business shall comply with all appli-
15 cable Federal, State, and local laws relating to health,
16 safety, civil rights, personnel policies and regulations,
17 labor, and collective bargaining agreements, as if such in-
18 dividual were hired, or such employee compensation was
19 provided, without assistance under this subtitle.

20 (b) COMPLIANCE WITH FEDERAL CIVIL RIGHTS
21 LAWS.—Federal civil rights laws described in subsection
22 (a) shall include the following:

23 (1) Title VI of the Civil Rights Act of 1964.

24 (2) Title IX of the Education Amendments of
25 1972.

1 (3) Sections 503 and 504 of the Rehabilitation
2 Act of 1973.

3 (4) The Age Discrimination Act of 1975.

4 **SEC. 1142. REPORTING.**

5 (a) REPORTS TO SECRETARIES.—At the end of fiscal
6 year 2012 and 2013, each State, unit of general local gov-
7 ernment, community-based organization, or business, or
8 other entity that receives assistance under this subtitle
9 shall submit to the Secretary that provided such assistance
10 a report on the number of jobs created and, if applicable,
11 the projects completed with funding under this subtitle.

12 (b) REPORTS TO CONGRESS.—Each Secretary that
13 receives a report under subsection (a) shall provide such
14 reports to Congress not later than July 1, 2014.

15 **SEC. 1143. HIRING AND PREFERENCES.**

16 (a) IN GENERAL.—In hiring individuals for positions
17 funded under part 1, part 5, and part 7, an entity de-
18 scribed in section 1142 receiving funding under this sub-
19 title may only employ unemployed individuals, except in
20 a case of a position (including a managerial position) for
21 which no qualified unemployed individual has applied.

22 (b) PRIORITIES IN RECRUITMENT AND HIRING.—In
23 recruiting and hiring unemployed individuals for positions
24 described in subsection, the entity shall target recruitment

1 efforts and prioritize hiring with respect to individuals who
2 are—

3 (1) unemployed individuals who have exhausted
4 their entitlement to unemployment compensation;

5 (2) unemployed veterans of the Armed Forces
6 and unemployed members of the reserve components
7 of the Armed Forces;

8 (3) unemployed individuals, who immediately
9 before employment in the programs described in sub-
10 paragraph (a), are eligible for unemployment com-
11 pensation payable under any State law or Federal
12 unemployment compensation law, including any ad-
13 ditional compensation or extended compensation
14 under such laws;

15 (4) unemployed individuals who are not eligible
16 to receive unemployment compensation because they
17 do not have sufficient wages to meet the minimum
18 qualifications for such compensation; or

19 (5) in the case of employment under subpart B
20 of part 1, unemployed young people, including those
21 who have not previously been employed.

22 (c) RULE OF CONSTRUCTION.—Nothing in this sec-
23 tion shall supersede the qualification requirements under
24 titles I through VII or existing law, such as medical licen-

1 sure where applicable for health corps or certification for
2 early childhood development workers.

3 **SEC. 1144. FLEXIBILITY ON HIRING.**

4 Funding under this subtitle shall be tied to the job
5 created with the funding rather than to the individual
6 awarded the job, and entities receiving funding under this
7 subtitle are authorized to hire new employees to replace
8 an individual that was hired with such funds, but who has
9 left the position.

10 **SEC. 1145. NONDISPLACEMENT.**

11 (a) NONDISPLACEMENT OF EXISTING EMPLOYEES.—

12 (1) IN GENERAL.—An entity described in sec-
13 tion 1142 that receives funding under this subtitle
14 may not employ an individual for a position funded
15 under this subtitle, if—

16 (A) employing such individual will result in
17 the layoff or partial displacement (such as a re-
18 duction in hours, wages, or employee benefits)
19 of an existing employee of the unit or organiza-
20 tion; or

21 (B) such individual will perform the same
22 or substantially similar work that had pre-
23 viously been performed by an employee of the
24 unit or organization who—

1 (i) has been laid off or partially dis-
2 placed (as such term is described in sub-
3 paragraph (A)); and

4 (ii) has not been offered by the unit
5 or organization, to be restored to the posi-
6 tion the employee had immediately prior to
7 being laid off or partially displaced.

8 (2) ELIMINATION OF POSITION.—For the pur-
9 poses of this subsection, a position shall be consid-
10 ered to have been eliminated by an entity receiving
11 funding under this subtitle if the position has re-
12 mained unfilled and the unit or organization has not
13 sought to fill such position for at least a period of
14 one month.

15 (3) PROMOTIONAL OPPORTUNITIES.—An indi-
16 vidual may not be hired for a position funded under
17 this part in a manner that infringes upon the pro-
18 motional opportunities of an existing employee (as of
19 the date of such hiring) of an entity receiving fund-
20 ing under this subtitle.

21 (b) NONDISPLACEMENT OF LOCAL GOVERNMENT
22 SERVICES.—A business or community-based organization
23 receiving funds under this part may not use such funds
24 to provide services or functions that are customarily pro-

1 vided by a unit of general local government where such
2 services or functions are provided by the organization.

3 (c) NONDISPLACEMENT OF LOCAL BUSINESS.—

4 Where appropriate, any unit of government or community-
5 based organizations receiving funds under this subtitle
6 cannot use those funds to provide services or functions
7 that are currently provided by a local business.

8 **SEC. 1146. EMPLOYMENT STATUS AND COMPENSATION IN**
9 **NEW PROGRAMS.**

10 (a) EMPLOYEE STATUS.—An individual hired for a
11 position funded under part 1, part 5, or part 6, or section
12 1081 of part 4 shall—

13 (1) be considered an employee of the unit of
14 general local government, business, or community-
15 based organization, by which such individual was
16 hired; and

17 (2) receive the same employee compensation,
18 have the same rights and responsibilities and job
19 classifications, and be subject to the same job stand-
20 ards, employer policies, and collective bargaining
21 agreements as if such individual was hired without
22 assistance under this subtitle.

23 (b) TOTAL AMOUNT OF COMPENSATION.—For each
24 fiscal year for which funds are appropriated to carry out
25 this subtitle, each unit of general local government, each

1 business, and each community-based organization that re-
 2 ceives funds under the provisions described in subsection
 3 (a) for any such fiscal year shall use such funds to provide
 4 an amount equal to the total amount of employee com-
 5 pensation for the individuals such the entity hired under
 6 this subtitle.

7 (c) **LIMIT ON PERIOD OF EMPLOYMENT.**—Notwith-
 8 standing any agreement or other provision of law (other
 9 than those provisions of law pertaining to civil rights in
 10 employment), a unit of general local government, business,
 11 or community-based organization shall not be obligated to
 12 employ the individuals hired under this subtitle or retain
 13 the positions filled by such individuals beyond the period
 14 for which the unit or organization receives funding under
 15 the provisions described in subsection (a).

16 **SEC. 1147. DISPUTE RESOLUTIONS, WHISTLEBLOWER HOT-**
 17 **LINE, AND ENFORCEMENT BY THE SEC-**
 18 **RETARY.**

19 (a) **ESTABLISHMENT OF ARBITRATION PROCE-**
 20 **DURE.**—

21 (1) **IN GENERAL.**—Each entity that receives
 22 funding under this subtitle shall agree to the arbi-
 23 tration procedure described in this subsection to re-
 24 solve disputes described in subsections (b) and (c).

25 (2) **WRITTEN GRIEVANCES.**—

1 (A) IN GENERAL.—If an employee (or an
2 employee representative) wishes to use the arbi-
3 tration procedure described in this subsection,
4 such party shall file a written grievance within
5 the time period required under subsection (b) or
6 (c), as applicable, simultaneously with the chief
7 executive officer of an entity involved in the dis-
8 pute and the Secretary of Labor.

9 (B) IN-PERSON MEETING.—Not later than
10 days after the date of the filing of the griev-
11 ance, the chief executive officer (or the designee
12 of the chief executive officer) shall have an in-
13 person meeting with the party to resolve the
14 grievance.

15 (3) ARBITRATION.—

16 (A) SUBMISSION.—If the grievance is not
17 resolved within the time period described in
18 paragraph (2)(B), a party, by written notice to
19 the other party involved, may submit such
20 grievance to binding arbitration before a quali-
21 fied arbitrator who is jointly selected and inde-
22 pendent of the parties.

23 (B) APPOINTMENT BY SECRETARY.—If the
24 parties cannot agree on an arbitrator within 5
25 days of submitting the grievance to binding ar-

1 bitration under subparagraph (A), one of the
2 parties may submit a request to the Secretary
3 of Labor to appoint a qualified and independent
4 arbitrator. The Secretary of Labor shall appoint
5 a qualified and independent arbitrator within
6 15 days after receiving the request.

7 (C) HEARING.—Unless the parties mutu-
8 ally agree otherwise, the arbitrator shall con-
9 duct a hearing on the grievance and issue a de-
10 cision not later than 30 days after the date
11 such arbitrator is selected or appointed.

12 (D) COSTS.—

13 (i) IN GENERAL.—Except as provided
14 in clause (ii), the cost of an arbitration
15 proceeding shall be divided evenly between
16 the parties to the arbitration.

17 (ii) EXCEPTION.—If a grievant pre-
18 vails under an arbitration proceeding, the
19 entity involved in the dispute shall pay the
20 cost of such proceeding, including attor-
21 neys' fees.

22 (b) DISPUTES CONCERNING THE ALLOTMENT OF
23 FUNDS.—In the case where a dispute arises as to whether
24 an entity has improperly requested funds for services, an
25 employee or employee representative of entity may file a

1 grievance under subsection (a) not later than 15 days
2 after public notice of an intent to request funds for serv-
3 ices. Upon receiving a copy of the grievance, the Secretary
4 of Labor shall withhold the funds subject to such griev-
5 ance, unless and until the grievance is resolved under sub-
6 section (a), by the parties or an arbitrator in favor of pro-
7 viding such funding.

8 (c) ALL OTHER DISPUTES.—

9 (1) IN GENERAL.—In the case of a dispute not
10 covered under subsection (b) concerning compliance
11 with the requirements of this subtitle by an entity
12 receiving funds under this part, an employee or em-
13 ployee representative of an entity may file a griev-
14 ance under subsection (a) not later than 90 days
15 after the dispute arises. In such cases, an arbitrator
16 may award such remedies as are necessary to make
17 the grievant whole, including the reinstatement of a
18 displaced employee or the payment of back wages,
19 and may submit recommendations to the Secretary
20 of Labor to ensure further compliance with the re-
21 quirements of this subtitle, including recommenda-
22 tions to suspend or terminate funding, or to require
23 the repayment of funds received under this part dur-
24 ing any period of noncompliance.

1 (2) EXISTING GRIEVANCE PROCEDURES.—A
2 party to a dispute described in paragraph (1) may
3 use the existing grievance procedure of an entity in-
4 volved in such dispute, or the arbitration procedure
5 described in this subsection, to resolve such dispute.

6 (d) PARTY DEFINED.—For purposes of subsections
7 (a), (b), and (c), the term “party” means an employee,
8 employee representative, or entity involved in a dispute de-
9 scribed in subsection (b) or (c).

10 (e) WHISTLEBLOWER HOTLINE; ENFORCEMENT BY
11 THE SECRETARY.—

12 (1) WHISTLEBLOWER HOTLINE.—The Sec-
13 retary of Labor shall post on a publicly accessible
14 Internet Web site of the Department of Labor the
15 contact information for reporting noncompliance
16 with this part by a State, unit of general local gov-
17 ernment, community-based organization, business, or
18 individual receiving funding under this part.

19 (2) ENFORCEMENT BY THE SECRETARY.—

20 (A) IN GENERAL.—If the Secretary of
21 Labor receives a complaint alleging noncompli-
22 ance with this subtitle, the Secretary may con-
23 duct an investigation and after notice and an
24 opportunity for a hearing, may order such rem-

1 edies as the Secretary of Labor determines ap-
2 propriate, including—

3 (i) withholding further funds under
4 this part to a noncompliant entity;

5 (ii) requiring the entity to make an
6 injured party whole; or

7 (iii) requiring the entity to repay to
8 the Secretary of Labor any funds received
9 under this part during any period of non-
10 compliance.

11 (B) RECOMMENDATION BY AN ARBI-
12 TRATOR.—A remedy described in subparagraph
13 (A) may also be ordered by the Secretary of
14 Labor upon recommendation by an arbitrator
15 appointed or selected under this section.

16 **SEC. 1148. TERMINATION.**

17 Programs and funding authorized under this subtitle
18 shall be phased-out over a 90-day period if national unem-
19 ployment, as measured by the Bureau of Labor Statistics,
20 falls under 5 percent. Such phase-out shall ensure that—

21 (1) an individual hired under this subtitle shall
22 not be fired prematurely;

23 (2) projects funded under this subtitle shall be
24 continued until completion; and

1 (3) an individual hired under this subtitle may
2 be replaced when such individual leaves the position
3 for which the individual was hired.

4 **Subtitle B—Buy American**
5 **Enhancement Act of 2011**

6 **SEC. 1201. SHORT TITLE.**

7 This subtitle may be cited as the “The Buy American
8 Enhancement Act of 2011”.

9 **SEC. 1202. DOMESTIC CONTENT REQUIREMENT FOR THE**
10 **BUY AMERICAN ACT.**

11 (a) **SUBSTANTIALLY ALL DEFINED.**—Section 8301
12 of title 41, United States Code, is amended—

13 (1) by redesignating paragraph (2) as para-
14 graph (3); and

15 (2) by inserting after paragraph (1) the fol-
16 lowing new paragraph:

17 “(2) **SUBSTANTIALLY ALL.**—Articles, materials,
18 or supplies shall be treated as made substantially all
19 from articles, materials, or supplies mined, pro-
20 duced, or manufactured in the United States if the
21 cost of the domestic components of such articles,
22 materials, or supplies exceeds 75 percent of the total
23 cost of all components of such articles, materials, or
24 supplies.”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall take effect not later than 180 days
3 after the date of the enactment of this subtitle.

4 **SEC. 1203. REQUIREMENT FOR INDIRECT CONTRACTS TO**
5 **COMPLY WITH THE BUY AMERICAN ACT.**

6 (a) CONTRACT REQUIREMENT.—The head of each
7 Federal agency shall ensure that each contract described
8 in subsection (b) awarded by such Federal agency includes
9 a provision requiring any articles, materials, and supplies
10 provided under the contract to comply with chapter 83 of
11 title 41, United States Code (popularly referred to as the
12 “Buy American Act”), subject to the exceptions to that
13 chapter provided in the Trade Agreements Act of 1979
14 (19 U.S.C. 2501 et seq.) or otherwise provided by law.

15 (b) CONTRACTS DESCRIBED.—The contracts de-
16 scribed in this subsection include each of the following:

17 (1) Housing leases, including military housing
18 provided by a private entity.

19 (2) Power purchase agreements.

20 (3) Enhanced-use leases.

21 (4) Energy savings performance contracts.

22 (5) Utility energy service contracts.

1 **SEC. 1204. BUY AMERICAN WAIVER REPORTING REQUIRE-**
2 **MENT.**

3 (a) **WAIVER DEFINED.**—Section 8301 of title 41,
4 United States Code, as amended by section 1202, is fur-
5 ther amended by adding at the end the following new para-
6 graph:

7 “(4) **WAIVER.**—The term ‘waiver’ means, with
8 respect to the acquisition of an article, material, or
9 supply for public use, the inapplicability of this
10 chapter to the acquisition by reason of any of the
11 following:

12 “(A) A determination by the head of the
13 Federal agency concerned that the acquisition
14 is inconsistent with the public interest.

15 “(B) A determination by the head of the
16 Federal agency concerned that the cost of the
17 acquisition is unreasonable.

18 “(C) Use outside of the United States.

19 “(D) A determination by the head of the
20 Federal agency concerned that the article, ma-
21 terial, or supply is not mined, produced, or
22 manufactured in the United States in sufficient
23 and reasonably available commercial quantities
24 of a satisfactory quality.

25 “(E) Procured under a contract with an
26 award value that is not more than the micro-

1 purchase threshold under section 1902 of this
2 title.

3 “(F) An exception under the Trade Agree-
4 ments Act of 1979 (19 U.S.C. 2501 et seq.).

5 “(G) Any other exception otherwise pro-
6 vided by law.”.

7 (b) **WAIVER REPORTING REQUIREMENT.**—Section
8 8302 of title 41, United States Code, is amended by add-
9 ing at the end the following new section:

10 “(c) **WAIVER REPORTING REQUIREMENT.**—The head
11 of each Federal agency shall establish a location on the
12 website of such agency for the publication of waivers ac-
13 cessible by the public and shall publish a list at such loca-
14 tion of each waiver granted under this chapter not later
15 than 30 days after such waiver is granted.”.

16 (c) **EFFECTIVE DATE.**—The amendments made by
17 this section shall take effect not later than 180 days after
18 the date of the enactment of this subtitle.

19 **SEC. 1205. IMPLEMENTATION THROUGH THE FEDERAL AC-**
20 **QUISITION REGULATION.**

21 Not later than 180 days after the date of the enact-
22 ment of this subtitle, the Federal Acquisition Regulation
23 shall be revised as necessary to implement the provisions
24 of this subtitle.

1 **SEC. 1206. DEFINITIONS.**

2 In this subtitle:

3 (1) **ENERGY SAVINGS PERFORMANCE CON-**
4 **TRACT.**—The term “energy savings performance
5 contract” has the meaning given that term under
6 section 436.31 of title 10, Code of Federal Regula-
7 tions.

8 (2) **FEDERAL AGENCY.**—The term “Federal
9 agency” means any executive agency (as defined in
10 section 133 of title 41, United States Code) or any
11 establishment in the legislative or judicial branch of
12 the Federal Government.

13 **Subtitle C—Fairness and Trans-**
14 **parency in Contracting Act of**
15 **2011**

16 **SEC. 1301. SHORT TITLE.**

17 This subtitle may be cited as the “Fairness and
18 Transparency in Contracting Act of 2011”.

19 **SEC. 1302. DEFINITIONS.**

20 In this subtitle—

21 (1) the terms “Administration” and “Adminis-
22 trator” mean the Small Business Administration
23 and the Administrator thereof, respectively;

24 (2) the term “parent company”, relating to a
25 business concern, means a person other than an in-

1 dividual that owns not less than 51 percent of that
2 business concern;

3 (3) the terms “small business concern”, “small
4 business concern owned and controlled by veterans”,
5 “small business concern owned and controlled by
6 service-disabled veterans”, and “small business con-
7 cern owned and controlled by women” have the
8 meanings given those terms in section 3 of the Small
9 Business Act (15 U.S.C. 632), as amended by this
10 subtitle; and

11 (4) the term “small business concern owned
12 and controlled by socially and economically disadvan-
13 tagged individuals” has the meaning given that term
14 in section 8(d)(3)(C) of the Small Business Act (15
15 U.S.C. 637(d)(3)(C)).

16 **SEC. 1303. PURPOSE.**

17 The purpose of this subtitle is to modify the defini-
18 tions relating to whether a business concern qualifies as
19 a small business concern to establish additional require-
20 ments that ensure that no publically traded business con-
21 cern, subsidiary of a publically traded business concern,
22 foreign-owned business concern, or subsidiary of a foreign-
23 owned business concern is considered a small business con-
24 cern for the purpose of Federal Government contracting
25 and subcontracting, including for procurement goals.

1 **SEC. 1304. DEFINITION OF SMALL BUSINESS CONCERN AND**
2 **STATUS REVIEW.**

3 Section 3(a) of the Small Business Act (15 U.S.C.
4 632(a)) is amended by adding at the end the following:

5 “(6) INDEPENDENTLY OWNED AND OPERATED.—

6 “(A) IN GENERAL.—In this subsection, the
7 term ‘independently owned and operated’ does not
8 include a business concern—

9 “(i) that is—

10 “(I) an issuer of a class of securities
11 registered or that is required to be reg-
12 istered pursuant to section 12 of the Secu-
13 rities Exchange Act of 1934 (15 U.S.C.
14 78l) or that is required to file reports pur-
15 suant to section 15(d) of that Act (15
16 U.S.C. 78o(d)); or

17 “(II) owned by an entity that is an
18 issuer of a class of securities registered or
19 that is required to be registered pursuant
20 to section 12 of the Securities Exchange
21 Act of 1934 (15 U.S.C. 78l) or that is re-
22 quired to file reports pursuant to section
23 15(d) of that Act (15 U.S.C. 78o(d)); or

24 “(ii) more than 50 percent of which is
25 owned, directly or indirectly, by one or more in-
26 dividuals that are not United States citizens.

1 “(B) ENTITIES.—In determining ownership of
2 a business concern, any interest in the business con-
3 cern that is owned by a person that is not an indi-
4 vidual (including a corporation, partnership, estate,
5 or trust) shall be considered owned proportionately
6 by or for the individuals that own that person.”.

7 **SEC. 1305. NOTIFICATION.**

8 (a) IN GENERAL.—Not later than 6 months after the
9 date of enactment of this subtitle, the Administrator shall
10 notify the head of each Federal department or agency re-
11 garding this subtitle and the amendments made by this
12 subtitle.

13 (b) TO CONTRACTORS.—Not later than 6 months
14 after receiving notice under subsection (a), the head of a
15 Federal department or agency shall notify any contractor
16 of that department or agency regarding this subtitle and
17 the amendments made by this subtitle.

18 **SEC. 1306. REPORTING.**

19 (a) IN GENERAL.—Not later than 6 months after the
20 end of each fiscal year, the Administrator shall publish
21 a report regarding prime contracts with the Federal Gov-
22 ernment awarded to business concerns that were identified
23 as small business concerns for the purposes of achieving
24 the small business contracting goals of the Federal Gov-
25 ernment during the previous fiscal year.

1 (b) CONTENTS.—

2 (1) IN GENERAL.—Each report under sub-
3 section (a) shall, for the fiscal year before the year
4 in which that report is published, include—

5 (A) the name of each small business con-
6 cern, small business concern owned and con-
7 trolled by socially and economically disadvan-
8 taged individuals, small business concern owned
9 and controlled by women, small business con-
10 cern owned and controlled by veterans, and
11 small business concern owned and controlled by
12 service-disabled veterans that was awarded a
13 prime contract with the Federal Government;
14 and

15 (B) for each small business concern de-
16 scribed in subparagraph (A), the total dollar
17 amount of prime contracts with the Federal
18 Government awarded to that small business
19 concern in descending order.

20 (2) PARENT COMPANIES.—If a small business
21 concern described in paragraph (1)(A) has a parent
22 company, the Administrator shall report information
23 relating to any prime contract with the Federal Gov-
24 ernment of that small business concern under the
25 name of that parent company.

1 (c) AVAILABILITY.—The Administrator shall make
2 each report under subsection (a) available on the Web site
3 of the Administration in a manner that is easily accessible
4 by members of the public.

5 **SEC. 1307. LIST OF CONTRACTORS.**

6 (a) IN GENERAL.—Each Federal department and
7 agency shall publish on the Web site of that department
8 or agency a list of each business concern that received a
9 contract award because that business concern was identi-
10 fied as a small business concern.

11 (b) LIST CONTENTS.—A list published under sub-
12 section (a) shall—

13 (1) list business concerns in the order of the
14 total amount in dollars of contracts between the
15 Federal Government and that business concern, be-
16 ginning with the largest total value;

17 (2) include the total amount in dollars of con-
18 tracts between the Federal Government and each
19 business concern on such list; and

20 (3) include the name of any parent company of
21 a business concern on such list.

22 **SEC. 1308. CONTRACTING DATABASES.**

23 The Administrator shall, by regulation, establish pro-
24 cedures to ensure that the Central Contractor Registration
25 database and any successor database provide an adequate

1 warning regarding criminal penalties established under
2 section 16(d) of the Small Business Act (15 U.S.C.
3 645(d)) for misrepresenting the status of a business con-
4 cern or person in order to obtain certain contracts with
5 the Federal Government.

6 **SEC. 1309. ENFORCEMENT.**

7 (a) COMPLAINTS.—

8 (1) IN GENERAL.—Any person may file a com-
9 plaint with the Administrator and the head of the
10 affected department or agency about the classifica-
11 tion of a business concern as a small business con-
12 cern and the Administrator and the head of the af-
13 fected department or agency shall resolve any com-
14 plaint filed under this paragraph in a timely man-
15 ner.

16 (2) REPORTS.—The Administrator shall annu-
17 ally submit to Congress a report describing any com-
18 plaints described in paragraph (1) that were filed
19 during the relevant year and the resolution of any
20 such complaint.

