

Calendar No. 165

112TH CONGRESS
1ST SESSION

S. 1549

To provide tax relief for American workers and businesses, to put workers back on the job while rebuilding and modernizing America, and to provide pathways back to work for Americans looking for jobs.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 13, 2011

Mr. REID (by request) introduced the following bill; which was read the first time

SEPTEMBER 14, 2011

Read the second time and placed on the calendar

A BILL

To provide tax relief for American workers and businesses, to put workers back on the job while rebuilding and modernizing America, and to provide pathways back to work for Americans looking for jobs.

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 “American Jobs Act of 2011”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. References.
- Sec. 3. Severability.
- Sec. 4. Buy American—Use of American iron, steel, and manufactured goods.
- Sec. 5. Wage rate and employment protection requirements.

TITLE I—RELIEF FOR WORKERS AND BUSINESSES

Subtitle A—Payroll Tax Relief

- Sec. 101. Temporary payroll tax cut for employers, employees and the self-employed.
- Sec. 102. Temporary tax credit for increased payroll.

Subtitle B—Other Relief for Businesses

- Sec. 111. Extension of temporary 100 percent bonus depreciation for certain business assets.
- Sec. 112. Surety bonds.
- Sec. 113. Delay in application of withholding on government contractors.

TITLE II—PUTTING WORKERS BACK ON THE JOB WHILE
 REBUILDING AND MODERNIZING AMERICA

Subtitle A—Veterans Hiring Preferences

- Sec. 201. Returning heroes and wounded warriors work opportunity tax credits.

Subtitle B—Teacher Stabilization

- Sec. 202. Purpose.
- Sec. 203. Grants for the outlying areas and the Secretary of the Interior; availability of funds.
- Sec. 204. State allocation.
- Sec. 205. State application.
- Sec. 206. State reservation and responsibilities.
- Sec. 207. Local educational agencies.
- Sec. 208. Early learning.
- Sec. 209. Maintenance of effort.
- Sec. 210. Reporting.
- Sec. 211. Definitions.
- Sec. 212. Authorization of appropriations.

Subtitle C—First Responder Stabilization

- Sec. 213. Purpose.
- Sec. 214. Grant program.
- Sec. 215. Appropriations.

Subtitle D—School Modernization

PART I—ELEMENTARY AND SECONDARY SCHOOLS

- Sec. 221. Purpose.

- Sec. 222. Authorization of appropriations.
- Sec. 223. Allocation of funds.
- Sec. 224. State use of funds.
- Sec. 225. State and local applications.
- Sec. 226. Use of funds.
- Sec. 227. Private schools.
- Sec. 228. Additional provisions.

PART II—COMMUNITY COLLEGE MODERNIZATION

- Sec. 229. Federal assistance for community college modernization.

PART III—GENERAL PROVISIONS

- Sec. 230. Definitions.
- Sec. 231. Buy American.

Subtitle E—Immediate Transportation Infrastructure Investments

- Sec. 241. Immediate transportation infrastructure investments.

Subtitle F—Building and Upgrading Infrastructure for Long-Term Development

- Sec. 242. Short title; table of contents.
- Sec. 243. Findings and purpose.
- Sec. 244. Definitions.

PART I—AMERICAN INFRASTRUCTURE FINANCING AUTHORITY

- Sec. 245. Establishment and general authority of AIFA.
- Sec. 246. Voting members of the board of directors.
- Sec. 247. Chief executive officer of AIFA.
- Sec. 248. Powers and duties of the board of directors.
- Sec. 249. Senior management.
- Sec. 250. Special Inspector General for AIFA.
- Sec. 251. Other personnel.
- Sec. 252. Compliance.

PART II—TERMS AND LIMITATIONS ON DIRECT LOANS AND LOAN GUARANTEES

- Sec. 253. Eligibility criteria for assistance from AIFA and terms and limitations of loans.
- Sec. 254. Loan terms and repayment.
- Sec. 255. Compliance and enforcement.
- Sec. 256. Audits; reports to the President and Congress.

PART III—FUNDING OF AIFA

- Sec. 257. Administrative fees.
- Sec. 258. Efficiency of AIFA.
- Sec. 259. Funding.

PART IV—EXTENSION OF EXEMPTION FROM ALTERNATIVE MINIMUM TAX TREATMENT FOR CERTAIN TAX-EXEMPT BONDS

- Sec. 260. Extension of exemption from alternative minimum tax treatment for certain tax-exempt bonds.

Subtitle G—Project Rebuild

Sec. 261. Project Rebuild.

Subtitle H—National Wireless Initiative

Sec. 271. Definitions.

PART I—AUCTIONS OF SPECTRUM AND SPECTRUM MANAGEMENT

Sec. 272. Clarification of authorities to repurpose Federal spectrum for commercial purposes.

Sec. 273. Incentive auction authority.

Sec. 274. Requirements when repurposing certain mobile satellite services spectrum for terrestrial broadband use.

Sec. 275. Permanent extension of auction authority.

Sec. 276. Authority to auction licenses for domestic satellite services.

Sec. 277. Directed auction of certain spectrum.

Sec. 278. Authority to establish spectrum license user fees.

PART II—PUBLIC SAFETY BROADBAND NETWORK

Sec. 281. Reallocation of D block for public safety.

Sec. 282. Flexible use of narrowband spectrum.

Sec. 283. Single public safety wireless network licensee.

Sec. 284. Establishment of Public Safety Broadband Corporation.

Sec. 285. Board of directors of the corporation.

Sec. 286. Officers, employees, and committees of the corporation.

Sec. 287. Nonprofit and nonpolitical nature of the corporation.

Sec. 288. Powers, duties, and responsibilities of the corporation.

Sec. 289. Initial funding for corporation.

Sec. 290. Permanent self-funding; duty to assess and collect fees for network use.

Sec. 291. Audit and report.

Sec. 292. Annual report to Congress.

Sec. 293. Provision of technical assistance.

Sec. 294. State and local implementation.

Sec. 295. State and Local Implementation Fund.

Sec. 296. Public safety wireless communications research and development.

Sec. 297. Public Safety Trust Fund.

Sec. 298. FCC report on efficient use of public safety spectrum.

Sec. 299. Public safety roaming and priority access.

TITLE III—ASSISTANCE FOR THE UNEMPLOYED AND PATHWAYS
BACK TO WORK

Subtitle A—Supporting Unemployed Workers

Sec. 301. Short title.

PART I—EXTENSION OF EMERGENCY UNEMPLOYMENT COMPENSATION AND
CERTAIN EXTENDED BENEFITS PROVISIONS, AND ESTABLISHMENT OF
SELF-EMPLOYMENT ASSISTANCE PROGRAM

Sec. 311. Extension of emergency unemployment compensation program.

Sec. 312. Temporary extension of extended benefit provisions.

Sec. 313. Reemployment services and reemployment and eligibility assessment activities.

- Sec. 314. Federal-State agreements to administer a self-employment assistance program.
- Sec. 315. Conforming amendment on payment of Bridge to Work wages.
- Sec. 316. Additional extended unemployment benefits under the Railroad Unemployment Insurance Act.

PART II—REEMPLOYMENT NOW PROGRAM

- Sec. 321. Establishment of Reemployment NOW program.
- Sec. 322. Distribution of funds.
- Sec. 323. State plan.
- Sec. 324. Bridge to Work program.
- Sec. 325. Wage insurance.
- Sec. 326. Enhanced reemployment strategies.
- Sec. 327. Self-employment programs.
- Sec. 328. Additional innovative programs.
- Sec. 329. Guidance and additional requirements.
- Sec. 330. Report of information and evaluations to Congress and the public.
- Sec. 331. State.

PART III—SHORT-TIME COMPENSATION PROGRAM

- Sec. 341. Treatment of short-time compensation programs.
- Sec. 342. Temporary financing of short-time compensation payments in States with programs in law.
- Sec. 343. Temporary financing of short-time compensation agreements.
- Sec. 344. Grants for short-time compensation programs.
- Sec. 345. Assistance and guidance in implementing programs.
- Sec. 346. Reports.

Subtitle B—Long Term Unemployed Hiring Preferences

- Sec. 351. Long term unemployed workers work opportunity tax credits.

Subtitle C—Pathways Back to Work

- Sec. 361. Short title.
- Sec. 362. Establishment of Pathways Back to Work Fund.
- Sec. 363. Availability of funds.
- Sec. 364. Subsidized employment for unemployed, low-income adults.
- Sec. 365. Summer employment and year-round employment opportunities for low-income youth.
- Sec. 366. Work-based employment strategies of demonstrated effectiveness.
- Sec. 367. General requirements.
- Sec. 368. Definitions.

Subtitle D—Prohibition of Discrimination in Employment on the Basis of an Individual's Status as Unemployed

- Sec. 371. Short title.
- Sec. 372. Findings and purpose.
- Sec. 373. Definitions.
- Sec. 374. Prohibited acts.
- Sec. 375. Enforcement.
- Sec. 376. Federal and State immunity.
- Sec. 377. Relationship to other laws.
- Sec. 378. Severability.

Sec. 379. Effective date.

TITLE IV—OFFSETS

Subtitle A—28 Percent Limitation on Certain Deductions and Exclusions

Sec. 401. 28 percent limitation on certain deductions and exclusions.

Subtitle B—Tax Carried Interest in Investment Partnerships as Ordinary Income

Sec. 411. Partnership interests transferred in connection with performance of services.

Sec. 412. Special rules for partners providing investment management services to partnerships.

Subtitle C—Close Loophole for Corporate Jet Depreciation

Sec. 421. General aviation aircraft treated as 7-year property.

Subtitle D—Repeal Oil Subsidies

Sec. 431. Repeal of deduction for intangible drilling and development costs in the case of oil and gas wells.

Sec. 432. Repeal of deduction for tertiary injectants.

Sec. 433. Repeal of percentage depletion for oil and gas wells.

Sec. 434. Section 199 deduction not allowed with respect to oil, natural gas, or primary products thereof.

Sec. 435. Repeal oil and gas working interest exception to passive activity rules.

Sec. 436. Uniform seven-year amortization for geological and geophysical expenditures.

Sec. 437. Repeal enhanced oil recovery credit.

Sec. 438. Repeal marginal well production credit.

Subtitle E—Dual Capacity Taxpayers

Sec. 441. Modifications of foreign tax credit rules applicable to dual capacity taxpayers.

Sec. 442. Separate basket treatment taxes paid on foreign oil and gas income.

Subtitle F—Increased Target and Trigger for Joint Select Committee on Deficit Reduction

Sec. 451. Increased target and trigger for Joint Select Committee on Deficit Reduction.

1 **SEC. 2. REFERENCES.**

2 Except as expressly provided otherwise, any reference
3 to “this Act” contained in any subtitle of this Act shall
4 be treated as referring only to the provisions of that sub-
5 title.

1 **SEC. 3. SEVERABILITY.**

2 If any provision of this Act, or the application thereof
3 to any person or circumstance, is held invalid, the remain-
4 der of the Act and the application of such provision to
5 other persons or circumstances shall not be affected there-
6 by.

7 **SEC. 4. BUY AMERICAN—USE OF AMERICAN IRON, STEEL,**
8 **AND MANUFACTURED GOODS.**

9 (a) None of the funds appropriated or otherwise made
10 available by this Act may be used for a project for the
11 construction, alteration, maintenance, or repair of a public
12 building or public work unless all of the iron, steel, and
13 manufactured goods used in the project are produced in
14 the United States.

15 (b) Subsection (a) shall not apply in any case or cat-
16 egory of cases in which the head of the Federal depart-
17 ment or agency involved finds that—

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

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

24 (3) inclusion of iron, steel, and manufactured
25 goods produced in the United States will increase

1 the cost of the overall project by more than 25 per-
2 cent.

3 (c) If the head of a Federal department or agency
4 determines that it is necessary to waive the application
5 of subsection (a) based on a finding under subsection (b),
6 the head of the department or agency shall publish in the
7 Federal Register a detailed written justification as to why
8 the provision is being waived.

9 (d) This section shall be applied in a manner con-
10 sistent with United States obligations under international
11 agreements.

12 **SEC. 5. WAGE RATE AND EMPLOYMENT PROTECTION RE-**
13 **QUIREMENTS.**

14 (a) Notwithstanding any other provision of law and
15 in a manner consistent with other provisions in this Act,
16 all laborers and mechanics employed by contractors and
17 subcontractors on projects funded directly by or assisted
18 in whole or in part by and through the Federal Govern-
19 ment pursuant to this Act shall be paid wages at rates
20 not less than those prevailing on projects of a character
21 similar in the locality as determined by the Secretary of
22 Labor in accordance with subchapter IV of chapter 31 of
23 title 40, United States Code.

24 (b) With respect to the labor standards specified in
25 this section, the Secretary of Labor shall have the author-

1 ity and functions set forth in Reorganization Plan Num-
2 bered 14 of 1950 (64 Stat. 1267; 5 U.S.C. App.) and sec-
3 tion 3145 of title 40, United States Code.

4 (c) Projects as defined under title 49, United States
5 Code, funded directly by or assisted in whole or in part
6 by and through the Federal Government pursuant to this
7 Act shall be subject to the requirements of section 5333(b)
8 of title 49, United States Code.

9 **TITLE I—RELIEF FOR WORKERS**
10 **AND BUSINESSES**

11 **Subtitle A—Payroll Tax Relief**

12 **SEC. 101. TEMPORARY PAYROLL TAX CUT FOR EMPLOYERS,**
13 **EMPLOYEES AND THE SELF-EMPLOYED.**

14 (a) WAGES.—Notwithstanding any other provision of
15 law—

16 (1) with respect to remuneration received dur-
17 ing the payroll tax holiday period, the rate of tax
18 under 3101(a) of the Internal Revenue Code of 1986
19 shall be 3.1 percent (including for purposes of deter-
20 mining the applicable percentage under sections
21 3201(a) and 3211(a) of such Code), and

22 (2) with respect to remuneration paid during
23 the payroll tax holiday period, the rate of tax under
24 3111(a) of such Code shall be 3.1 percent (including
25 for purposes of determining the applicable percent-

1 age under sections 3221(a) and 3211(a) of such
2 Code).

3 (3) Subsection (a)(2) shall only apply to—

4 (A) employees performing services in a
5 trade or business of a qualified employer, or

6 (B) in the case of a qualified employer ex-
7 empt from tax under section 501(a), in further-
8 ance of the activities related to the purpose or
9 function constituting the basis of the employer's
10 exemption under section 501.

11 (4) Subsection (a)(2) shall apply only to the
12 first \$5 million of remuneration or compensation
13 paid by a qualified employer subject to section
14 3111(a) or a corresponding amount of compensation
15 subject to 3221(a).

16 (b) SELF-EMPLOYMENT TAXES.—

17 (1) IN GENERAL.—Notwithstanding any other
18 provision of law, with respect to any taxable year
19 which begins in the payroll tax holiday period, the
20 rate of tax under section 1401(a) of the Internal
21 Revenue Code of 1986 shall be—

22 (A) 6.2 percent on the portion of net earn-
23 ings from self-employment subject to 1401(a)
24 during the payroll tax period that does not ex-
25 ceed the amount of the excess of \$5 million over

1 total remuneration, if any, subject to section
2 3111(a) paid during the payroll tax holiday pe-
3 riod to employees of the self-employed person,
4 and

5 (B) 9.3 percent for any portion of net
6 earnings from self-employment not subject to
7 subsection (b)(1)(A).

8 (2) COORDINATION WITH DEDUCTIONS FOR EM-
9 PLOYMENT TAXES.—For purposes of the Internal
10 Revenue Code of 1986, in the case of any taxable
11 year which begins in the payroll tax holiday period—

12 (A) DEDUCTION IN COMPUTING NET EARN-
13 INGS FROM SELF-EMPLOYMENT.—The deduc-
14 tion allowed under section 1402(a)(12) of such
15 Code shall be the sum of (i) 4.55 percent times
16 the amount of the taxpayer's net earnings from
17 self-employment for the taxable year subject to
18 paragraph (b)(1)(A) of this section, plus (ii)
19 7.65 percent of the taxpayer's net earnings
20 from self-employment in excess of that amount.

21 (B) INDIVIDUAL DEDUCTION.—The deduc-
22 tion under section 164(f) of such Code shall be
23 equal to the sum of (i) one-half of the taxes im-
24 posed by section 1401 (after the application of
25 this section) with respect to the taxpayer's net

1 earnings from self-employment for the taxable
2 year subject to paragraph (b)(1)(A) of this sec-
3 tion plus (ii) 62.7 percent of the taxes imposed
4 by section 1401 (after the application of this
5 section) with respect to the excess.

6 (c) REGULATORY AUTHORITY.—The Secretary may
7 prescribe any such regulations or other guidance necessary
8 or appropriate to carry out this section, including the allo-
9 cation of the excess of \$5 million over total remuneration
10 subject to section 3111(a) paid during the payroll tax holi-
11 day period among related taxpayers treated as a single
12 qualified employer.

13 (d) DEFINITIONS.—

14 (1) PAYROLL TAX HOLIDAY PERIOD.—The term
15 “payroll tax holiday period” means calendar year
16 2012.

17 (2) QUALIFIED EMPLOYER.—For purposes of
18 this paragraph,

19 (A) IN GENERAL.—The term “qualified
20 employer” means any employer other than the
21 United States, any State or possession of the
22 United States, or any political subdivision
23 thereof, or any instrumentality of the foregoing.

24 (B) TREATMENT OF EMPLOYEES OF POST-
25 SECONDARY EDUCATIONAL INSTITUTIONS.—

1 Notwithstanding paragraph (A), the term
2 “qualified employer” includes any employer
3 which is a public institution of higher education
4 (as defined in section 101 of the Higher Edu-
5 cation Act of 1965).