21 (b) DEBARMENT.—The head of each Federal depart-
22 ment or agency shall issue or amend the contracting rules
23 and regulations for that department or agency to ensure
24 that a business concern shall be debarred from receiving

1 a Federal contract for a period of not less than 5 years
2 if that business concern—

3 (1) fraudulently represents that it is a small
4 business concern as part of a bid for a small busi-
5 ness contract with that department or agency; or

6 (2) violates this subtitle or an amendment made
7 by this subtitle.

8 **Subtitle D—National Infrastruc-**
9 **ture Development Bank Act of**
10 **2011**

11 **SEC. 1401. SHORT TITLE.**

12 This subtitle may be cited as the “National Infra-
13 structure Development Bank Act of 2011”.

14 **SEC. 1402. FINDINGS.**

15 Congress finds the following:

16 (1) According to the American Society of Civil
17 Engineers, the current condition of the infrastruc-
18 ture in the United States earns a grade point aver-
19 age of D, and an estimated \$2,200,000,000,000 in-
20 vestment is needed over the next 5 years to meet
21 adequate conditions.

22 (2) According to the National Surface Trans-
23 portation Policy and Revenue Study Commission,
24 \$225,000,000,000 is needed annually from all
25 sources for the next 50 years to upgrade our surface

1 transportation system to a state of good repair and
2 create a more advanced system.

3 (3) The Environmental Protection Agency
4 projects that—

5 (A) \$334,000,000,000 is needed to invest
6 in infrastructure improvements over 20 years to
7 ensure the provision of safe water; and

8 (B) \$202,500,000,000 is needed for pub-
9 licly owned wastewater systems-related infra-
10 structure needs over 20 years.

11 (4) According to the Edison Electric Institute,
12 the electric power industry will need to invest
13 \$298,000,000,000 in the Nation's transmission sys-
14 tem by 2030 in order to maintain reliable service.

15 (5) According to the American Council on Re-
16 newable Energy, renewable energy could provide up
17 to 635 gigawatts of new electricity generating capac-
18 ity by 2025, a substantial contribution and poten-
19 tially more than the Nation's need for new capacity,
20 according to the United States Energy Information
21 Administration.

22 (6) According to the United States Green
23 Building Council, United States buildings account
24 for nearly 39 percent of primary energy use and 38
25 percent of carbon emissions.

1 (7) According to the Organization for Economic
2 Cooperation and Development (OECD), the United
3 States ranks 14th among OECD nations in
4 broadband access per 100 inhabitants.

5 (8) Although grant programs of the Govern-
6 ment must continue to play a central role in financ-
7 ing the transportation, environment, energy, and
8 telecommunications infrastructure needs of the
9 United States, current and foreseeable demands on
10 existing Federal, State, and local funding for infra-
11 structure expansion exceed the resources to support
12 these programs by margins wide enough to prompt
13 serious concerns about the United States' ability to
14 sustain long-term economic development, produc-
15 tivity, and international competitiveness.

16 (9) The capital markets, including central
17 banks, pension funds, financial institutions, sov-
18 ereign wealth funds, and insurance companies, have
19 a growing interest in infrastructure investment. The
20 establishment of a United States Government-owned
21 institution that would provide this investment oppor-
22 tunity through high-quality bond issues that would
23 be used to finance qualifying infrastructure projects
24 would attract needed capital for United States infra-
25 structure development.

1 **SEC. 1403. DEFINITIONS.**

2 For purposes of this subtitle, the following definitions
3 apply unless the context requires otherwise:

4 (1) **BANK.**—The term “Bank” means the Na-
5 tional Infrastructure Development Bank established
6 under section 1404(a).

7 (2) **BOARD.**—The term “Board” means the Na-
8 tional Infrastructure Development Bank Board.

9 (3) **CHIEF ASSET AND LIABILITY MANAGEMENT**
10 **OFFICER.**—The term “chief asset and liability man-
11 agement officer” means the chief individual respon-
12 sible for coordinating the management of assets and
13 liabilities of the Bank.

14 (4) **CHIEF COMPLIANCE OFFICER.**—The term
15 “chief compliance officer or CCO” means the chief
16 individual responsible for overseeing and managing
17 the compliance and regulatory affairs issues of the
18 Bank.

19 (5) **CHIEF FINANCIAL OFFICER.**—The term
20 “chief financial officer or CFO” means the chief in-
21 dividual responsible for managing the financial risks,
22 planning, and reporting of the Bank.

23 (6) **CHIEF LOAN ORIGINATION OFFICER.**—The
24 term “chief loan origination officer” means the chief
25 individual responsible for the processing of new
26 loans provided by the Bank.

1 (7) CHIEF OPERATIONS OFFICER.—The term
2 “chief operations officer or COO” means the chief
3 individual responsible for information technology and
4 the day to day operations of the Bank.

5 (8) CHIEF RISK OFFICER.—The term “chief
6 risk officer or CRO” means the chief individual re-
7 sponsible for managing operational and compliance-
8 related risks of the Bank.

9 (9) CHIEF TREASURY OFFICER.—The term
10 “chief treasury officer” means the chief individual
11 responsible for managing the Bank’s treasury oper-
12 ations.

13 (10) DEVELOPMENT.—The terms “develop-
14 ment” and “develop” mean, with respect to an infra-
15 structure project, any—

16 (A) preconstruction planning, feasibility re-
17 view, permitting, design work, and other
18 preconstruction activities; and

19 (B) construction, reconstruction, rehabili-
20 tation, replacement, or expansion.

21 (11) DISADVANTAGED COMMUNITY.—The term
22 “disadvantaged community” means a community
23 with a median household income of less than 80 per-
24 cent of the statewide median household income for
25 the State in which the community is located.

1 (12) ENERGY INFRASTRUCTURE PROJECT.—

2 The term “energy infrastructure project” means any
3 project for energy transmission, energy efficiency en-
4 hancement for buildings, public housing, and
5 schools, renewable energy, and energy storage.

6 (13) ENTITY.—The term “entity” means an in-
7 dividual, corporation, partnership (including a pub-
8 lic-private partnership), joint venture, trust, and a
9 State or other governmental entity, including a polit-
10 ical subdivision or any other instrumentality of a
11 State or a revolving fund.

12 (14) ENVIRONMENTAL INFRASTRUCTURE
13 PROJECT.—The term “environmental infrastructure
14 project” means any project for the establishment,
15 maintenance, or enhancement of any drinking water
16 and wastewater treatment facility, storm water man-
17 agement system, dam, levee, open space manage-
18 ment system, solid waste disposal facility, hazardous
19 waste facility, or industrial site cleanup.

20 (15) EXECUTIVE DIRECTOR.—The term “execu-
21 tive director” means the individual serving as the
22 chief executive officer of the Bank.

23 (16) GENERAL COUNSEL.—The term “general
24 counsel” means the individual who serves as the
25 chief lawyer for the Bank.

1 (17) INFRASTRUCTURE PROJECT.—The term
2 “infrastructure project” means any energy, environ-
3 mental, telecommunications, or transportation infra-
4 structure project.

5 (18) PUBLIC BENEFIT BOND.—The term “pub-
6 lic benefit bond” means a bond issued with respect
7 to an infrastructure project in accordance with this
8 subtitle if—

9 (A) the net spendable proceeds from the
10 sale of the issue may be used for expenditures
11 incurred after the date of issuance with respect
12 to the project, subject to the rules of the Bank;

13 (B) the bond issued by the Bank is in reg-
14 istered form and meets the requirements of this
15 subtitle and otherwise applicable law; and

16 (C) the payment of principal with respect
17 to the bond is the obligation of the Bank.

18 (19) PUBLIC-PRIVATE PARTNERSHIP.—The
19 term “public-private partnership” means any enti-
20 ty—

21 (A)(i) which is undertaking the develop-
22 ment of all or part of an infrastructure project,
23 which will have a public benefit, pursuant to re-
24 quirements established in one or more contracts

1 between the entity and a State or an instru-
2 mentality of a State; or

3 (ii) the activities of which, with respect to
4 such an infrastructure project, are subject to
5 regulation by a State or any instrumentality of
6 a State; and

7 (B) which owns, leases, or operates, or will
8 own, lease, or operate, the project in whole or
9 in part, and at least one of the participants in
10 the entity is a nongovernmental entity.

11 (20) REVOLVING FUND.—The term “revolving
12 fund” means a fund or program established by a
13 State or a political subdivision or other instrumen-
14 tality of a State, the principal activity of which is to
15 make loans, commitments, or other financial accom-
16 modation available for the development of one or
17 more categories of infrastructure projects.

18 (21) SECRETARY.—The term “Secretary”
19 means the Secretary of the Treasury or the designee
20 of the Secretary.

21 (22) SMART GRID.—The term “smart grid”
22 means a system that provides for any of the smart
23 grid functions set forth in section 1306(d) of the
24 Energy Independence and Security Act of 2007 (42
25 U.S.C. 17386(d)).

1 (23) STATE.—The term “State” includes the
2 District of Columbia, Puerto Rico, Guam, American
3 Samoa, the Virgin Islands, the Commonwealth of
4 Northern Mariana Islands, and any other territory
5 of the United States.

6 (24) TELECOMMUNICATIONS INFRASTRUCTURE
7 PROJECT.—The term “telecommunications infra-
8 structure project” means any project involving infra-
9 structure required to provide communications by
10 wire or radio.

11 (25) TRANSPORTATION INFRASTRUCTURE
12 PROJECT.—The term “transportation infrastructure
13 project” means any project for the construction,
14 maintenance, or enhancement of highways, roads,
15 bridges, transit and intermodal systems, inland wa-
16 terways, commercial ports, airports, high speed rail
17 and freight rail systems.

18 **SEC. 1404. ESTABLISHMENT OF NATIONAL INFRASTRUC-**
19 **TURE DEVELOPMENT BANK.**

20 (a) ESTABLISHMENT OF NATIONAL INFRASTRUC-
21 TURE DEVELOPMENT BANK.—The National Infrastruc-
22 ture Development Bank is established as a wholly owned
23 Government corporation subject to chapter 91 of title 31,
24 United States Code (commonly known as the “Govern-

1 ment Corporation Control Act”), except as otherwise pro-
2 vided in this subtitle.

3 (b) RESPONSIBILITY OF THE SECRETARY.—The Sec-
4 retary shall take such action as may be necessary to assist
5 in implementing the establishment of the bank in accord-
6 ance with this subtitle.

7 (c) CONFORMING AMENDMENT.—Section 9101(3) of
8 title 31, United States Code, is amended by inserting after
9 subparagraph (N) the following:

10 “(O) the National Infrastructure Develop-
11 ment Bank.”.

12 **SEC. 1405. BOARD OF DIRECTORS.**

13 (a) IN GENERAL.—The Bank shall have a Board of
14 Directors consisting of 5 members appointed by the Presi-
15 dent by and with the advice and consent of the Senate.

16 (b) QUALIFICATIONS.—The directors of the Board
17 shall include individuals representing different regions of
18 the United States and—

19 (1) 2 of the directors shall have public sector
20 experience; and

21 (2) 3 of the directors shall have private sector
22 experience.

23 (c) CHAIRPERSON AND VICE CHAIRPERSON.—As des-
24 ignated at the time of appointment, one of the directors
25 of the Board shall be designated chairperson of the Board

1 by the President and one shall be designated as vice chair-
2 person of the Board by the President.

3 (d) TERMS.—

4 (1) IN GENERAL.—Except as provided in para-
5 graph (2) and subsection (f), each director shall be
6 appointed for a term of 6 years.

7 (2) INITIAL STAGGERED TERMS.—Of the initial
8 members of the Board—

9 (A) the chairperson and vice chairperson
10 shall be appointed for terms of 6 years;

11 (B) 1 shall be appointed for a term of 5
12 years;

13 (C) 1 shall be appointed for a term of 4
14 years; and

15 (D) 1 shall be appointed for a term of 3
16 years.

17 (e) DATE OF INITIAL NOMINATIONS.—The initial
18 nominations by the President for appointment of directors
19 to the Board shall be made not later than 60 days after
20 the date of enactment of this Act.

21 (f) VACANCIES.—

22 (1) IN GENERAL.—A vacancy on the Board
23 shall be filled in the manner in which the original
24 appointment was made.

1 (2) APPOINTMENT TO REPLACE DURING
2 TERM.—Any director appointed to fill a vacancy oc-
3 curring before the expiration of the term for which
4 the director’s predecessor was appointed shall be ap-
5 pointed only for the remainder of the term.

6 (3) DURATION.—A director may serve after the
7 expiration of that director’s term until a successor
8 has taken office.

9 (g) QUORUM.—Three directors shall constitute a
10 quorum.

11 (h) REAPPOINTMENT.—A director of the Board ap-
12 pointed by the President may be reappointed by the Presi-
13 dent in accordance with this section.

14 (i) PER DIEM REIMBURSEMENT.—Directors of the
15 Board shall serve on a part-time basis and shall receive
16 a per diem when engaged in the actual performance of
17 Bank business, plus reasonable reimbursement for travel,
18 subsistence, and other necessary expenses incurred in the
19 performance of their duties.

20 (j) LIMITATIONS.—A director of the Board may not
21 participate in any review or decision affecting a project
22 under consideration for assistance under this subtitle if
23 the director has or is affiliated with a person who has an
24 interest in such project.

25 (k) POWERS AND LIMITATIONS OF THE BOARD.—

1 (1) POWERS.—In order to carry out the pur-
2 poses of the Bank as set forth in this subtitle, the
3 Board shall be responsible for monitoring and over-
4 seeing infrastructure projects and have the following
5 powers:

6 (A) To make senior and subordinated
7 loans and purchase senior and subordinated
8 debt securities and enter into a binding commit-
9 ment to make any such loan or purchase any
10 such security, on such terms as the Board may
11 determine, in the Board’s discretion, to be ap-
12 propriate, the proceeds of which are used to as-
13 sist in the financing or refinancing of the devel-
14 opment of one or more infrastructure projects.

15 (B) To issue and sell debt securities of the
16 Bank on such terms as the Board shall deter-
17 mine from time to time.

18 (C) To issue public benefit bonds and to
19 provide financing to infrastructure projects
20 from amounts made available from the issuance
21 of such bonds.

22 (D) To make loan guarantees.

23 (E) To make agreements and contracts
24 with any entity in furtherance of the business
25 of the Bank.

1 (F) To borrow on the global capital market
2 and lend to regional, State, and local entities,
3 and commercial banks for the purpose of fund-
4 ing infrastructure projects.

5 (G) To purchase in the open market any of
6 the Bank's outstanding obligations at any time
7 and at any price.

8 (H) To monitor and oversee infrastructure
9 projects financed, in whole or in part, by the
10 Bank.

11 (I) To acquire, lease, pledge, exchange,
12 and dispose of real and personal property and
13 otherwise exercise all the usual incidents of
14 ownership of property to the extent the exercise
15 of such powers are appropriate to and con-
16 sistent with the purposes of the Bank.

17 (J) To sue and be sued in the Bank's cor-
18 porate capacity in any court of competent juris-
19 diction, except that no attachment, injunction,
20 or similar process, may be issued against the
21 property of the Bank or against the Bank with
22 respect to such property.

23 (K) To indemnify the directors and officers
24 of the Bank for liabilities arising out of the ac-
25 tions of the directors and officers in such capac-

1 ity, in accordance with, and subject to the limi-
2 tations contained in, this subtitle.

3 (L) To serve as the primary liaison be-
4 tween the Bank, Congress, the executive
5 branch, and State and local governments and to
6 represent the Bank's interests.

7 (M) To exercise all other lawful powers
8 which are necessary or appropriate to carry out,
9 and are consistent with, the purposes of the
10 Bank.

11 (2) LIMITATIONS.—

12 (A) ISSUANCE OF DEBT SECURITY.—The
13 Board may not issue any debt security without
14 the prior consent of the Secretary.

15 (B) ISSUANCE OF VOTING SECURITY.—The
16 Board may not issue any voting security in the
17 Bank to any entity other than the Secretary.

18 (3) ACTIONS CONSISTENT WITH SELF-SUP-
19 PORTING ENTITY STATUS.—The Board shall conduct
20 its business in a manner consistent with the require-
21 ments of this section.

22 (4) COORDINATION WITH STATE AND LOCAL
23 REGULATORY AUTHORITY.—The provision of finan-
24 cial assistance by the Board pursuant to this subtitle
25 shall not be construed as—

1 (A) limiting the right of any State or polit-
2 ical subdivision or other instrumentality of a
3 State to approve or regulate rates of return on
4 private equity invested in a project; or

5 (B) otherwise superseding any State law or
6 regulation applicable to a project.

7 (5) FEDERAL PERSONNEL REQUESTS.—The
8 Board shall have the power to request the detail, on
9 a reimbursable basis, of personnel from other Fed-
10 eral agencies with specific expertise not available
11 from within the Bank or elsewhere. The head of any
12 Federal agency may detail, on a reimbursable basis,
13 any personnel of such agency requested by the
14 Board and shall not withhold unreasonably the de-
15 tail of any personnel requested by the Board.

16 (1) MEETINGS.—

17 (1) OPEN TO THE PUBLIC; NOTICE.—All meet-
18 ings of the Board held to conduct the business of the
19 Bank shall be open to the public and shall be pre-
20 ceded by reasonable notice.

21 (2) INITIAL MEETING.—The Board shall meet
22 not later than 90 days after the date on which all
23 directors of the Board are first appointed and other-
24 wise at the call of the Chairperson.

1 (3) EXCEPTION FOR CLOSED MEETINGS.—Pur-
2 suant to such rules as the Board may establish
3 through their bylaws, the directors may close a
4 meeting of the Board if, at the meeting, there is
5 likely to be disclosed information which could ad-
6 versely affect or lead to speculation relating to an in-
7 frastructure project under consideration for assist-
8 ance under this subtitle or in financial or securities
9 or commodities markets or institutions, utilities, or
10 real estate. The determination to close any meeting
11 of the Board shall be made in a meeting of the
12 Board, open to the public, and preceded by reason-
13 able notice. The Board shall prepare minutes of any
14 meeting which is closed to the public and make such
15 minutes available as soon as the considerations ne-
16 cessitating closing such meeting no longer apply.

17 **SEC. 1406. EXECUTIVE COMMITTEE.**

18 (a) IN GENERAL.—The Board shall have an executive
19 committee consisting of 9 members, headed by the execu-
20 tive director of the Bank.

21 (b) EXECUTIVE DIRECTOR.—A majority of the Board
22 shall have the authority to appoint and reappoint the exec-
23 utive director.

24 (c) CEO.—The executive director shall be the chief
25 executive officer of the Bank, with such executive func-

1 tions, powers, and duties as may be prescribed by this sub-
2 title, the bylaws of the Bank, or the Board.

3 (d) OTHER EXECUTIVE OFFICERS.—The Board shall
4 appoint, remove, fix the compensation, and define duties
5 of 8 other executive officers to serve on the Executive
6 Committee as the—

- 7 (1) chief compliance officer;
- 8 (2) chief financial officer;
- 9 (3) chief asset and liability management officer;
- 10 (4) chief loan origination officer;
- 11 (5) chief operations officer;
- 12 (6) chief risk officer;
- 13 (7) chief treasury officer; and
- 14 (8) general counsel.

15 (e) QUALIFICATIONS.—The executive director and
16 other executive officers shall have demonstrated experience
17 and expertise in one or more of the following:

- 18 (1) Transportation infrastructure.
- 19 (2) Environmental infrastructure.
- 20 (3) Energy infrastructure.
- 21 (4) Telecommunications infrastructure.
- 22 (5) Economic development.
- 23 (6) Workforce development.
- 24 (7) Public health.
- 25 (8) Private or public finance.

1 (f) DUTIES.—In order to carry out the purposes of
2 the Bank as set forth in this subtitle, the executive com-
3 mittee shall—

4 (1) establish disclosure and application proce-
5 dures for entities nominating projects for assistance
6 under this subtitle;

7 (2) accept, for consideration, project proposals
8 relating to the development of infrastructure
9 projects, which meet the basic criteria established by
10 the Board, and which are submitted by an entity;

11 (3) provide recommendations to the Board and
12 place project proposals accepted by the executive
13 committee on a list for consideration for financial
14 assistance from the Board; and

15 (4) provide technical assistance to entities re-
16 ceiving financing from the Bank and otherwise im-
17 plement decisions of the Board.

18 (g) VACANCY.—A vacancy in the position of executive
19 director shall be filled in the manner in which the original
20 appointment was made.

21 (h) COMPENSATION.—The compensation of the exec-
22 utive director and other executive officers of the executive
23 committee shall be determined by the Board.

1 (i) REMOVAL.—The executive director and other ex-
2 ecutive officers may be removed at the discretion of a ma-
3 jority of the Board.

4 (j) TERM.—The executive director and other execu-
5 tive officers shall serve a 6-year term and may be re-
6 appointed in accordance with this section.

7 (k) LIMITATIONS.—The executive director and other
8 executive officers shall not—

9 (1) hold any other public office;

10 (2) have any interest in an infrastructure
11 project considered by the Board;

12 (3) have any interest in an investment institu-
13 tion, commercial bank, or other entity seeking finan-
14 cial assistance for any infrastructure project from
15 the Bank; and

16 (4) have any such interest during the 2-year pe-
17 riod beginning on the date such officer ceases to
18 serve in such capacity.

19 **SEC. 1407. RISK MANAGEMENT COMMITTEE.**

20 (a) ESTABLISHMENT OF RISK MANAGEMENT COM-
21 MITTEE.—The Bank shall establish a risk management
22 committee consisting of 5 members, headed by the chief
23 risk officer.

1 (b) APPOINTMENTS.—A majority of the Board shall
2 have the authority to appoint and reappoint the CRO of
3 the Bank.

4 (c) FUNCTIONS; DUTIES.—

5 (1) IN GENERAL.—The CRO shall have such
6 functions, powers, and duties as may be prescribed
7 by one or more of the following: This subtitle, the
8 bylaws of the Bank, and the Board. The CRO shall
9 report directly to the Board.

10 (2) RISK MANAGEMENT DUTIES.—In order to
11 carry out the purposes of this subtitle, the risk man-
12 agement committee shall—

13 (A) create financial, credit, and operational
14 risk management guidelines and policies to be
15 adhered to by the Bank;

16 (B) set guidelines to ensure diversification
17 of lending activities by both region and infra-
18 structure project type;

19 (C) create conforming standards for infra-
20 structure finance securities;

21 (D) monitor financial, credit and oper-
22 ational exposure of the Bank; and

23 (E) provide financial recommendations to
24 the Board.

1 (d) OTHER RISK MANAGEMENT OFFICERS.—The
2 Board shall appoint, remove, fix the compensation, and
3 define the duties of 4 other risk management officers to
4 serve on the risk management committee.

5 (e) QUALIFICATIONS.—The CRO and other risk man-
6 agement officers shall have demonstrated experience and
7 expertise in one or more of the following:

8 (1) Treasury and asset and liability manage-
9 ment.

10 (2) Investment regulations.

11 (3) Insurance.

12 (4) Credit risk management and credit evalua-
13 tions.

14 (5) Related disciplines.

15 (f) VACANCY.—A vacancy in the position of CRO or
16 any other risk management officer shall be filled in the
17 manner in which the original appointment was made.

18 (g) COMPENSATION.—The compensation of the CRO
19 and other risk management officers shall be determined
20 by the Board.

21 (h) REMOVAL.—The CRO and any other risk man-
22 agement officers may be removed at the discretion of a
23 majority of the Board.

1 (i) TERM.—The CRO and other risk management of-
2 ficers shall serve a 6-year term and may be reappointed
3 in accordance with this section.

4 (j) LIMITATIONS.—The CRO and other risk manage-
5 ment officers shall not—

6 (1) hold any other public office;

7 (2) have any interest in an infrastructure
8 project considered by the Board;

9 (3) have any interest in an investment institu-
10 tion, commercial bank, or other entity seeking finan-
11 cial assistance for any infrastructure project from
12 the Bank; and

13 (4) have any such interest during the 2-year pe-
14 riod beginning on the date such officer ceases to
15 serve in such capacity.

16 **SEC. 1408. AUDIT COMMITTEE.**

17 (a) IN GENERAL.—The Bank shall have an audit
18 committee consisting of 5 members, headed by the chief
19 compliance officer of the Bank.

20 (b) APPOINTMENTS.—A majority of the Board shall
21 have the authority to appoint and reappoint the CCO of
22 the Bank.