6 (3) AGGREGATION RULES.—For purposes of
7 this subsection rules similar to sections 414(b),
8 414(c), 414(m) and 414(o) shall apply to determine
9 when multiple entities shall be treated as a single
10 employer, and rules with respect to predecessor and
11 successor employers may be applied, in such manner
12 as may be prescribed by the Secretary.

13 (e) TRANSFERS OF FUNDS.—

14 (1) TRANSFERS TO FEDERAL OLD-AGE AND
15 SURVIVORS INSURANCE TRUST FUND.—There are
16 hereby appropriated to the Federal Old-Age and
17 Survivors Trust Fund and the Federal Disability In-
18 surance Trust Fund established under section 201
19 of the Social Security Act (42 U.S.C. 401) amounts
20 equal to the reduction in revenues to the Treasury
21 by reason of the application of subsections (a) and
22 (b) to employers other than those described in
23 (e)(2). Amounts appropriated by the preceding sen-
24 tence shall be transferred from the general fund at
25 such times and in such manner as to replicate to the

1 extent possible the transfers which would have oc-
2 curred to such Trust Fund had such amendments
3 not been enacted.

4 (2) TRANSFERS TO SOCIAL SECURITY EQUIVA-
5 LENT BENEFIT ACCOUNT.—There are hereby appro-
6 priated to the Social Security Equivalent Benefit Ac-
7 count established under section 15A(a) of the Rail-
8 road Retirement Act of 1974 (45 U.S.C. 231n–1(a))
9 amounts equal to the reduction in revenues to the
10 Treasury by reason of the application of subsection
11 (a) to employers subject to the Railroad Retirement
12 Tax. Amounts appropriated by the preceding sen-
13 tence shall be transferred from the general fund at
14 such times and in such manner as to replicate to the
15 extent possible the transfers which would have oc-
16 curred to such Account had such amendments not
17 been enacted.

18 (f) COORDINATION WITH OTHER FEDERAL LAWS.—
19 For purposes of applying any provision of Federal law
20 other than the provisions of the Internal Revenue Code
21 of 1986, the rate of tax in effect under section 3101(a)
22 of such Code shall be determined without regard to the
23 reduction in such rate under this section.

1 **SEC. 102. TEMPORARY TAX CREDIT FOR INCREASED PAY-**
2 **ROLL.**

3 (a) IN GENERAL.—Notwithstanding any other provi-
4 sion of law, each qualified employer shall be allowed, with
5 respect to wages for services performed for such qualified
6 employer, a payroll increase credit determined as follows:

7 (1) With respect to the period from October 1,
8 2011 through December 31, 2011, 6.2 percent of
9 the excess, if any, (but not more than \$12.5 million
10 of the excess) of the wages subject to tax under sec-
11 tion 3111(a) of the Internal Revenue Code of 1986
12 for such period over such wages for the cor-
13 responding period of 2010.

14 (2) With respect to the period from January 1,
15 2012 through December 31, 2012,

16 (A) 6.2 percent of the excess, if any, (but
17 not more than \$50 million of the excess) of the
18 wages subject to tax under section 3111(a) of
19 the Internal Revenue Code of 1986 for such pe-
20 riod over such wages for calendar year 2011,
21 minus

22 (B) 3.1 percent of the result (but not less
23 than zero) of subtracting from \$5 million such
24 wages for calendar year 2011.

25 (3) In the case of a qualified employer for
26 which the wages subject to tax under section

1 3111(a) of the Internal Revenue Code of 1986 (a)
2 were zero for the corresponding period of 2010 re-
3 ferred to in subsection (a)(1), the amount of such
4 wages shall be deemed to be 80 percent of the
5 amount of wages taken into account for the period
6 from October 1, 2011 through December 31, 2011
7 and (b) were zero for the calendar year 2011 re-
8 ferred to in subsection (a)(2), then the amount of
9 such wages shall be deemed to be 80 percent of the
10 amount of wages taken into account for 2012.

11 (4) This subsection (a) shall only apply with re-
12 spect to the wages of employees performing services
13 in a trade or business of a qualified employer or, in
14 the case of a qualified employer exempt from tax
15 under section 501(a) of the Internal Revenue Code
16 of 1986, in furtherance of the activities related to
17 the purpose or function constituting the basis of the
18 employer's exemption under section 501.

19 (b) QUALIFIED EMPLOYERS.—For purposes of this
20 section—

21 (1) IN GENERAL.—The term “qualified em-
22 ployer” means any employer other than the United
23 States, any State or possession of the United States,
24 or any political subdivision thereof, or any instru-
25 mentality of the foregoing.

1 (2) TREATMENT OF EMPLOYEES OF POST-SEC-
2 ONDARY EDUCATIONAL INSTITUTIONS.—Notwith-
3 standing subparagraph (1), the term “qualified em-
4 ployer” includes any employer which is a public in-
5 stitution of higher education (as defined in section
6 101 of the Higher Education Act of 1965).

7 (c) AGGREGATION RULES.—For purposes of this sub-
8 section rules similar to sections 414(b), 414(c), 414(m)
9 and 414(o) of the Internal Revenue Code of 1986 shall
10 apply to determine when multiple entities shall be treated
11 as a single employer, and rules with respect to predecessor
12 and successor employers may be applied, in such manner
13 as may be prescribed by the Secretary.

14 (d) APPLICATION OF CREDITS.—The payroll increase
15 credit shall be treated as a credit allowable under Subtitle
16 C of the Internal Revenue Code of 1986 under rules pre-
17 scribed by the Secretary of the Treasury, provided that
18 the amount so treated for the period described in sub-
19 section (a)(1) or subsection (a)(2) shall not exceed the
20 amount of tax imposed on the qualified employer under
21 section 3111(a) of such Code for the relevant period. Any
22 income tax deduction by a qualified employer for amounts
23 paid under section 3111(a) of such Code or similar Rail-
24 road Retirement Tax provisions shall be reduced by the
25 amounts so credited.

1 (e) TRANSFERS TO FEDERAL OLD-AGE AND SUR-
2 VIVORS INSURANCE TRUST FUND.—There are hereby ap-
3 propriated to the Federal Old-Age and Survivors Trust
4 Fund and the Federal Disability Insurance Trust Fund
5 established under section 201 of the Social Security Act
6 (42 U.S.C. 401) amounts equal to the reduction in reve-
7 nues to the Treasury by reason of the amendments made
8 by subsection (d). Amounts appropriated by the preceding
9 sentence shall be transferred from the general fund at
10 such times and in such manner as to replicate to the ex-
11 tent possible the transfers which would have occurred to
12 such Trust Fund had such amendments not been enacted.

13 (f) APPLICATION TO RAILROAD RETIREMENT
14 TAXES.—For purposes of qualified employers that are em-
15 ployers under section 3231(a) of the Internal Revenue
16 Code of 1986, subsections (a)(1) and (a)(2) of this section
17 shall apply by substituting section 3221 for section 3111,
18 and substituting the term “compensation” for “wages” as
19 appropriate.

1 **Subtitle B—Other Relief for**
2 **Businesses**

3 **SEC. 111. EXTENSION OF TEMPORARY 100 PERCENT BONUS**
4 **DEPRECIATION FOR CERTAIN BUSINESS AS-**
5 **SETS.**

6 (a) IN GENERAL.—Paragraph (5) of section 168(k)
7 of the Internal Revenue Code is amended—

8 (1) by striking “January 1, 2012” each place
9 it appears and inserting “January 1, 2013”, and

10 (2) by striking “January 1, 2013” and insert-
11 ing “January 1, 2014”.

12 (b) CONFORMING AMENDMENT.—The heading for
13 paragraph (5) of section 168(k) of the Internal Revenue
14 Code is amended by striking “PRE-2012 PERIODS” and
15 inserting “PRE-2013 PERIODS”.

16 **SEC. 112. SURETY BONDS.**

17 (a) MAXIMUM BOND AMOUNT.—Section 411(a)(1) of
18 the Small Business Investment Act of 1958 (15 U.S.C.
19 694b(a)(1)) is amended by striking “\$2,000,000” and in-
20 serting “\$5,000,000”.

21 (b) DENIAL OF LIABILITY.—Section 411(e)(2) of the
22 Small Business Investment Act of 1958 (15 U.S.C.
23 694b(e)(2)) is amended by striking “\$2,000,000” and in-
24 serting “\$5,000,000”.

1 (c) SUNSET.—The amendments made by subsections
 2 (a) and (b) of this section shall remain in effect until Sep-
 3 tember 30, 2012.

4 (d) FUNDING.—There is appropriated out of any
 5 money in the Treasury not otherwise appropriated,
 6 \$3,000,000, to remain available until expended, for addi-
 7 tional capital for the Surety Bond Guarantees Revolving
 8 Fund, as authorized by the Small Business Investment
 9 Act of 1958, as amended.

10 **SEC. 113. DELAY IN APPLICATION OF WITHHOLDING ON**
 11 **GOVERNMENT CONTRACTORS.**

12 Subsection (b) of section 511 of the Tax Increase
 13 Prevention and Reconciliation Act of 2005 is amended by
 14 striking “December 31, 2011” and inserting “December
 15 31, 2013”.

16 **TITLE II—PUTTING WORKERS**
 17 **BACK ON THE JOB WHILE RE-**
 18 **BUILDING AND MODERNIZING**
 19 **AMERICA**
 20 **Subtitle A—Veterans Hiring**
 21 **Preferences**

22 **SEC. 201. RETURNING HEROES AND WOUNDED WARRIORS**
 23 **WORK OPPORTUNITY TAX CREDITS.**

24 (a) IN GENERAL.—Paragraph (3) of section 51(b) of
 25 the Internal Revenue Code is amended by striking

1 “(\$12,000 per year in the case of any individual who is
2 a qualified veteran by reason of subsection (d)(3)(A)(ii))”
3 and inserting “(\$12,000 per year in the case of any indi-
4 vidual who is a qualified veteran by reason of subsection
5 (d)(3)(A)(ii)(I), \$14,000 per year in the case of any indi-
6 vidual who is a qualified veteran by reason of subsection
7 (d)(3)(A)(iv), and \$24,000 per year in the case of any in-
8 dividual who is a qualified veteran by reason of subsection
9 (d)(3)(A)(ii)(II))”.

10 (b) RETURNING HEROES TAX CREDITS.—Section
11 51(d)(3)(A) of the Internal Revenue Code is amended by
12 striking “or” at the end of paragraph (3)(A)(i), and in-
13 serting the following new paragraphs after paragraph
14 (ii)—

15 “(iii) having aggregate periods of un-
16 employment during the 1-year period end-
17 ing on the hiring date which equal or ex-
18 ceed 4 weeks (but less than 6 months), or

19 “(iv) having aggregate periods of un-
20 employment during the 1-year period end-
21 ing on the hiring date which equal or ex-
22 ceed 6 months.”.

23 (c) SIMPLIFIED CERTIFICATION.—Section 51(d) of
24 the Internal Revenue Code is amended by adding a new
25 paragraph 15 as follows—

1 “(15) CREDIT ALLOWED FOR UNEMPLOYED
2 VETERANS.—

3 “(A) IN GENERAL.—Any qualified veteran
4 under paragraphs (3)(A)(ii)(II), (3)(A)(iii), and
5 (3)(A)(iv) will be treated as certified by the des-
6 ignated local agency as having aggregate peri-
7 ods of unemployment if—

8 “(i) in the case of qualified veterans
9 under paragraphs (3)(A)(ii)(II) and
10 (3)(A)(iv), the veteran is certified by the
11 designated local agency as being in receipt
12 of unemployment compensation under
13 State or Federal law for not less than 6
14 months during the 1-year period ending on
15 the hiring date; or

16 “(ii) in the case of a qualified veteran
17 under paragraph (3)(A)(iii), the veteran is
18 certified by the designated local agency as
19 being in receipt of unemployment com-
20 pensation under State or Federal law for
21 not less than 4 weeks (but less than 6
22 months) during the 1-year period ending
23 on the hiring date.

1 “(B) REGULATORY AUTHORITY.—The Sec-
2 retary in his discretion may provide alternative
3 methods for certification.”.

4 (d) CREDIT MADE AVAILABLE TO TAX-EXEMPT EM-
5 PLOYERS IN CERTAIN CIRCUMSTANCES.—Section 52(c) of
6 the Internal Revenue Code is amended—

7 (1) by striking the word “No” at the beginning
8 of the section and replacing it with “Except as pro-
9 vided in this subsection, no”;

10 (2) the following new paragraphs are inserted
11 at the end of section 52(c)—

12 “(1) IN GENERAL.—In the case of a tax-exempt
13 employer, there shall be treated as a credit allowable
14 under subpart C (and not allowable under subpart
15 D) the lesser of—

16 “(A) the amount of the work opportunity
17 credit determined under this subpart with re-
18 spect to such employer that is related to the
19 hiring of qualified veterans described in sections
20 51(d)(3)(A)(ii)(II), (iii) or (iv); or

21 “(B) the amount of the payroll taxes of the
22 employer during the calendar year in which the
23 taxable year begins.

24 “(2) CREDIT AMOUNT.—In calculating for tax-
25 exempt employers, the work opportunity credit shall

1 be determined by substituting ‘26 percent’ for ‘40
2 percent’ in section 51(a) and by substituting ‘16.25
3 percent’ for ‘25 percent’ in section 51(i)(3)(A).

4 “(3) TAX-EXEMPT EMPLOYER.—For purposes
5 of this subpart, the term ‘tax-exempt employer’
6 means an employer that is—

7 “(i) an organization described in section
8 501(c) and exempt from taxation under section
9 501(a), or

10 “(ii) a public higher education institution
11 (as defined in section 101 of the Higher Edu-
12 cation Act of 1965).

13 “(4) PAYROLL TAXES.—For purposes of this
14 subsection—

15 “(A) IN GENERAL.—The term ‘payroll
16 taxes’ means—

17 “(i) amounts required to be withheld
18 from the employees of the tax-exempt em-
19 ployer under section 3401(a),

20 “(ii) amounts required to be withheld
21 from such employees under section
22 3101(a), and

23 “(iii) amounts of the taxes imposed on
24 the tax-exempt employer under section
25 3111(a).”.

1 (e) TREATMENT OF POSSESSIONS.—

2 (1) PAYMENTS TO POSSESSIONS.—

3 (A) MIRROR CODE POSSESSIONS.—The
4 Secretary of the Treasury shall pay to each pos-
5 session of the United States with a mirror code
6 tax system amounts equal to the loss to that
7 possession by reason of the application of this
8 section (other than this subsection). Such
9 amounts shall be determined by the Secretary
10 of the Treasury based on information provided
11 by the government of the respective possession
12 of the United States.

13 (B) OTHER POSSESSIONS.—The Secretary
14 of the Treasury shall pay to each possession of
15 the United States, which does not have a mirror
16 code tax system, amounts estimated by the Sec-
17 retary of the Treasury as being equal to the ag-
18 gregate credits that would have been provided
19 by the possession by reason of the application
20 of this section (other than this subsection) if a
21 mirror code tax system had been in effect in
22 such possession. The preceding sentence shall
23 not apply with respect to any possession of the
24 United States unless such possession has a
25 plan, which has been approved by the Secretary

1 of the Treasury, under which such possession
2 will promptly distribute such payments.

3 (2) COORDINATION WITH CREDIT ALLOWED
4 AGAINST UNITED STATES INCOME TAXES.—No in-
5 crease in the credit determined under section 38(b)
6 of the Internal Revenue Code of 1986 that is attrib-
7 utable to the credit provided by this section (other
8 than this subsection (e)) shall be taken into account
9 with respect to any person—

10 (A) to whom a credit is allowed against
11 taxes imposed by the possession of the United
12 States by reason of this section for such taxable
13 year, or

14 (B) who is eligible for a payment under a
15 plan described in paragraph (1)(B) with respect
16 to such taxable year.

17 (3) DEFINITIONS AND SPECIAL RULES.—

18 (A) POSSESSION OF THE UNITED
19 STATES.—For purposes of this subsection (e),
20 the term “possession of the United States” in-
21 cludes American Samoa, the Commonwealth of
22 the Northern Mariana Islands, the Common-
23 wealth of Puerto Rico, Guam, and the United
24 States Virgin Islands.

1 (B) MIRROR CODE TAX SYSTEM.—For pur-
2 poses of this subsection, the term “mirror code
3 tax system” means, with respect to any posses-
4 sion of the United States, the income tax sys-
5 tem of such possession if the income tax liabil-
6 ity of the residents of such possession under
7 such system is determined by reference to the
8 income tax laws of the United States as if such
9 possession were the United States.

10 (C) TREATMENT OF PAYMENTS.—For pur-
11 poses of section 1324(b)(2) of title 31, United
12 States Code, rules similar to the rules of section
13 1001(b)(3)(C) of the American Recovery and
14 Reinvestment Tax Act of 2009 shall apply.

15 (f) EFFECTIVE DATE.—The amendment made by
16 this section shall apply to individuals who begin work for
17 the employer after the date of the enactment of this Act.

18 **Subtitle B—Teacher Stabilization**

19 **SEC. 202. PURPOSE.**

20 The purpose of this subtitle is to provide funds to
21 States to prevent teacher layoffs and support the creation
22 of additional jobs in public early childhood, elementary,
23 and secondary education in the 2011–2012 and 2012–
24 2013 school years.

1 **SEC. 203. GRANTS FOR THE OUTLYING AREAS AND THE**
2 **SECRETARY OF THE INTERIOR; AVAILABILITY**
3 **OF FUNDS.**

4 (a) RESERVATION OF FUNDS.—From the amount ap-
5 propriated to carry out this subtitle under section 212,
6 the Secretary—

7 (1) shall reserve up to one-half of one percent
8 to provide assistance to the outlying areas on the
9 basis of their respective needs, as determined by the
10 Secretary, for activities consistent with this part
11 under such terms and conditions as the Secretary
12 may determine;

13 (2) shall reserve up to one-half of one percent
14 to provide assistance to the Secretary of the Interior
15 to carry out activities consistent with this part, in
16 schools operated or funded by the Bureau of Indian
17 Education; and

18 (3) may reserve up to \$2,000,000 for adminis-
19 tration and oversight of this part, including program
20 evaluation.

21 (b) AVAILABILITY OF FUNDS.—Funds made avail-
22 able under section 212 shall remain available to the Sec-
23 retary until September 30, 2012.

24 **SEC. 204. STATE ALLOCATION.**

25 (a) ALLOCATION.—After reserving funds under sec-
26 tion 203(a), the Secretary shall allocate to the States—

1 (1) 60 percent on the basis of their relative
2 population of individuals aged 5 through 17; and

3 (2) 40 percent on the basis of their relative
4 total population.

5 (b) AWARDS.—From the funds allocated under sub-
6 section (a), the Secretary shall make a grant to the Gov-
7 ernor of each State who submits an approvable application
8 under section 214.

9 (c) ALTERNATE DISTRIBUTION OF FUNDS.—

10 (1) If, within 30 days after the date of enact-
11 ment of this Act, a Governor has not submitted an
12 approvable application to the Secretary, the Sec-
13 retary shall, consistent with paragraph (2), provide
14 for funds allocated to that State to be distributed to
15 another entity or other entities in the State for the
16 support of early childhood, elementary, and sec-
17 ondary education, under such terms and conditions
18 as the Secretary may establish.

19 (2) MAINTENANCE OF EFFORT.—

20 (A) GOVERNOR ASSURANCE.—The Sec-
21 retary shall not allocate funds under paragraph
22 (1) unless the Governor of the State provides
23 an assurance to the Secretary that the State
24 will for fiscal years 2012 and 2013 meet the re-
25 quirements of section 209.

1 (B) Notwithstanding subparagraph (A),
2 the Secretary may allocate up to 50 percent of
3 the funds that are available to the State under
4 paragraph (1) to another entity or entities in
5 the State, provided that the State educational
6 agency submits data to the Secretary dem-
7 onstrating that the State will for fiscal year
8 2012 meet the requirements of section 209(a)
9 or the Secretary otherwise determines that the
10 State will meet those requirements, or such
11 comparable requirements as the Secretary may
12 establish, for that year.

13 (3) REQUIREMENTS.—An entity that receives
14 funds under paragraph (1) shall use those funds in
15 accordance with the requirements of this subtitle.

16 (d) REALLOCATION.—If a State does not receive
17 funding under this subtitle or only receives a portion of
18 its allocation under subsection (c), the Secretary shall re-
19 allocate the State’s entire allocation or the remaining por-
20 tion of its allocation, as the case may be, to the remaining
21 States in accordance with subsection (a).

22 **SEC. 205. STATE APPLICATION.**

23 The Governor of a State desiring to receive a grant
24 under this subtitle shall submit an application to the Sec-
25 retary within 30 days of the date of enactment of this Act,

1 in such manner, and containing such information as the
2 Secretary may reasonably require to determine the State's
3 compliance with applicable provisions of law.

4 **SEC. 206. STATE RESERVATION AND RESPONSIBILITIES.**

5 (a) RESERVATION.—Each State receiving a grant
6 under section 204(b) may reserve—

7 (1) not more than 10 percent of the grant
8 funds for awards to State-funded early learning pro-
9 grams; and

10 (2) not more than 2 percent of the grant funds
11 for the administrative costs of carrying out its re-
12 sponsibilities under this subtitle.

13 (b) STATE RESPONSIBILITIES.—Each State receiving
14 a grant under this subtitle shall, after reserving any funds
15 under subsection (a)—

16 (1) use the remaining grant funds only for
17 awards to local educational agencies for the support
18 of early childhood, elementary, and secondary edu-
19 cation; and

20 (2) distribute those funds, through subgrants,
21 to its local educational agencies by distributing—

22 (A) 60 percent on the basis of the local
23 educational agencies' relative shares of enroll-
24 ment; and

1 (B) 40 percent on the basis of the local
 2 educational agencies' relative shares of funds
 3 received under part A of title I of the Elemen-
 4 tary and Secondary Education Act of 1965 for
 5 fiscal year 2011; and

6 (3) make those funds available to local edu-
 7 cational agencies no later than 100 days after receiv-
 8 ing a grant from the Secretary.

9 (c) PROHIBITIONS.—A State shall not use funds re-
 10 ceived under this subtitle to directly or indirectly—

11 (1) establish, restore, or supplement a rainy-day
 12 fund;

13 (2) supplant State funds in a manner that has
 14 the effect of establishing, restoring, or
 15 supplementing a rainy-day fund;

16 (3) reduce or retire debt obligations incurred by
 17 the State; or

18 (4) supplant State funds in a manner that has
 19 the effect of reducing or retiring debt obligations in-
 20 curred by the State.

21 **SEC. 207. LOCAL EDUCATIONAL AGENCIES.**

22 Each local educational agency that receives a
 23 subgrant under this subtitle—

24 (1) shall use the subgrant funds only for com-
 25 pensation and benefits and other expenses, such as

1 support services, necessary to retain existing employ-
2 ees, recall or rehire former employees, or hire new
3 employees to provide early childhood, elementary, or
4 secondary educational and related services;

5 (2) shall obligate those funds no later than Sep-
6 tember 30, 2013; and

7 (3) may not use those funds for general admin-
8 istrative expenses or for other support services or ex-
9 penditures, as those terms are defined by the Na-
10 tional Center for Education Statistics in the Com-
11 mon Core of Data, as of the date of enactment of
12 this Act.

13 **SEC. 208. EARLY LEARNING.**

14 Each State-funded early learning program that re-
15 ceives funds under this subtitle shall—

16 (1) use those funds only for compensation, ben-
17 efits, and other expenses, such as support services,
18 necessary to retain early childhood educators, recall
19 or rehire former early childhood educators, or hire
20 new early childhood educators to provide early learn-
21 ing services; and

22 (2) obligate those funds no later than Sep-
23 tember 30, 2013.

1 **SEC. 209. MAINTENANCE OF EFFORT.**

2 (a) The Secretary shall not allocate funds to a State
3 under this subtitle unless the State provides an assurance
4 to the Secretary that—

5 (1) for State fiscal year 2012—

6 (A) the State will maintain State support
7 for early childhood, elementary, and secondary
8 education (in the aggregate or on the basis of
9 expenditure per pupil) and for public institu-
10 tions of higher education (not including support
11 for capital projects or for research and develop-
12 ment or tuition and fees paid by students) at
13 not less than the level of such support for each
14 of the two categories for State fiscal year 2011;
15 or

16 (B) the State will maintain State support
17 for early childhood, elementary, and secondary
18 education and for public institutions of higher
19 education (not including support for capital
20 projects or for research and development or tui-
21 tion and fees paid by students) at a percentage
22 of the total revenues available to the State that
23 is equal to or greater than the percentage pro-
24 vided for State fiscal year 2011; and

25 (2) for State fiscal year 2013—

1 (A) the State will maintain State support
2 for early childhood, elementary, and secondary
3 education (in the aggregate or on the basis of
4 expenditure per pupil) and for public institu-
5 tions of higher education (not including support
6 for capital projects or for research and develop-
7 ment or tuition and fees paid by students) at
8 not less than the level of such support for each
9 of the two categories for State fiscal year 2012;
10 or

11 (B) the State will maintain State support
12 for early childhood, elementary, and secondary
13 education and for public institutions of higher
14 education (not including support for capital
15 projects or for research and development or tui-
16 tion and fees paid by students) at a percentage
17 of the total revenues available to the State that
18 is equal to or greater than the percentage pro-
19 vided for State fiscal year 2012.

20 (b) WAIVER.—The Secretary may waive the require-
21 ments of this section if the Secretary determines that a
22 waiver would be equitable due to—

23 (1) exceptional or uncontrollable circumstances,
24 such as a natural disaster; or

1 (2) a precipitous decline in the financial re-
2 sources of the State.

3 **SEC. 210. REPORTING.**

4 Each State that receives a grant under this subtitle
5 shall submit, on an annual basis, a report to the Secretary
6 that contains—

7 (1) a description of how funds received under
8 this part were expended or obligated; and

9 (2) an estimate of the number of jobs supported
10 by the State using funds received under this subtitle.

11 **SEC. 211. DEFINITIONS.**

12 (a) Except as otherwise provided, the terms “local
13 educational agency”, “outlying area”, “Secretary”,
14 “State”, and “State educational agency” have the mean-
15 ings given those terms in section 9101 of the Elementary
16 and Secondary Education Act of 1965 (20 U.S.C. 7801).

17 (b) The term “State” does not include an outlying
18 area.

19 (c) The term “early childhood educator” means an
20 individual who—

21 (1) works directly with children in a State-fund-
22 ed early learning program in a low-income commu-
23 nity;

1 (2) is involved directly in the care, development,
2 and education of infants, toddlers, or young children
3 age five and under; and

4 (3) has completed a baccalaureate or advanced
5 degree in early childhood development or early child-
6 hood education, or in a field related to early child-
7 hood education.

8 (d) The term “State-funded early learning program”
9 means a program that provides educational services to
10 children from birth to kindergarten entry and receives
11 funding from the State.

12 **SEC. 212. AUTHORIZATION OF APPROPRIATIONS.**

13 There are authorized to be appropriated, and there
14 are appropriated, \$30,000,000,000 to carry out this sub-
15 title for fiscal year 2012.

16 **Subtitle C—First Responder**
17 **Stabilization**

18 **SEC. 213. PURPOSE.**

19 The purpose of this subtitle is to provide funds to
20 States and localities to prevent layoffs of, and support the
21 creation of additional jobs for, law enforcement officers
22 and other first responders.

23 **SEC. 214. GRANT PROGRAM.**

24 The Attorney General shall carry out a competitive
25 grant program pursuant to section 1701 of title I of the

1 Omnibus Crime Control and Safe Streets Act of 1968 (42
2 U.S.C. 3796dd) for hiring, rehiring, or retention of career
3 law enforcement officers under part Q of such title. Grants
4 awarded under this section shall not be subject to sub-
5 sections (g) or (i) of section 1701 or to section 1704 of
6 such Act (42 U.S.C. 3796dd–3(c)).

7 **SEC. 215. APPROPRIATIONS.**

8 There are hereby appropriated to the Community
9 Oriented Policing Stabilization Fund out of any money in
10 the Treasury not otherwise obligated, \$5,000,000,000, to
11 remain available until September 30, 2012, of which
12 \$4,000,000,000 shall be for the Attorney General to carry
13 out the competitive grant program under Section 214; and
14 of which \$1,000,000,000 shall be transferred by the Attor-
15 ney General to a First Responder Stabilization Fund from
16 which the Secretary of Homeland Security shall make
17 competitive grants for hiring, rehiring, or retention pursu-
18 ant to the Federal Fire Prevention and Control Act of
19 1974 (15 U.S.C. 2201 et seq.), to carry out section 34
20 of such Act (15 U.S.C. 2229a). In making such grants,
21 the Secretary may grant waivers from the requirements
22 in subsections (a)(1)(A), (a)(1)(B), (a)(1)(E), (c)(1),
23 (c)(2), and (c)(4)(A) of section 34. Of the amounts appro-
24 priated herein, not to exceed \$8,000,000 shall be for ad-
25 ministrative costs of the Attorney General, and not to ex-

1 ceed \$2,000,000 shall be for administrative costs of the
2 Secretary of Homeland Security.

3 **Subtitle D—School Modernization**

4 **PART I—ELEMENTARY AND SECONDARY** 5 **SCHOOLS**

6 **SEC. 221. PURPOSE.**

7 The purpose of this part is to provide assistance for
8 the modernization, renovation, and repair of elementary
9 and secondary school buildings in public school districts
10 across America in order to support the achievement of im-
11 proved educational outcomes in those schools.

12 **SEC. 222. AUTHORIZATION OF APPROPRIATIONS.**

13 There are authorized to be appropriated, and there
14 are appropriated, \$25,000,000,000 to carry out this part,
15 which shall be available for obligation by the Secretary
16 until September 30, 2012.

17 **SEC. 223. ALLOCATION OF FUNDS.**

18 (a) RESERVATIONS.—Of the amount made available
19 to carry out this part, the Secretary shall reserve—

20 (1) one-half of one percent for the Secretary of
21 the Interior to carry out modernization, renovation,
22 and repair activities described in section 226 in
23 schools operated or funded by the Bureau of Indian
24 Education;

1 (2) one-half of one percent to make grants to
2 the outlying areas for modernization, renovation,
3 and repair activities described in section 226; and

4 (3) such funds as the Secretary determines are
5 needed to conduct a survey, by the National Center
6 for Education Statistics, of the school construction,
7 modernization, renovation, and repair needs of the
8 public schools of the United States.

9 (b) STATE ALLOCATION.—After reserving funds
10 under subsection (a), the Secretary shall allocate the re-
11 maining amount among the States in proportion to their
12 respective allocations under part A of title I of the Ele-
13 mentary and Secondary Education Act (ESEA) (20
14 U.S.C. 6311 et seq.) for fiscal year 2011, except that—

15 (1) the Secretary shall allocate 40 percent of
16 such remaining amount to the 100 local educational
17 agencies with the largest numbers of children aged
18 5–17 living in poverty, as determined using the most
19 recent data available from the Department of Com-
20 merce that are satisfactory to the Secretary, in pro-
21 portion to those agencies' respective allocations
22 under part A of title I of the ESEA for fiscal year
23 2011; and

24 (2) the allocation to any State shall be reduced
25 by the aggregate amount of the allocations under

1 paragraph (1) to local educational agencies in that
2 State.

3 (c) REMAINING ALLOCATION.—

4 (1) If a State does not apply for its allocation
5 (or applies for less than the full allocation for which
6 it is eligible) or does not use that allocation in a
7 timely manner, the Secretary may—

8 (A) reallocate all or a portion of that allo-
9 cation to the other States in accordance with
10 subsection (b); or

11 (B) use all or a portion of that allocation
12 to make direct allocations to local educational
13 agencies within the State based on their respec-
14 tive allocations under part A of title I of the
15 ESEA for fiscal year 2011 or such other meth-
16 od as the Secretary may determine.

17 (2) If a local educational agency does not apply
18 for its allocation under subsection (b)(1), applies for
19 less than the full allocation for which it is eligible,
20 or does not use that allocation in a timely manner,
21 the Secretary may reallocate all or a portion of its
22 allocation to the State in which that agency is lo-
23 cated.

1 **SEC. 224. STATE USE OF FUNDS.**

2 (a) RESERVATION.—Each State that receives a grant
3 under this part may reserve not more than one percent
4 of the State’s allocation under section 223(b) for the pur-
5 pose of administering the grant, except that no State may
6 reserve more than \$750,000 for this purpose.

7 (b) FUNDS TO LOCAL EDUCATIONAL AGENCIES.—

8 (1) FORMULA SUBGRANTS.—From the grant
9 funds that are not reserved under subsection (a), a
10 State shall allocate at least 50 percent to local edu-
11 cational agencies, including charter schools that are
12 local educational agencies, that did not receive funds
13 under section 223(b)(1) from the Secretary, in ac-
14 cordance with their respective allocations under part
15 A of title I of the ESEA for fiscal year 2011, except
16 that no such local educational agency shall receive
17 less than \$10,000.

18 (2) ADDITIONAL SUBGRANTS.—The State shall
19 use any funds remaining, after reserving funds
20 under subsection (a) and allocating funds under
21 paragraph (1), for subgrants to local educational
22 agencies that did not receive funds under section
23 223(b)(1), including charter schools that are local
24 educational agencies, to support modernization, ren-
25 ovation, and repair projects that the State deter-
26 mines, using objective criteria, are most needed in

1 the State, with priority given to projects in rural
2 local educational agencies.

3 (c) REMAINING FUNDS.—If a local educational agen-
4 cy does not apply for an allocation under subsection
5 (b)(1), applies for less than its full allocation, or fails to
6 use that allocation in a timely manner, the State may re-
7 allocate any unused portion to other local educational
8 agencies in accordance with subsection (b).

9 **SEC. 225. STATE AND LOCAL APPLICATIONS.**

10 (a) STATE APPLICATION.—A State that desires to re-
11 ceive a grant under this part shall submit an application
12 to the Secretary at such time, in such manner, and con-
13 taining such information and assurances as the Secretary
14 may require, which shall include—

15 (1) an identification of the State agency or enti-
16 ty that will administer the program; and

17 (2) the State's process for determining how the
18 grant funds will be distributed and administered, in-
19 cluding—

20 (A) how the State will determine the cri-
21 teria and priorities in making subgrants under
22 section 224(b)(2);

23 (B) any additional criteria the State will
24 use in determining which projects it will fund
25 under that section;

1 (C) a description of how the State will con-
2 sider—

3 (i) the needs of local educational
4 agencies for assistance under this part;

5 (ii) the impact of potential projects on
6 job creation in the State;

7 (iii) the fiscal capacity of local edu-
8 cational agencies applying for assistance;

9 (iv) the percentage of children in
10 those local educational agencies who are
11 from low-income families; and

12 (v) the potential for leveraging assist-
13 ance provided by this program through
14 matching or other financing mechanisms;

15 (D) a description of how the State will en-
16 sure that the local educational agencies receiv-
17 ing subgrants meet the requirements of this
18 part;

19 (E) a description of how the State will en-
20 sure that the State and its local educational
21 agencies meet the deadlines established in sec-
22 tion 228;

23 (F) a description of how the State will give
24 priority to the use of green practices that are

1 certified, verified, or consistent with any appli-
2 cable provisions of—

3 (i) the LEED Green Building Rating
4 System;

5 (ii) Energy Star;

6 (iii) the CHPS Criteria;

7 (iv) Green Globes; or

8 (v) an equivalent program adopted by
9 the State or another jurisdiction with au-
10 thority over the local educational agency;

11 (G) a description of the steps that the
12 State will take to ensure that local educational
13 agencies receiving subgrants will adequately
14 maintain any facilities that are modernized,
15 renovated, or repaired with subgrant funds
16 under this part; and

17 (H) such additional information and assur-
18 ances as the Secretary may require.