23 (c) FUNCTIONS; DUTIES.—The CCO shall have such
24 functions, powers, and duties as may be prescribed by one
25 or more of the following: This subtitle, the bylaws of the

1 Bank, and the Board. The CCO shall report directly to
2 the Board.

3 (d) AUDIT DUTIES.—In order to carry out the pur-
4 poses of the Bank under this subtitle, the audit committee
5 shall—

6 (1) provide internal controls and internal audit-
7 ing activities for the Bank;

8 (2) maintain responsibility for the accounting
9 activities of the Bank;

10 (3) issue financial reports of the Bank; and

11 (4) complete reports with outside auditors and
12 public accountants appointed by the Board.

13 (e) OTHER AUDIT OFFICERS.—The Board shall ap-
14 point, remove, fix the compensation, and define the duties
15 of 4 other audit officers to serve on the audit committee.

16 (f) QUALIFICATIONS.—The CCO and other audit offi-
17 cers shall have demonstrated experience and expertise in
18 one or more of the following:

19 (1) Internal auditing.

20 (2) Internal investigations.

21 (3) Accounting practices.

22 (4) Financing practices.

23 (g) VACANCY.—A vacancy in the position of CCO or
24 any other audit officer shall be filled in the manner in
25 which the original appointment was made.

1 (h) COMPENSATION.—The compensation of the CCO
2 and other audit officers shall be determined by the Board.

3 (i) REMOVAL.—The CCO and other audit officers
4 may be removed at the discretion of a majority of the
5 Board.

6 (j) TERM.—The CCO and other audit officers shall
7 serve a 6-year term and may be reappointed in accordance
8 with this section.

9 (k) LIMITATIONS.—The CCO and other audit officers
10 shall not—

11 (1) hold any other public office;

12 (2) have any interest in an infrastructure
13 project considered by the Board;

14 (3) have any interest in an investment institu-
15 tion, commercial bank, or other entity seeking finan-
16 cial assistance for any infrastructure project from
17 the Bank; and

18 (4) have any such interest during the 2-year pe-
19 riod beginning on the date such officer ceases to
20 serve in such capacity.

21 **SEC. 1409. PERSONNEL.**

22 The chairperson of the Board, executive director,
23 chief risk officer, and chief compliance officer shall ap-
24 point, remove, fix the compensation of, and define the du-
25 ties of such qualified personnel to serve under the Board,

1 executive committee, risk management committee, or
2 audit committee, as the case may be, as necessary and
3 prescribed by one or more of the following: This subtitle,
4 the bylaws of the Bank, and the Board.

5 **SEC. 1410. ELIGIBILITY CRITERIA FOR ASSISTANCE FROM**
6 **BANK.**

7 (a) IN GENERAL.—No financial assistance shall be
8 available under this subtitle from the Bank unless the ap-
9 plicant for such assistance has demonstrated to the satis-
10 faction of the Board that the project for which such assist-
11 ance is being sought meets—

- 12 (1) the requirements of this subtitle; and
13 (2) any criteria established in accordance with
14 this subtitle by the Board.

15 (b) ESTABLISHMENT OF PROJECT CRITERIA.—

16 (1) IN GENERAL.—Consistent with the require-
17 ments of subsections (c) and (d), the Board shall es-
18 tablish—

19 (A) criteria for determining eligibility for
20 financial assistance under this subtitle;

21 (B) disclosure and application procedures
22 to be followed by entities to nominate projects
23 for assistance under this subtitle; and

1 (C) such other criteria as the Board may
2 consider to be appropriate for purposes of car-
3 rying out this subtitle.

4 (2) FACTORS TO BE TAKEN INTO ACCOUNT.—

5 (A) IN GENERAL.—The Bank shall con-
6 duct an analysis that takes into account the
7 economic, environmental, social benefits, and
8 costs of each project under consideration for fi-
9 nancial assistance under this subtitle,
10 prioritizing projects that contribute to economic
11 growth, lead to job creation, and are of regional
12 or national significance.

13 (B) CRITERIA.—The criteria established
14 pursuant to paragraph (1)(A) shall provide for
15 the consideration of the following factors in
16 considering eligibility for financial assistance
17 under this subtitle:

18 (i) The means by which development
19 of the infrastructure project under consid-
20 eration is being financed, including—

21 (I) the terms and conditions and
22 financial structure of the proposed fi-
23 nancing;

1 (II) the financial assumptions
2 and projections on which the project
3 is based; and

4 (III) the extent to which the in-
5 frastructure project maximizes invest-
6 ment from other sources.

7 (ii) The likelihood that the provision
8 of assistance by the Bank will cause such
9 development to proceed more promptly and
10 with lower costs for financing than would
11 be the case without such assistance.

12 (iii) The extent to which the provision
13 of assistance by the Bank maximizes the
14 level of private investment in the infra-
15 structure project while providing a public
16 benefit.

17 (c) FACTORS FOR SPECIFIC TYPES OF PROJECTS.—

18 (1) TRANSPORTATION INFRASTRUCTURE
19 PROJECTS.—For any transportation infrastructure
20 project, the Board shall consider the following:

21 (A) Job creation, including workforce de-
22 velopment for women and minorities, respon-
23 sible employment practices, and quality job
24 training opportunities.

25 (B) Reduction in carbon emissions.

1 (C) Reduction in surface and air traffic
2 congestion.

3 (D) Poverty and inequality reduction
4 through targeted training and employment op-
5 portunities for low-income workers.

6 (E) Use of smart tolling, such as vehicle
7 miles traveled and congestion pricing, for high-
8 way, road, and bridge projects.

9 (F) Public health benefits.

10 (2) ENVIRONMENTAL INFRASTRUCTURE
11 PROJECT.—For any environmental infrastructure
12 project, the Board shall consider the following:

13 (A) Public health benefits.

14 (B) Pollution reductions.

15 (C) Job creation, including workforce de-
16 velopment for women and minorities, respon-
17 sible employment practices, and quality job
18 training opportunities.

19 (D) Poverty and inequality reduction
20 through targeted training and employment op-
21 portunities for low-income workers.

22 (3) ENERGY INFRASTRUCTURE PROJECT.—For
23 any energy infrastructure project, the Board shall
24 consider the following:

1 (A) Job creation, including workforce de-
2 velopment for women and minorities, respon-
3 sible employment practices, and quality job
4 training opportunities.

5 (B) Poverty and inequality reduction
6 through targeted training and employment op-
7 portunities for low-income workers.

8 (C) Reduction in carbon emissions.

9 (D) Expanded use of renewable energy.

10 (E) Development of a smart grid.

11 (F) Energy efficient building, housing, and
12 school modernization.

13 (G) In any case in which the project is also
14 a public housing project—

15 (i) improvement of the physical shape
16 and layout;

17 (ii) environmental improvement; and

18 (iii) mobility improvements for resi-
19 dents.

20 (H) Public health benefits.

21 (4) TELECOMMUNICATIONS.—For any tele-
22 communications project, the Board shall consider
23 the following:

1 (A) The extent to which assistance ex-
2 pands or improves broadband and wireless serv-
3 ices in rural and disadvantaged communities.

4 (B) Poverty and inequality reduction
5 through targeted training and employment op-
6 portunities for low-income workers.

7 (C) Job creation, including work force de-
8 velopment for women and minorities, respon-
9 sible employment practices, and quality job
10 training opportunities.

11 (d) CONSIDERATION OF PROJECT PROPOSALS.—

12 (1) PARTICIPATION BY OTHER AGENCY PER-
13 SONNEL.—Consideration of projects by the executive
14 committee and the Board shall be conducted with
15 personnel on detail to the Bank from relevant Fed-
16 eral agencies from among individuals who are famil-
17 iar with and experienced in the selection criteria for
18 competitive projects.

19 (2) FEES.—A fee may be charged for the re-
20 view of any project proposal in such amount as
21 maybe considered appropriate by the executive com-
22 mittee to cover the cost of such review.

23 (e) DISCRETION OF BOARD.—Consistent with other
24 provisions of this subtitle, any determination of the Board
25 to provide assistance to any project, and the manner in

1 which such assistance is provided, including the terms,
2 conditions, fees, and charges shall be at the sole discretion
3 of the Board.

4 (f) STATE AND LOCAL PERMITS REQUIRED.—The
5 provision of assistance by the Board in accordance with
6 this subtitle shall not be deemed to relieve any recipient
7 of assistance or the related project of any obligation to
8 obtain required State and local permits and approvals.

9 (g) ANNUAL REPORT.—An entity receiving assistance
10 from the Board shall make annual reports to the Board
11 on the use of any such assistance, compliance with the
12 criteria set forth in this section, and a disclosure of all
13 entities with a development, ownership, or operational in-
14 terest in a project assisted or proposed to be assisted
15 under this subtitle.

16 **SEC. 1411. EXEMPTION FROM LOCAL TAXATION.**

17 All notes, debentures, bonds or other such obligations
18 issued by the Bank, and the interest on or credits with
19 respect to such bonds or other obligations, shall not be
20 subject to taxation by any State, county, municipality, or
21 local taxing authority.

22 **SEC. 1412. STATUS AND APPLICABILITY OF CERTAIN FED-**
23 **ERAL LAWS; NO FULL FAITH AND CREDIT.**

24 (a) BUDGETING AND AUDITORS PRACTICES.—The
25 Bank shall comply with all Federal laws regulating the

1 budgetary and auditing practices of a government corpora-
2 tion, except as otherwise provided in this subtitle.

3 (b) NO FULL FAITH AND CREDIT OF THE UNITED
4 STATES.—Obligations of the Bank shall not be obligations
5 of, or guaranteed as to principal or interest by, the United
6 States or any agency of the United States and the obliga-
7 tions shall so plainly state.

8 (c) EFFECT OF AND EXEMPTIONS FROM OTHER
9 LAWS.—

10 (1) EXEMPT SECURITIES.—All debt securities
11 and other obligations issued by the Bank pursuant
12 to this subtitle shall be deemed to be exempt securi-
13 ties within the meaning of laws administered by the
14 Securities and Exchange Commission to the same
15 extent as securities which are direct obligations of,
16 or obligations fully guaranteed as to principal or in-
17 terest by, the United States.

18 (2) OPEN MARKET OPERATIONS AND STATE
19 TAX EXEMPT STATUS.—The obligations of the Bank
20 shall be deemed to be obligations of the United
21 States for the purposes of the provision designated
22 as (b)(2) of the 2nd undesignated paragraph of sec-
23 tion 14 of the Federal Reserve Act (12 U.S.C. 355)
24 and section 3124 of title 31, United States Code.

1 (3) NO PRIORITY AS A FEDERAL CLAIM.—The
2 priority established in favor of the United States by
3 section 3713 of title 31, United States Code, shall
4 not apply with respect to any indebtedness of the
5 Bank.

6 (d) FEDERAL RESERVE BANKS AS DEPOSITORIES,
7 CUSTODIANS, AND FISCAL AGENTS.—The Federal reserve
8 banks may act as depositories for, or custodians or fiscal
9 agents of, the Bank.

10 (e) ACCESS TO BOOK-ENTRY SYSTEM.—The Sec-
11 retary may authorize the Bank to use the book-entry sys-
12 tem of the Federal reserve system.

13 **SEC. 1413. COMPLIANCE WITH DAVIS-BACON ACT.**

14 All laborers and mechanics employed by contractors
15 and subcontractors on projects funded directly by or as-
16 sisted in whole or in part by and through the Bank pursu-
17 ant to this subtitle shall be paid wages at rates not less
18 than those prevailing on projects of a character similar
19 in the locality as determined by the Secretary of Labor
20 in accordance with subchapter IV of chapter 31 of part
21 A of title 40, United States Code. With respect to the
22 labor standards specified in this section, the Secretary of
23 Labor shall have the authority and functions set forth in
24 Reorganization Plan Numbered 14 of 1950 (64 Stat.

1 1267; 5 U.S.C. App.) and section 3145 of title 40, United
2 States Code.

3 **SEC. 1414. APPLICABILITY OF CERTAIN STATE LAWS.**

4 The receipt by any entity of any assistance under this
5 subtitle, directly or indirectly, and any financial assistance
6 provided by any governmental entity in connection with
7 such assistance under this subtitle shall be valid and law-
8 ful notwithstanding any State or local restrictions regard-
9 ing extensions of credit or other benefits to private persons
10 or entities, or other similar restrictions.

11 **SEC. 1415. AUDITS; REPORTS TO PRESIDENT AND CON-**
12 **GRESS.**

13 (a) ACCOUNTING.—The books of account of the Bank
14 shall be maintained in accordance with generally accepted
15 accounting principles and shall be subject to an annual
16 audit by independent public accountants appointed by the
17 Board and of nationally recognized standing.

18 (b) REPORTS.—

19 (1) BOARD.—The Board shall submit to the
20 President and Congress, within 90 days after the
21 last day of each fiscal year, a complete and detailed
22 report with respect to the preceding fiscal year, set-
23 ting forth—

24 (A) a summary of the Bank's operations,
25 for such preceding fiscal year;

1 (B) a schedule of the Bank's obligations
2 and capital securities outstanding at the end of
3 such preceding fiscal year, with a statement of
4 the amounts issued and redeemed or paid dur-
5 ing such preceding fiscal year; and

6 (C) the status of projects receiving funding
7 or other assistance pursuant to this subtitle, in-
8 cluding disclosure of all entities with a develop-
9 ment, ownership, or operational interest in such
10 projects.

11 (2) GAO.—Not later than 5 years after the
12 date of enactment of this subtitle, the Comptroller
13 General of the United States shall submit to Con-
14 gress a report evaluating activities of the Bank for
15 the fiscal years covered by the report that includes
16 an assessment of the impact and benefits of each
17 funded project, including a review of how effectively
18 each project accomplished the goals prioritized by
19 the Bank's project criteria.

20 (c) BOOKS AND RECORDS.—

21 (1) IN GENERAL.—The Bank shall maintain
22 adequate books and records to support the financial
23 transactions of the Bank with a description of finan-
24 cial transactions and infrastructure projects receiv-
25 ing funding, and the amount of funding for each

1 project maintained on a publically accessible data-
2 base.

3 (2) AUDITS BY THE SECRETARY AND GAO.—

4 The books and records of the Bank shall be main-
5 tained in accordance with recommended accounting
6 practices and shall be open to inspection by the Sec-
7 retary and the Comptroller General of the United
8 States.

9 **SEC. 1416. CAPITALIZATION OF BANK.**

10 (a) AUTHORIZATION OF APPROPRIATION.—There is
11 authorized to be appropriated to the Secretary for pur-
12 chase of the shares of the Bank \$5,000,000,000 for each
13 of fiscal years 2012, 2013, 2014, 2015, and 2016 with
14 the aggregate representing 10 percent of the total sub-
15 scribed capital of the Bank.

16 (b) CALLABLE CAPITAL.—Of the total subscribed
17 capital of the Bank, 90 percent shall be callable capital
18 subject to call from the Secretary only as and when re-
19 quired by the Bank to meet its obligations on borrowing
20 of funds for inclusion in its ordinary capital resources or
21 guarantees chargeable to such resources.

22 (c) OUTSTANDING LOANS.—At any time, the aggre-
23 gate amount outstanding of bonds issued by the Bank
24 shall not exceed 250 percent of its total subscribed capital.

1 (4) in paragraph (4)(A), as so redesignated—

2 (A) by striking “paragraph (2)” and in-
3 serting “paragraph (3)”; and

4 (B) by striking “paragraph (1)” and in-
5 serting “paragraph (1) or should be deemed in-
6 eligible for reemployment on the grounds of
7 paragraph (2)”.

8 **SEC. 1504. NOTIFICATION OF EMPLOYER OF INTENT TO RE-**
9 **TURN TO A POSITION OF EMPLOYMENT.**

10 Section 4312(e)(1)(A) of such title is amended by in-
11 serting after “31 days” the following: “or a person who
12 was absent from a position of employment for the purpose
13 of obtaining medical treatment for an injury or illness rec-
14 ognized by the Secretary of Veterans Affairs as a service-
15 connected, or for which a ‘line of duty’ document has been
16 granted by the Secretary of Defense”.

17 **SEC. 1505. EFFECTIVE DATE.**

18 The amendments made by this subtitle shall take ef-
19 fect on the date that is 90 days after the date of the enact-
20 ment of this subtitle.

1 **Subtitle F—Emergency Unemploy-**
2 **ment Compensation Extension**
3 **Act of 2011**

4 **SEC. 1601. SHORT TITLE.**

5 This subtitle may be cited as the “Emergency Unem-
6 ployment Compensation Extension Act of 2011”.

7 **SEC. 1602. EXTENSION OF EMERGENCY UNEMPLOYMENT**
8 **COMPENSATION PROGRAM.**

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

12 (1) by striking “January 3, 2012” each place
13 it appears and inserting “January 3, 2013”;

14 (2) in the heading for subsection (b)(2), by
15 striking “JANUARY 3, 2012” and inserting “JANUARY
16 3, 2013”; and

17 (3) in subsection (b)(3), by striking “June 9,
18 2012” and inserting “June 8, 2013”.

19 (b) FUNDING.—Section 4004(e)(1) of the Supple-
20 mental Appropriations Act, 2008 (Public Law 110–252;
21 26 U.S.C. 3304 note) is amended—

22 (1) in subparagraph (F), by striking “and” at
23 the end; and

24 (2) by inserting after subparagraph (G) the fol-
25 lowing:

1 “(H) the amendments made by section
2 1602(a) of the Emergency Unemployment Com-
3 pensation Extension Act of 2011; and”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall take effect as if included in the enact-
6 ment of the Tax Relief, Unemployment Insurance Reau-
7 thorization, and Job Creation Act of 2010 (Public Law
8 111–312; 26 U.S.C. 3304 note).

9 **SEC. 1603. TEMPORARY EXTENSION OF EXTENDED BENEFIT**
10 **PROVISIONS.**

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

15 (1) by striking “January 4, 2012” each place
16 it appears and inserting “January 4, 2013”; and

17 (2) in subsection (c), by striking “June 11,
18 2012” and inserting “June 11, 2013”.

19 (b) EXTENSION OF MATCHING FOR STATES WITH
20 NO WAITING WEEK.—Section 5 of the Unemployment
21 Compensation Extension Act of 2008 (Public Law 110–
22 449; 26 U.S.C. 3304 note) is amended by striking “June
23 10, 2012” and inserting “June 9, 2013”.

24 (c) EXTENSION OF MODIFICATION OF INDICATORS
25 UNDER THE EXTENDED BENEFIT PROGRAM.—Section

1 203 of the Federal-State Extended Unemployment Com-
2 pensation Act of 1970 (26 U.S.C. 3304 note) is amend-
3 ed—

4 (1) in subsection (d), by striking “December
5 31, 2011” and inserting “December 31, 2012”; and

6 (2) in subsection (f)(2), by striking “December
7 31, 2011” and inserting “December 31, 2012”.

8 (d) EFFECTIVE DATE.—The amendments made by
9 this section shall take effect as if included in the enact-
10 ment of the Tax Relief, Unemployment Insurance Reau-
11 thorization, and Job Creation Act of 2010 (Public Law
12 111–312; 26 U.S.C. 3304 note).

13 **Subtitle G—Emergency Unemploy-**
14 **ment Compensation Expansion**
15 **Act of 2011**

16 **SEC. 1701. SHORT TITLE.**

17 This subtitle may be cited as the “Emergency Unem-
18 ployment Compensation Expansion Act of 2011”.

19 **SEC. 1702. ADDITIONAL FIRST-TIER EMERGENCY UNEM-**
20 **PLOYMENT COMPENSATION.**

21 (a) IN GENERAL.—Section 4002(b)(1) of the Supple-
22 mental Appropriations Act, 2008 (Public Law 110–252;
23 26 U.S.C. 3304 note) is amended—

24 (1) in subparagraph (A), by striking “80” and
25 inserting “131”; and

1 (2) in subparagraph (B), by striking “20” and
2 inserting “34”.

3 (b) COORDINATION RULE.—Section 4002(f) of such
4 Act is amended by adding at the end the following:

5 “(3) RULES RELATING TO ADDITIONAL WEEKS
6 OF FIRST-TIER EMERGENCY UNEMPLOYMENT COM-
7 PENSATION.—

8 “(A) IN GENERAL.—If a State determines
9 that implementation of the increased entitle-
10 ment to first-tier emergency unemployment
11 compensation by reason of the amendments
12 made by section 1702(a) of the Emergency Un-
13 employment Compensation Expansion Act of
14 2011 would unduly delay the prompt payment
15 of emergency unemployment compensation
16 under this title, such State may elect to pay
17 second-tier, third-tier, or fourth-tier emergency
18 unemployment compensation (or a combination
19 of those tiers) prior to the payment of such in-
20 creased first-tier emergency unemployment
21 compensation until such time as such State de-
22 termines that such increased first-tier emer-
23 gency unemployment compensation may be paid
24 without undue delay.

1 “(B) SPECIAL RULES.—If a State makes
2 an election under subparagraph (A) which re-
3 sults in—

4 “(i) the payment of second-tier (but
5 not third-tier) emergency unemployment
6 compensation prior to the payment of in-
7 creased first-tier emergency unemployment
8 compensation, then, for purposes of deter-
9 mining whether an account may be aug-
10 mented for third-tier emergency unemploy-
11 ment compensation under subsection (d),
12 such State shall treat the date of exhaus-
13 tion of such increased first-tier emergency
14 unemployment compensation as the date of
15 exhaustion of second-tier emergency unem-
16 ployment compensation, if such date is
17 later than the date of exhaustion of the
18 second-tier emergency unemployment com-
19 pensation; or

20 “(ii) the payment of third-tier emer-
21 gency unemployment compensation prior to
22 the payment of increased first-tier emer-
23 gency unemployment compensation, then,
24 for purposes of determining whether an ac-
25 count may be augmented for fourth-tier

1 emergency unemployment compensation
2 under subsection (e), such State shall treat
3 the date of exhaustion of such increased
4 first-tier emergency unemployment com-
5 pensation as the date of exhaustion of
6 third-tier emergency unemployment com-
7 pensation, if such date is later than the
8 date of exhaustion of the third-tier emer-
9 gency unemployment compensation.

10 “(4) COORDINATION OF MODIFICATIONS (RE-
11 LATING TO ADDITIONAL FIRST-TIER EMERGENCY
12 UNEMPLOYMENT COMPENSATION) WITH EXTENDED
13 COMPENSATION.—Notwithstanding an election under
14 section 4001(e) by a State to provide for the pay-
15 ment of emergency unemployment compensation
16 prior to extended compensation, such State may pay
17 extended compensation to an otherwise eligible indi-
18 vidual prior to any additional emergency unemploy-
19 ment compensation under subsection (b) (payable by
20 reason of the amendments made by section 1702(a)
21 of the Emergency Unemployment Compensation Ex-
22 pansion Act of 2011), if such individual claimed ex-
23 tended compensation for at least 1 week of unem-
24 ployment after the exhaustion of emergency unem-
25 ployment compensation under subsection (b) (as

1 such subsection was in effect on the day before the
2 date of the enactment of this paragraph), (c), (d),
3 or (e).”.

4 (c) FUNDING.—Section 4004(e)(1) of such Act, as
5 amended by section 1602(b) of the Emergency Unemploy-
6 ment Compensation Extension Act of 2011, is further
7 amended—

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

10 (2) by inserting after subparagraph (H) the fol-
11 lowing:

12 “(I) the amendments made by section
13 1702(a) of the Emergency Unemployment Com-
14 pensation Expansion Act of 2011; and”.

15 **SEC. 1703. REGULATIONS.**

16 The Secretary of Labor may prescribe any operating
17 instructions or regulations necessary to carry out this sub-
18 title and the amendments made by this subtitle.

19 **SEC. 1704. EFFECTIVE DATE.**

20 The amendments made by this subtitle shall take ef-
21 fect as if included in the enactment of the Unemployment
22 Compensation Extension Act of 2010 (Public Law 111–
23 205), except that no additional first-tier emergency unem-
24 ployment compensation shall be payable by virtue of the
25 amendments made by section 1702(a) with respect to any

1 week of unemployment commencing before the date of the
2 enactment of this subtitle.

3 **Subtitle H—Currency Reform for**
4 **Fair Trade Act**

5 **SEC. 1801. SHORT TITLE.**

6 This subtitle may be cited as the “Currency Reform
7 for Fair Trade Act”.

8 **SEC. 1802. CLARIFICATION REGARDING DEFINITION OF**
9 **COUNTERAVAILABLE SUBSIDY.**

10 (a) **BENEFIT CONFERRED.**—Section 771(5)(E) of
11 the Tariff Act of 1930 (19 U.S.C. 1677(5)(E)) is amend-
12 ed—

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

14 (2) in clause (iv), by striking the period at the
15 end and inserting “, and”; and

16 (3) by inserting after clause (iv) the following
17 new clause:

18 “(v) in the case in which the currency
19 of a country in which the subject merchan-
20 dise is produced is exchanged for foreign
21 currency obtained from export trans-
22 actions, and the currency of such country
23 is a fundamentally undervalued currency,
24 as defined in paragraph (37), the dif-
25 ference between the amount of the cur-

1 rency of such country provided and the
2 amount of the currency of such country
3 that would have been provided if the real
4 effective exchange rate of the currency of
5 such country were not undervalued, as de-
6 termined pursuant to paragraph (38).”.

7 (b) EXPORT SUBSIDY.—Section 771(5A)(B) of the
8 Tariff Act of 1930 (19 U.S.C. 1677(5A)(B)) is amended
9 by adding at the end the following new sentence: “In the
10 case of a subsidy relating to a fundamentally undervalued
11 currency, the fact that the subsidy may also be provided
12 in circumstances not involving export shall not, for that
13 reason alone, mean that the subsidy cannot be considered
14 contingent upon export performance.”.

15 (c) DEFINITION OF FUNDAMENTALLY UNDER-
16 VALUED CURRENCY.—Section 771 of the Tariff Act of
17 1930 (19 U.S.C. 1677) is amended by adding at the end
18 the following new paragraph:

19 “(37) FUNDAMENTALLY UNDERVALUED CUR-
20 RENCY.—The administering authority shall deter-
21 mine that the currency of a country in which the
22 subject merchandise is produced is a ‘fundamentally
23 undervalued currency’ if—

24 “(A) the government of the country (in-
25 cluding any public entity within the territory of

1 the country) engages in protracted, large-scale
2 intervention in one or more foreign exchange
3 markets during part or all of the 18-month pe-
4 riod that represents the most recent 18 months
5 for which the information required under para-
6 graph (38) is reasonably available, but that
7 does not include any period of time later than
8 the final month in the period of investigation or
9 the period of review, as applicable;

10 “(B) the real effective exchange rate of the
11 currency is undervalued by at least 5 percent,
12 on average and as calculated under paragraph
13 (38), relative to the equilibrium real effective
14 exchange rate for the country’s currency during
15 the 18-month period;

16 “(C) during the 18-month period, the
17 country has experienced significant and per-
18 sistent global current account surpluses; and

19 “(D) during the 18-month period, the for-
20 eign asset reserves held by the government of
21 the country exceed—

22 “(i) the amount necessary to repay all
23 debt obligations of the government falling
24 due within the coming 12 months;

1 “(ii) 20 percent of the country’s
2 money supply, using standard measures of
3 M2; and

4 “(iii) the value of the country’s im-
5 ports during the previous 4 months.”.

6 (d) DEFINITION OF REAL EFFECTIVE EXCHANGE
7 RATE UNDERVALUATION.—Section 771 of the Tariff Act
8 of 1930 (19 U.S.C. 1677), as amended by subsection (c)
9 of this section, is further amended by adding at the end
10 the following new paragraph:

11 “(38) REAL EFFECTIVE EXCHANGE RATE
12 UNDERVALUATION.—The calculation of real effective
13 exchange rate undervaluation, for purposes of para-
14 graph (5)(E)(v) and paragraph (37), shall—

15 “(A)(i) rely upon, and where appropriate
16 be the simple average of, the results yielded
17 from application of the approaches described in
18 the guidelines of the International Monetary
19 Fund’s Consultative Group on Exchange Rate
20 Issues; or

21 “(ii) if the guidelines of the International
22 Monetary Fund’s Consultative Group on Ex-
23 change Rate Issues are not available, be based
24 on generally accepted economic and econometric

1 techniques and methodologies to measure the
2 level of undervaluation;

3 “(B) rely upon data that are publicly avail-
4 able, reliable, and compiled and maintained by
5 the International Monetary Fund or, if the
6 International Monetary Fund cannot provide
7 the data, by other international organizations or
8 by national governments; and

9 “(C) use inflation-adjusted, trade-weighted
10 exchange rates.”.

11 **SEC. 1803. REPORT ON IMPLEMENTATION OF SUBTITLE.**

12 (a) IN GENERAL.—Not later than 9 months after the
13 date of the enactment of this subtitle, the Comptroller
14 General of the United States shall submit to Congress a
15 report on the implementation of the amendments made by
16 this subtitle.

17 (b) MATTERS TO BE INCLUDED.—The report re-
18 quired by subsection (a) shall include a description of the
19 extent to which United States industries that have been
20 materially injured by reason of imports of subject mer-
21 chandise produced in foreign countries with fundamentally
22 undervalued currencies have received relief under title VII
23 of the Tariff Act of 1930 (19 U.S.C. 1671 et seq.), as
24 amended by this subtitle.

1 **SEC. 1804. APPLICATION TO GOODS FROM CANADA AND**
2 **MEXICO.**

3 Pursuant to article 1902 of the North American Free
4 Trade Agreement and section 408 of the North American
5 Free Trade Agreement Implementation Act of 1993 (19
6 U.S.C. 3438), the amendments made by section 1802 shall
7 apply to goods from Canada and Mexico.

8 **Subtitle I—Prioritize Emergency**
9 **Job Creation Act**

10 **SEC. 1851. SHORT TITLE.**

11 This subtitle may be cited as the “Prioritize Emer-
12 gency Job Creation Act”.

13 **SEC. 1852. EMERGENCY JOB CREATION.**

14 Section 251(b)(2) of the Balanced Budget and Emer-
15 gency Deficit Control Act of 1985 is amended by adding
16 at the end the following new subparagraph:

17 “(E) EMERGENCY JOB CREATION.—If, for
18 fiscal years 2012 through 2021, appropriations
19 for discretionary accounts are enacted that
20 Congress designates and the President subse-
21 quently so designates as being for emergency
22 job creation in statute, the adjustment for a fis-
23 cal year shall be the total of such appropria-
24 tions for the fiscal year in discretionary ac-
25 counts designated as being for emergency job
26 creation.”.

1 **Subtitle J—Fair Employment**
2 **Opportunity Act of 2011**

3 **SEC. 1901. SHORT TITLE.**

4 This subtitle may be cited as the “Fair Employment
5 Opportunity Act of 2011”.

6 **SEC. 1902. FINDINGS AND PURPOSE.**

7 (a) **FINDINGS.**—Congress finds that denial of em-
8 ployment opportunities to individuals because they are or
9 have been unemployed is discriminatory and burdens com-
10 merce by—

11 (1) reducing personal consumption and under-
12 mining economic stability and growth;

13 (2) squandering human capital essential to the
14 Nation’s economic vibrancy and growth;

15 (3) increasing demands for State and Federal
16 unemployment insurance benefits, reducing trust
17 fund assets, and leading to higher payroll taxes for
18 employers, cuts in benefits for jobless workers, or
19 both;

20 (4) imposing additional burdens on publicly
21 funded health and welfare programs; and

22 (5) depressing income, property, and other tax
23 revenues that states, localities and the Federal Gov-
24 ernment rely on to support operations and institu-
25 tions essential to commerce.

1 (b) PURPOSE.—The purpose of this subtitle is to pro-
2 hibit consideration of an individual’s status as unemployed
3 in screening for or filling positions except where a require-
4 ment related to employment status is a bona fide occupa-
5 tional qualification reasonably necessary to successful per-
6 formance in the job and to eliminate the burdens imposed
7 on commerce by excluding such individuals from employ-
8 ment.

9 **SEC. 1903. DEFINITIONS.**

10 As used in this subtitle—

11 (1) the term “employer” means any person en-
12 gaged in commerce or any industry or activity af-
13 fecting commerce who has 15 or more employees for
14 each working day in each of 20 or more calendar
15 weeks in the current or preceding calendar year, and
16 includes—

17 (A) any person who acts, directly or indi-
18 rectly, in the interest of an employer with re-
19 spect to employing individuals to work for the
20 employer; and

21 (B) any successor in interest of an em-
22 ployer;

23 (2) the term “employment agency” means any
24 person regularly undertaking with or without com-
25 pensation to procure employees for an employer or

1 to procure for individuals opportunities to work for
2 an employer and includes an agent of such a person,
3 and includes any person who maintains an Internet
4 website that publishes advertisements or announce-
5 ments of job openings;

6 (3) the term “affected individual” means any
7 person who was refused consideration for employ-
8 ment or was not hired by an employer because of the
9 person’s current employment status, or any person
10 who was not considered, screened, or referred for
11 employment opportunities by an employment agency
12 because of the person’s current employment status;

13 (4) the term “status as unemployed” means an
14 individual’s present or past unemployment regard-
15 less of the length of time such individual was unem-
16 ployed; and

17 (5) the term “Secretary” means the Secretary
18 of Labor.

19 **SEC. 1904. PROHIBITED ACTS.**

20 (a) EMPLOYERS.—It shall be an unlawful practice for
21 an employer to—

22 (1) refuse to consider for employment or refuse
23 to offer employment to an individual because of the
24 individual’s status as unemployed;

1 (2) publish in print, on the Internet, or in any
2 other medium, an advertisement or announcement
3 for any job that includes—

4 (A) any provision stating or indicating that
5 an individual's status as unemployed disquali-
6 fies the individual for a job; and

7 (B) any provision stating or indicating that
8 an employer will not consider an applicant for
9 employment based on that individual's status as
10 unemployed; and

11 (3) direct or request that an employment agen-
12 cy take an individual's status as unemployed into ac-
13 count in screening or referring applicants for em-
14 ployment.

15 (b) EMPLOYMENT AGENCIES.—It shall be an unlaw-
16 ful practice for an employment agency to—

17 (1) refuse to consider or refer an individual for
18 employment based on the individual's status as un-
19 employed;

20 (2) limit, segregate, or classify individuals in
21 any manner that may limit their access to informa-
22 tion about jobs or referral for consideration of jobs
23 because of their status as unemployed; or

1 (3) publish, in print or on the Internet or in
2 any other medium, an advertisement or announce-
3 ment for any job vacancy that includes—

4 (A) any provision stating or indicating that
5 an individual's status as unemployed disquali-
6 fies the individual for a job; and

7 (B) any provision stating or indicating that
8 an employer will not consider individuals for
9 employment based on that individual's status as
10 unemployed.

11 (c) INTERFERENCE WITH RIGHTS, PROCEEDINGS OR
12 INQUIRIES.—It shall be unlawful for any employer or em-
13 ployment agency to—

14 (1) interfere with, restrain, or deny the exercise
15 of or the attempt to exercise, any right provided
16 under this subtitle; or

17 (2) refuse to hire, to discharge, or in any other
18 manner to discriminate against any individual be-
19 cause such individual—

20 (A) opposed any practice made unlawful by
21 this subtitle;

22 (B) has filed any charge, or has instituted
23 or caused to be instituted any proceeding,
24 under or related to this subtitle;

1 (C) has given, or is about to give, any in-
2 formation in connection with any inquiry or
3 proceeding relating to any right provided under
4 this subtitle; or

5 (D) has testified, or is about to testify, in
6 any inquiry or proceeding relating to any right
7 provided under this subtitle.

8 (d) BONA FIDE OCCUPATIONAL QUALIFICATION.—
9 Notwithstanding any other provision of this subtitle, con-
10 sideration by an employer or employment agency of an in-
11 dividual's status as unemployed shall not be an unlawful
12 employment practice where an individual's employment in
13 a similar or related job for a period of time reasonably
14 proximate to the hiring of such individual is a bona fide
15 occupational qualification reasonably necessary to success-
16 ful performance of the job that is being filled.

17 **SEC. 1905. ENFORCEMENT.**

18 (a) CIVIL ACTION BY INDIVIDUAL.—

19 (1) LIABILITY FOR EMPLOYERS AND EMPLOY-
20 MENT AGENCIES.—Any employer or employment
21 agency that violates section 1904(a) or (b) shall be
22 liable to any affected individual—

23 (A) for actual damages equal to—

24 (i) the amount of—

1 (I) any wages, salary, employ-
2 ment benefits, or other compensation
3 denied or lost to such individual by
4 reason of the violation; or

5 (II) in a case in which wages,
6 salary, employment benefits, or other
7 compensation have not been denied or
8 lost to the individual, any actual mon-
9 etary losses sustained by the indi-
10 vidual as a direct result of the viola-
11 tion or a civil penalty of \$1,000 per
12 violation per day, whichever is great-
13 er;

14 (ii) the interest on the amount de-
15 scribed in clause (i) calculated at the pre-
16 vailing rate; and

17 (iii) an additional amount as liq-
18 uidated damages equal to the sum of the
19 amount described in clause (i) and the in-
20 terest described in clause (ii), except that
21 if an employer or employment agency that
22 has violated section 1904 proves to the sat-
23 isfaction of the court that the act or omis-
24 sion that violated section 1904 was in good
25 faith and that the employer had reasonable

1 grounds for believing that the act or omis-
2 sion was not a violation of section 1904,
3 such court may, in its discretion, reduce
4 the amount of the liability to the amount
5 and interest determined under clauses (i)
6 and (ii), respectively; and

7 (B) for such equitable relief as may be ap-
8 propriate, including employment and compen-
9 satory and punitive damages.

10 (2) RIGHT OF ACTION.—An action to recover
11 the damages or equitable relief prescribed in para-
12 graph (1) of this subsection may be maintained
13 against any employer or employment agency in any
14 Federal or State court of competent jurisdiction by
15 any one or more persons for and in behalf of—

16 (A) the affected individual; or

17 (B) the affected individual and other indi-
18 viduals similarly situated.

19 (3) FEES AND COSTS.—The court in such an
20 action shall, in addition to any judgment awarded to
21 the plaintiff, allow a reasonable attorney's fee, rea-
22 sonable expert witness fees, and other costs of the
23 action to be paid by the defendant.

24 (4) LIMITATIONS.—The right provided by para-
25 graph (2) of this subsection to bring an action by or

1 on behalf of any affected individual shall termi-
2 nate—

3 (A) on the filing of a complaint by the Sec-
4 retary in an action under subsection (d) in
5 which restraint is sought of any violation of sec-
6 tion 1904; or

7 (B) on the filing of a complaint by the Sec-
8 retary in an action under subsection (b) in
9 which a recovery is sought of the damages de-
10 scribed in paragraph (1)(A) owing to an af-
11 fected individual by an employer or employment
12 agency liable under paragraph (1), unless the
13 action described in subparagraph (A) or (B) is
14 dismissed without prejudice on motion of the
15 Secretary.

16 (b) ACTION BY THE SECRETARY.—

17 (1) ADMINISTRATIVE ACTION.—The Secretary
18 shall receive, investigate, and attempt to resolve
19 complaints of violations of section 1904 in the same
20 manner that the Secretary receives, investigates, and
21 attempts to resolve complaints of violations of sec-
22 tions 6 and 7 of the Fair Labor Standards Act of
23 1938 (29 U.S.C. 206 and 207).

24 (2) CIVIL ACTION.—The Secretary may bring
25 an action in any court of competent jurisdiction—

1 (A) to enjoin violations of this subtitle and
2 seek other relief going forward necessary to pre-
3 vent future violations;

4 (B) to recover—

5 (i) the damages described in sub-
6 section (a)(1)(A);

7 (ii) in the case of a violation of section
8 1904(c), a civil penalty of not less than
9 \$250 per violation; or

10 (iii) such other equitable relief the
11 Court deems appropriate.

12 (3) SUMS RECOVERED.—Any sums recovered by
13 the Secretary pursuant to paragraph (2)(A) shall be
14 held in a special deposit account and shall be paid,
15 on order of the Secretary, directly to each affected
16 individual. Any such sums recovered pursuant to
17 paragraph (2)(A) that are not paid to an affected in-
18 dividual because of inability to do so within a period
19 of 3 years and any sums recovered pursuant to para-
20 graph (2)(B) shall be deposited into the Treasury of
21 the United States as miscellaneous receipts.

22 (c) LIMITATION.—

23 (1) IN GENERAL.—Except as provided in para-
24 graph (2), an action under subsection (a) may be
25 brought not later than 2 years after the date of the

1 last event constituting the alleged violation for which
2 the action is brought, provided that the limitations
3 for filing an action shall be tolled during the period
4 that the Secretary is considering a complaint against
5 any defendant named in a complaint filed with the
6 Secretary under subsection (b)(1) above.

7 (2) WILLFUL VIOLATION.—In the case of such
8 action brought for a willful violation of section 1904,
9 such action may be brought within 3 years of the
10 date of the last event constituting the alleged viola-
11 tion for which such action is brought, provided that
12 the limitations for filing an action by an individual
13 shall be tolled during the period that the Secretary
14 is considering a complaint pursuant to subsection
15 (b)(1).

16 (3) COMMENCEMENT.—In determining when an
17 action is commenced by the Secretary under this
18 section for the purposes of this subsection, it shall
19 be considered to be commenced on the date when the
20 Secretary files a complaint in a court of competent
21 jurisdiction.

22 (d) ACTION FOR INJUNCTION BY SECRETARY.—The
23 district courts of the United States shall have jurisdiction,
24 for cause shown, in an action brought by the Secretary—

25 (1) to restrain violations of section 1904; and

1 (2) To create compensated training programs
2 that offer training in emerging markets and indus-
3 tries (such as green technologies).

4 (3) To partner with historically Black colleges
5 and universities and Hispanic serving colleges and
6 universities along with local community college sys-
7 tems to create innovative retraining programs for
8 minorities focused on retooling workers for jobs in
9 the growth sectors of healthcare, biotech, and infor-
10 mation technology.

11 (4) To partner with cities and non-profit orga-
12 nizations to provide apprenticeships and internships.

13 (5) To provide compensation to participants in
14 training programs to temporarily aide in their finan-
15 cial distress.

16 (6) To provide access to public healthcare pro-
17 grams for participants.

18 (7) To create training programs for ex-offend-
19 ers in an effort to reduce recidivism.

20 (8) To aide newly trained participants in secur-
21 ing employment within the field of their newly ac-
22 quired expertise.

23 (c) CONDITIONS.—As a condition of receiving a grant
24 under this subtitle, a grant recipient shall—

1 (1) comply with nondiscrimination standards of
2 the Civil Rights Act;

3 (2) allocate not less than 80 percent of the
4 funding allocated under the grant to wages, benefits,
5 and support activities, including child care services
6 to individuals receiving compensated training under
7 such a grant; and

8 (3) institute a program to aide newly trained
9 participants in securing employment in their new
10 area of expertise.

11 (d) AUTHORIZATION OF APPROPRIATIONS.—There
12 are authorized to be appropriated such sums as may be
13 necessary to carry out this subtitle.

14 **Subtitle L—Transportation**
15 **Infrastructure Investment**

16 **SEC. 1961. TRANSPORTATION INFRASTRUCTURE INVEST-**
17 **MENT.**

18 (a) HIGHWAY INFRASTRUCTURE INVESTMENT.—

19 (1) IN GENERAL.—There is made available to
20 the Secretary of Transportation \$45,000,000,000
21 for restoration, repair, construction, and other ac-
22 tivities eligible under section 133(b) of title 23,
23 United States Code, and for passenger and freight
24 rail transportation and port infrastructure projects

1 eligible for assistance under section 601(a)(8) of
2 title 23, United States Code.

3 (2) FEDERAL SHARE; LIMITATION ON OBLIGA-
4 TIONS.—The Federal share payable on account of
5 any project or activity carried out with funds made
6 available under this subsection shall be, at the op-
7 tion of the recipient, up to 100 percent of the total
8 cost thereof. The amount made available under this
9 subsection shall not be subject to any limitation on
10 obligations for Federal-aid highways and highway
11 safety construction programs set forth in any Act or
12 in title 23, United States Code.

13 (3) AVAILABILITY.—The amounts made avail-
14 able under this subsection shall be available for obli-
15 gation until the date that is two years after the date
16 of the enactment of this Act. The Secretary shall ob-
17 ligate amounts totaling not less than 50 percent of
18 the funds made available within one year of enact-
19 ment and obligate remaining amounts not later than
20 two years after enactment.

21 (4) DISTRIBUTION OF FUNDS.—Of the funds
22 provided in this subsection, after making the set-
23 asides required by paragraphs (9), (10), (11), (12),
24 and (15), 50 percent of the funds shall be appor-
25 tioned to States using the formula set forth in sec-

1 tion 104(b)(3) of title 23, United States Code, and
2 the remaining funds shall be apportioned to States
3 in the same ratio as the obligation limitation for fis-
4 cal year 2010 was distributed among the States in
5 accordance with the formula specified in section
6 120(a)(6) of division A of Public Law 111–117.

7 (5) APPORTIONMENT.—Apportionments under
8 paragraph (4) shall be made not later than 30 days
9 after the date of the enactment of this subtitle.

10 (6) REDISTRIBUTION.—

11 (A) The Secretary shall, 180 days fol-
12 lowing the date of apportionment, withdraw
13 from each State an amount equal to 50 percent
14 of the funds apportioned under paragraph (4)
15 to that State (excluding funds suballocated
16 within the State) less the amount of funding
17 obligated (excluding funds suballocated within
18 the State), and the Secretary shall redistribute
19 such amounts to other States that have had no
20 funds withdrawn under this subparagraph in
21 the manner described in section 120(c) of divi-
22 sion A of Public Law 111–117.

23 (B) One year following the date of appor-
24 tionment, the Secretary shall withdraw from
25 each recipient of funds apportioned under para-

1 graph (4) any unobligated funds, and the Sec-
2 retary shall redistribute such amounts to States
3 that have had no funds withdrawn under this
4 paragraph (excluding funds suballocated within
5 the State) in the manner described in section
6 120(c) of division A of Public Law 111–117.

7 (C) At the request of a State, the Sec-
8 retary may provide an extension of the one-year
9 period only to the extent that the Secretary de-
10 termines that the State has encountered ex-
11 treme conditions that create an unworkable bid-
12 ding environment or other extenuating cir-
13 cumstances. Before granting an extension, the
14 Secretary shall notify in writing the Committee
15 on Transportation and Infrastructure of the
16 House of Representatives and the Committee
17 on Environment and Public Works of the Sen-
18 ate, providing a thorough justification for the
19 extension.

20 (7) TRANSPORTATION ENHANCEMENTS.—Three
21 percent of the funds apportioned to a State under
22 paragraph (4) shall be set aside for the purposes de-
23 scribed in section 133(d)(2) of title 23, United
24 States Code (without regard to the comparison to
25 fiscal year 2005).

1 (8) SUBALLOCATION.—Thirty percent of the
2 funds apportioned to a State under this subsection
3 shall be suballocated within the State in the manner
4 and for the purposes described in the first sentence
5 of sections 133(d)(3)(A), 133(d)(3)(B), and
6 133(d)(3)(D) of title 23, United States Code. Such
7 suballocation shall be conducted in every State.
8 Funds suballocated within a State to urbanized
9 areas and other areas shall not be subject to the re-
10 distribution of amounts required 180 days following
11 the date of apportionment of funds provided by
12 paragraph (6)(A).

13 (9) PUERTO RICO AND TERRITORIAL HIGHWAY
14 PROGRAMS.—Of the funds provided under this sub-
15 section, \$105,000,000 shall be set aside for the
16 Puerto Rico highway program authorized under sec-
17 tion 165 of title 23, United States Code, and
18 \$45,000,000 shall be for the territorial highway pro-
19 gram authorized under section 215 of title 23,
20 United States Code.

21 (10) FEDERAL LANDS AND INDIAN RESERVA-
22 TIONS.—Of the funds provided under this sub-
23 section, \$750,000,000 shall be set aside for invest-
24 ments in transportation at Indian reservations and
25 Federal lands in accordance with the following:

1 (A) Of the funds set aside by this para-
2 graph, \$410,000,000 shall be for the Indian
3 Reservation Roads program, \$270,000,000
4 shall be for the Park Roads and Parkways pro-
5 gram, \$60,000,000 shall be for the Forest
6 Highway Program, and \$10,000,000 shall be
7 for the Refuge Roads program.

8 (B) For investments at Indian reservations
9 and Federal lands, priority shall be given to
10 capital investments, and to projects and activi-
11 ties that can be completed within 2 years of en-
12 actment of this Act.

13 (C) One year following the enactment of
14 this subtitle, to ensure the prompt use of the
15 funding provided for investments at Indian res-
16 ervations and Federal lands, the Secretary shall
17 have the authority to redistribute unobligated
18 funds within the respective program for which
19 the funds were appropriated.