19 (b) LOCAL APPLICATION.—A local educational agen-
20 cy that is eligible under section 223(b)(1) that desires to
21 receive a grant under this part shall submit an application
22 to the Secretary at such time, in such manner, and con-
23 taining such information and assurances as the Secretary
24 may require, which shall include—

1 (1) a description of how the local educational
2 agency will meet the deadlines and requirements of
3 this part;

4 (2) a description of the steps that the local edu-
5 cational agency will take to adequately maintain any
6 facilities that are modernized, renovated, or repaired
7 with funds under this part; and

8 (3) such additional information and assurances
9 as the Secretary may require.

10 **SEC. 226. USE OF FUNDS.**

11 (a) IN GENERAL.—Funds awarded to local edu-
12 cational agencies under this part shall be used only for
13 either or both of the following modernization, renovation,
14 or repair activities in facilities that are used for elemen-
15 tary or secondary education or for early learning pro-
16 grams:

17 (1) Direct payments for school modernization,
18 renovation, and repair.

19 (2) To pay interest on bonds or payments for
20 other financing instruments that are newly issued
21 for the purpose of financing school modernization,
22 renovation, and repair.

23 (b) SUPPLEMENT, NOT SUPPLANT.—Funds made
24 available under this part shall be used to supplement, and
25 not supplant, other Federal, State, and local funds that

1 would otherwise be expended to modernize, renovate, or
2 repair eligible school facilities.

3 (c) PROHIBITION.—Funds awarded to local edu-
4 cational agencies under this part may not be used for—

5 (1) new construction;

6 (2) payment of routine maintenance costs; or

7 (3) modernization, renovation, or repair of sta-
8 diums or other facilities primarily used for athletic
9 contests or exhibitions or other events for which ad-
10 mission is charged to the general public.

11 **SEC. 227. PRIVATE SCHOOLS.**

12 (a) IN GENERAL.—Section 9501 of the ESEA (20
13 U.S.C. 7881) shall apply to this part in the same manner
14 as it applies to activities under that Act, except that—

15 (1) section 9501 shall not apply with respect to
16 the title to any real property modernized, renovated,
17 or repaired with assistance provided under this sec-
18 tion;

19 (2) the term “services”, as used in section 9501
20 with respect to funds under this part, shall be pro-
21 vided only to private, nonprofit elementary or sec-
22 ondary schools with a rate of child poverty of at
23 least 40 percent and may include only—

24 (A) modifications of school facilities nec-
25 essary to meet the standards applicable to pub-

1 lic schools under the Americans with Disabil-
2 ities Act of 1990 (42 U.S.C. 12101 et seq.);

3 (B) modifications of school facilities nec-
4 essary to meet the standards applicable to pub-
5 lic schools under section 504 of the Rehabilita-
6 tion Act of 1973 (29 U.S.C. 794); and

7 (C) asbestos or polychlorinated biphenyls
8 abatement or removal from school facilities; and

9 (3) expenditures for services provided using
10 funds made available under section 226 shall be con-
11 sidered equal for purposes of section 9501(a)(4) of
12 the ESEA if the per-pupil expenditures for services
13 described in paragraph (2) for students enrolled in
14 private nonprofit elementary and secondary schools
15 that have child-poverty rates of at least 40 percent
16 are consistent with the per-pupil expenditures under
17 this subpart for children enrolled in the public
18 schools of the local educational agency receiving
19 funds under this subpart.

20 (b) REMAINING FUNDS.—If the expenditure for serv-
21 ices described in paragraph (2) is less than the amount
22 calculated under paragraph (3) because of insufficient
23 need for those services, the remainder shall be available
24 to the local educational agency for modernization, renova-
25 tion, and repair of its school facilities.

1 (c) APPLICATION.—If any provision of this section,
2 or the application thereof, to any person or circumstance
3 is judicially determined to be invalid, the remainder of the
4 section and the application to other persons or cir-
5 cumstances shall not be affected thereby.

6 **SEC. 228. ADDITIONAL PROVISIONS.**

7 (a) Funds appropriated under section 222 shall be
8 available for obligation by local educational agencies re-
9 ceiving grants from the Secretary under section 223(b)(1),
10 by States reserving funds under section 224(a), and by
11 local educational agencies receiving subgrants under sec-
12 tion 224(b)(1) only during the period that ends 24 months
13 after the date of enactment of this Act.

14 (b) Funds appropriated under section 222 shall be
15 available for obligation by local educational agencies re-
16 ceiving subgrants under section 224(b)(2) only during the
17 period that ends 36 months after the date of enactment
18 of this Act.

19 (c) Section 439 of the General Education Provisions
20 Act (20 U.S.C. 1232b) shall apply to funds available
21 under this part.

22 (d) For purposes of section 223(b)(1), Hawaii, the
23 District of Columbia, and the Commonwealth of Puerto
24 Rico are not local educational agencies.

PART II—COMMUNITY COLLEGE**MODERNIZATION****SEC. 229. FEDERAL ASSISTANCE FOR COMMUNITY COLLEGE MODERNIZATION.**

(a) IN GENERAL.—

(1) GRANT PROGRAM.—From the amounts made available under subsection (h), the Secretary shall award grants to States to modernize, renovate, or repair existing facilities at community colleges.

(2) ALLOCATION.—

(A) RESERVATIONS.—Of the amount made available to carry out this section, the Secretary shall reserve—

(i) up to 0.25 percent for grants to institutions that are eligible under section 316 of the Higher Education Act of 1965 (20 U.S.C. 1059c) to provide for modernization, renovation, and repair activities described in this section; and

(ii) up to 0.25 percent for grants to the outlying areas to provide for modernization, renovation, and repair activities described in this section.

(B) ALLOCATION.—After reserving funds under subparagraph (A), the Secretary shall allocate to each State that has an application ap-

1 proved by the Secretary an amount that bears
2 the same relation to any remaining funds as the
3 total number of students in such State who are
4 enrolled in institutions described in section
5 230(b)(1)(A) plus the number of students who
6 are estimated to be enrolled in and pursuing a
7 degree or certificate that is not a bachelor's,
8 master's, professional, or other advanced degree
9 in institutions described in section
10 230(b)(1)(B), based on the proportion of de-
11 grees or certificates awarded by such institu-
12 tions that are not bachelor's, master's, profes-
13 sional, or other advanced degrees, as reported
14 to the Integrated Postsecondary Data System
15 bears to the estimated total number of such
16 students in all States, except that no State shall
17 receive less than \$2,500,000.

18 (C) REALLOCATION.—Amounts not allo-
19 cated under this section to a State because the
20 State either did not submit an application
21 under subsection (b), the State submitted an
22 application that the Secretary determined did
23 not meet the requirements of such subsection,
24 or the State cannot demonstrate to the Sec-
25 retary a sufficient demand for projects to war-

1 rant the full allocation of the funds, shall be
2 proportionately reallocated under this para-
3 graph to the other States that have a dem-
4 onstrated need for, and are receiving, alloca-
5 tions under this section.

6 (D) STATE ADMINISTRATION.—A State
7 that receives a grant under this section may use
8 not more than one percent of that grant to ad-
9 minister it, except that no State may use more
10 than \$750,000 of its grant for this purpose.

11 (3) SUPPLEMENT, NOT SUPPLANT.—Funds
12 made available under this section shall be used to
13 supplement, and not supplant, other Federal, State,
14 and local funds that would otherwise be expended to
15 modernize, renovate, or repair existing community
16 college facilities.

17 (b) APPLICATION.—A State that desires to receive a
18 grant under this section shall submit an application to the
19 Secretary at such time, in such manner, and containing
20 such information and assurances as the Secretary may re-
21 quire. Such application shall include a description of—

22 (1) how the funds provided under this section
23 will improve instruction at community colleges in the
24 State and will improve the ability of those colleges

1 to educate and train students to meet the workforce
2 needs of employers in the State; and

3 (2) the projected start of each project and the
4 estimated number of persons to be employed in the
5 project.

6 (c) PROHIBITED USES OF FUNDS.—

7 (1) IN GENERAL.—No funds awarded under
8 this section may be used for—

9 (i) payment of routine maintenance costs;

10 (ii) construction, modernization, renova-
11 tion, or repair of stadiums or other facilities
12 primarily used for athletic contests or exhibi-
13 tions or other events for which admission is
14 charged to the general public; or

15 (iii) construction, modernization, renova-
16 tion, or repair of facilities—

17 (I) used for sectarian instruction, reli-
18 gious worship, or a school or department
19 of divinity; or

20 (II) in which a substantial portion of
21 the functions of the facilities are subsumed
22 in a religious mission.

23 (2) FOUR-YEAR INSTITUTIONS.—No funds
24 awarded to a four-year public institution of higher
25 education under this section may be used for any fa-

1 cility, service, or program of the institution that is
2 not available to students who are pursuing a degree
3 or certificate that is not a bachelor's, master's, pro-
4 fessional, or other advanced degree.

5 (d) GREEN PROJECTS.—In providing assistance to
6 community college projects under this section, the State
7 shall consider the extent to which a community college's
8 project involves activities that are certified, verified, or
9 consistent with the applicable provisions of—

- 10 (1) the LEED Green Building Rating System;
- 11 (2) Energy Star;
- 12 (3) the CHPS Criteria, as applicable;
- 13 (4) Green Globes; or
- 14 (5) an equivalent program adopted by the State
15 or the State higher education agency that includes
16 a verifiable method to demonstrate compliance with
17 such program.

18 (e) APPLICATION OF GEPA.—Section 439 of the
19 General Education Provisions Act such Act (20 U.S.C.
20 1232b) shall apply to funds available under this subtitle.

21 (f) REPORTS BY THE STATES.—Each State that re-
22 ceives a grant under this section shall, not later than Sep-
23 tember 30, 2012, and annually thereafter for each fiscal
24 year in which the State expends funds received under this
25 section, submit to the Secretary a report that includes—

1 (1) a description of the projects for which the
2 grant was, or will be, used;

3 (2) a description of the amount and nature of
4 the assistance provided to each community college
5 under this section; and

6 (3) the number of jobs created by the projects
7 funded under this section.

8 (g) REPORT BY THE SECRETARY.—The Secretary
9 shall submit to the authorizing committees (as defined in
10 section 103 of the Higher Education Act of 1965; 20
11 U.S.C. 1003) an annual report on the grants made under
12 this section, including the information described in sub-
13 section (f).

14 (h) AVAILABILITY OF FUNDS.—

15 (1) There are authorized to be appropriated,
16 and there are appropriated, to carry out this section
17 (in addition to any other amounts appropriated to
18 carry out this section and out of any money in the
19 Treasury not otherwise appropriated),
20 \$5,000,000,000 for fiscal year 2012.

21 (2) Funds appropriated under this subsection
22 shall be available for obligation by community col-
23 leges only during the period that ends 36 months
24 after the date of enactment of this Act.

1 **PART III—GENERAL PROVISIONS**

2 **SEC. 230. DEFINITIONS.**

3 (a) ESEA TERMS.—Except as otherwise provided, in
4 this subtitle, the terms “local educational agency”, “Sec-
5 retary”, and “State educational agency” have the mean-
6 ings given those terms in section 9101 of the Elementary
7 and Secondary Education Act of 1965 (20 U.S.C. 7801).

8 (b) ADDITIONAL DEFINITIONS.—The following defi-
9 nitions apply to this title:

10 (1) COMMUNITY COLLEGE.—The term “commu-
11 nity college” means—

12 (A) a junior or community college, as that
13 term is defined in section 312(f) of the Higher
14 Education Act of 1965 (20 U.S.C. 1058(f)); or

15 (B) a four-year public institution of higher
16 education (as defined in section 101 of the
17 Higher Education Act of 1965 (20 U.S.C.
18 1001)) that awards a significant number of de-
19 grees and certificates, as determined by the
20 Secretary, that are not—

21 (i) bachelor’s degrees (or an equiva-
22 lent); or

23 (ii) master’s, professional, or other
24 advanced degrees.

25 (2) CHPS CRITERIA.—The term “CHPS Cri-
26 teria” means the green building rating program de-

1 developed by the Collaborative for High Performance
2 Schools.

3 (3) ENERGY STAR.—The term “Energy Star”
4 means the Energy Star program of the United
5 States Department of Energy and the United States
6 Environmental Protection Agency.

7 (4) GREEN GLOBES.—The term “Green
8 Globes” means the Green Building Initiative envi-
9 ronmental design and rating system referred to as
10 Green Globes.

11 (5) LEED GREEN BUILDING RATING SYS-
12 TEM.—The term “LEED Green Building Rating
13 System” means the United States Green Building
14 Council Leadership in Energy and Environmental
15 Design green building rating standard referred to as
16 the LEED Green Building Rating System.

17 (6) MODERNIZATION, RENOVATION, AND RE-
18 PAIR.—The term “modernization, renovation and re-
19 pair” means—

20 (A) comprehensive assessments of facilities
21 to identify—

22 (i) facility conditions or deficiencies
23 that could adversely affect student and
24 staff health, safety, performance, or pro-

1 ductivity or energy, water, or materials ef-
2 ficiency; and

3 (ii) needed facility improvements;

4 (B) repairing, replacing, or installing roofs
5 (which may be extensive, intensive, or semi-in-
6 tensive “green” roofs); electrical wiring; water
7 supply and plumbing systems, sewage systems,
8 storm water runoff systems, lighting systems
9 (or components of such systems); or building
10 envelope, windows, ceilings, flooring, or doors,
11 including security doors;

12 (C) repairing, replacing, or installing heat-
13 ing, ventilation, or air conditioning systems, or
14 components of those systems (including insula-
15 tion), including by conducting indoor air quality
16 assessments;

17 (D) compliance with fire, health, seismic,
18 and safety codes, including professional installa-
19 tion of fire and life safety alarms, and mod-
20 ernizations, renovations, and repairs that en-
21 sure that facilities are prepared for such emer-
22 gencies as acts of terrorism, campus violence,
23 and natural disasters, such as improving build-
24 ing infrastructure to accommodate security
25 measures and installing or upgrading tech-

1 nology to ensure that a school or incident is
2 able to respond to such emergencies;

3 (E) making modifications necessary to
4 make educational facilities accessible in compli-
5 ance with the Americans with Disabilities Act
6 of 1990 (42 U.S.C. 12101 et seq.) and section
7 504 of the Rehabilitation Act of 1973 (29
8 U.S.C. 794), except that such modifications
9 shall not be the primary use of a grant or
10 subgrant;

11 (F) abatement, removal, or interim con-
12 trols of asbestos, polychlorinated biphenyls,
13 mold, mildew, or lead-based hazards, including
14 lead-based paint hazards;

15 (G) retrofitting necessary to increase en-
16 ergy efficiency;

17 (H) measures, such as selection and sub-
18 stitution of products and materials, and imple-
19 mentation of improved maintenance and oper-
20 ational procedures, such as “green cleaning”
21 programs, to reduce or eliminate potential stu-
22 dent or staff exposure to—

23 (i) volatile organic compounds;

24 (ii) particles such as dust and pollens;

25 or

1 (iii) combustion gases;

2 (I) modernization, renovation, or repair
3 necessary to reduce the consumption of coal,
4 electricity, land, natural gas, oil, or water;

5 (J) installation or upgrading of educational
6 technology infrastructure;

7 (K) installation or upgrading of renewable
8 energy generation and heating systems, includ-
9 ing solar, photovoltaic, wind, biomass (including
10 wood pellet and woody biomass), waste-to-en-
11 ergy, solar-thermal, and geothermal systems,
12 and energy audits;

13 (L) modernization, renovation, or repair
14 activities related to energy efficiency and renew-
15 able energy, and improvements to building in-
16 frastructures to accommodate bicycle and pe-
17 destrian access;

18 (M) ground improvements, storm water
19 management, landscaping and environmental
20 clean-up when necessary;

21 (N) other modernization, renovation, or re-
22 pair to—

23 (i) improve teachers' ability to teach
24 and students' ability to learn;

1 (ii) ensure the health and safety of
2 students and staff; or

3 (iii) improve classroom, laboratory,
4 and vocational facilities in order to en-
5 hance the quality of science, technology,
6 engineering, and mathematics instruction;
7 and

8 (O) required environmental remediation re-
9 lated to facilities modernization, renovation, or
10 repair activities described in subparagraphs (A)
11 through (L).

12 (7) OUTLYING AREA.—The term “outlying
13 area” means the U.S. Virgin Islands, Guam, Amer-
14 ican Samoa, the Commonwealth of the Northern
15 Mariana Islands, and the Republic of Palau.

16 (8) STATE.—The term “State” means each of
17 the 50 States of the United States, the Common-
18 wealth of Puerto Rico, and the District of Columbia.

19 **SEC. 231. BUY AMERICAN.**

20 Section 1605 of division A of the American Recovery
21 and Reinvestment Act of 2009 (Public Law 111–5) applies
22 to funds made available under this title.

1 **Subtitle E—Immediate Transportation**
2 **Infrastructure Investments**
3 **ments**

4 **SEC. 241. IMMEDIATE TRANSPORTATION INFRASTRUCTURE**
5 **INVESTMENTS.**

6 (a) GRANTS-IN-AID FOR AIRPORTS.—

7 (1) IN GENERAL.—There is made available to
8 the Secretary of Transportation \$2,000,000,000 to
9 carry out airport improvement under subchapter I of
10 chapter 471 and subchapter I of chapter 475 of title
11 49, United States Code.

12 (2) FEDERAL SHARE; LIMITATION ON OBLIGA-
13 TIONS.—The Federal share payable of the costs for
14 which a grant is made under this subsection, shall
15 be 100 percent. The amount made available under
16 this subsection shall not be subject to any limitation
17 on obligations for the Grants-In-Aid for Airports
18 program set forth in any Act or in title 49, United
19 States Code.