20 (D) Up to four percent of the funding pro-
21 vided for Indian Reservation Roads may be
22 used by the Secretary of the Interior for pro-
23 gram management and oversight and project-re-
24 lated administrative expenses.

1 (E) Section 134(f)(3)(C)(ii)(II) of title 23,
2 United States Code, shall not apply to funds set
3 aside by this paragraph.

4 (11) JOB TRAINING.—Of the funds provided
5 under this subsection, \$100,000,000 shall be set
6 aside for the development and administration of
7 transportation training programs under section
8 140(b) of title 23, United States Code, in accord-
9 ance with the following:

10 (A) Funds set aside under this paragraph
11 shall be competitively awarded and used for the
12 purpose of providing training, apprenticeship
13 (including Registered Apprenticeship), skill de-
14 velopment, and skill improvement programs, as
15 well as summer transportation institutes, may
16 be transferred to, or administered in partner-
17 ship with, the Secretary of Labor, and shall be
18 used for programs that demonstrate to the Sec-
19 retary of Transportation program outcomes, in-
20 cluding with respect to—

21 (i) impact on areas with transpor-
22 tation workforce shortages;

23 (ii) diversity of training participants;

1 (iii) number of participants obtaining
2 certifications or credentials required for
3 specific types of employment;

4 (iv) employment outcome metrics,
5 such as job placement and job retention
6 rates, established in consultation with the
7 Secretary of Labor and consistent with
8 metrics used by programs under the Work-
9 force Investment Act of 1998 (Public Law
10 105–220);

11 (v) to the extent practical, evidence
12 that the program did not preclude workers
13 that participate in training or apprentice-
14 ship activities under the program from
15 being referred to, or hired on, projects
16 funded under this chapter; and

17 (vi) identification of areas of collabo-
18 ration with the Department of Labor pro-
19 grams, including co-enrollment.

20 (B) To be eligible to receive a competitively
21 awarded grant under this paragraph, a State
22 must certify that at least 0.1 percent of the
23 amounts apportioned under the Surface Trans-
24 portation Program and Bridge Program will be
25 obligated in the first fiscal year after enactment

1 of this Act for job training activities consistent
2 with section 140(b) of title 23, United States
3 Code.

4 (12) DISADVANTAGED BUSINESS ENTER-
5 PRISES.—Of the funds provided under this sub-
6 section, \$10,000,000 shall be set aside for training
7 programs and assistance programs under section
8 140(c) of title 23, United States Code. Funds set
9 aside under this paragraph should be allocated to
10 businesses that have proven success in adding staff
11 while effectively completing projects.

12 (13) STATE PLANNING AND OVERSIGHT EX-
13 PENSES.—Of amounts apportioned under paragraph
14 (4) of this subsection, a State may use up to 0.5
15 percent for activities related to projects funded
16 under this subsection, including activities eligible
17 under sections 134 and 135 of title 23, United
18 States Code, State administration of subgrants, and
19 State oversight of subrecipients.

20 (14) CONDITIONS.—

21 (A) Funds made available under this sub-
22 section shall be administered as if apportioned
23 under chapter 1 of title 23, United States Code,
24 except for funds made available for investments
25 in transportation at Indian reservations and

1 Federal lands, and for the territorial highway
2 program, which shall be administered in accord-
3 ance with chapter 2 of title 23, United States
4 Code, and except for funds made available for
5 disadvantaged business enterprises bonding as-
6 sistance, which shall be administered in accord-
7 ance with chapter 3 of title 49, United States
8 Code.

9 (B) Funds made available under this sub-
10 section shall not be obligated for the purposes
11 authorized under section 115(b) of title 23,
12 United States Code.

13 (C) Funding provided under this sub-
14 section shall be in addition to any and all funds
15 provided for fiscal years 2012 and 2013 in any
16 other Act for “Federal-aid Highways” and shall
17 not affect the distribution of funds provided for
18 “Federal-aid Highways” in any other Act.

19 (D) Section 1101(b) of Public Law 109–59
20 shall apply to funds apportioned under this sub-
21 section.

22 (15) OVERSIGHT.—The Administrator of the
23 Federal Highway Administration may set aside up
24 to 0.15 percent of the funds provided under this
25 subsection to fund the oversight by the Adminis-

1 trator of projects and activities carried out with
2 funds made available to the Federal Highway Ad-
3 ministration in this Act, and such funds shall be
4 available through September 30, 2015.

5 (b) TRANSPORTATION INFRASTRUCTURE GRANTS
6 AND FINANCING.—

7 (1) IN GENERAL.—There is made available to
8 the Secretary of Transportation \$5,000,000,000 for
9 capital investments in surface transportation infra-
10 structure. The Secretary shall distribute funds pro-
11 vided under this subsection as discretionary grants
12 to be awarded to State and local governments or
13 transit agencies on a competitive basis for projects
14 that will have a significant impact on the Nation, a
15 metropolitan area, or a region.

16 (2) FEDERAL SHARE; LIMITATION ON OBLIGA-
17 TIONS.—The Federal share payable of the costs for
18 which a grant is made under this subsection shall be
19 100 percent.

20 (3) AVAILABILITY.—The amounts made avail-
21 able under this subsection shall be available for obli-
22 gation until the date that is two years after the date
23 of the enactment of this subtitle. The Secretary shall
24 obligate amounts totaling not less than 50 percent
25 of the funds made available within one year of en-

1 actment and obligate remaining amounts not later
2 than two years after enactment.

3 (4) PROJECT ELIGIBILITY.—Projects eligible for
4 funding provided under this subsection include—

5 (A) highway or bridge projects eligible
6 under title 23, United States Code, including
7 interstate rehabilitation, improvements to the
8 rural collector road system, the reconstruction
9 of overpasses and interchanges, bridge replace-
10 ments, seismic retrofit projects for bridges, and
11 road realignments;

12 (B) public transportation projects eligible
13 under chapter 53 of title 49, United States
14 Code, including investments in projects partici-
15 pating in the New Starts or Small Starts pro-
16 grams that will expedite the completion of those
17 projects and their entry into revenue service;

18 (C) passenger and freight rail transpor-
19 tation projects; and

20 (D) port infrastructure investments, in-
21 cluding projects that connect ports to other
22 modes of transportation and improve the effi-
23 ciency of freight movement.

24 (5) TIFIA PROGRAM.—The Secretary may
25 transfer to the Federal Highway Administration

1 funds made available under this subsection for the
2 purpose of paying the subsidy and administrative
3 costs of projects eligible for Federal credit assistance
4 under chapter 6 of title 23, United States Code, if
5 the Secretary finds that such use of the funds would
6 advance the purposes of this subsection.

7 (6) PROJECT PRIORITY.—The Secretary shall
8 give priority to projects that are expected to be com-
9 pleted within 3 years of the date of the enactment
10 of this subtitle.

11 (7) DEADLINE FOR ISSUANCE OF COMPETITION
12 CRITERIA.—The Secretary shall publish criteria on
13 which to base the competition for any grants award-
14 ed under this subsection not later than 90 days after
15 enactment of this subtitle. The Secretary shall re-
16 quire applications for funding provided under this
17 subsection to be submitted not later than 180 days
18 after the publication of the criteria and announce all
19 projects selected to be funded from such funding not
20 later than one year after the date of the enactment
21 of this subtitle.

22 (8) APPLICABILITY OF TITLE 40.—Each project
23 conducted using funds provided under this sub-
24 section shall comply with the requirements of sub-

1 chapter IV of chapter 31 of title 40, United States
2 Code.

3 (9) ADMINISTRATIVE EXPENSES.—The Sec-
4 retary may retain up to one half of one percent of
5 the funds provided under this subsection, and may
6 transfer portions of those funds to the Administra-
7 tors of the Federal Highway Administration, the
8 Federal Transit Administration, the Federal Rail-
9 road Administration, and the Maritime Administra-
10 tion, to fund the award and oversight of grants
11 made under this subsection. Funds retained shall re-
12 main available for obligation until September 30,
13 2015.

14 **Subtitle M—Jobs NOW Act**

15 **SEC. 1971. SHORT TITLE.**

16 This subtitle may be cited as the “Jobs NOW Act”.

17 **SEC. 1972. RESTORATION OF TANF EMERGENCY CONTIN-** 18 **GENCY FUND.**

19 (a) IN GENERAL.—Section 403 of the Social Security
20 Act (42 U.S.C. 603) is amended by adding at the end the
21 following:

22 “(c) EMERGENCY FUND.—

23 “(1) ESTABLISHMENT.—There is established in
24 the Treasury of the United States a fund which
25 shall be known as the ‘Emergency Contingency

1 Fund for State Temporary Assistance for Needy
2 Families Programs’ (in this subsection referred to as
3 the ‘Emergency Fund’).

4 “(2) DEPOSITS INTO FUND.—

5 “(A) IN GENERAL.—Out of any money in
6 the Treasury of the United States not otherwise
7 appropriated, there are appropriated
8 \$5,000,000 for each of fiscal years 2012 and
9 2013, for payment to the Emergency Fund.

10 “(B) AVAILABILITY AND USE OF FUNDS.—

11 The amounts appropriated to the Emergency
12 Fund under subparagraph (A) for fiscal year
13 2012 shall be available for the 1st 12 months
14 of the program period, and the amounts so ap-
15 propriated for fiscal year 2013 shall be avail-
16 able for the 2nd 12 months of the program pe-
17 riod, and all such amounts shall be used to
18 make grants to States in accordance with para-
19 graph (3).

20 “(C) LIMITATION.—In no case may the

21 Secretary make a grant from the Emergency
22 Fund for a fiscal year after the end of the pro-
23 gram period.

24 “(D) PROGRAM PERIOD DEFINED.—In this
25 subsection, the term ‘program period’ means

1 the 2-year period that begins with the 1st day
2 of the 1st calendar quarter that begins after the
3 effective date of this subsection.

4 “(3) GRANTS.—

5 “(A) IN GENERAL.—For each calendar
6 quarter in the program period, the Secretary
7 shall make a grant from the Emergency Fund
8 to each State that—

9 “(i) requests a grant under this sub-
10 paragraph for the quarter; and

11 “(ii) meets the requirement of clause
12 (ii) for the quarter.

13 “(B) REQUIREMENT.—A State meets the
14 requirement of this clause for a quarter if the
15 unemployment rate of the State (as determined
16 by the Secretary of Commerce in consultation
17 with the Secretary of Labor) was not less than
18 6 percent for each month in the most recent 6-
19 month period for which such information is
20 available.

21 “(C) AMOUNT OF GRANT.—The amount of
22 the grant to be made to a State under this sub-
23 paragraph for a quarter shall be an amount
24 equal to 75 percent of the State family assist-
25 ance grant.

1 “(4) 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 “(5) 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 “(6) APPLICATION TO INDIAN TRIBES.—This
10 subsection shall apply to an Indian tribe with an ap-
11 proved tribal family assistance plan under section
12 412 in the same manner as this subsection applies
13 to a State.”.

14 (b) DISREGARD FROM LIMITATION ON TOTAL PAY-
15 MENTS TO TERRITORIES.—Section 1108(a)(2) of such Act
16 (42 U.S.C. 1308(a)(2)) is amended by inserting
17 “403(c)(3),” after “403(a)(5),”.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall take effect 90 days after the date of the
20 enactment of this subtitle.

1 **Subtitle N—Discretionary**
2 **Spending Limits**

3 **SEC. 1981. REPEAL OF NEW DISCRETIONARY SPENDING**
4 **LIMITS.**

5 (a) IN GENERAL.—Section 251A of the Balanced
6 Budget and Emergency Deficit Control Act of 1985 (2
7 U.S.C. 901a) is hereby repealed.

8 (b) CONFORMING AMENDMENT.—The Balanced
9 Budget and Emergency Deficit Control Act of 1985 is
10 amended—

11 (1) in section 250(a), by amending the table of
12 contents by striking the item relating to section
13 251A; and

14 (2) by amending section 251(c) to read as fol-
15 lows:

16 “(c) DISCRETIONARY SPENDING LIMIT.—As used in
17 this part, the term ‘discretionary spending limit’ means—

18 “(1) with respect to fiscal year 2012—

19 “(A) for the security category,
20 \$684,000,000,000 in new budget authority; and

21 “(B) for the nonsecurity category,
22 \$359,000,000,000 in new budget authority;

23 “(2) with respect to fiscal year 2013—

24 “(A) for the security category,
25 \$686,000,000,000 in new budget authority; and

1 “(B) for the nonsecurity category,
2 \$361,000,000,000 in new budget authority;

3 “(3) with respect to fiscal year 2014, for the
4 discretionary category, \$1,066,000,000,000 in new
5 budget authority;

6 “(4) with respect to fiscal year 2015, for the
7 discretionary category, \$1,086,000,000,000 in new
8 budget authority;

9 “(5) with respect to fiscal year 2016, for the
10 discretionary category, \$1,107,000,000,000 in new
11 budget authority;

12 “(6) with respect to fiscal year 2017, for the
13 discretionary category, \$1,131,000,000,000 in new
14 budget authority;

15 “(7) with respect to fiscal year 2018, for the
16 discretionary category, \$1,156,000,000,000 in new
17 budget authority;

18 “(8) with respect to fiscal year 2019, for the
19 discretionary category, \$1,182,000,000,000 in new
20 budget authority;

21 “(9) with respect to fiscal year 2020, for the
22 discretionary category, \$1,208,000,000,000 in new
23 budget authority; and

1 “(10) with respect to fiscal year 2021, for the
2 discretionary category, \$1,234,000,000,000 in new
3 budget authority;
4 as adjusted in strict conformance with subsection (b).”.

5 **Subtitle O—Emergency Job**
6 **Creation Designation**

7 **SEC. 1991. CONGRESSIONAL DESIGNATION.**

8 For purposes of section 251(b)(2) of the Balanced
9 Budget and Emergency Deficit Control Act of 1985 (2
10 U.S.C. 901(b)(2)), the Congress hereby designates all ap-
11 propriations made under this title, and amendments made
12 by this title, as being for the purpose of emergency job
13 creation.

14 **TITLE II—RESPONSIBLE**
15 **SAVINGS AND FAIR TAXATION**
16 **Subtitle A—Responsible End to the**
17 **War in Afghanistan Act**

18 **SEC. 2001. SHORT TITLE.**

19 This subtitle may be cited as the “Responsible End
20 to the War in Afghanistan Act”.

21 **SEC. 2002. STATEMENT OF POLICY.**

22 It is the policy of the United States to ensure that
23 funds made available for operations of the Armed Forces
24 in Afghanistan are to be used only for purposes of pro-
25 viding for the safe and orderly withdrawal from Afghani-

1 stan of all members of the Armed Forces and Department
2 of Defense contractor personnel who are in Afghanistan.

3 **SEC. 2003. LIMITATION ON USE OF FUNDS FOR OPER-**
4 **ATIONS OF THE ARMED FORCES IN AFGHANI-**
5 **STAN.**

6 (a) **LIMITATION.**—Funds appropriated or otherwise
7 made available under any provision of law for operations
8 of the Armed Forces in Afghanistan shall be obligated and
9 expended only for purposes of providing for the safe and
10 orderly withdrawal from Afghanistan of all members of
11 the Armed Forces and Department of Defense contractor
12 personnel who are in Afghanistan.

13 (b) **RULE OF CONSTRUCTION.**—Nothing in this sub-
14 title shall be construed—

15 (1) to authorize the use of funds for the con-
16 tinuation of combat operations in Afghanistan while
17 carrying out the safe and orderly withdrawal from
18 Afghanistan of all members of the Armed Forces
19 and Department of Defense contractor personnel
20 who are in Afghanistan; and

21 (2) to prohibit or otherwise restrict the use of
22 funds available to any department or agency of the
23 United States to carry out diplomatic efforts or hu-
24 manitarian, development, or general reconstruction
25 activities in Afghanistan.

1 **Subtitle B—Defense and Deficit**
2 **Reduction Act**

3 **SEC. 2101. SHORT TITLE.**

4 This subtitle may be cited as the “Defense and Def-
5 icit Reduction Act”.

6 **SEC. 2102. FINDINGS.**

7 Congress finds the following:

8 (1) Under H. Res. 38, the Chair of the Com-
9 mittee on the Budget shall include in the Congres-
10 sional Record an allocation for the remainder of fis-
11 cal year 2011 that assumes nonsecurity spending at
12 fiscal year 2008 levels.

13 (2) Reductions in defense spending should be
14 included in any effort to reduce Federal outlays and
15 reduce the national deficit.

16 (3) In fiscal year 2010, defense spending com-
17 prised 58 percent of discretionary spending.

18 (4) If defense spending continued at fiscal year
19 2010 levels for the next 5 years, it would total
20 \$3,600,000,000,000.

21 (5) Reducing defense spending to fiscal year
22 2008 levels would save approximately
23 \$182,000,000,000 over 5 years compared to current
24 levels.

1 (6) In January 2011 Secretary of Defense
2 Gates stated that the Administration is seeking
3 \$78,000,000,000 in cuts to the defense budget over
4 the next five years on top of \$100,000,000,000 in
5 efficiencies. This savings should be used to decrease
6 the deficit.

7 (7) President Obama has pledged to begin
8 drawing down forces in Afghanistan in July 2011
9 with a goal of full withdrawal in 2014. With a de-
10 crease in troops abroad, our defense spending should
11 decrease.

12 (8) In a CBS News Poll from January 2011,
13 over 50 percent of Americans questioned would re-
14 duce defense spending to decrease the Federal def-
15 icit.

16 (9) The United States currently spends more
17 on its military and defense than the next 19 biggest
18 spending nations combined.

19 (10) Making reasonable reductions to the de-
20 fense budget can help to solve the Nation's long-
21 term fiscal problems.

22 **SEC. 2103. REDUCTION AND FREEZE IN BUDGET OF DE-**
23 **PARTMENT OF DEFENSE.**

24 (a) **REDUCTION AND FREEZE.**—The aggregate
25 amount of funds appropriated or otherwise made available

1 for military functions administered by the Department of
2 Defense (other than the functions excluded by subsection
3 (b)) for a fiscal year may not exceed—

4 (1) in the case of fiscal year 2011, the aggre-
5 gate amount of funds appropriated or otherwise
6 made available for military functions administered
7 by the Department of Defense (other than the func-
8 tions excluded by subsection (b)) for fiscal year
9 2008; and

10 (2) in the case of fiscal years 2012 through
11 2016, the aggregate amount of funds appropriated
12 or otherwise made available for such functions for
13 the previous fiscal year.

14 (b) EXCLUSION OF MILITARY PERSONNEL PAY AND
15 BENEFITS.—In determining the aggregate amount of
16 funds appropriated or otherwise made available for mili-
17 tary functions administered by the Department of Defense
18 for fiscal year 2008 or any subsequent fiscal year for pur-
19 poses of subsection (a), there shall be excluded all amounts
20 appropriated or otherwise made available in general and
21 supplemental appropriations Acts for—

22 (1) military personnel, reserve personnel, and
23 National Guard personnel accounts of the Depart-
24 ment of Defense, generally title I of the annual De-
25 partment of Defense appropriations Act;

1 (2) the Defense Health Program; and

2 (3) drug interdiction and counter-drug activities
3 of the Department of Defense, but only to the extent
4 the amounts were transferred to personnel accounts
5 referred to in paragraph (1).

6 (c) USE OF SAVINGS.—All funds saved by the imple-
7 mentation of this section shall be used for deficit reduc-
8 tion.

9 **Subtitle C—Reduction in Military**
10 **End Strength Level in Europe**

11 **SEC. 2201. REDUCTION IN END STRENGTH LEVEL OF MEM-**
12 **BERS OF THE UNITED STATES ARMED**
13 **FORCES ASSIGNED TO PERMANENT DUTY IN**
14 **EUROPE AND CORRESPONDING GENERAL**
15 **END STRENGTH REDUCTIONS.**

16 (a) EUROPEAN END STRENGTH LEVEL.—Effective
17 September 30, 2012, the end strength level of members
18 of the Armed Forces of the United States assigned to per-
19 manent duty ashore in Europe may not exceed a perma-
20 nent ceiling of 30,000 in any fiscal year.

21 (b) EXCLUSION OF CERTAIN MEMBERS.—For pur-
22 poses of this section, the following members of the Armed
23 Forces are excluded in calculating the end strength level
24 of members of the Armed Forces of the United States as-
25 signed to permanent duty ashore in Europe:

1 (1) Members assigned to permanent duty
2 ashore in Iceland, Greenland, and the Azores.

3 (2) Members performing duties in Europe for
4 more than 179 days under a military-to-military
5 contact program under section 168 of title 10,
6 United States Code.

7 (c) EXCEPTIONS; WAIVER.—This section shall not
8 apply in the event of a declaration of war or an armed
9 attack on any European member nation of the North At-
10 lantic Treaty Organization. The President may waive op-
11 eration of this section if the President declares an emer-
12 gency and immediately informs the Congress of the waiver
13 and the reasons therefor.

14 (d) REPEAL OF SUPERCEDED END STRENGTH LIM-
15 ITATION.—Section 1002 of the Department of Defense Au-
16 thorization Act, 1985 (22 U.S.C. 1928 note) is repealed.

17 **SEC. 2202. CONFORMING CHANGES TO ARMED FORCES END**
18 **STRENGTH LEVELS.**

19 (a) END STRENGTHS FOR ACTIVE FORCES FOR FIS-
20 CAL YEAR 2012.—Notwithstanding section 401, the
21 Armed Forces are authorized strengths for active duty
22 personnel as of September 30, 2012, as follows:

23 (1) The Army, 556,600.

24 (2) The Navy, 325,239.

25 (3) The Marine Corps, 202,000.

1 (4) The Air Force, 328,800.

2 (b) CONTINUATION OF REDUCTIONS IN SUBSEQUENT
3 FISCAL YEARS.—For each of fiscal years 2013 through
4 2016, the end strength numbers shall be reduced by an
5 additional 10,000 a year, as follows:

6 (1) 5,400 a year from the Army.

7 (2) 4,000 a year from the Air Force.

8 (3) 500 a year from the Navy.

9 (4) 100 a year from the Marine Corps.

10 (c) REVISION IN PERMANENT ACTIVE DUTY END
11 STRENGTH MINIMUM LEVELS.—Section 691(b) of title
12 10, United States Code, as amended by section 402, is
13 amended by striking paragraphs (1) through (4) and in-
14 serting the following new paragraphs:

15 “(1) For the Army, 535,000.

16 “(2) For the Navy, 323,239.

17 “(3) For the Marine Corps, 201,600.

18 “(4) For the Air Force, 312,800.”

19 **Subtitle D—V-22 Osprey Aircraft**
20 **Program**

21 **SEC. 2401. TERMINATION OF V-22 OSPREY AIRCRAFT PRO-**
22 **GRAM.**

23 Notwithstanding any other provision of law, none of
24 the funds authorized to be appropriated or otherwise made
25 available for fiscal year 2012 or any fiscal year thereafter

1 for the Department of Defense may be obligated or ex-
 2 pended for the procurement of V-22 Osprey aircraft.

3 **Subtitle E—Fairness in Taxation**

4 **SEC. 2501. INCREASED TAX RATES FOR TAXPAYERS WITH** 5 **MORE THAN \$1,000,000 TAXABLE INCOME.**

6 (a) IN GENERAL.—

7 (1) MARRIED INDIVIDUALS FILING JOINT RE-
 8 TURNS AND SURVIVING SPOUSES.—The table con-
 9 tained in subsection (a) of section 1 of the Internal
 10 Revenue Code of 1986 is amended to read as fol-
 11 lows:

If taxable income is:	The tax is:
Not over \$69,000	15% of taxable income.
Over \$69,000 but not over \$139,350.	\$10,350, plus 28% of the excess over \$69,000.
Over \$139,350 but not over \$212,300.	\$30,048, plus 31% of the excess over \$139,350.
Over \$212,300 but not over \$379,150.	\$52,662.50, plus 36% of the excess over \$212,300.
Over \$379,150 but not over \$1,000,000.	\$112,728.50, plus 39.6% of the ex- cess over \$379,150.
Over \$1,000,000 but not over \$10,000,000.	\$358,585.10, plus 45% of the excess over \$1,000,000.
Over \$10,000,000 but not over \$20,000,000.	\$4,408,585.10, plus 46% of the ex- cess over \$10,000,000.
Over \$20,000,000 but not over \$100,000,000.	\$9,008,585.10, plus 47% of the ex- cess over \$20,000,000.
Over \$100,000,000 but not over \$1,000,000,000.	\$46,608,585.10, plus 48% of the ex- cess over \$100,000,000.
Over \$1,000,000,000	\$478,608,585.10, plus 49% over the excess over \$1,000,000,000.