20 (3) DISTRIBUTION OF FUNDS.—Funds provided
21 to the Secretary under this subsection shall not be
22 subject to apportionment formulas, special appor-
23 tionment categories, or minimum percentages under
24 chapter 471 of such title.

1 (4) AVAILABILITY.—The amounts made avail-
2 able under this subsection shall be available for obli-
3 gation until the date that is two years after the date
4 of the enactment of this Act. The Secretary shall ob-
5 ligate amounts totaling not less than 50 percent of
6 the funds made available within one year of enact-
7 ment and obligate remaining amounts not later than
8 two years after enactment.

9 (5) ADMINISTRATIVE EXPENSES.—Of the funds
10 made available under this subsection, 0.3 percent
11 shall be available to the Secretary for administrative
12 expenses, shall remain available for obligation until
13 September 30, 2015, and may be used in conjunc-
14 tion with funds otherwise provided for the adminis-
15 tration of the Grants-In-Aid for Airports program.

16 (b) NEXT GENERATION AIR TRAFFIC CONTROL AD-
17 VANCEMENTS.—

18 (1) IN GENERAL.—There is made available to
19 the Secretary of Transportation \$1,000,000,000 for
20 necessary Federal Aviation Administration capital,
21 research and operating costs to carry out Next Gen-
22 eration air traffic control system advancements.

23 (2) AVAILABILITY.—The amounts made avail-
24 able under this subsection shall be available for obli-

1 gation until the date that is two years after the date
2 of the enactment of this Act.

3 (c) HIGHWAY INFRASTRUCTURE INVESTMENT.—

4 (1) IN GENERAL.—There is made available to
5 the Secretary of Transportation \$27,000,000,000
6 for restoration, repair, construction and other activi-
7 ties eligible under section 133(b) of title 23, United
8 States Code, and for passenger and freight rail
9 transportation and port infrastructure projects eligi-
10 ble for assistance under section 601(a)(8) of title 23.

11 (2) FEDERAL SHARE; LIMITATION ON OBLIGA-
12 TIONS.—The Federal share payable on account of
13 any project or activity carried out with funds made
14 available under this subsection shall be, at the op-
15 tion of the recipient, up to 100 percent of the total
16 cost thereof. The amount made available under this
17 subsection shall not be subject to any limitation on
18 obligations for Federal-aid highways and highway
19 safety construction programs set forth in any Act or
20 in title 23, United States Code.

21 (3) AVAILABILITY.—The amounts made avail-
22 able under this subsection shall be available for obli-
23 gation until the date that is two years after the date
24 of the enactment of this Act. The Secretary shall ob-
25 ligate amounts totaling not less than 50 percent of

1 the funds made available within one year of enact-
2 ment and obligate remaining amounts not later than
3 two years after enactment.

4 (4) DISTRIBUTION OF FUNDS.—Of the funds
5 provided in this subsection, after making the set-
6 asides required by paragraphs (9), (10), (11), (12),
7 and (15), 50 percent of the funds shall be appor-
8 tioned to States using the formula set forth in sec-
9 tion 104(b)(3) of title 23, United States Code, and
10 the remaining funds shall be apportioned to States
11 in the same ratio as the obligation limitation for fis-
12 cal year 2010 was distributed among the States in
13 accordance with the formula specified in section
14 120(a)(6) of division A of Public Law 111–117.

15 (5) APPORTIONMENT.—Apportionments under
16 paragraph (4) shall be made not later than 30 days
17 after the date of the enactment of this Act.

18 (6) REDISTRIBUTION.—

19 (A) The Secretary shall, 180 days fol-
20 lowing the date of apportionment, withdraw
21 from each State an amount equal to 50 percent
22 of the funds apportioned under paragraph (4)
23 to that State (excluding funds suballocated
24 within the State) less the amount of funding
25 obligated (excluding funds suballocated within

1 the State), and the Secretary shall redistribute
2 such amounts to other States that have had no
3 funds withdrawn under this subparagraph in
4 the manner described in section 120(c) of divi-
5 sion A of Public Law 111–117.

6 (B) One year following the date of appor-
7 tionment, the Secretary shall withdraw from
8 each recipient of funds apportioned under para-
9 graph (4) any unobligated funds, and the Sec-
10 retary shall redistribute such amounts to States
11 that have had no funds withdrawn under this
12 paragraph (excluding funds suballocated within
13 the State) in the manner described in section
14 120(c) of division A of Public Law 111–117.

15 (C) At the request of a State, the Sec-
16 retary may provide an extension of the one-year
17 period only to the extent that the Secretary de-
18 termines that the State has encountered ex-
19 treme conditions that create an unworkable bid-
20 ding environment or other extenuating cir-
21 cumstances. Before granting an extension, the
22 Secretary notify in writing the Committee on
23 Transportation and Infrastructure and the
24 Committee on Environment and Public Works,

1 providing a thorough justification for the exten-
2 sion.

3 (7) TRANSPORTATION ENHANCEMENTS.—Three
4 percent of the funds apportioned to a State under
5 paragraph (4) shall be set aside for the purposes de-
6 scribed in section 133(d)(2) of title 23, United
7 States Code (without regard to the comparison to
8 fiscal year 2005).

9 (8) SUBALLOCATION.—Thirty percent of the
10 funds apportioned to a State under this subsection
11 shall be suballocated within the State in the manner
12 and for the purposes described in the first sentence
13 of sections 133(d)(3)(A), 133(d)(3)(B), and
14 133(d)(3)(D) of title 23, United States Code. Such
15 suballocation shall be conducted in every State.
16 Funds suballocated within a State to urbanized
17 areas and other areas shall not be subject to the re-
18 distribution of amounts required 180 days following
19 the date of apportionment of funds provided by
20 paragraph (6)(A).

21 (9) PUERTO RICO AND TERRITORIAL HIGHWAY
22 PROGRAMS.—Of the funds provided under this sub-
23 section, \$105,000,000 shall be set aside for the
24 Puerto Rico highway program authorized under sec-
25 tion 165 of title 23, United States Code, and

1 \$45,000,000 shall be for the territorial highway pro-
2 gram authorized under section 215 of title 23,
3 United States Code.

4 (10) FEDERAL LANDS AND INDIAN RESERVA-
5 TIONS.—Of the funds provided under this sub-
6 section, \$550,000,000 shall be set aside for invest-
7 ments in transportation at Indian reservations and
8 Federal lands in accordance with the following:

9 (A) Of the funds set aside by this para-
10 graph, \$310,000,000 shall be for the Indian
11 Reservation Roads program, \$170,000,000
12 shall be for the Park Roads and Parkways pro-
13 gram, \$60,000,000 shall be for the Forest
14 Highway Program, and \$10,000,000 shall be
15 for the Refuge Roads program.

16 (B) For investments at Indian reservations
17 and Federal lands, priority shall be given to
18 capital investments, and to projects and activi-
19 ties that can be completed within 2 years of en-
20 actment of this Act.

21 (C) One year following the enactment of
22 this Act, to ensure the prompt use of the fund-
23 ing provided for investments at Indian reserva-
24 tions and Federal lands, the Secretary shall
25 have the authority to redistribute unobligated

1 funds within the respective program for which
2 the funds were appropriated.

3 (D) Up to four percent of the funding pro-
4 vided for Indian Reservation Roads may be
5 used by the Secretary of the Interior for pro-
6 gram management and oversight and project-re-
7 lated administrative expenses.

8 (E) Section 134(f)(3)(C)(ii)(II) of title 23,
9 United States Code, shall not apply to funds set
10 aside by this paragraph.

11 (11) JOB TRAINING.—Of the funds provided
12 under this subsection, \$50,000,000 shall be set aside
13 for the development and administration of transpor-
14 tation training programs under section 140(b) title
15 23, United States Code.

16 (A) Funds set aside under this subsection
17 shall be competitively awarded and used for the
18 purpose of providing training, apprenticeship
19 (including Registered Apprenticeship), skill de-
20 velopment, and skill improvement programs, as
21 well as summer transportation institutes and
22 may be transferred to, or administered in part-
23 nership with, the Secretary of Labor and shall
24 demonstrate to the Secretary of Transportation
25 program outcomes, including—

- 1 (i) impact on areas with transpor-
2 tation workforce shortages;
- 3 (ii) diversity of training participants;
- 4 (iii) number of participants obtaining
5 certifications or credentials required for
6 specific types of employment;
- 7 (iv) employment outcome metrics,
8 such as job placement and job retention
9 rates, established in consultation with the
10 Secretary of Labor and consistent with
11 metrics used by programs under the Work-
12 force Investment Act;
- 13 (v) to the extent practical, evidence
14 that the program did not preclude workers
15 that participate in training or apprentice-
16 ship activities under the program from
17 being referred to, or hired on, projects
18 funded under this chapter; and
- 19 (vi) identification of areas of collabo-
20 ration with the Department of Labor pro-
21 grams, including co-enrollment.
- 22 (B) To be eligible to receive a competitively
23 awarded grant under this subsection, a State
24 must certify that at least 0.1 percent of the
25 amounts apportioned under the Surface Trans-

1 portation Program and Bridge Program will be
2 obligated in the first fiscal year after enactment
3 of this Act for job training activities consistent
4 with section 140(b) of title 23, United States
5 Code.

6 (12) DISADVANTAGED BUSINESS ENTER-
7 PRISES.—Of the funds provided under this sub-
8 section, \$10,000,000 shall be set aside for training
9 programs and assistance programs under section
10 140(c) of title 23, United States Code. Funds set
11 aside under this paragraph should be allocated to
12 businesses that have proven success in adding staff
13 while effectively completing projects.

14 (13) STATE PLANNING AND OVERSIGHT EX-
15 PENSES.—Of amounts apportioned under paragraph
16 (4) of this subsection, a State may use up to 0.5
17 percent for activities related to projects funded
18 under this subsection, including activities eligible
19 under sections 134 and 135 of title 23, United
20 States Code, State administration of subgrants, and
21 State oversight of subrecipients.

22 (14) CONDITIONS.—

23 (A) Funds made available under this sub-
24 section shall be administered as if apportioned
25 under chapter 1 of title 23, United States Code,

1 except for funds made available for investments
2 in transportation at Indian reservations and
3 Federal lands, and for the territorial highway
4 program, which shall be administered in accord-
5 ance with chapter 2 of title 23, United States
6 Code, and except for funds made available for
7 disadvantaged business enterprises bonding as-
8 sistance, which shall be administered in accord-
9 ance with chapter 3 of title 49, United States
10 Code.

11 (B) Funds made available under this sub-
12 section shall not be obligated for the purposes
13 authorized under section 115(b) of title 23,
14 United States Code.

15 (C) Funding provided under this sub-
16 section shall be in addition to any and all funds
17 provided for fiscal years 2011 and 2012 in any
18 other Act for “Federal-aid Highways” and shall
19 not affect the distribution of funds provided for
20 “Federal-aid Highways” in any other Act.

21 (D) Section 1101(b) of Public Law 109–59
22 shall apply to funds apportioned under this sub-
23 section.

24 (15) OVERSIGHT.—The Administrator of the
25 Federal Highway Administration may set aside up

1 to 0.15 percent of the funds provided under this
2 subsection to fund the oversight by the Adminis-
3 trator of projects and activities carried out with
4 funds made available to the Federal Highway Ad-
5 ministration in this Act, and such funds shall be
6 available through September 30, 2015.

7 (d) CAPITAL ASSISTANCE FOR HIGH-SPEED RAIL
8 CORRIDORS AND INTERCITY PASSENGER RAIL SERV-
9 ICE.—

10 (1) IN GENERAL.—There is made available to
11 the Secretary of Transportation \$4,000,000,000 for
12 grants for high-speed rail projects as authorized
13 under sections 26104 and 26106 of title 49, United
14 States Code, capital investment grants to support
15 intercity passenger rail service as authorized under
16 section 24406 of title 49, United States Code, and
17 congestion grants as authorized under section 24105
18 of title 49, United States Code, and to enter into co-
19 operative agreements for these purposes as author-
20 ized, except that the Administrator of the Federal
21 Railroad Administration may retain up to one per-
22 cent of the funds provided under this heading to
23 fund the award and oversight by the Administrator
24 of grants made under this subsection, which retained

1 amount shall remain available for obligation until
2 September 30, 2015.

3 (2) AVAILABILITY.—The amounts made avail-
4 able under this subsection shall be available for obli-
5 gation until the date that is two years after the date
6 of the enactment of this Act. The Secretary shall ob-
7 ligate amounts totaling not less than 50 percent of
8 the funds made available within one year of enact-
9 ment and obligate remaining amounts not later than
10 two years after enactment.

11 (3) FEDERAL SHARE.—The Federal share pay-
12 able of the costs for which a grant or cooperative
13 agreements is made under this subsection shall be,
14 at the option of the recipient, up to 100 percent.

15 (4) INTERIM GUIDANCE.—The Secretary shall
16 issue interim guidance to applicants covering appli-
17 cation procedures and administer the grants pro-
18 vided under this subsection pursuant to that guid-
19 ance until final regulations are issued.

20 (5) INTERCITY PASSENGER RAIL CORRIDORS.—
21 Not less than 85 percent of the funds provided
22 under this subsection shall be for cooperative agree-
23 ments that lead to the development of entire seg-
24 ments or phases of intercity or high-speed rail cor-
25 ridors.

1 (6) CONDITIONS.—

2 (A) In addition to the provisions of title
3 49, United States Code, that apply to each of
4 the individual programs funded under this sub-
5 section, subsections 24402(a)(2), 24402(i), and
6 24403 (a) and (c) of title 49, United States
7 Code, shall also apply to the provision of funds
8 provided under this subsection.

9 (B) A project need not be in a State rail
10 plan developed under Chapter 227 of title 49,
11 United States Code, to be eligible for assistance
12 under this subsection.

13 (C) Recipients of grants under this para-
14 graph shall conduct all procurement trans-
15 actions using such grant funds in a manner
16 that provides full and open competition, as de-
17 termined by the Secretary, in compliance with
18 existing labor agreements.

19 (e) CAPITAL GRANTS TO THE NATIONAL RAILROAD
20 PASSENGER CORPORATION.—

21 (1) IN GENERAL.—There is made available
22 \$2,000,000,000 to enable the Secretary of Transpor-
23 tation to make capital grants to the National Rail-
24 road Passenger Corporation (Amtrak), as authorized
25 by section 101(c) of the Passenger Rail Investment

1 and Improvement Act of 2008 (Public Law 110–
2 432).

3 (2) AVAILABILITY.—The amounts made avail-
4 able under this subsection shall be available for obli-
5 gation until the date that is two years after the date
6 of the enactment of this Act. The Secretary shall ob-
7 ligate amounts totaling not less than 50 percent of
8 the funds made available within one year of enact-
9 ment and obligate remaining amounts not later than
10 two years after enactment.

11 (3) PROJECT PRIORITY.—The priority for the
12 use of funds shall be given to projects for the repair,
13 rehabilitation, or upgrade of railroad assets or infra-
14 structure, and for capital projects that expand pas-
15 senger rail capacity including the rehabilitation of
16 rolling stock.

17 (4) CONDITIONS.—

18 (A) None of the funds under this sub-
19 section shall be used to subsidize the operating
20 losses of Amtrak.

21 (B) The funds provided under this sub-
22 section shall be awarded not later than 90 days
23 after the date of enactment of this Act.

24 (C) The Secretary shall take measures to
25 ensure that projects funded under this sub-

1 section shall be completed within 2 years of en-
2 actment of this Act, and shall serve to supple-
3 ment and not supplant planned expenditures for
4 such activities from other Federal, State, local
5 and corporate sources. The Secretary shall cer-
6 tify to the House and Senate Committees on
7 Appropriations in writing compliance with the
8 preceding sentence.

9 (5) OVERSIGHT.—The Administrator of the
10 Federal Railroad Administration may set aside 0.5
11 percent of the funds provided under this subsection
12 to fund the oversight by the Administrator of
13 projects and activities carried out with funds made
14 available in this subsection, and such funds shall be
15 available through September 30, 2015.

16 (f) TRANSIT CAPITAL ASSISTANCE.—

17 (1) IN GENERAL.—There is made available to
18 the Secretary of Transportation \$3,000,000,000 for
19 grants for transit capital assistance grants as de-
20 fined by section 5302(a)(1) of title 49, United
21 States Code. Notwithstanding any provision of chap-
22 ter 53 of title 49, however, a recipient of funding
23 under this subsection may use up to 10 percent of
24 the amount provided for the operating costs of

1 equipment and facilities for use in public transpor-
2 tation or for other eligible activities.

3 (2) FEDERAL SHARE; LIMITATION ON OBLIGA-
4 TIONS.—The applicable requirements of chapter 53
5 of title 49, United States Code, shall apply to fund-
6 ing provided under this subsection, except that the
7 Federal share of the costs for which any grant is
8 made under this subsection shall be, at the option of
9 the recipient, up to 100 percent. The amount made
10 available under this subsection shall not be subject
11 to any limitation on obligations for transit programs
12 set forth in any Act or chapter 53 of title 49.

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.—The Secretary
22 of Transportation shall—

23 (A) provide 80 percent of the funds appro-
24 priated under this subsection for grants under
25 section 5307 of title 49, United States Code,

1 and apportion such funds in accordance with
2 section 5336 of such title;

3 (B) provide 10 percent of the funds appro-
4 priated under this subsection in accordance
5 with section 5340 of such title; and

6 (C) provide 10 percent of the funds appro-
7 priated under this subsection for grants under
8 section 5311 of title 49, United States Code,
9 and apportion such funds in accordance with
10 such section.

11 (5) APPORTIONMENT.—The funds apportioned
12 under this subsection shall be apportioned not later
13 than 21 days after the date of the enactment of this
14 Act.