12 (2) HEADS OF HOUSEHOLD.—The table con-
 13 tained in subsection (b) of section 1 of such Code is
 14 amended to read as follows:

If taxable income is:	The tax is:
Not over \$46,250	15% of taxable income.
Over \$46,250 but not over \$119,400.	\$6,937.50, plus 28% of the excess over \$46,250.

If taxable income is:	The tax is:
Over \$119,400 but not over \$193,350.	\$27,419.50, plus 31% of the excess over \$119,400.
Over \$193,350 but not over \$379,150.	\$50,344, plus 36% of the excess over \$193,350.
Over \$379,150 but not over \$1,000,000.	\$117,232, plus 39.6% of the excess over \$379,150.
Over \$1,000,000 but not over \$10,000,000.	\$363,088.60, plus 45% of the excess over \$1,000,000.
Over \$10,000,000 but not over \$20,000,000.	\$4,413,088.60, plus 46% of the excess over \$10,000,000.
Over \$20,000,000 but not over \$100,000,000.	\$9,013,088.60, plus 47% of the excess over \$20,000,000.
Over \$100,000,000 but not over \$1,000,000,000.	\$46,613,088.60, plus 48% of the excess over \$100,000,000.
Over \$1,000,000,000	\$478,613,088.60, plus 49% of the excess over \$1,000,000,000.

1 (3) UNMARRIED INDIVIDUALS (OTHER THAN
2 SURVIVING SPOUSES AND HEADS OF HOUSE-
3 HOLDS).—The table contained in subsection (c) of
4 section 1 of such Code is amended to read as fol-
5 lows:

If taxable income is:	The tax is:
Not over \$34,500	15% of taxable income.
Over \$34,500 but not over \$83,600.	\$5,175, plus 28% of the excess over \$34,500.
Over \$83,600 but not over \$174,400.	\$18,923, plus 31% of the excess over \$83,600.
Over \$174,400 but not over \$379,150.	\$47,071, plus 36% of the excess over \$174,400.
Over \$379,150 but not over \$1,000,000.	\$120,781, plus 39.6% of the excess over \$379,150.
Over \$1,000,000 but not over \$10,000,000.	\$366,637.60, plus 45% of the excess over \$1,000,000.
Over \$10,000,000 but not over \$20,000,000.	\$4,416,637.60, plus 46% of the excess over \$10,000,000.
Over \$20,000,000 but not over \$100,000,000.	\$9,016,637.60, plus 47% of the excess over \$20,000,000.
Over \$100,000,000 but not over \$1,000,000,000.	\$46,616,637.60, plus 48% of the excess over \$100,000,000.
Over \$1,000,000,000	\$478,616,637.60, plus 49% of the excess over \$1,000,000,000.

6 (4) MARRIED INDIVIDUALS FILING SEPARATE
7 RETURNS.—The table contained in subsection (d) of

1 section 1 of such Code is amended to read as fol-
 2 lows:

If taxable income is:	The tax is:
Not over \$34,500	plus 15% of taxable income.
Over \$34,500 but not over \$69,675.	\$5,175, plus 28% of the excess over \$34,500.
Over \$69,675 but not over \$106,150.	\$15,024, plus 31% of the excess over \$69,675.
Over \$106,150 but not over \$189,575.	\$26,331.25, plus 35% of the excess over \$106,150.
Over \$189,575 but not over \$500,000.	\$55,530, plus 39.6% of the excess over \$189,575.
Over \$500,000 but not over \$5,000,000.	\$178,458.30, plus 45% of the excess over \$500,000.
Over \$5,000,000 but not over \$10,000,000.	\$2,203,458.30, plus 46% of the excess over \$5,000,000.
Over \$10,000,000 but not over \$50,000,000.	\$4,503,458.30, plus 47% of the excess over \$10,000,000.
Over \$50,000,000 but not over \$500,000,000.	\$23,303,458.30, plus 48% of the excess over \$50,000,000.
Over \$500,000,000	\$239,303,458.30, plus 49% of the excess over \$500,000,000.

3 (b) **EFFECTIVE DATE.**—The amendments made by
 4 this section shall apply to taxable years beginning after
 5 December 31, 2011.

6 **SEC. 2502. RECAPTURE OF LOWER CAPITAL GAINS RATES**
 7 **FOR INDIVIDUALS SUBJECT TO ADDED RATE**
 8 **BRACKETS.**

9 (a) **IN GENERAL.**—Section 1 of the Internal Revenue
 10 Code of 1986 is amended by adding at the end the fol-
 11 lowing new subsection:

12 “(j) **SPECIAL RULE FOR CAPITAL GAINS IN CASE OF**
 13 **TAXABLE INCOME SUBJECT TO AT LEAST 45-PERCENT**
 14 **RATE BRACKET.**—If for the taxable year a taxpayer has
 15 taxable income in excess of the minimum dollar amount

1 for the 45-percent rate bracket and has a net capital gain,
2 then—

3 “(1) the tax imposed by this section for the tax-
4 able year with respect to such excess shall be deter-
5 mined without regard to subsection (h), and

6 “(2) the amount of net capital gain of the tax-
7 payer taken into account for the taxable year under
8 subsection (h) shall be reduced by the lesser of—

9 “(A) such excess, or

10 “(B) the net capital gain for the taxable
11 year.

12 Any reduction in net capital gain under the pre-
13 ceding sentence shall be allocated between adjusted
14 net capital gain, unrecaptured 1250 gain, and sec-
15 tion 1202 gain in amounts proportionate to the
16 amounts of each such gain.”.

17 (b) CONFORMING AMENDMENT.—Paragraph (1) of
18 section 1(h) of such Code is amended by striking “If a
19 taxpayer has” and inserting “Except to the extent pro-
20 vided in subsection (j), if a taxpayer has”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to taxable years beginning after
23 December 31, 2011.

1 **Subtitle F—End Big Oil Tax**
2 **Subsidies Act of 2011**

3 **SEC. 2601. SHORT TITLE.**

4 This subtitle may be cited as the “End Big Oil Tax
5 Subsidies Act of 2011”.

6 **SEC. 2602. AMORTIZATION OF GEOLOGICAL AND GEO-**
7 **PHYSICAL EXPENDITURES.**

8 (a) **IN GENERAL.**—Subparagraph (A) of section
9 167(h)(5) of the Internal Revenue Code of 1986 is amend-
10 ed by striking “major integrated oil company” and insert-
11 ing “covered large oil company”.

12 (b) **COVERED LARGE OIL COMPANY.**—Paragraph (5)
13 of section 167(h) of such Code is amended by redesign-
14 nating subparagraph (B) as subparagraph (C) and by in-
15 serting after subparagraph (A) the following new subpara-
16 graph:

17 “(B) **COVERED LARGE OIL COMPANY.**—
18 For purposes of this paragraph, the term ‘cov-
19 ered large oil company’ means a taxpayer
20 which—

21 “(i) is a major integrated oil com-
22 pany, or

23 “(ii) has gross receipts in excess of
24 \$50,000,000 for the taxable year.

1 For purposes of clause (ii), all persons treated
2 as a single employer under subsections (a) and
3 (b) of section 52 shall be treated as 1 person.”.

4 (c) CONFORMING AMENDMENT.—The heading for
5 paragraph (5) of section 167(h) of such Code is amended
6 by inserting “AND OTHER LARGE TAXPAYERS”.

7 (d) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to amounts paid or incurred in tax-
9 able years beginning after December 31, 2011.

10 **SEC. 2603. PRODUCING OIL AND GAS FROM MARGINAL**
11 **WELLS.**

12 (a) IN GENERAL.—Section 45I of the Internal Rev-
13 enue Code of 1986 is amended by adding at the end the
14 following new subsection:

15 “(e) EXCEPTION FOR TAXPAYER WHO IS NOT
16 SMALL, INDEPENDENT OIL AND GAS COMPANY.—

17 “(1) IN GENERAL.—Subsection (a) shall not
18 apply to any taxpayer which is not a small, inde-
19 pendent oil and gas company for the taxable year.

20 “(2) AGGREGATION RULE.—For purposes of
21 paragraph (1), all persons treated as a single em-
22 ployer under subsections (a) and (b) of section 52
23 shall be treated as 1 person.”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall apply to credits determined for taxable
3 years beginning after December 31, 2011.

4 **SEC. 2604. ENHANCED OIL RECOVERY CREDIT.**

5 (a) IN GENERAL.—Section 43 of the Internal Rev-
6 enue Code of 1986 is amended by adding at the end the
7 following new subsection:

8 “(f) EXCEPTION FOR TAXPAYER WHO IS NOT
9 SMALL, INDEPENDENT OIL AND GAS COMPANY.—

10 “(1) IN GENERAL.—Subsection (a) shall not
11 apply to any taxpayer which is not a small, inde-
12 pendent oil and gas company for the taxable year.

13 “(2) AGGREGATION RULE.—For purposes of
14 paragraph (1), all persons treated as a single em-
15 ployer under subsections (a) and (b) of section 52
16 shall be treated as 1 person.”.

17 (b) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to amounts paid or incurred in tax-
19 able years beginning after December 31, 2011.

20 **SEC. 2605. INTANGIBLE DRILLING AND DEVELOPMENT**
21 **COSTS IN THE CASE OF OIL AND GAS WELLS.**

22 (a) IN GENERAL.—Subsection (c) of section 263 of
23 the Internal Revenue Code of 1986 is amended by adding
24 at the end the following new sentence: “This subsection
25 shall not apply to amounts paid or incurred by a taxpayer

1 in any taxable year in which such taxpayer is not a small,
2 independent oil and gas company, determined by deeming
3 all persons treated as a single employer under subsections
4 (a) and (b) of section 52 as 1 person.”.

5 (b) EFFECTIVE DATE.—The amendment made by
6 this section shall apply to amounts paid or incurred in tax-
7 able years beginning after December 31, 2011.

8 **SEC. 2606. PERCENTAGE DEPLETION.**

9 (a) IN GENERAL.—Section 613A of the Internal Rev-
10 enue Code of 1986 is amended by adding at the end the
11 following new subsection:

12 “(f) EXCEPTION FOR TAXPAYER WHO IS NOT
13 SMALL, INDEPENDENT OIL AND GAS COMPANY.—

14 “(1) IN GENERAL.—This section and section
15 611 shall not apply to any taxpayer which is not a
16 small, independent oil and gas company for the tax-
17 able year.

18 “(2) AGGREGATION RULE.—For purposes of
19 paragraph (1), all persons treated as a single em-
20 ployer under subsections (a) and (b) of section 52
21 shall be treated as 1 person.”.

22 (b) CONFORMING AMENDMENT.—Section 613A(c)(1)
23 of such Code is amended by striking “subsection (d)” and
24 inserting “subsections (d) and (f)”.

1 (c) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to taxable years beginning after
3 December 31, 2011.

4 **SEC. 2607. TERTIARY INJECTANTS.**

5 (a) IN GENERAL.—Section 193 of the Internal Rev-
6 enue Code of 1986 is amended by adding at the end the
7 following new subsection:

8 “(d) EXCEPTION FOR TAXPAYER WHO IS NOT
9 SMALL, INDEPENDENT OIL AND GAS COMPANY.—

10 “(1) IN GENERAL.—Subsection (a) shall not
11 apply to any taxpayer which is not a small, inde-
12 pendent oil and gas company for the taxable year.

13 “(2) EXCEPTION FOR QUALIFIED CARBON DI-
14 OXIDE DISPOSED IN SECURE GEOLOGICAL STOR-
15 AGE.—Paragraph (1) shall not apply in the case of
16 any qualified tertiary injectant expense paid or in-
17 curred for any tertiary injectant is qualified carbon
18 dioxide (as defined in section 45Q(b)) which is dis-
19 posed of by the taxpayer in secure geological storage
20 (as defined by section 45Q(d)).

21 “(3) AGGREGATION RULE.—For purposes of
22 paragraph (1), all persons treated as a single em-
23 ployer under subsections (a) and (b) of section 52
24 shall be treated as 1 person.”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to expenses incurred after Decem-
3 ber 31, 2011.

4 **SEC. 2608. PASSIVE ACTIVITY LOSSES AND CREDITS LIM-**
5 **ITED.**

6 (a) IN GENERAL.—Paragraph (3) of section 469(c)
7 of the Internal Revenue Code of 1986 is amended by add-
8 ing at the end the following:

9 “(C) EXCEPTION FOR TAXPAYER WHO IS
10 NOT SMALL, INDEPENDENT OIL AND GAS COM-
11 PANY.—

12 “(i) IN GENERAL.—Subparagraph (A)
13 shall not apply to any taxpayer which is
14 not a small, independent oil and gas com-
15 pany for the taxable year.

16 “(ii) AGGREGATION RULE.—For pur-
17 poses of clause (i), all persons treated as
18 a single employer under subsections (a)
19 and (b) of section 52 shall be treated as 1
20 person.”.

21 **SEC. 2609. INCOME ATTRIBUTABLE TO DOMESTIC PRODUC-**
22 **TION ACTIVITIES.**

23 (a) IN GENERAL.—Section 199 of the Internal Rev-
24 enue Code of 1986 is amended by adding at the end the
25 following new subsection:

1 “(e) EXCEPTION FOR TAXPAYER WHO IS NOT
2 SMALL, INDEPENDENT OIL AND GAS COMPANY.—Sub-
3 section (a) shall not apply to the income derived from the
4 production, transportation, or distribution of oil, natural
5 gas, or any primary product (within the meaning of sub-
6 section (d)(9)) thereof by any taxpayer which for the tax-
7 able year is an oil and gas company which is not a small,
8 independent oil and gas company.”.

9 (b) EFFECTIVE DATE.—The amendment made by
10 this section shall apply to taxable years beginning after
11 December 31, 2011.

12 **SEC. 2610. PROHIBITION ON USING LAST-IN, FIRST-OUT AC-**
13 **COUNTING FOR MAJOR INTEGRATED OIL**
14 **COMPANIES.**

15 (a) IN GENERAL.—Section 472 of the Internal Rev-
16 enue Code of 1986 is amended by adding at the end the
17 following new subsection:

18 “(h) MAJOR INTEGRATED OIL COMPANIES.—Not-
19 withstanding any other provision of this section, a major
20 integrated oil company (as defined in section 167(h)) may
21 not use the method provided in subsection (b) in
22 inventorying of any goods.”.

23 (b) EFFECTIVE DATE AND SPECIAL RULE.—

1 (1) IN GENERAL.—The amendment made by
2 subsection (a) shall apply to taxable years beginning
3 after December 31, 2011.

4 (2) CHANGE IN METHOD OF ACCOUNTING.—In
5 the case of any taxpayer required by the amendment
6 made by this section to change its method of ac-
7 counting for its first taxable year beginning after the
8 date of the enactment of this subtitle—

9 (A) such change shall be treated as initi-
10 ated by the taxpayer,

11 (B) such change shall be treated as made
12 with the consent of the Secretary of the Treas-
13 ury, and

14 (C) the net amount of the adjustments re-
15 quired to be taken into account by the taxpayer
16 under section 481 of the Internal Revenue Code
17 of 1986 shall be taken into account ratably over
18 a period (not greater than 8 taxable years) be-
19 ginning with such first taxable year.

20 **SEC. 2611. MODIFICATIONS OF FOREIGN TAX CREDIT**
21 **RULES APPLICABLE TO DUAL CAPACITY TAX-**
22 **PAYERS.**

23 (a) IN GENERAL.—Section 901 of the Internal Rev-
24 enue Code of 1986 is amended by redesignating subsection

1 (n) as subsection (o) and by inserting after subsection (m)
2 the following new subsection:

3 “(n) SPECIAL RULES RELATING TO DUAL CAPACITY
4 TAXPAYERS.—

5 “(1) GENERAL RULE.—Notwithstanding any
6 other provision of this chapter, any amount paid or
7 accrued by a dual capacity taxpayer to a foreign
8 country or possession of the United States for any
9 period with respect to combined foreign oil and gas
10 income (as defined in section 907(b)(1)) shall not be
11 considered a tax to the extent such amount exceeds
12 the amount (determined in accordance with regula-
13 tions) which would have been required to be paid if
14 the taxpayer were not a dual capacity taxpayer.

15 “(2) DUAL CAPACITY TAXPAYER.—For pur-
16 poses of this subsection, the term ‘dual capacity tax-
17 payer’ means, with respect to any foreign country or
18 possession of the United States, a person who—

19 “(A) is subject to a levy of such country or
20 possession, and

21 “(B) receives (or will receive) directly or
22 indirectly a specific economic benefit (as deter-
23 mined in accordance with regulations) from
24 such country or possession.”.

25 (b) EFFECTIVE DATE.—

1 (1) IN GENERAL.—The amendments made by
2 this section shall apply to taxes paid or accrued in
3 taxable years beginning after December 31, 2011.

4 (2) CONTRARY TREATY OBLIGATIONS
5 UPHOLD.—The amendments made by this section
6 shall not apply to the extent contrary to any treaty
7 obligation of the United States.

8 **Subtitle G—Superfund** 9 **Reinvestment Act**

10 **SEC. 2701. SHORT TITLE.**

11 This subtitle may be cited as the “Superfund Rein-
12 vestment Act”.

13 **SEC. 2702. USE OF HAZARDOUS SUBSTANCE SUPERFUND** 14 **FOR CLEANUP.**

15 (a) AVAILABILITY OF AMOUNTS.—Section 111 of the
16 Comprehensive Environmental Response, Compensation,
17 and Liability Act of 1980 (42 U.S.C. 9611) is amended—

18 (1) in subsection (a) by striking “For the pur-
19 poses specified” and all that follows through “for
20 the following purposes:” and inserting the following:
21 “‘The amount in the Hazardous Substance Super-
22 fund established under section 9507 of the Internal
23 Revenue Code of 1986 shall be available, without
24 further appropriation, to be used for the purposes

1 specified in this section. The President shall use
2 such amount for the following purposes:”; and

3 (2) in subsection (c)—

4 (A) by striking “Subject to such amounts
5 as are provided in appropriations Acts, the”
6 each place it appears and inserting “The”; and

7 (B) in paragraph (12) by striking “to the
8 extent that such costs” and all that follows
9 through “and 1994”.

10 (b) AMENDMENT TO THE INTERNAL REVENUE
11 CODE.—Section 9507 of the Internal Revenue Code of
12 1986 is amended—

13 (1) by striking “appropriated to” in subsection
14 (a)(1) and inserting “made available for”,

15 (2) by striking “appropriated” in subsection (b)
16 and inserting “transferred”,

17 (3) by striking “, as provided in appropriations
18 Acts,” in subsection (c)(1), and

19 (4) by striking “1995” in subsection (d)(3)(B)
20 and inserting “2021”.

21 **SEC. 2703. BUDGETARY TREATMENT OF HAZARDOUS SUB-**
22 **STANCE SUPERFUND.**

23 Notwithstanding any other provision of law, the re-
24 ceipts and disbursements of the Hazardous Substance

1 Superfund established in section 9507 of the Internal Rev-
2 enue Code of 1986—

3 (1) shall not be counted as new budget author-
4 ity, outlays, receipts, or deficit or surplus for pur-
5 poses of—

6 (A) the budget of the United States Gov-
7 ernment as submitted by the President;

8 (B) the congressional budget (including al-
9 locations of budget authority and outlays pro-
10 vided therein);

11 (C) the Balanced Budget and Emergency
12 Deficit Control Act of 1985; or

13 (D) the Statutory Pay-As-You-Go Act of
14 2010;

15 (2) shall be exempt from any general budget
16 limitation imposed by statute on expenditures and
17 net lending (budget outlays) of the United States
18 Government; and

19 (3) shall be available only for the purposes
20 specified in section 111 of the Comprehensive Envi-
21 ronmental Response, Compensation, and Liability
22 Act of 1980 (42 U.S.C. 9611).

1 **SEC. 2704. EXTENSION OF SUPERFUND TAXES.**

2 (a) **EXCISE TAXES.**—Subsection (e) of section 4611
3 of the Internal Revenue Code of 1986 is amended to read
4 as follows:

5 “(e) **APPLICATION OF HAZARDOUS SUBSTANCE**
6 **SUPERFUND FINANCING RATE.**—The Hazardous Sub-
7 stance Superfund financing rate under this section shall
8 apply after December 31, 1986, and before January 1,
9 1996, and after the date of the enactment of the Super-
10 fund Reinvestment Act and before January 1, 2019.”.

11 (b) **CORPORATE ENVIRONMENTAL INCOME TAX.**—
12 Subsection (e) of section 59A of such Code is amended
13 to read as follows:

14 “(e) **APPLICATION OF TAX.**—The tax imposed by this
15 section shall apply to taxable years beginning after De-
16 cember 31, 1986, and before January 1, 1996, and to tax-
17 able years beginning after the date of the enactment of
18 the Superfund Reinvestment Act and before January 1,
19 2019.”.

20 (c) **TECHNICAL AMENDMENTS.**—

21 (1) Subsection (b) of section 4611 of such Code
22 is amended—

23 (A) by striking “or exported from” in
24 paragraph (1)(A),

25 (B) by striking “or exportation” in para-
26 graph (1)(B), and

1 (C) by striking “AND EXPORTATION” in
2 the heading thereof.

3 (2) Paragraph (3) of section 4611(d) of such
4 Code is amended—

5 (A) by striking “or exporting the crude oil,
6 as the case may be” and inserting “the crude
7 oil”, and

8 (B) by striking “OR EXPORTS” in the
9 heading thereof.

10 **SEC. 2705. APPLICABILITY.**

11 (a) IN GENERAL.—Except as provided in subsections
12 (b) and (c), this subtitle (including the amendments made
13 by this subtitle) shall apply to fiscal years beginning after
14 September 30, 2011.

15 (b) EXCISE TAXES.—The amendments made by sec-
16 tions 2704(a) and 2704(c) shall take effect on the date
17 of the enactment of this subtitle.

18 (c) INCOME TAX.—The amendment made by section
19 2704(b) shall apply to taxable years beginning after the
20 date of the enactment of this subtitle.

21 **Subtitle H—Wall Street Trading**
22 **and Speculators Tax Act**

23 **SEC. 2801. SHORT TITLE.**

24 This subtitle may be cited as the “Wall Street Trad-
25 ing and Speculators Tax Act”.

1 **SEC. 2802. TRANSACTION TAX.**

2 (a) IN GENERAL.—Chapter 36 of the Internal Rev-
3 enue Code of 1986 is amended by inserting after sub-
4 chapter B the following new subchapter:

5 **“Subchapter C—Tax on Trading Transactions**

“Sec. 4475. Tax on trading transactions.

6 **“SEC. 4475. TAX ON TRADING TRANSACTIONS.**

7 “(a) IMPOSITION OF TAX.—There is hereby imposed
8 a tax on each covered transaction with respect to any secu-
9 rity.

10 “(b) RATE OF TAX.—The tax imposed under sub-
11 section (a) with respect to any covered transaction shall
12 be 0.03 percent of the specified base amount with respect
13 to such covered transaction.

14 “(c) SPECIFIED BASE AMOUNT.—For purposes of
15 this section, the term ‘specified base amount’ means—

16 “(1) except as provided in paragraph (2), the
17 fair market value of the security (determined as of
18 the time of the covered transaction), and

19 “(2) in the case of any payment described in
20 subsection (h), the amount of such payment.

21 “(d) COVERED TRANSACTION.—For purposes of this
22 section, the term ‘covered transaction’ means—

23 “(1) except as provided in paragraph (2), any
24 purchase if—

1 “(A) such purchase occurs or is cleared on
2 a facility located in the United States, or

3 “(B) the purchaser or seller is a United
4 States person, and

5 “(2) any transaction with respect to a security
6 described in subparagraph (D), (E), or (F) of sub-
7 section (e)(1), if—

8 “(A) such security is traded or cleared on
9 a facility located in the United States, or

10 “(B) any party with rights under such se-
11 curity is a United States person.