15 (6) REDISTRIBUTION.—

16 (A) The Secretary shall, 180 days fol-
17 lowing the date of apportionment, withdraw
18 from each urbanized area or State an amount
19 equal to 50 percent of the funds apportioned to
20 such urbanized areas or States less the amount
21 of funding obligated, and the Secretary shall re-
22 distribute such amounts to other urbanized
23 areas or States that have had no funds with-
24 drawn under this proviso utilizing whatever
25 method he deems appropriate to ensure that all

1 funds redistributed under this proviso shall be
2 utilized promptly.

3 (B) One year following the date of appor-
4 tionment, the Secretary shall withdraw from
5 each urbanized area or State any unobligated
6 funds, and the Secretary shall redistribute such
7 amounts to other urbanized areas or States
8 that have had no funds withdrawn under this
9 proviso utilizing whatever method the Secretary
10 deems appropriate to ensure that all funds re-
11 distributed under this proviso shall be utilized
12 promptly.

13 (C) At the request of an urbanized area or
14 State, the Secretary of Transportation may pro-
15 vide an extension of such 1-year period if the
16 Secretary determines that the urbanized area or
17 State has encountered an unworkable bidding
18 environment or other extenuating cir-
19 cumstances. Before granting an extension, the
20 Secretary shall notify in writing the Committee
21 on Transportation and Infrastructure and the
22 Committee on Banking, Housing and Urban
23 Affairs, providing a thorough justification for
24 the extension.

25 (7) CONDITIONS.—

1 (A) Of the funds provided for section 5311
2 of title 49, United States Code, 2.5 percent
3 shall be made available for section 5311(c)(1).

4 (B) Section 1101(b) of Public Law 109–59
5 shall apply to funds appropriated under this
6 subsection.

7 (C) The funds appropriated under this
8 subsection shall not be comingled with any prior
9 year funds.

10 (8) OVERSIGHT.—Notwithstanding any other
11 provision of law, 0.3 percent of the funds provided
12 for grants under section 5307 and section 5340, and
13 0.3 percent of the funds provided for grants under
14 section 5311, shall be available for administrative
15 expenses and program management oversight, and
16 such funds shall be available through September 30,
17 2015.

18 (g) STATE OF GOOD REPAIR.—

19 (1) IN GENERAL.—There is made available to
20 the Secretary of Transportation \$6,000,000,000 for
21 capital expenditures as authorized by sections
22 5309(b) (2) and (3) of title 49, United States Code.

23 (2) FEDERAL SHARE.—The applicable require-
24 ments of chapter 53 of title 49, United States Code,
25 shall apply, except that the Federal share of the

1 costs for which a grant is made under this sub-
2 section shall be, at the option of the recipient, up to
3 100 percent.

4 (3) AVAILABILITY.—The amounts made avail-
5 able under this subsection shall be available for obli-
6 gation until the date that is two years after the date
7 of the enactment of this Act. The Secretary shall ob-
8 ligate amounts totaling not less than 50 percent of
9 the funds made available within one year of enact-
10 ment and obligate remaining amounts not later than
11 two years after enactment.

12 (4) DISTRIBUTION OF FUNDS.—

13 (A) The Secretary of Transportation shall
14 apportion not less than 75 percent of the funds
15 under this subsection for the modernization of
16 fixed guideway systems, pursuant to the for-
17 mula set forth in section 5336(b) title 49,
18 United States Code, other than subsection
19 (b)(2)(A)(ii).

20 (B) Of the funds appropriated under this
21 subsection, not less than 25 percent shall be
22 available for the restoration or replacement of
23 existing public transportation assets related to
24 bus systems, pursuant to the formula set forth
25 in section 5336 other than subsection (b).

1 (5) APPORTIONMENT.—The funds made avail-
2 able under this subsection shall be apportioned not
3 later than 30 days after the date of the enactment
4 of this Act.

5 (6) REDISTRIBUTION.—

6 (A) The Secretary shall, 180 days fol-
7 lowing the date of apportionment, withdraw
8 from each urbanized area an amount equal to
9 50 percent of the funds apportioned to such ur-
10 banized area less the amount of funding obli-
11 gated, and the Secretary shall redistribute such
12 amounts to other urbanized areas that have had
13 no funds withdrawn under this paragraph uti-
14 lizing whatever method the Secretary deems ap-
15 propriate to ensure that all funds redistributed
16 under this paragraph shall be utilized promptly.

17 (B) One year following the date of appor-
18 tionment, the Secretary shall withdraw from
19 each urbanized area any unobligated funds, and
20 the Secretary shall redistribute such amounts to
21 other urbanized areas that have had no funds
22 withdrawn under this paragraph, utilizing what-
23 ever method the Secretary deems appropriate to
24 ensure that all funds redistributed under this
25 paragraph shall be utilized promptly.

1 (C) At the request of an urbanized area,
2 the Secretary may provide an extension of the
3 1-year period if the Secretary finds that the ur-
4 banized area has encountered an unworkable
5 bidding environment or other extenuating cir-
6 cumstances. Before granting an extension, the
7 Secretary shall notify the Committee on Trans-
8 portation and Infrastructure and the Com-
9 mittee on Banking, Housing, and Urban Af-
10 fairs, providing a thorough justification for the
11 extension.

12 (7) CONDITIONS.—

13 (A) The provisions of section 1101(b) of
14 Public Law 109–59 shall apply to funds made
15 available under this subsection.

16 (B) The funds appropriated under this
17 subsection shall not be commingled with any
18 prior year funds.

19 (8) OVERSIGHT.—Notwithstanding any other
20 provision of law, 0.3 percent of the funds under this
21 subsection shall be available for administrative ex-
22 penses and program management oversight and shall
23 remain available for obligation until September 30,
24 2015.

1 (h) TRANSPORTATION INFRASTRUCTURE GRANTS
2 AND FINANCING.—

3 (1) IN GENERAL.—There is made available to
4 the Secretary of Transportation \$5,000,000,000 for
5 capital investments in surface transportation infra-
6 structure. The Secretary shall distribute funds pro-
7 vided under this subsection as discretionary grants
8 to be awarded to State and local governments or
9 transit agencies on a competitive basis for projects
10 that will have a significant impact on the Nation, a
11 metropolitan area, or a region.

12 (2) FEDERAL SHARE; LIMITATION ON OBLIGA-
13 TIONS.—The Federal share payable of the costs for
14 which a grant is made under this subsection, shall
15 be 100 percent.

16 (3) AVAILABILITY.—The amounts made avail-
17 able under this subsection shall be available for obli-
18 gation until the date that is two years after the date
19 of the enactment of this Act. The Secretary shall ob-
20 ligate amounts totaling not less than 50 percent of
21 the funds made available within one year of enact-
22 ment and obligate remaining amounts not later than
23 two years after enactment.

24 (4) PROJECT ELIGIBILITY.—Projects eligible for
25 funding provided under this subsection include—

1 (A) highway or bridge projects eligible
2 under title 23, United States Code, including
3 interstate rehabilitation, improvements to the
4 rural collector road system, the reconstruction
5 of overpasses and interchanges, bridge replace-
6 ments, seismic retrofit projects for bridges, and
7 road realignments;

8 (B) public transportation projects eligible
9 under chapter 53 of title 49, United States
10 Code, including investments in projects partici-
11 pating in the New Starts or Small Starts pro-
12 grams that will expedite the completion of those
13 projects and their entry into revenue service;

14 (C) passenger and freight rail transpor-
15 tation projects; and

16 (D) port infrastructure investments, in-
17 cluding projects that connect ports to other
18 modes of transportation and improve the effi-
19 ciency of freight movement.

20 (5) TIFIA PROGRAM.—The Secretary may
21 transfer to the Federal Highway Administration
22 funds made available under this subsection for the
23 purpose of paying the subsidy and administrative
24 costs of projects eligible for federal credit assistance
25 under chapter 6 of title 23, United States Code, if

1 the Secretary finds that such use of the funds would
2 advance the purposes of this subsection.

3 (6) PROJECT PRIORITY.—The Secretary shall
4 give priority to projects that are expected to be com-
5 pleted within 3 years of the date of the enactment
6 of this Act.

7 (7) DEADLINE FOR ISSUANCE OF COMPETITION
8 CRITERIA.—The Secretary shall publish criteria on
9 which to base the competition for any grants award-
10 ed under this subsection not later than 90 days after
11 enactment of this Act. The Secretary shall require
12 applications for funding provided under this sub-
13 section to be submitted not later than 180 days after
14 the publication of the criteria, and announce all
15 projects selected to be funded from such funds not
16 later than 1 year after the date of the enactment of
17 the Act.

18 (8) APPLICABILITY OF TITLE 40.—Each project
19 conducted using funds provided under this sub-
20 section shall comply with the requirements of sub-
21 chapter IV of chapter 31 of title 40, United States
22 Code.

23 (9) ADMINISTRATIVE EXPENSES.—The Sec-
24 retary may retain up to one-half of one percent of
25 the funds provided under this subsection, and may

1 transfer portions of those funds to the Administra-
2 tors of the Federal Highway Administration, the
3 Federal Transit Administration, the Federal Rail-
4 road Administration and the Maritime Administra-
5 tion, to fund the award and oversight of grants
6 made under this subsection. Funds retained shall re-
7 main available for obligation until September 30,
8 2015.

9 (i) LOCAL HIRING.—

10 (1) IN GENERAL.—In the case of the funding
11 made available under subsections (a) through (h) of
12 this section, the Secretary of Transportation may es-
13 tablish standards under which a contract for con-
14 struction may be advertised that contains require-
15 ments for the employment of individuals residing in
16 or adjacent to any of the areas in which the work
17 is to be performed to perform construction work re-
18 quired under the contract, provided that—

19 (A) all or part of the construction work
20 performed under the contract occurs in an area
21 designated by the Secretary as an area of high
22 unemployment, using data reported by the
23 United States Department of Labor, Bureau of
24 Labor Statistics;

1 (B) the estimated cost of the project of
2 which the contract is a part is greater than \$10
3 million, except that the estimated cost of the
4 project in the case of construction funded under
5 subsection (c) shall be greater than \$50 million;
6 and

7 (C) the recipient may not require the hir-
8 ing of individuals who do not have the nec-
9 essary skills to perform work in any craft or
10 trade; provided that the recipient may require
11 the hiring of such individuals if the recipient es-
12 tablishes reasonable provisions to train such in-
13 dividuals to perform any such work under the
14 contract effectively.

15 (2) PROJECT STANDARDS.—

16 (A) IN GENERAL.—Any standards estab-
17 lished by the Secretary under this section shall
18 ensure that any requirements specified under
19 subsection (c)(1)—

20 (i) do not compromise the quality of
21 the project;

22 (ii) are reasonable in scope and appli-
23 cation;

24 (iii) do not unreasonably delay the
25 completion of the project; and

1 (iv) do not unreasonably increase the
2 cost of the project.

3 (B) AVAILABLE PROGRAMS.—The Sec-
4 retary shall make available to recipients the
5 workforce development and training programs
6 set forth in section 24604(e)(1)(D) of this title
7 to assist recipients who wish to establish train-
8 ing programs that satisfy the provisions of sub-
9 section (c)(1)(C). The Secretary of Labor shall
10 make available its qualifying workforce and
11 training development programs to recipients
12 who wish to establish training programs that
13 satisfy the provisions of subsection (c)(1)(C).

14 (3) IMPLEMENTING REGULATIONS.—The Sec-
15 retary shall promulgate final regulations to imple-
16 ment the authority of this subsection.

17 (j) ADMINISTRATIVE PROVISIONS.—

18 (1) APPLICABILITY OF TITLE 40.—Each project
19 conducted using funds provided under this subtitle
20 shall comply with the requirements of subchapter IV
21 of chapter 31 of title 40, United States Code.

22 (2) BUY AMERICAN.—Section 1605 of division
23 A of the American Recovery and Reinvestment Act
24 of 2009 (Public Law 111–5) applies to each project
25 conducted using funds provided under this subtitle.

1 **Subtitle F—Building and Upgrad-**
2 **ing Infrastructure for Long-**
3 **Term Development**

4 **SEC. 242. SHORT TITLE; TABLE OF CONTENTS.**

5 (a) SHORT TITLE.—This subtitle may be cited as the
6 “Building and Upgrading Infrastructure for Long-Term
7 Development Act”.

8 **SEC. 243. FINDINGS AND PURPOSE.**

9 (a) FINDINGS.—Congress finds that—

10 (1) infrastructure has always been a vital ele-
11 ment of the economic strength of the United States
12 and a key indicator of the international leadership of
13 the United States;

14 (2) the Erie Canal, the Hoover Dam, the rail-
15 roads, and the interstate highway system are all tes-
16 taments to American ingenuity and have helped pro-
17 pel and maintain the United States as the world’s
18 largest economy;

19 (3) according to the World Economic Forum’s
20 Global Competitiveness Report, the United States
21 fell to second place in 2009, and dropped to fourth
22 place overall in 2010, however, in the “Quality of
23 overall infrastructure” category of the same report,
24 the United States ranked twenty-third in the world;

1 (4) according to the World Bank’s 2010 Logis-
2 tic Performance Index, the capacity of countries to
3 efficiently move goods and connect manufacturers
4 and consumers with international markets is improv-
5 ing around the world, and the United States now
6 ranks seventh in the world in logistics-related infra-
7 structure behind countries from both Europe and
8 Asia;

9 (5) according to a January 2009 report from
10 the University of Massachusetts/Alliance for Amer-
11 ican Manufacturing entitled “Employment, Produc-
12 tivity and Growth,” infrastructure investment is a
13 “highly effective engine of job creation”;

14 (6) according to the American Society of Civil
15 Engineers, the current condition of the infrastruc-
16 ture in the United States earns a grade point aver-
17 age of D, and an estimated \$2,200,000,000,000 in-
18 vestment is needed over the next 5 years to bring
19 American infrastructure up to adequate condition;

20 (7) according to the National Surface Trans-
21 portation Policy and Revenue Study Commission,
22 \$225,000,000,000 is needed annually from all
23 sources for the next 50 years to upgrade the United
24 States surface transportation system to a state of
25 good repair and create a more advanced system;

1 (8) the current infrastructure financing mecha-
2 nisms of the United States, both on the Federal and
3 State level, will fail to meet current and foreseeable
4 demands and will create large funding gaps;

5 (9) published reports state that there may not
6 be enough demand for municipal bonds to maintain
7 the same level of borrowing at the same rates, re-
8 sulting in significantly decreased infrastructure in-
9 vestment at the State and local level;

10 (10) current funding mechanisms are not read-
11 ily scalable and do not—

12 (A) serve large in-State or cross jurisdic-
13 tion infrastructure projects, projects of regional
14 or national significance, or projects that cross
15 sector silos;

16 (B) sufficiently catalyze private sector in-
17 vestment; or

18 (C) ensure the optimal return on public re-
19 sources;

20 (11) although grant programs of the United
21 States Government must continue to play a central
22 role in financing the transportation, environment,
23 and energy infrastructure needs of the United
24 States, current and foreseeable demands on existing
25 Federal, State, and local funding for infrastructure

1 expansion clearly exceed the resources to support
2 these programs by margins wide enough to prompt
3 serious concerns about the United States ability to
4 sustain long-term economic development, produc-
5 tivity, and international competitiveness;

6 (12) the capital markets, including pension
7 funds, private equity funds, mutual funds, sovereign
8 wealth funds, and other investors, have a growing
9 interest in infrastructure investment and represent
10 hundreds of billions of dollars of potential invest-
11 ment; and

12 (13) the establishment of a United States Gov-
13 ernment-owned, independent, professionally managed
14 institution that could provide credit support to quali-
15 fied infrastructure projects of regional and national
16 significance, making transparent merit-based invest-
17 ment decisions based on the commercial viability of
18 infrastructure projects, would catalyze the participa-
19 tion of significant private investment capital.

20 (b) PURPOSE.—The purpose of this Act is to facili-
21 tate investment in, and long-term financing of, economi-
22 cally viable infrastructure projects of regional or national
23 significance in a manner that both complements existing
24 Federal, State, local, and private funding sources for these
25 projects and introduces a merit-based system for financing

1 such projects, in order to mobilize significant private sec-
2 tor investment, create jobs, and ensure United States com-
3 petitiveness through an institution that limits the need for
4 ongoing Federal funding.

5 **SEC. 244. DEFINITIONS.**

6 For purposes of this Act, the following definitions
7 shall apply:

8 (1) AIFA.—The term “AIFA” means the
9 American Infrastructure Financing Authority estab-
10 lished under this Act.

11 (2) BLIND TRUST.—The term “blind trust”
12 means a trust in which the beneficiary has no knowl-
13 edge of the specific holdings and no rights over how
14 those holdings are managed by the fiduciary of the
15 trust prior to the dissolution of the trust.

16 (3) BOARD OF DIRECTORS.—The term “Board
17 of Directors” means Board of Directors of AIFA.

18 (4) CHAIRPERSON.—The term “Chairperson”
19 means the Chairperson of the Board of Directors of
20 AIFA.

21 (5) CHIEF EXECUTIVE OFFICER.—The term
22 “chief executive officer” means the chief executive
23 officer of AIFA, appointed under section 247.

1 (6) COST.—The term “cost” has the same
2 meaning as in section 502 of the Federal Credit Re-
3 form Act of 1990 (2 U.S.C. 661a).

4 (7) DIRECT LOAN.—The term “direct loan” has
5 the same meaning as in section 502 of the Federal
6 Credit Reform Act of 1990 (2 U.S.C. 661a).

7 (8) ELIGIBLE ENTITY.—The term “eligible enti-
8 ty” means an individual, corporation, partnership
9 (including a public-private partnership), joint ven-
10 ture, trust, State, or other non-Federal govern-
11 mental entity, including a political subdivision or any
12 other instrumentality of a State, or a revolving fund.