12 “(e) SECURITY AND OTHER DEFINITIONS.—For pur-
13 poses of this section—

14 “(1) IN GENERAL.—The term ‘security’
15 means—

16 “(A) any share of stock in a corporation,

17 “(B) any partnership or beneficial owner-
18 ship interest in a partnership or trust,

19 “(C) any note, bond, debenture, or other
20 evidence of indebtedness,

21 “(D) any evidence of an interest in, or a
22 derivative financial instrument with respect to,
23 any security or securities described in subpara-
24 graph (A), (B), or (C),

1 “(E) any derivative financial instrument
2 with respect to any currency or commodity, and

3 “(F) any other derivative financial instru-
4 ment any payment with respect to which is cal-
5 culated by reference to any specified index.

6 “(2) DERIVATIVE FINANCIAL INSTRUMENT.—
7 The term ‘derivative financial instrument’ includes
8 any option, forward contract, futures contract, no-
9 tional principal contract, or any similar financial in-
10 strument.

11 “(3) SPECIFIED INDEX.—The term ‘specified
12 index’ means any 1 or more of any combination of—

13 “(A) a fixed rate, price, or amount, or

14 “(B) a variable rate, price, or amount,
15 which is based on any current objectively deter-
16 minable information which is not within the control
17 of any of the parties to the contract or instrument
18 and is not unique to any of the parties’ cir-
19 cumstances.

20 “(4) TREATMENT OF EXCHANGES.—

21 “(A) IN GENERAL.—An exchange shall be
22 treated as the sale of the property transferred
23 and a purchase of the property received by each
24 party to the exchange.

1 “(B) CERTAIN DEEMED EXCHANGES.—In
2 the case of a distribution treated as an ex-
3 change for stock under section 302 or 331, the
4 corporation making such distribution shall be
5 treated as having purchased such stock for pur-
6 poses of this section.

7 “(f) EXCEPTIONS.—

8 “(1) EXCEPTION FOR INITIAL ISSUES.—No tax
9 shall be imposed under subsection (a) on any cov-
10 ered transaction with respect to the initial issuance
11 of any security described in subparagraph (A), (B),
12 or (C) of subsection (e)(1).

13 “(2) EXCEPTION FOR CERTAIN TRADED SHORT-
14 TERM INDEBTEDNESS.—A note, bond, debenture, or
15 other evidence of indebtedness which—

16 “(A) is traded on a trading facility located
17 in the United States, and

18 “(B) has a fixed maturity of not more
19 than 100 days,

20 shall not be treated as described in subsection
21 (e)(1)(C).

22 “(3) EXCEPTION FOR SECURITIES LENDING AR-
23 RANGEMENTS.—No tax shall be imposed under sub-
24 section (a) on any covered transaction with respect

1 to which gain or loss is not recognized by reason of
2 section 1058.

3 “(g) BY WHOM PAID.—

4 “(1) IN GENERAL.—The tax imposed by this
5 section shall be paid by—

6 “(A) in the case of a transaction which oc-
7 curs or is cleared on a facility located in the
8 United States, such facility, and

9 “(B) in the case of a purchase not de-
10 scribed in subparagraph (A) which is executed
11 by a broker (as defined in section 6045(c)(1))
12 which is a United States person, such broker.

13 “(2) SPECIAL RULES FOR DIRECT, ETC.,
14 TRANSACTIONS.—In the case of any transaction to
15 which paragraph (1) does not apply, the tax imposed
16 by this section shall be paid by—

17 “(A) in the case of a transaction described
18 in subsection (d)(1)—

19 “(i) the purchaser if the purchaser is
20 a United States person, and

21 “(ii) the seller if the purchaser is not
22 a United States person, and

23 “(B) in the case of a transaction described
24 in subsection (d)(2)—

1 “(i) the payor if the payor is a United
2 States person, and

3 “(ii) the payee if the payor is not a
4 United States person.

5 “(h) CERTAIN PAYMENTS TREATED AS SEPARATE
6 TRANSACTIONS.—Except as otherwise provided by the
7 Secretary, any payment with respect to a security de-
8 scribed in subparagraph (D), (E), or (F) of subsection
9 (e)(1) shall be treated as a separate transaction for pur-
10 poses of this section, including—

11 “(1) any net initial payment, net final or termi-
12 nating payment, or net periodical payment with re-
13 spect to a notional principal contract (or similar fi-
14 nancial instrument),

15 “(2) any payment with respect to any forward
16 contract (or similar financial instrument), and

17 “(3) any premium paid with respect to any op-
18 tion (or similar financial instrument).

19 “(i) ADMINISTRATION.—The Secretary shall carry
20 out this section in consultation with the Securities and Ex-
21 change Commission and the Commodity Futures Trading
22 Commission.

23 “(j) GUIDANCE; REGULATIONS.—The Secretary
24 shall—

1 and 2010” both places it appears and inserting “2009,
2 2010, 2011, and 2012”.

3 (c) EFFECTIVE DATE.—The amendment made by
4 this section shall apply to taxable years beginning after
5 December 31, 2010.

6 **Subtitle J—Employee**
7 **Misclassification Prevention Act**

8 **SEC. 2951 SHORT TITLE.**

9 This subtitle may be cited as the “Employee
10 Misclassification Prevention Act”.

11 **SEC. 2952. CLASSIFICATION OF EMPLOYEES AND NON-EM-**
12 **PLOYEES.**

13 (a) RECORDKEEPING AND NOTICE REQUIRE-
14 MENTS.—Section 11(c) of the Fair Labor Standards Act
15 of 1938 (29 U.S.C. 211(c)) is amended—

16 (1) by striking “(c) Every employer subject to
17 any provision of this Act or of any order issued
18 under this Act” and inserting the following:

19 “(c) RECORDKEEPING AND NOTICE REQUIRE-
20 MENTS.—

21 “(1) IN GENERAL.—Every person subject to
22 any provision of this Act or of any order issued
23 under this Act”;

24 (2) by striking “of the persons employed by
25 him” and inserting the following: “of—

1 “(A) each individual employed by such per-
2 son”;

3 (3) by striking “employment maintained by
4 him, and shall” and inserting the following: “em-
5 ployment;

6 “(B) subject to paragraph (2), each indi-
7 vidual—

8 “(i) who is not an employee within the
9 meaning given the term in section 3(e) (re-
10 ferred to in this subsection as a ‘non-em-
11 ployee’);

12 “(ii) whom the person has engaged, in
13 the course of the person’s trade or busi-
14 ness, for the performance of labor or serv-
15 ices; and

16 “(iii)(I) with respect to whom the per-
17 son is required to file an information re-
18 turn under section 6041A(a) of the Inter-
19 nal Revenue Code of 1986; or

20 “(II) who is providing labor or serv-
21 ices to the person through an entity that
22 is a trust, estate, partnership, association,
23 company, or corporation (as such terms
24 are used in section 7701(a)(1) of the In-
25 ternal Revenue Code of 1986) if—

1 “(aa) such individual has an
2 ownership interest in the entity;

3 “(bb) creation or maintenance of
4 such entity is a condition for the pro-
5 vision of such labor or services to the
6 person; and

7 “(cc) the person would be re-
8 quired to file an information return
9 for the entity under section 6041A(a)
10 of the Internal Revenue Code of 1986
11 if the entity were an individual; and

12 “(C) the remuneration and hours relating
13 to the performance of labor or services by each
14 individual described in subparagraph (B); and

15 “(D) the notices required under paragraph
16 (5),
17 and shall”; and

18 (4) by adding at the end the following:

19 “(2) RECORDKEEPING LIMITATION.—A person
20 otherwise subject to the requirements of paragraph
21 (1) shall have no responsibility for making, keeping,
22 or preserving records, including the records de-
23 scribed in such paragraph and paragraph (4), con-
24 cerning the employees of any individual described in
25 paragraph (1)(B) or the non-employees with whom

1 such individual has engaged for the performance of
2 labor or services for such person, unless such
3 records are provided during the course of the trade
4 or business to the person.

5 “(3) PRESUMPTION.—

6 “(A) IN GENERAL.—For purposes of this
7 Act and the regulations or orders issued under
8 this Act, an individual who is employed, or who
9 is remunerated for the performance of labor or
10 services, by a person, shall be presumed to be
11 an employee of the person if—

12 “(i) the person has not made, kept,
13 and preserved records in accordance with
14 subparagraphs (B) and (C) of paragraph
15 (1) regarding the individual; or

16 “(ii) the person has not provided the
17 individual with the notice required under
18 paragraph (5).

19 “(B) REBUTTAL.—The presumption under
20 subparagraph (A) shall be rebutted only
21 through the presentation of clear and con-
22 vincing evidence that an individual described in
23 such subparagraph is not an employee (within
24 the meaning of section 3(e)) of the person.

1 “(4) ACCURATE CLASSIFICATION.—An accurate
2 classification of the status of each individual de-
3 scribed in paragraph (1) as either an employee
4 (within the meaning of section 3(e)) of the person
5 maintaining the records or a non-employee of such
6 person shall be included within the records under
7 this subsection.

8 “(5) NOTICE.—

9 “(A) IN GENERAL.—Every person subject
10 to any provision of this Act or of any order
11 issued under this Act shall provide the notice
12 described in subparagraph (C) to each employee
13 of the person and each individual classified by
14 the person as a non-employee under paragraph
15 (1)(B).

16 “(B) TIMING OF NOTICE.—

17 “(i) IN GENERAL.—Such notice shall
18 be provided, at a minimum, not later than
19 6 months after the date of enactment of
20 the Employee Misclassification Prevention
21 Act, and thereafter—

22 “(I) for new employees, upon em-
23 ployment; and

24 “(II) for new non-employees who
25 are classified under paragraph (1)(B),

1 upon commencement of the labor or
2 services described in such paragraph.

3 “(ii) CHANGE IN STATUS.—Each per-
4 son required to provide notice under sub-
5 paragraph (A) to an individual shall also
6 provide such notice to such individual upon
7 changing such individual’s status as an
8 employee or non-employee under paragraph
9 (1).

10 “(C) CONTENTS OF NOTICE.—The notice
11 required under this paragraph shall be in writ-
12 ing and shall—

13 “(i) inform the individual of the indi-
14 vidual’s classification, by the person sub-
15 mitting the notice, as an employee or a
16 non-employee under paragraph (1);

17 “(ii) include a statement directing
18 such individual to a Department of Labor
19 website established for the purpose of pro-
20 viding further information about the rights
21 of employees under the law;

22 “(iii) include the address and tele-
23 phone number for the applicable local of-
24 fice of the United States Department of
25 Labor;

1 “(iv) include for each individual classi-
2 fied as a non-employee under paragraph
3 (1)(B) by the person submitting the notice,
4 the following statement: ‘Your rights to
5 wage, hour, and other labor protections de-
6 pend upon your proper classification as an
7 employee or non-employee. If you have any
8 questions or concerns about how you have
9 been classified or suspect that you may
10 have been misclassified, contact the U.S.
11 Department of Labor.’; and

12 “(v) include such additional informa-
13 tion as the Secretary shall prescribe by
14 regulation.”.

15 (b) SPECIAL PROHIBITED ACTS.—Section 15(a) of
16 the Fair Labor Standards Act of 1938 (29 U.S.C. 215(a))
17 is amended—

18 (1) by striking paragraph (3) and inserting the
19 following:

20 “(3) to discharge or in any other manner dis-
21 criminate against any individual (including an em-
22 ployee) because such individual has—

23 “(A) opposed any practice, or filed a peti-
24 tion or complaint or instituted or caused to be
25 instituted any proceeding—

1 “(i) under or related to this Act (in-
2 cluding concerning an individual’s status
3 as an employee or non-employee for pur-
4 poses of this Act); or

5 “(ii) concerning an individual’s status
6 as an employee or non-employee for em-
7 ployment tax purposes within the meaning
8 of subtitle C of the Internal Revenue Code
9 of 1986;

10 “(B) testified or is about to testify in any
11 proceeding described in subparagraph (A); or

12 “(C) served, or is about to serve, on an in-
13 dustry committee;”;

14 (2) in paragraph (5), by striking the period at
15 the end and inserting “; and”; and

16 (3) by adding at the end the following:

17 “(6) to fail to accurately classify an individual
18 as an employee.”.

19 (c) SPECIAL PENALTY FOR CERTAIN
20 MISCLASSIFICATION, RECORDKEEPING, AND NOTICE VIO-
21 LATIONS.—Section 16 of the Fair Labor Standards Act
22 of 1938 (29 U.S.C. 216) is amended—

23 (1) in subsection (b)—

1 (A) in the sixth sentence, by striking “any
2 employee” each place the term occurs and in-
3 serting “any employee or individual”;

4 (B) in the fourth sentence, by striking
5 “employee” and inserting “employee or indi-
6 vidual”;

7 (C) in the third sentence—

8 (i) by striking “either of the preceding
9 sentences” and inserting “any of the pre-
10 ceding sentences”;

11 (ii) by striking “one or more employ-
12 ees” and inserting “one or more employees
13 or individuals”; and

14 (iii) by striking “other employees”
15 and inserting “other employees or individ-
16 uals, respectively,”; and

17 (D) by inserting after the first sentence
18 the following: “Such liquidated damages are
19 doubled (subject to section 11 of the Portal-to-
20 Portal Pay Act of 1947 (29 U.S.C. 260))
21 where, in addition to violating the provisions of
22 section 6 or 7, the employer has violated the
23 provisions of section 15(a)(6) with respect to
24 such employee or employees.”; and

1 (2) in subsection (e), by striking paragraph (2)
2 and inserting the following:

3 “(2) Any person who violates section 6, 7, 11(e), or
4 15(a)(6) shall be subject to a civil penalty, for each em-
5 ployee or other individual who was the subject of such a
6 violation, in an amount—

7 “(A) not to exceed \$1,100; or

8 “(B) in the case of a person who has repeatedly
9 or willfully committed such violation, not to exceed
10 \$5,000.”.

11 (d) EMPLOYEE RIGHTS WEBSITE.—

12 (1) IN GENERAL.—Not later than 180 days
13 after the date of enactment of this subtitle, the Sec-
14 retary of Labor shall establish, for purposes of sec-
15 tion 11(e)(5)(C)(ii) of the Fair Labor Standards Act
16 of 1938 (as added by this subtitle), a single webpage
17 on the Department of Labor website that summa-
18 rizes in plain language the rights of employees as
19 described in the amendments made by subsection (a)
20 and other information considered appropriate by the
21 Secretary, including appropriate links to additional
22 information on the Department of Labor website or
23 other Federal agency websites. In addition, such
24 webpage—

1 (A) shall include a statement explaining
2 that employees may have additional or greater
3 rights under State or local laws and how em-
4 ployees may obtain additional information about
5 their rights under State or local laws;

6 (B) shall be made available in English and
7 any other languages that the Secretary deter-
8 mines to be prevalent among individuals likely
9 to access the webpage; and

10 (C) may provide a link to permit individ-
11 uals to file complaints online.

12 (2) COORDINATION WITH OTHER FEDERAL
13 WEBSITES.—The Secretary shall coordinate with
14 other relevant Federal agencies in order to provide
15 information similar to the information described in
16 paragraph (1) (or a link to the Department of Labor
17 webpage required by this subsection) on the websites
18 of such other agencies.

19 **SEC. 2953. MISCLASSIFICATION OF EMPLOYEES FOR UNEM-**
20 **PLOYMENT COMPENSATION PURPOSES.**

21 (a) IN GENERAL.—Section 303(a) of the Social Secu-
22 rity Act (42 U.S.C. 503(a)) is amended—

23 (1) in paragraph (10), by striking the period
24 and inserting “; and”; and

1 (2) by adding after paragraph (10) the fol-
2 lowing:

3 “(11)(A) Such auditing and investigative proce-
4 dures as may be necessary to identify employers that
5 have not registered under the State law or that are
6 paying unreported wages, where these actions or
7 omissions by the employers have the effect of exclud-
8 ing employees from unemployment compensation
9 coverage; and

10 “(B) The making of quarterly reports to the
11 Secretary of Labor (in such form as the Secretary
12 of Labor may require) describing the results of the
13 procedures under subparagraph (A); and

14 “(12) The establishment of administrative pen-
15 alties for misclassifying employees, or paying unre-
16 ported wages to employees without proper record-
17 keeping, for unemployment compensation pur-
18 poses.”.

19 (b) REVIEW OF AUDITING PROGRAMS.—The Sec-
20 retary of Labor shall include, in the Department of La-
21 bor’s system for measuring States’ performance in con-
22 ducting unemployment compensation tax audits, a specific
23 measure of their effectiveness in identifying the under-
24 reporting of wages and the underpayment of unemploy-
25 ment compensation contributions (including their effec-

1 tiveness in identifying instances of such underreporting or
2 underpayments despite the absence of cancelled checks,
3 original time sheets, or other similar documentation).

4 (c) EFFECTIVE DATE.—

5 (1) IN GENERAL.—Except as provided in para-
6 graph (2), the amendments made by subsection (a)
7 shall take effect 12 months after the date of the en-
8 actment of this subtitle.

9 (2) EXCEPTION.—If the Secretary of Labor
10 finds that legislation is necessary in order for the
11 unemployment compensation law of a State to com-
12 ply with the amendments made by subsection (a),
13 such amendments shall not apply with respect to
14 such law until the later of—

15 (A) the day after the close of the first reg-
16 ular session of the legislature of such State
17 which begins after the date of the enactment of
18 this subtitle; or

19 (B) 12 months after the date of the enact-
20 ment of this subtitle.

21 (d) DEFINITION OF STATE.—For purposes of this
22 section, the term “State” has the meaning given such
23 term by section 3306(j) of the Internal Revenue Code of
24 1986.

1 **SEC. 2954. DEPARTMENT OF LABOR COORDINATION, RE-**
2 **FERRAL, AND REGULATIONS.**

3 (a) COORDINATION AND REFERRAL.—Notwith-
4 standing any other provision of law, any office, adminis-
5 tration, or division of the Department of Labor that, while
6 in the performance of its official duties, obtains informa-
7 tion regarding the misclassification by a person subject to
8 the provisions of the Fair Labor Standards Act of 1938
9 (29 U.S.C. 201 et seq.) or any order issued under such
10 Act of any individual regarding whether such individual
11 is an employee or a non-employee contracted for the per-
12 formance of labor or services for purposes of section 6 or
13 7 of such Act (29 U.S.C. 206, 207) or in records required
14 under section 11(c) of such Act (29 U.S.C. 211(c)), shall
15 report such information to the Wage and Hour Division
16 of the Department. The Wage and Hour Division may re-
17 port such information to the Internal Revenue Service as
18 the Division considers appropriate.

19 (b) REGULATIONS.—The Secretary of Labor shall
20 promulgate regulations to carry out this Act and the
21 amendments made by this Act.

22 **SEC. 2955. TARGETED AUDITS.**

23 The audits of employers subject to the Fair Labor
24 Standards Act of 1938 (29 U.S.C. 201 et seq.) that are
25 conducted by the Wage and Hour Division of the Depart-
26 ment of Labor shall include certain industries with fre-

1 quent incidence of misclassifying employees as non-em-
 2 ployees, as determined by the Secretary of Labor.

3 **Subtitle K—Corporate Assets**
 4 **Should Be Used to Hire Act**

5 **SEC. 2961. SHORT TITLE.**

6 This subtitle may be cited as the “Corporate Assets
 7 Should be used to Hire Act”.

8 **SEC. 2962. TEMPORARY SURTAX ON INCREASES IN RE-**
 9 **TAINED EARNINGS OF DOMESTIC CORPORA-**
 10 **TIONS.**

11 (a) IN GENERAL.—Part II of subchapter A of chap-
 12 ter 1 of the Internal Revenue Code of 1986 is amended
 13 by redesignating section 12 as section 13 and by inserting
 14 after section 11 the following new section:

15 **“SEC. 12. TEMPORARY SURTAX ON INCREASES IN RE-**
 16 **TAINED EARNINGS OF DOMESTIC CORPORA-**
 17 **TIONS.**

18 “(a) IN GENERAL.—In the case of a domestic cor-
 19 poration for any taxable year beginning during 2011 or
 20 2012, there is hereby imposed (in addition to any other
 21 tax imposed by this part) a tax equal to 40 percent of
 22 the excess (if any) of—

23 “(1) the retained earnings of such corporation
 24 for such taxable year, over

1 “(2) the average retained earnings of such cor-
2 poration for the 3 taxable years immediately pre-
3 ceding such taxable year.

4 “(b) EXCEPTIONS.—

5 “(1) RETAINED EARNINGS REQUIRED BY
6 LAW.—Subsection (a) shall not apply to so much of
7 the excess described in such subsection as is attrib-
8 utable to any increase in retained earnings which is
9 required by Federal law or regulation.

10 “(2) SMALL BUSINESS EXCEPTION.—Subsection
11 (a) shall not apply to any corporation for any tax-
12 able year with respect to which the retained earnings
13 of such corporation for such taxable year is less than
14 \$5,000,000. For purposes of this paragraph, all per-
15 sons treated as a single employer under subsection
16 (a) or (b) of section 52, or subsection (m) or (o) of
17 section 414, shall be treated as one person.

18 “(3) CORPORATIONS NOT IN EXISTENCE FOR
19 ENTIRE BASE PERIOD.—Subsection (a) shall not
20 apply to any corporation if such corporation was not
21 in existence for the entire 3 taxable year period re-
22 ferred to in subsection (a)(2).

23 “(c) RETAINED EARNINGS.—For purposes of this
24 section, the term ‘retained earnings’ means, with respect
25 to any taxable year, the excess (if any) of—

1 “(1) the retained earnings of such corporation
2 as of the end of such taxable year, over

3 “(2) the retained earnings of such corporation
4 as of the beginning of such taxable year.

5 Appropriated and unappropriated retained earnings shall
6 be taken into account under paragraphs (1) and (2).

7 “(d) TREATMENT OF PREDECESSORS.—Any ref-
8 erence in this section to a corporation shall include a ref-
9 erence to any predecessor of such corporation.”.

10 (b) CLERICAL AMENDMENT.—The table of sections
11 for part II of subchapter A of chapter 1 of such Code
12 is amended by redesignating the item relating to section
13 12 as an item relating to section 13 and by inserting after
14 the item relating to section 11 the following new item:

 “Sec. 12. Temporary surtax on increases in retained earnings of domestic cor-
 porations.”.

15 (c) DEFICIT REDUCTION.—The increase in Federal
16 revenue resulting from the amendments made by this sec-
17 tion shall be deposited in the Treasury and used for Fed-
18 eral budget deficit reduction or, if there is no Federal
19 budget deficit, for reducing the Federal debt in such man-
20 ner as the Secretary of the Treasury considers appro-
21 priate.

22 (d) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to taxable years beginning after
24 December 31, 2010.

1 **TITLE III—PROTECT AND**
2 **STRENGTHEN SOCIAL SECUR-**
3 **RITY, MEDICARE, AND MED-**
4 **ICAID**

5 **Subtitle A—Public Option Deficit**
6 **Reduction Act**

7 **SEC. 3001. SHORT TITLE.**

8 This subtitle may be cited as the “Public Option Def-
9 icit Reduction Act”.

10 **SEC. 3002. PUBLIC HEALTH INSURANCE OPTION.**

11 (a) IN GENERAL.—Part III of subtitle D of title I
12 of the Patient Protection and Affordable Care Act (Public
13 Law 111–148) is amended by adding at the end the fol-
14 lowing new section:

15 **“SEC. 1325. PUBLIC HEALTH INSURANCE OPTION.**

16 **“(a) ESTABLISHMENT AND ADMINISTRATION OF A**
17 **PUBLIC HEALTH INSURANCE OPTION.—**

18 **“(1) ESTABLISHMENT.—**For years beginning
19 with 2014, the Secretary of Health and Human
20 Services (in this subtitle referred to as the ‘Sec-
21 retary’) shall provide for the offering through Ex-
22 changes established under this title of a health bene-
23 fits plan (in this Act referred to as the ‘public health
24 insurance option’) that ensures choice, competition,
25 and stability of affordable, high-quality coverage

1 throughout the United States in accordance with
2 this section. In designing the option, the Secretary’s
3 primary responsibility is to create a low-cost plan
4 without compromising quality or access to care.

5 “(2) OFFERING THROUGH EXCHANGES.—

6 “(A) EXCLUSIVE TO EXCHANGES.—The
7 public health insurance option shall only be
8 made available through Exchanges established
9 under this title.

10 “(B) ENSURING A LEVEL PLAYING
11 FIELD.—Consistent with this section, the public
12 health insurance option shall comply with re-
13 quirements that are applicable under this title
14 to health benefits plans offered through such
15 Exchanges, including requirements related to
16 benefits, benefit levels, provider networks, no-
17 tices, consumer protections, and cost sharing.