13 (9) INFRASTRUCTURE PROJECT.—

14 (A) IN GENERAL.—The term “eligible in-
15 frastructure project” means any non-Federal
16 transportation, water, or energy infrastructure
17 project, or an aggregation of such infrastruc-
18 ture projects, as provided in this Act.

19 (B) TRANSPORTATION INFRASTRUCTURE
20 PROJECT.—The term “transportation infra-
21 structure project” means the construction, al-
22 teration, or repair, including the facilitation of
23 intermodal transit, of the following subsectors:

24 (i) Highway or road.

25 (ii) Bridge.

- 1 (iii) Mass transit.
- 2 (iv) Inland waterways.
- 3 (v) Commercial ports.
- 4 (vi) Airports.
- 5 (vii) Air traffic control systems.
- 6 (viii) Passenger rail, including high-
- 7 speed rail.
- 8 (ix) Freight rail systems.

9 (C) WATER INFRASTRUCTURE PROJECT.—

10 The term “water infrastructure project” means
 11 the construction, consolidation, alteration, or
 12 repair of the following subsectors:

- 13 (i) Waterwaste treatment facility.
- 14 (ii) Storm water management system.
- 15 (iii) Dam.
- 16 (iv) Solid waste disposal facility.
- 17 (v) Drinking water treatment facility.
- 18 (vi) Levee.
- 19 (vii) Open space management system.

20 (D) ENERGY INFRASTRUCTURE

21 PROJECT.—The term “energy infrastructure
 22 project” means the construction, alteration, or
 23 repair of the following subsectors:

- 24 (i) Pollution reduced energy genera-
- 25 tion.

1 (ii) Transmission and distribution.

2 (iii) Storage.

3 (iv) Energy efficiency enhancements
4 for buildings, including public and com-
5 mercial buildings.

6 (E) BOARD AUTHORITY TO MODIFY SUB-
7 SECTORS.—The Board of Directors may make
8 modifications, at the discretion of the Board, to
9 the subsectors described in this paragraph by a
10 vote of not fewer than 5 of the voting members
11 of the Board of Directors.

12 (10) INVESTMENT PROSPECTUS.—

13 (A) The term “investment prospectus”
14 means the processes and publications described
15 below that will guide the priorities and strategic
16 focus for the Bank’s investments. The invest-
17 ment prospectus shall follow rulemaking proce-
18 dures under section 553 of title 5, United
19 States Code.

20 (B) The Bank shall publish a detailed de-
21 scription of its strategy in an Investment Pro-
22 spectus within one year of the enactment of this
23 subchapter. The Investment Prospectus shall—

24 (i) specify what the Bank shall con-
25 sider significant to the economic competi-

1 tiveness of the United States or a region
2 thereof in a manner consistent with the
3 primary objective;

4 (ii) specify the priorities and strategic
5 focus of the Bank in forwarding its stra-
6 tegic objectives and carrying out the Bank
7 strategy;

8 (iii) specify the priorities and strategic
9 focus of the Bank in promoting greater ef-
10 ficiency in the movement of freight;

11 (iv) specify the priorities and strategic
12 focus of the Bank in promoting the use of
13 innovation and best practices in the plan-
14 ning, design, development and delivery of
15 projects;

16 (v) describe in detail the framework
17 and methodology for calculating applica-
18 tion qualification scores and associated
19 ranges as specified in this subchapter,
20 along with the data to be requested from
21 applicants and the mechanics of calcula-
22 tions to be applied to that data to deter-
23 mine qualification scores and ranges;

24 (vi) describe how selection criteria will
25 be applied by the Chief Executive Officer

1 in determining the competitiveness of an
2 application and its qualification score and
3 range relative to other current applications
4 and previously funded applications; and

5 (vii) describe how the qualification
6 score and range methodology and project
7 selection framework are consistent with
8 maximizing the Bank goals in both urban
9 and rural areas.

10 (C) The Investment Prospectus and any
11 subsequent updates thereto shall be approved
12 by a majority vote of the Board of Directors
13 prior to publication.

14 (D) The Bank shall update the Investment
15 Prospectus on every biennial anniversary of its
16 original publication.

17 (11) INVESTMENT-GRADE RATING.—The term
18 “investment-grade rating” means a rating of BBB
19 minus, Baa3, or higher assigned to an infrastructure
20 project by a ratings agency.

21 (12) LOAN GUARANTEE.—The term “loan guar-
22 antee” has the same meaning as in section 502 of
23 the Federal Credit Reform Act of 1990 (2 U.S.C.
24 661a).

1 (13) PUBLIC-PRIVATE PARTNERSHIP.—The
2 term “public-private partnership” means any eligible
3 entity—

4 (A)(i) which is undertaking the develop-
5 ment of all or part of an infrastructure project
6 that will have a public benefit, pursuant to re-
7 quirements established in one or more contracts
8 between the entity and a State or an instru-
9 mentality of a State; or

10 (ii) the activities of which, with respect to
11 such an infrastructure project, are subject to
12 regulation by a State or any instrumentality of
13 a State;

14 (B) which owns, leases, or operates or will
15 own, lease, or operate, the project in whole or
16 in part; and

17 (C) the participants in which include not
18 fewer than 1 nongovernmental entity with sig-
19 nificant investment and some control over the
20 project or project vehicle.

21 (14) RURAL INFRASTRUCTURE PROJECT.—The
22 term “rural infrastructure project” means an infra-
23 structure project in a rural area, as that term is de-
24 fined in section 343(a)(13)(A) of the Consolidated

1 Farm and Rural Development Act (7 U.S.C.
2 1991(a)(13)(A)).

3 (15) SECRETARY.—Unless the context other-
4 wise requires, the term “Secretary” means the Sec-
5 retary of the Treasury or the designee thereof.

6 (16) SENIOR MANAGEMENT.—The term “senior
7 management” means the chief financial officer, chief
8 risk officer, chief compliance officer, general counsel,
9 chief lending officer, and chief operations officer of
10 AIFA established under section 249, and such other
11 officers as the Board of Directors may, by majority
12 vote, add to senior management.

13 (17) STATE.—The term “State” includes the
14 District of Columbia, Puerto Rico, Guam, American
15 Samoa, the Virgin Islands, the Commonwealth of
16 Northern Mariana Islands, and any other territory
17 of the United States.

18 **PART I—AMERICAN INFRASTRUCTURE**

19 **FINANCING AUTHORITY**

20 **SEC. 245. ESTABLISHMENT AND GENERAL AUTHORITY OF**

21 **AIFA.**

22 (a) ESTABLISHMENT OF AIFA.—The American In-
23 frastructure Financing Authority is established as a whol-
24 ly owned Government corporation.

1 (b) GENERAL AUTHORITY OF AIFA.—AIFA shall
2 provide direct loans and loan guarantees to facilitate infra-
3 structure projects that are both economically viable and
4 of regional or national significance, and shall have such
5 other authority, as provided in this Act.

6 (c) INCORPORATION.—

7 (1) IN GENERAL.—The Board of Directors first
8 appointed shall be deemed the incorporator of AIFA,
9 and the incorporation shall be held to have been ef-
10 fected from the date of the first meeting of the
11 Board of Directors.

12 (2) CORPORATE OFFICE.—AIFA shall—

13 (A) maintain an office in Washington, DC;

14 and

15 (B) for purposes of venue in civil actions,
16 be considered to be a resident of Washington,
17 DC.

18 (d) RESPONSIBILITY OF THE SECRETARY.—The Sec-
19 retary shall take such action as may be necessary to assist
20 in implementing AIFA, and in carrying out the purpose
21 of this Act.

22 (e) RULE OF CONSTRUCTION.—Chapter 91 of title
23 31, United States Code, does not apply to AIFA, unless
24 otherwise specifically provided in this Act.

1 **SEC. 246. VOTING MEMBERS OF THE BOARD OF DIREC-**
2 **TORS.**

3 (a) VOTING MEMBERSHIP OF THE BOARD OF DIREC-
4 TORS.—

5 (1) IN GENERAL.—AIFA shall have a Board of
6 Directors consisting of 7 voting members appointed
7 by the President, by and with the advice and consent
8 of the Senate, not more than 4 of whom shall be
9 from the same political party.

10 (2) CHAIRPERSON.—One of the voting members
11 of the Board of Directors shall be designated by the
12 President to serve as Chairperson thereof.

13 (3) CONGRESSIONAL RECOMMENDATIONS.—Not
14 later than 30 days after the date of enactment of
15 this Act, the majority leader of the Senate, the mi-
16 nority leader of the Senate, the Speaker of the
17 House of Representatives, and the minority leader of
18 the House of Representatives shall each submit a
19 recommendation to the President for appointment of
20 a member of the Board of Directors, after consulta-
21 tion with the appropriate committees of Congress.

22 (b) VOTING RIGHTS.—Each voting member of the
23 Board of Directors shall have an equal vote in all decisions
24 of the Board of Directors.

25 (c) QUALIFICATIONS OF VOTING MEMBERS.—Each
26 voting member of the Board of Directors shall—

- 1 (1) be a citizen of the United States; and
- 2 (2) have significant demonstrated expertise in—
- 3 (A) the management and administration of
- 4 a financial institution relevant to the operation
- 5 of AIFA; or a public financial agency or author-
- 6 ity; or
- 7 (B) the financing, development, or oper-
- 8 ation of infrastructure projects; or
- 9 (C) analyzing the economic benefits of in-
- 10 frastructure investment.

11 (d) TERMS.—

12 (1) IN GENERAL.—Except as otherwise pro-

13 vided in this Act, each voting member of the Board

14 of Directors shall be appointed for a term of 4 years.

15 (2) INITIAL STAGGERED TERMS.—Of the voting

16 members first appointed to the Board of Directors—

17 (A) the initial Chairperson and 3 of the

18 other voting members shall each be appointed

19 for a term of 4 years; and

20 (B) the remaining 3 voting members shall

21 each be appointed for a term of 2 years.

22 (3) DATE OF INITIAL NOMINATIONS.—The ini-

23 tial nominations for the appointment of all voting

24 members of the Board of Directors shall be made

1 not later than 60 days after the date of enactment
2 of this Act.

3 (4) BEGINNING OF TERM.—The term of each of
4 the initial voting members appointed under this sec-
5 tion shall commence immediately upon the date of
6 appointment, except that, for purposes of calculating
7 the term limits specified in this subsection, the ini-
8 tial terms shall each be construed as beginning on
9 January 22 of the year following the date of the ini-
10 tial appointment.

11 (5) VACANCIES.—A vacancy in the position of
12 a voting member of the Board of Directors shall be
13 filled by the President, and a member appointed to
14 fill a vacancy on the Board of Directors occurring
15 before the expiration of the term for which the pred-
16 ecessor was appointed shall be appointed only for
17 the remainder of that term.

18 (e) MEETINGS.—

19 (1) OPEN TO THE PUBLIC; NOTICE.—Except as
20 provided in paragraph (3), all meetings of the Board
21 of Directors shall be—

22 (A) open to the public; and

23 (B) preceded by reasonable public notice.

24 (2) FREQUENCY.—The Board of Directors shall
25 meet not later than 60 days after the date on which

1 all members of the Board of Directors are first ap-
2 pointed, at least quarterly thereafter, and otherwise
3 at the call of either the Chairperson or 5 voting
4 members of the Board of Directors.

5 (3) EXCEPTION FOR CLOSED MEETINGS.—The
6 voting members of the Board of Directors may, by
7 majority vote, close a meeting to the public if, dur-
8 ing the meeting to be closed, there is likely to be dis-
9 closed proprietary or sensitive information regarding
10 an infrastructure project under consideration for as-
11 sistance under this Act. The Board of Directors
12 shall prepare minutes of any meeting that is closed
13 to the public, and shall make such minutes available
14 as soon as practicable, not later than 1 year after
15 the date of the closed meeting, with any necessary
16 redactions to protect any proprietary or sensitive in-
17 formation.

18 (4) QUORUM.—For purposes of meetings of the
19 Board of Directors, 5 voting members of the Board
20 of Directors shall constitute a quorum.

21 (f) COMPENSATION OF MEMBERS.—Each voting
22 member of the Board of Directors shall be compensated
23 at a rate equal to the daily equivalent of the annual rate
24 of basic pay prescribed for level III of the Executive
25 Schedule under section 5314 of title 5, United States

1 Code, for each day (including travel time) during which
2 the member is engaged in the performance of the duties
3 of the Board of Directors.

4 (g) CONFLICTS OF INTEREST.—A voting member of
5 the Board of Directors may not participate in any review
6 or decision affecting an infrastructure project under con-
7 sideration for assistance under this Act, if the member has
8 or is affiliated with an entity who has a financial interest
9 in such project.

10 **SEC. 247. CHIEF EXECUTIVE OFFICER OF AIFA.**

11 (a) IN GENERAL.—The chief executive officer of
12 AIFA shall be a nonvoting member of the Board of Direc-
13 tors, who shall be responsible for all activities of AIFA,
14 and shall support the Board of Directors as set forth in
15 this Act and as the Board of Directors deems necessary
16 or appropriate.

17 (b) APPOINTMENT AND TENURE OF THE CHIEF EX-
18 ECUTIVE OFFICER.—

19 (1) IN GENERAL.—The President shall appoint
20 the chief executive officer, by and with the advice
21 and consent of the Senate.

22 (2) TERM.—The chief executive officer shall be
23 appointed for a term of 6 years.

24 (3) VACANCIES.—Any vacancy in the office of
25 the chief executive officer shall be filled by the Presi-

1 dent, and the person appointed to fill a vacancy in
2 that position occurring before the expiration of the
3 term for which the predecessor was appointed shall
4 be appointed only for the remainder of that term.

5 (c) QUALIFICATIONS.—The chief executive officer—

6 (1) shall have significant expertise in manage-
7 ment and administration of a financial institution,
8 or significant expertise in the financing and develop-
9 ment of infrastructure projects, or significant exper-
10 tise in analyzing the economic benefits of infrastruc-
11 ture investment; and

12 (2) may not—

13 (A) hold any other public office;

14 (B) have any financial interest in an infra-
15 structure project then being considered by the
16 Board of Directors, unless that interest is
17 placed in a blind trust; or

18 (C) have any financial interest in an in-
19 vestment institution or its affiliates or any
20 other entity seeking or likely to seek financial
21 assistance for any infrastructure project from
22 AIFA, unless any such interest is placed in a
23 blind trust for the tenure of the service of the
24 chief executive officer plus 2 additional years.

1 (d) RESPONSIBILITIES.—The chief executive officer
2 shall have such executive functions, powers, and duties as
3 may be prescribed by this Act, the bylaws of AIFA, or
4 the Board of Directors, including—

5 (1) responsibility for the development and im-
6 plementation of the strategy of AIFA, including—

7 (A) the development and submission to the
8 Board of Directors of the investment pro-
9 spectus, the annual business plans and budget;

10 (B) the development and submission to the
11 Board of Directors of a long-term strategic
12 plan; and

13 (C) the development, revision, and submis-
14 sion to the Board of Directors of internal poli-
15 cies; and

16 (2) responsibility for the management and over-
17 sight of the daily activities, decisions, operations,
18 and personnel of AIFA, including—

19 (A) the appointment of senior manage-
20 ment, subject to approval by the voting mem-
21 bers of the Board of Directors, and the hiring
22 and termination of all other AIFA personnel;

23 (B) requesting the detail, on a reimburs-
24 able basis, of personnel from any Federal agen-
25 cy having specific expertise not available from

1 within AIFA, following which request the head
2 of the Federal agency may detail, on a reim-
3 bursable basis, any personnel of such agency
4 reasonably requested by the chief executive offi-
5 cer;

6 (C) assessing and recommending in the
7 first instance, for ultimate approval or dis-
8 approval by the Board of Directors, compensa-
9 tion and adjustments to compensation of senior
10 management and other personnel of AIFA as
11 may be necessary for carrying out the functions
12 of AIFA;

13 (D) ensuring, in conjunction with the gen-
14 eral counsel of AIFA, that all activities of
15 AIFA are carried out in compliance with appli-
16 cable law;

17 (E) overseeing the involvement of AIFA in
18 all projects, including—

19 (i) developing eligible projects for
20 AIFA financial assistance;

21 (ii) determining the terms and condi-
22 tions of all financial assistance packages;

23 (iii) monitoring all infrastructure
24 projects assisted by AIFA, including re-
25 sponsibility for ensuring that the proceeds

1 of any loan made, guaranteed, or partici-
2 pated in are used only for the purposes for
3 which the loan or guarantee was made;

4 (iv) preparing and submitting for ap-
5 proval by the Board of Directors the docu-
6 ments required under paragraph (1); and

7 (v) ensuring the implementation of de-
8 cisions of the Board of Directors; and

9 (F) such other activities as may be nec-
10 essary or appropriate in carrying out this Act.

11 (e) COMPENSATION.—

12 (1) IN GENERAL.—Any compensation assess-
13 ment or recommendation by the chief executive offi-
14 cer under this section shall be without regard to the
15 provisions of chapter 51 or subchapter III of chapter
16 53 of title 5, United States Code.

17 (2) CONSIDERATIONS.—The compensation as-
18 sessment or recommendation required under this
19 subsection shall take into account merit principles,
20 where applicable, as well as the education, experi-
21 ence, level of responsibility, geographic differences,
22 and retention and recruitment needs in determining
23 compensation of personnel.