18 “(C) PROVISION OF BENEFIT LEVELS.—

19 The public health insurance option—

20 “(i) shall offer bronze, silver, and gold
21 plans; and

22 “(ii) may offer platinum plans.

23 “(3) ADMINISTRATIVE CONTRACTING.—The
24 Secretary may enter into contracts for the purpose
25 of performing administrative functions (including

1 functions described in subsection (a)(4) of section
2 1874A of the Social Security Act) with respect to
3 the public health insurance option in the same man-
4 ner as the Secretary may enter into contracts under
5 subsection (a)(1) of such section. The Secretary has
6 the same authority with respect to the public health
7 insurance option as the Secretary has under sub-
8 sections (a)(1) and (b) of section 1874A of the So-
9 cial Security Act with respect to title XVIII of such
10 Act. Contracts under this subsection shall not in-
11 volve the transfer of insurance risk to such entity.

12 “(4) OMBUDSMAN.—The Secretary shall estab-
13 lish an office of the ombudsman for the public
14 health insurance option which shall have duties with
15 respect to the public health insurance option similar
16 to the duties of the Medicare Beneficiary Ombuds-
17 man under section 1808(c)(2) of the Social Security
18 Act. In addition, such office shall work with States
19 to ensure that information and notice is provided
20 that the public health insurance option is one of the
21 health plans available through an Exchange.

22 “(5) DATA COLLECTION.—The Secretary shall
23 collect such data as may be required to establish
24 premiums and payment rates for the public health
25 insurance option and for other purposes under this

1 section, including to improve quality and to reduce
2 racial, ethnic, and other disparities in health and
3 health care.

4 “(6) ACCESS TO FEDERAL COURTS.—The provi-
5 sions of Medicare (and related provisions of title II
6 of the Social Security Act) relating to access of
7 Medicare beneficiaries to Federal courts for the en-
8 forcement of rights under Medicare, including with
9 respect to amounts in controversy, shall apply to the
10 public health insurance option and individuals en-
11 rolled under such option under this title in the same
12 manner as such provisions apply to Medicare and
13 Medicare beneficiaries.

14 “(b) PREMIUMS AND FINANCING.—

15 “(1) ESTABLISHMENT OF PREMIUMS.—

16 “(A) IN GENERAL.—The Secretary shall
17 establish geographically adjusted premium rates
18 for the public health insurance option—

19 “(i) in a manner that complies with
20 the premium rules under paragraph (3);
21 and

22 “(ii) at a level sufficient to fully fi-
23 nance the costs of—

1 “(I) health benefits provided by
2 the public health insurance option;
3 and

4 “(II) administrative costs related
5 to operating the public health insur-
6 ance option.

7 “(B) CONTINGENCY MARGIN.—In estab-
8 lishing premium rates under subparagraph (A),
9 the Secretary shall include an appropriate
10 amount for a contingency margin.

11 “(2) ACCOUNT.—

12 “(A) ESTABLISHMENT.—There is estab-
13 lished in the Treasury of the United States an
14 account for the receipts and disbursements at-
15 tributable to the operation of the public health
16 insurance option, including the start-up funding
17 under subparagraph (B). Section 1854(g) of
18 the Social Security Act shall apply to receipts
19 described in the previous sentence in the same
20 manner as such section applies to payments or
21 premiums described in such section.

22 “(B) START-UP FUNDING.—

23 “(i) IN GENERAL.—In order to pro-
24 vide for the establishment of the public
25 health insurance option there is hereby ap-

1 appropriated to the Secretary, out of any
2 funds in the Treasury not otherwise appro-
3 priated, \$2,000,000,000. In order to pro-
4 vide for initial claims reserves before the
5 collection of premiums, there is hereby ap-
6 propriated to the Secretary, out of any
7 funds in the Treasury not otherwise appro-
8 priated, such sums as necessary to cover
9 90 days worth of claims reserves based on
10 projected enrollment.

11 “(ii) AMORTIZATION OF START-UP
12 FUNDING.—The Secretary shall provide for
13 the repayment of the startup funding pro-
14 vided under clause (i) to the Treasury in
15 an amortized manner over the 10-year pe-
16 riod beginning with 2014.

17 “(iii) LIMITATION ON FUNDING.—
18 Nothing in this subsection shall be con-
19 strued as authorizing any additional appro-
20 priations to the account, other than such
21 amounts as are otherwise provided with re-
22 spect to other health benefits plans partici-
23 pating under the Exchange involved.

24 “(3) INSURANCE RATING RULES.—The pre-
25 mium rate charged for the public health insurance

1 option may not vary except as provided under sec-
2 tion 2701 of the Public Health Service Act.

3 “(c) PAYMENT RATES FOR ITEMS AND SERVICES.—

4 “(1) RATES ESTABLISHED BY SECRETARY.—

5 “(A) IN GENERAL.—The Secretary shall
6 establish payment rates for the public health in-
7 surance option for services and health care pro-
8 viders consistent with this subsection and may
9 change such payment rates in accordance with
10 subsection (d).

11 “(B) INITIAL PAYMENT RULES.—

12 “(i) IN GENERAL.—During 2014,
13 2015, and 2016, the Secretary shall set
14 the payment rates under this subsection
15 for services and providers described in sub-
16 paragraph (A) equal to the payment rates
17 for equivalent services and providers under
18 parts A and B of Medicare, subject to
19 clause (ii), paragraphs (2)(A) and (4), and
20 subsection (d).

21 “(ii) EXCEPTIONS.—

22 “(I) PRACTITIONERS’ SERV-
23 ICES.—Payment rates for practi-
24 tioners’ services otherwise established
25 under the fee schedule under section

1 1848 of the Social Security Act shall
2 be applied without regard to the pro-
3 visions under subsection (f) of such
4 section and the update under sub-
5 section (d)(4) under such section for a
6 year as applied under this paragraph
7 shall be not less than 1 percent.

8 “(II) ADJUSTMENTS.—The Sec-
9 retary may determine the extent to
10 which Medicare adjustments applica-
11 ble to base payment rates under parts
12 A and B of Medicare for graduate
13 medical education and dispropor-
14 tionate share hospitals shall apply
15 under this section.

16 “(C) FOR NEW SERVICES.—The Secretary
17 shall modify payment rates described in sub-
18 paragraph (B) in order to accommodate pay-
19 ments for services, such as well-child visits, that
20 are not otherwise covered under Medicare.

21 “(D) PRESCRIPTION DRUGS.—Payment
22 rates under this subsection for prescription
23 drugs that are not paid for under part A or
24 part B of Medicare shall be at rates negotiated
25 by the Secretary.

1 “(2) INCENTIVES FOR PARTICIPATING PRO-
2 VIDERS.—

3 “(A) INITIAL INCENTIVE PERIOD.—

4 “(i) IN GENERAL.—The Secretary
5 shall provide, in the case of services de-
6 scribed in clause (ii) furnished during
7 2014, 2015, and 2016, for payment rates
8 that are 5 percent greater than the rates
9 established under paragraph (1).

10 “(ii) SERVICES DESCRIBED.—The
11 services described in this clause are items
12 and professional services, under the public
13 health insurance option by a physician or
14 other health care practitioner who partici-
15 pates in both Medicare and the public
16 health insurance option.

17 “(iii) SPECIAL RULES.—A pediatrician
18 and any other health care practitioner who
19 is a type of practitioner that does not typi-
20 cally participate in Medicare (as deter-
21 mined by the Secretary) shall also be eligi-
22 ble for the increased payment rates under
23 clause (i).

24 “(B) SUBSEQUENT PERIODS.—Beginning
25 with 2017 and for subsequent years, the Sec-

1 retary shall continue to use an administrative
2 process to set such rates in order to promote
3 payment accuracy, to ensure adequate bene-
4 ficiary access to providers, and to promote af-
5 fordability and the efficient delivery of medical
6 care consistent with subsection (a)(1). Such
7 rates shall not be set at levels expected to in-
8 crease average medical costs per enrollee cov-
9 ered under the public health insurance option
10 beyond what would be expected if the process
11 under paragraph (1)(B) and subparagraph (A)
12 were continued, as certified by the Office of the
13 Actuary of the Centers for Medicare & Medicaid
14 Services.

15 “(C) ESTABLISHMENT OF A PROVIDER
16 NETWORK.—Health care providers participating
17 under Medicare are participating providers in
18 the public health insurance option unless they
19 opt out in a process established by the Sec-
20 retary.

21 “(3) ADMINISTRATIVE PROCESS FOR SETTING
22 RATES.—Chapter 5 of title 5, United States Code
23 shall apply to the process for the initial establish-
24 ment of payment rates under this subsection but not

1 to the specific methodology for establishing such
2 rates or the calculation of such rates.

3 “(4) CONSTRUCTION.—Nothing in this section
4 shall be construed as limiting the Secretary’s author-
5 ity to correct for payments that are excessive or defi-
6 cient, taking into account the provisions of sub-
7 section (a)(1) and any appropriate adjustments
8 based on the demographic characteristics of enrollees
9 covered under the public health insurance option,
10 but in no case shall the correction of payments
11 under this paragraph result in a level of expendi-
12 tures per enrollee that exceeds the level of expendi-
13 tures that would have occurred under paragraphs
14 (1)(B) and (2)(A), as certified by the Office of the
15 Actuary of the Centers for Medicare & Medicaid
16 Services.

17 “(5) CONSTRUCTION.—Nothing in this section
18 shall be construed as affecting the authority of the
19 Secretary to establish payment rates, including pay-
20 ments to provide for the more efficient delivery of
21 services, such as the initiatives provided for under
22 subsection (d).

23 “(6) LIMITATIONS ON REVIEW.—There shall be
24 no administrative or judicial review of a payment

1 rate or methodology established under this sub-
2 section or under subsection (d).

3 “(d) MODERNIZED PAYMENT INITIATIVES AND DE-
4 LIVERY SYSTEM REFORM.—

5 “(1) IN GENERAL.—For plan years beginning
6 with 2014, the Secretary may utilize innovative pay-
7 ment mechanisms and policies to determine pay-
8 ments for items and services under the public health
9 insurance option. The payment mechanisms and
10 policies under this subsection may include patient-
11 centered medical home and other care management
12 payments, accountable care organizations, value-
13 based purchasing, bundling of services, differential
14 payment rates, performance or utilization based pay-
15 ments, partial capitation, and direct contracting with
16 providers. Payment rates under such payment mech-
17 anisms and policies shall not be set at levels ex-
18 pected to increase average medical costs per enrollee
19 covered under the public health insurance option be-
20 yond what would be expected if the process under
21 paragraphs (1)(B) and (2)(A) of subsection (c) were
22 continued, as certified by the Office of the Actuary
23 of the Centers for Medicare & Medicaid Services.

24 “(2) REQUIREMENTS FOR INNOVATIVE PAY-
25 MENTS.—The Secretary shall design and implement

1 the payment mechanisms and policies under this
2 subsection in a manner that—

3 “(A) seeks to—

4 “(i) improve health outcomes;

5 “(ii) reduce health disparities (includ-
6 ing racial, ethnic, and other disparities);

7 “(iii) provide efficient and affordable
8 care;

9 “(iv) address geographic variation in
10 the provision of health services; or

11 “(v) prevent or manage chronic ill-
12 ness; and

13 “(B) promotes care that is integrated, pa-
14 tient-centered, high-quality, and efficient.

15 “(3) ENCOURAGING THE USE OF HIGH VALUE
16 SERVICES.—To the extent allowed by the benefit
17 standards applied to all health benefits plans partici-
18 pating under the Exchange involved, the public
19 health insurance option may modify cost sharing and
20 payment rates to encourage the use of services that
21 promote health and value.

22 “(4) NON-UNIFORMITY PERMITTED.—Nothing
23 in this subtitle shall prevent the Secretary from
24 varying payments based on different payment struc-
25 ture models (such as accountable care organizations

1 and medical homes) under the public health insur-
2 ance option for different geographic areas.

3 “(e) PROVIDER PARTICIPATION.—

4 “(1) IN GENERAL.—The Secretary shall estab-
5 lish conditions of participation for health care pro-
6 viders under the public health insurance option.

7 “(2) LICENSURE OR CERTIFICATION.—The Sec-
8 retary shall not allow a health care provider to par-
9 ticipate in the public health insurance option unless
10 such provider is appropriately licensed or certified
11 under State law.

12 “(3) PAYMENT TERMS FOR PROVIDERS.—

13 “(A) PHYSICIANS.—The Secretary shall
14 provide for the annual participation of physi-
15 cians under the public health insurance option,
16 for which payment may be made for services
17 furnished during the year, in one of 2 classes:

18 “(i) PREFERRED PHYSICIANS.—Those
19 physicians who agree to accept the pay-
20 ment rate established under this section
21 (without regard to cost-sharing) as the
22 payment in full.

23 “(ii) PARTICIPATING, NON-PRE-
24 FERRED PHYSICIANS.—Those physicians
25 who agree not to impose charges (in rela-

1 tion to the payment rate described in sub-
2 section (c) for such physicians) that exceed
3 the ratio permitted under section
4 1848(g)(2)(C) of the Social Security Act.

5 “(B) OTHER PROVIDERS.—The Secretary
6 shall provide for the participation (on an annual
7 or other basis specified by the Secretary) of
8 health care providers (other than physicians)
9 under the public health insurance option under
10 which payment shall only be available if the
11 provider agrees to accept the payment rate es-
12 tablished under subsection (c) (without regard
13 to cost-sharing) as the payment in full.

14 “(4) EXCLUSION OF CERTAIN PROVIDERS.—
15 The Secretary shall exclude from participation under
16 the public health insurance option a health care pro-
17 vider that is excluded from participation in a Fed-
18 eral health care program (as defined in section
19 1128B(f) of the Social Security Act).

20 “(f) APPLICATION OF FRAUD AND ABUSE PROVI-
21 SIONS.—Provisions of law (other than criminal law provi-
22 sions) identified by the Secretary by regulation, in con-
23 sultation with the Inspector General of the Department
24 of Health and Human Services, that impose sanctions
25 with respect to waste, fraud, and abuse under Medicare,

1 such as the False Claims Act (31 U.S.C. 3729 et seq.),
2 shall also apply to the public health insurance option.

3 “(g) MEDICARE DEFINED.—For purposes of this sec-
4 tion, the term ‘Medicare’ means the health insurance pro-
5 grams under title XVIII of the Social Security Act.”.

6 (b) CONFORMING AMENDMENTS.—

7 (1) TREATMENT AS QUALIFIED HEALTH
8 PLAN.—Section 1301(a)(2) of the Patient Protection
9 and Affordable Care Act, as amended by section
10 10104(a) of such Act, is amended—

11 (A) in the heading, by inserting “, THE
12 PUBLIC HEALTH INSURANCE OPTION,” before
13 “AND”; and

14 (B) by inserting “the public health insur-
15 ance option under section 1325,” before “and a
16 multi-State plan”.

17 (2) LEVEL PLAYING FIELD.—Section 1324(a)
18 of such Act, as amended by section 10104(n) of such
19 Act, is amended by inserting “the public health in-
20 surance option under section 1325,” before “or a
21 multi-State qualified health plan”.

1 **Subtitle B—Medicare Prescription**
 2 **Drug Price Negotiation Act of 2011**

3 **SEC. 3101. SHORT TITLE.**

4 This subtitle may be cited as the “Medicare Prescrip-
 5 tion Drug Price Negotiation Act of 2011”.

6 **SEC. 3102. NEGOTIATION OF LOWER COVERED PART D**
 7 **DRUG PRICES ON BEHALF OF MEDICARE**
 8 **BENEFICIARIES.**

9 (a) **NEGOTIATION BY SECRETARY.**—Section 1860D–
 10 11 of the Social Security Act (42 U.S.C. 1395w–111) is
 11 amended by striking subsection (i) (relating to noninter-
 12 ference) and inserting the following:

13 “(i) **NEGOTIATION OF LOWER DRUG PRICES.**—

14 “(1) **IN GENERAL.**—Notwithstanding any other
 15 provision of law, the Secretary shall negotiate with
 16 pharmaceutical manufacturers the prices (including
 17 discounts, rebates, and other price concessions) that
 18 may be charged to PDP sponsors and MA organiza-
 19 tions for covered part D drugs for part D eligible in-
 20 dividuals who are enrolled under a prescription drug
 21 plan or under an MA–PD plan.

22 “(2) **NO CHANGE IN RULES FOR**
 23 **FORMULARIES.**—

24 “(A) **IN GENERAL.**—Nothing in paragraph
 25 (1) shall be construed to authorize the Sec-

1 retary to establish or require a particular for-
2 mulary.

3 “(B) CONSTRUCTION.—Subparagraph (A)
4 shall not be construed as affecting the Sec-
5 retary’s authority to ensure appropriate and
6 adequate access to covered part D drugs under
7 prescription drug plans and under MA–PD
8 plans, including compliance of such plans with
9 formulary requirements under section 1860D–
10 4(b)(3).

11 “(3) CONSTRUCTION.—Nothing in this sub-
12 section shall be construed as preventing the sponsor
13 of a prescription drug plan, or an organization offer-
14 ing an MA–PD plan, from obtaining a discount or
15 reduction of the price for a covered part D drug
16 below the price negotiated under paragraph (1).

17 “(4) SEMI-ANNUAL REPORTS TO CONGRESS.—
18 Not later than June 1, 2012, and every 6 months
19 thereafter, the Secretary shall submit to the Com-
20 mittees on Ways and Means, Energy and Commerce,
21 and Oversight and Government Reform of the House
22 of Representatives and the Committee on Finance of
23 the Senate a report on negotiations conducted by the
24 Secretary to achieve lower prices for Medicare bene-

1 ficiaries, and the prices and price discounts achieved
2 by the Secretary as a result of such negotiations.”.

3 (b) **EFFECTIVE DATE.**—The amendment made by
4 subsection (a) shall take effect on the date of the enact-
5 ment of this subtitle and shall first apply to negotiations
6 and prices for plan years beginning on January 1, 2012.

7 **Subtitle C—Medicaid Enhancement**
8 **and Emergency Job Creation**
9 **Act of 2011**

10 **SEC. 3201. SHORT TITLE.**

11 This subtitle may be cited as the “Medicaid Enhance-
12 ment and Emergency Job Creation Act of 2011”.

13 **SEC. 3202. EXTENSION OF ARRA INCREASE IN FMAP**
14 **THROUGH FISCAL YEAR 2012.**

15 (a) **IN GENERAL.**—Section 5001 of division B of the
16 American Recovery and Reinvestment Act of 2009 (Public
17 Law 111–5), as amended by section 201 of Public Law
18 111–226, is amended—

19 (1) in subsection (a)—

20 (A) by striking “and” at the end of para-
21 graph (2);

22 (B) in paragraph (3), by striking “, but
23 only for the first 3 calendar quarters in fiscal
24 year 2011.” and inserting “; and”; and

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

3 “(4) fiscal year 2011 is less than the FMAP as
4 so determines for fiscal year 2008, fiscal year 2009
5 (after the application of paragraph (1)), fiscal year
6 2010 (after the application of paragraph (2), or fis-
7 cal year 2011 (after the application of paragraph
8 (3)), the greatest of such FMAP for the State for
9 fiscal year 2008, fiscal year 2009, fiscal year 2010,
10 or fiscal year 2011, shall be substituted for the
11 State’s FMAP for fiscal year 2012 before the appli-
12 cation of this section.”;

13 (2) in subsection (b)(3), by adding at the end
14 the following:

15 “(C) FOURTH QUARTER OF FISCAL YEAR
16 2011 AND FIRST AND SECOND QUARTERS OF
17 FISCAL YEAR 2012.—For each State, for the
18 fourth quarter of fiscal year 2011 and the first
19 and second quarters of fiscal year 2012, the
20 FMAP percentage increase for the State under
21 paragraph (1) or (2) (as applicable) shall be 6.2
22 percentage points.

23 “(D) THIRD QUARTER OF FISCAL YEAR
24 2012.—For each State, for the third quarter of
25 fiscal year 2012, the FMAP percentage increase

1 for the State under paragraph (1) or (2) (as
2 applicable) shall be 3.2 percentage points.

3 “(E) FOURTH QUARTER OF FISCAL YEAR
4 2011.—For each State, for the fourth quarter of
5 fiscal year 2012, the FMAP percentage increase
6 for the State under paragraph (1) or (2) (as
7 applicable) shall be 1.2 percentage points.”;

8 (3) in subsection (c)—

9 (A) in paragraph (2)(B), by striking “Jan-
10 uary 1, 2011” and inserting “April 1, 2012”;

11 (B) in paragraph (3)(B)(i), by striking
12 “January 1, 2011” and inserting “April 1,
13 2012” each place it appears; and

14 (C) in paragraph (4)(C)(ii), by striking
15 “January 2011” and inserting “April 2012”;

16 (4) in subsection (f)(1)(A), by adding at the
17 end the following: “The previous sentence shall
18 apply for quarters beginning after the date of the
19 enactment of this sentence in the case of a State op-
20 erating under a Statewide waiver as of such date re-
21 gardless of whether the waiver in effect on July 1,
22 2008, was renewed or extended after such date”;

23 (5) in subsection (g)(1), by striking “March 31,
24 2012” and inserting “September 30, 2013”; and

1 (6) in subsection (h)(3), by striking “June 30,
2 2011” and inserting “September 30, 2012”.

3 (b) PAYMENT ADJUSTMENT.—The Secretary of
4 Health and Human Services shall provide, not later than
5 30 days after the date of the enactment of this subtitle,
6 for such adjustments of payments to States under title
7 XIX of the Social Security Act as may be necessary for
8 calendar quarters ending before such date to reflect the
9 amendments made by subsection (a).

10 **Subtitle D—Keeping Our Social** 11 **Security Promises Act**

12 **SEC. 3301. SHORT TITLE.**

13 This subtitle may be cited as the “Keeping Our Social
14 Security Promises Act”.

15 **SEC. 3302. PAYROLL TAX ON REMUNERATION UP TO CON-** 16 **TRIBUTION AND BENEFIT BASE AND MORE** 17 **THAN \$250,000.**

18 (a) IN GENERAL.—Paragraph (1) of section 3121(a)
19 of the Internal Revenue Code of 1986 is amended by in-
20 serting after “such calendar year.” the following: “The
21 preceding sentence shall apply only to calendar years for
22 which the contribution and benefit base (as so determined)
23 is less than \$250,000, and, for such calendar years, only
24 to so much of the remuneration paid to such employee

1 by such employer with respect to employment as does not
2 exceed \$250,000.”.

3 (b) CONFORMING AMENDMENT.—Paragraph (1) of
4 section 3121 of the Internal Revenue Code of 1986 is
5 amended by striking “Act) to” and inserting “Act), or in
6 excess of \$250,000, to”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to remuneration paid after Decem-
9 ber 31, 2011.

10 **SEC. 3303. TAX ON NET EARNINGS FROM SELF-EMPLOY-**
11 **MENT UP TO CONTRIBUTION AND BENEFIT**
12 **BASE AND MORE THAN \$250,000.**

13 (a) IN GENERAL.—Paragraph (1) of section 1402(b)
14 of the Internal Revenue Code of 1986 is amended to read
15 as follows:

16 “(1) in the case of the tax imposed by section
17 1401(a), the excess of—

18 “(A) that part of the net earnings from
19 self-employment which is in excess of—

20 “(i) an amount equal to the contribu-
21 tion and benefit base (as determined under
22 section 230 of the Social Security Act)
23 which is effective for the calendar year in
24 which such taxable year begins, minus

1 “(ii) the amount of the wages paid to
2 such individual during such taxable years;
3 over

4 “(B) that part of the net earnings from
5 self-employment which is in excess of the sum
6 of—

7 “(i) the excess of—

8 “(I) the net earning from self-
9 employment reduced by the excess (if
10 any) of subparagraph (A)(i) over sub-
11 paragraph (A)(ii), over

12 “(II) \$250,000, reduced by such
13 contribution and benefit base, plus

14 “(ii) the amount of the wages paid to
15 such individual during such taxable year in
16 excess of such contribution and benefit
17 base and not in excess of \$250,000; or”.

18 (b) PHASEOUT.—Subsection (b) of section 1402 of
19 the Internal Revenue Code of 1986 is amended by adding
20 at the end the following: “Paragraph (1) shall apply only
21 to taxable years beginning in calendar years for which the
22 contribution and benefit base (as determined under section
23 230 of the Social Security Act) is less than \$250,000.”.

24 (c) EFFECTIVE DATE.—The amendments made by
25 this section shall apply to net earnings from self-employ-

1 ment derived, and remuneration paid, after December 31,
2 2011.

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