1 **SEC. 248. POWERS AND DUTIES OF THE BOARD OF DIREC-**
2 **TORS.**

3 The Board of Directors shall—

4 (1) as soon as is practicable after the date on
5 which all members are appointed, approve or dis-
6 approve senior management appointed by the chief
7 executive officer;

8 (2) not later than 180 days after the date on
9 which all members are appointed—

10 (A) develop and approve the bylaws of
11 AIFA, including bylaws for the regulation of
12 the affairs and conduct of the business of
13 AIFA, consistent with the purpose, goals, objec-
14 tives, and policies set forth in this Act;

15 (B) establish subcommittees, including an
16 audit committee that is composed solely of
17 members of the Board of Directors who are
18 independent of the senior management of
19 AIFA;

20 (C) develop and approve, in consultation
21 with senior management, a conflict-of-interest
22 policy for the Board of Directors and for senior
23 management;

24 (D) approve or disapprove internal policies
25 that the chief executive officer shall submit to
26 the Board of Directors, including—

- 1 (i) policies regarding the loan applica-
2 tion and approval process, including—
- 3 (I) disclosure and application
4 procedures to be followed by entities
5 in the course of nominating infra-
6 structure projects for assistance under
7 this Act;
- 8 (II) guidelines for the selection
9 and approval of projects;
- 10 (III) specific criteria for deter-
11 mining eligibility for project selection,
12 consistent with title II; and
- 13 (IV) standardized terms and con-
14 ditions, fee schedules, or legal require-
15 ments of a contract or program, so as
16 to carry out this Act; and
- 17 (ii) operational guidelines; and
- 18 (E) approve or disapprove a multi-year or
19 1-year business plan and budget for AIFA;
- 20 (3) ensure that AIFA is at all times operated
21 in a manner that is consistent with this Act, by—
- 22 (A) monitoring and assessing the effective-
23 ness of AIFA in achieving its strategic goals;
- 24 (B) periodically reviewing internal policies;

1 (C) reviewing and approving annual busi-
2 ness plans, annual budgets, and long-term
3 strategies submitted by the chief executive offi-
4 cer;

5 (D) reviewing and approving annual re-
6 ports submitted by the chief executive officer;

7 (E) engaging one or more external audi-
8 tors, as set forth in this Act; and

9 (F) reviewing and approving all changes to
10 the organization of senior management;

11 (4) appoint and fix, by a vote of 5 of the 7 vot-
12 ing members of the Board of Directors, and without
13 regard to the provisions of chapter 51 or subchapter
14 III of chapter 53 of title 5, United States Code, the
15 compensation and adjustments to compensation of
16 all AIFA personnel, provided that in appointing and
17 fixing any compensation or adjustments to com-
18 pensation under this paragraph, the Board shall—

19 (A) consult with, and seek to maintain
20 comparability with, other comparable Federal
21 personnel;

22 (B) consult with the Office of Personnel
23 Management; and

24 (C) carry out such duties consistent with
25 merit principles, where applicable, as well as the

1 education, experience, level of responsibility, ge-
2 ographic differences, and retention and recruit-
3 ment needs in determining compensation of per-
4 sonnel;

5 (5) establish such other criteria, requirements,
6 or procedures as the Board of Directors may con-
7 sider to be appropriate in carrying out this Act;

8 (6) serve as the primary liaison for AIFA in
9 interactions with Congress, the Executive Branch,
10 and State and local governments, and to represent
11 the interests of AIFA in such interactions and oth-
12 ers;

13 (7) approve by a vote of 5 of the 7 voting mem-
14 bers of the Board of Directors any changes to the
15 bylaws or internal policies of AIFA;

16 (8) have the authority and responsibility—

17 (A) to oversee entering into and carry out
18 such contracts, leases, cooperative agreements,
19 or other transactions as are necessary to carry
20 out this Act with—

21 (i) any Federal department or agency;

22 (ii) any State, territory, or possession

23 (or any political subdivision thereof, includ-
24 ing State infrastructure banks) of the

25 United States; and

1 (iii) any individual, public-private
2 partnership, firm, association, or corpora-
3 tion;

4 (B) to approve of the acquisition, lease,
5 pledge, exchange, and disposal of real and per-
6 sonal property by AIFA and otherwise approve
7 the exercise by AIFA of all of the usual inci-
8 dents of ownership of property, to the extent
9 that the exercise of such powers is appropriate
10 to and consistent with the purposes of AIFA;

11 (C) to determine the character of, and the
12 necessity for, the obligations and expenditures
13 of AIFA, and the manner in which the obliga-
14 tions and expenditures will be incurred, allowed,
15 and paid, subject to this Act and other Federal
16 law specifically applicable to wholly owned Fed-
17 eral corporations;

18 (D) to execute, in accordance with applica-
19 ble bylaws and regulations, appropriate instru-
20 ments;

21 (E) to approve other forms of credit en-
22 hancement that AIFA may provide to eligible
23 projects, as long as the forms of credit enhance-
24 ments are consistent with the purposes of this
25 Act and terms set forth in title II;

1 (F) to exercise all other lawful powers
2 which are necessary or appropriate to carry out,
3 and are consistent with, the purposes of AIFA;

4 (G) to sue or be sued in the corporate ca-
5 pacity of AIFA in any court of competent juris-
6 diction;

7 (H) to indemnify the members of the
8 Board of Directors and officers of AIFA for
9 any liabilities arising out of the actions of the
10 members and officers in such capacity, in ac-
11 cordance with, and subject to the limitations
12 contained in this Act;

13 (I) to review all financial assistance pack-
14 ages to all eligible infrastructure projects, as
15 submitted by the chief executive officer and to
16 approve, postpone, or deny the same by major-
17 ity vote;

18 (J) to review all restructuring proposals
19 submitted by the chief executive officer, includ-
20 ing assignation, pledging, or disposal of the in-
21 terest of AIFA in a project, including payment
22 or income from any interest owned or held by
23 AIFA, and to approve, postpone, or deny the
24 same by majority vote; and

1 (K) to enter into binding commitments, as
2 specified in approved financial assistance pack-
3 ages;

4 (9) delegate to the chief executive officer those
5 duties that the Board of Directors deems appro-
6 priate, to better carry out the powers and purposes
7 of the Board of Directors under this section; and

8 (10) to approve a maximum aggregate amount
9 of outstanding obligations of AIFA at any given
10 time, taking into consideration funding, and the size
11 of AIFA's addressable market for infrastructure
12 projects.

13 **SEC. 249. SENIOR MANAGEMENT.**

14 (a) IN GENERAL.—Senior management shall support
15 the chief executive officer in the discharge of the respon-
16 sibilities of the chief executive officer.

17 (b) APPOINTMENT OF SENIOR MANAGEMENT.—The
18 chief executive officer shall appoint such senior managers
19 as are necessary to carry out the purpose of AIFA, as
20 approved by a majority vote of the voting members of the
21 Board of Directors.

22 (c) TERM.—Each member of senior management
23 shall serve at the pleasure of the chief executive officer
24 and the Board of Directors.

1 (d) REMOVAL OF SENIOR MANAGEMENT.—Any mem-
2 ber of senior management may be removed, either by a
3 majority of the voting members of the Board of Directors
4 upon request by the chief executive officer, or otherwise
5 by vote of not fewer than 5 voting members of the Board
6 of Directors.

7 (e) SENIOR MANAGEMENT.—

8 (1) IN GENERAL.—Each member of senior
9 management shall report directly to the chief execu-
10 tive officer, other than the Chief Risk Officer, who
11 shall report directly to the Board of Directors.

12 (2) DUTIES AND RESPONSIBILITIES.—

13 (A) CHIEF FINANCIAL OFFICER.—The
14 Chief Financial Officer shall be responsible for
15 all financial functions of AIFA, provided that,
16 at the discretion of the Board of Directors, spe-
17 cific functions of the Chief Financial Officer
18 may be delegated externally.

19 (B) CHIEF RISK OFFICER.—The Chief
20 Risk Officer shall be responsible for all func-
21 tions of AIFA relating to—

22 (i) the creation of financial, credit,
23 and operational risk management guide-
24 lines and policies;

1 (ii) credit analysis for infrastructure
2 projects;

3 (iii) the creation of conforming stand-
4 ards for infrastructure finance agreements;

5 (iv) the monitoring of the financial,
6 credit, and operational exposure of AIFA;

7 and

8 (v) risk management and mitigation
9 actions, including by reporting such ac-
10 tions, or recommendations of such actions
11 to be taken, directly to the Board of Direc-
12 tors.

13 (C) CHIEF COMPLIANCE OFFICER.—The
14 Chief Compliance Officer shall be responsible
15 for all functions of AIFA relating to internal
16 audits, accounting safeguards, and the enforce-
17 ment of such safeguards and other applicable
18 requirements.

19 (D) GENERAL COUNSEL.—The General
20 Counsel shall be responsible for all functions of
21 AIFA relating to legal matters and, in consulta-
22 tion with the chief executive officer, shall be re-
23 sponsible for ensuring that AIFA complies with
24 all applicable law.

1 (E) CHIEF OPERATIONS OFFICER.—The
2 Chief Operations Officer shall be responsible for
3 all operational functions of AIFA, including
4 those relating to the continuing operations and
5 performance of all infrastructure projects in
6 which AIFA retains an interest and for all
7 AIFA functions related to human resources.

8 (F) CHIEF LENDING OFFICER.—The Chief
9 Lending Officer shall be responsible for—

10 (i) all functions of AIFA relating to
11 the development of project pipeline, finan-
12 cial structuring of projects, selection of in-
13 frastructure projects to be reviewed by the
14 Board of Directors, preparation of infra-
15 structure projects to be presented to the
16 Board of Directors, and set aside for rural
17 infrastructure projects;

18 (ii) the creation and management of—

19 (I) a Center for Excellence to
20 provide technical assistance to public
21 sector borrowers in the development
22 and financing of infrastructure
23 projects; and

24 (II) an Office of Rural Assistance
25 to provide technical assistance in the

1 development and financing of rural in-
2 frastructure projects; and
3 (iii) the establishment of guidelines to
4 ensure diversification of lending activities
5 by region, infrastructure project type, and
6 project size.

7 (f) CHANGES TO SENIOR MANAGEMENT.—The Board
8 of Directors, in consultation with the chief executive offi-
9 cer, may alter the structure of the senior management of
10 AIFA at any time to better accomplish the goals, objec-
11 tives, and purposes of AIFA, provided that the functions
12 of the Chief Financial Officer set forth in subsection (e)
13 remain separate from the functions of the Chief Risk Offi-
14 cer set forth in subsection (e).

15 (g) CONFLICTS OF INTEREST.—No individual ap-
16 pointed to senior management may—

17 (1) hold any other public office;

18 (2) have any financial interest in an infrastruc-
19 ture project then being considered by the Board of
20 Directors, unless that interest is placed in a blind
21 trust; or

22 (3) have any financial interest in an investment
23 institution or its affiliates, AIFA or its affiliates, or
24 other entity then seeking or likely to seek financial
25 assistance for any infrastructure project from AIFA,

1 unless any such interest is placed in a blind trust
2 during the term of service of that individual in a
3 senior management position, and for a period of 2
4 years thereafter.

5 **SEC. 250. SPECIAL INSPECTOR GENERAL FOR AIFA.**

6 (a) IN GENERAL.—During the first 5 operating years
7 of AIFA, the Office of the Inspector General of the De-
8 partment of the Treasury shall have responsibility for
9 AIFA.

10 (b) OFFICE OF THE SPECIAL INSPECTOR GEN-
11 ERAL.—Effective 5 years after the date of enactment of
12 the commencement of the operations of AIFA, there is es-
13 tablished the Office of the Special Inspector General for
14 AIFA.

15 (c) APPOINTMENT OF INSPECTOR GENERAL; RE-
16 MOVAL.—

17 (1) HEAD OF OFFICE.—The head of the Office
18 of the Special Inspector General for AIFA shall be
19 the Special Inspector General for AIFA (in this Act
20 referred to as the “Special Inspector General”), who
21 shall be appointed by the President, by and with the
22 advice and consent of the Senate.

23 (2) BASIS OF APPOINTMENT.—The appoint-
24 ment of the Special Inspector General shall be made
25 on the basis of integrity and demonstrated ability in

1 accounting, auditing, financial analysis, law, man-
2 agement analysis, public administration, or inves-
3 tigations.

4 (3) TIMING OF NOMINATION.—The nomination
5 of an individual as Special Inspector General shall
6 be made as soon as is practicable after the effective
7 date under subsection (b).

8 (4) REMOVAL.—The Special Inspector General
9 shall be removable from office in accordance with
10 the provisions of section 3(b) of the Inspector Gen-
11 eral Act of 1978 (5 U.S.C. App.).

12 (5) RULE OF CONSTRUCTION.—For purposes of
13 section 7324 of title 5, United States Code, the Spe-
14 cial Inspector General shall not be considered an em-
15 ployee who determines policies to be pursued by the
16 United States in the nationwide administration of
17 Federal law.

18 (6) RATE OF PAY.—The annual rate of basic
19 pay of the Special Inspector General shall be the an-
20 nual rate of basic pay for an Inspector General
21 under section 3(e) of the Inspector General Act of
22 1978 (5 U.S.C. App.).

23 (d) DUTIES.—

24 (1) IN GENERAL.—It shall be the duty of the
25 Special Inspector General to conduct, supervise, and

1 coordinate audits and investigations of the business
2 activities of AIFA.

3 (2) OTHER SYSTEMS, PROCEDURES, AND CON-
4 TROLS.—The Special Inspector General shall estab-
5 lish, maintain, and oversee such systems, procedures,
6 and controls as the Special Inspector General con-
7 siders appropriate to discharge the duty under para-
8 graph (1).

9 (3) ADDITIONAL DUTIES.—In addition to the
10 duties specified in paragraphs (1) and (2), the In-
11 spector General shall also have the duties and re-
12 sponsibilities of inspectors general under the Inspec-
13 tor General Act of 1978.

14 (e) POWERS AND AUTHORITIES.—

15 (1) IN GENERAL.—In carrying out the duties
16 specified in subsection (c), the Special Inspector
17 General shall have the authorities provided in section
18 6 of the Inspector General Act of 1978.

19 (2) ADDITIONAL AUTHORITY.—The Special In-
20 spector General shall carry out the duties specified
21 in subsection (c)(1) in accordance with section
22 4(b)(1) of the Inspector General Act of 1978.

23 (f) PERSONNEL, FACILITIES, AND OTHER RE-
24 SOURCES.—

25 (1) ADDITIONAL OFFICERS.—

1 (A) The Special Inspector General may se-
2 lect, appoint, and employ such officers and em-
3 ployees as may be necessary for carrying out
4 the duties of the Special Inspector General,
5 subject to the provisions of title 5, United
6 States Code, governing appointments in the
7 competitive service, and the provisions of chap-
8 ter 51 and subchapter III of chapter 53 of such
9 title, relating to classification and General
10 Schedule pay rates.

11 (B) The Special Inspector General may ex-
12 ercise the authorities of subsections (b) through
13 (i) of section 3161 of title 5, United States
14 Code (without regard to subsection (a) of that
15 section).

16 (2) RETENTION OF SERVICES.—The Special In-
17 specter General may obtain services as authorized by
18 section 3109 of title 5, United States Code, at daily
19 rates not to exceed the equivalent rate prescribed for
20 grade GS–15 of the General Schedule by section
21 5332 of such title.

22 (3) ABILITY TO CONTRACT FOR AUDITS, STUD-
23 IES, AND OTHER SERVICES.—The Special Inspector
24 General may enter into contracts and other arrange-
25 ments for audits, studies, analyses, and other serv-

1 ices with public agencies and with private persons,
2 and make such payments as may be necessary to
3 carry out the duties of the Special Inspector Gen-
4 eral.

5 (4) REQUEST FOR INFORMATION.—

6 (A) IN GENERAL.—Upon request of the
7 Special Inspector General for information or as-
8 sistance from any department, agency, or other
9 entity of the Federal Government, the head of
10 such entity shall, insofar as is practicable and
11 not in contravention of any existing law, furnish
12 such information or assistance to the Special
13 Inspector General, or an authorized designee.

14 (B) REFUSAL TO COMPLY.—Whenever in-
15 formation or assistance requested by the Spe-
16 cial Inspector General is, in the judgment of the
17 Special Inspector General, unreasonably refused
18 or not provided, the Special Inspector General
19 shall report the circumstances to the Secretary
20 of the Treasury, without delay.

21 (g) REPORTS.—

22 (1) ANNUAL REPORT.—Not later than 1 year
23 after the confirmation of the Special Inspector Gen-
24 eral, and every calendar year thereafter, the Special
25 Inspector General shall submit to the President a re-

1 port summarizing the activities of the Special In-
2 spector General during the previous 1-year period
3 ending on the date of such report.

4 (2) PUBLIC DISCLOSURES.—Nothing in this
5 subsection shall be construed to authorize the public
6 disclosure of information that is—

7 (A) specifically prohibited from disclosure
8 by any other provision of law;

9 (B) specifically required by Executive order
10 to be protected from disclosure in the interest
11 of national defense or national security or in
12 the conduct of foreign affairs; or

13 (C) a part of an ongoing criminal inves-
14 tigation.

15 **SEC. 251. OTHER PERSONNEL.**

16 Except as otherwise provided in the bylaws of AIFA,
17 the chief executive officer, in consultation with the Board
18 of Directors, shall appoint, remove, and define the duties
19 of such qualified personnel as are necessary to carry out
20 the powers, duties, and purpose of AIFA, other than sen-
21 ior management, who shall be appointed in accordance
22 with section 249.

23 **SEC. 252. COMPLIANCE.**

24 The provision of assistance by the Board of Directors
25 pursuant to this Act shall not be construed as superseding

1 any provision of State law or regulation otherwise applica-
2 ble to an infrastructure project.

3 **PART II—TERMS AND LIMITATIONS ON DIRECT**
4 **LOANS AND LOAN GUARANTEES**

5 **SEC. 253. ELIGIBILITY CRITERIA FOR ASSISTANCE FROM**
6 **AIFA AND TERMS AND LIMITATIONS OF**
7 **LOANS.**

8 (a) IN GENERAL.—Any project whose use or purpose
9 is private and for which no public benefit is created shall
10 not be eligible for financial assistance from AIFA under
11 this Act. Financial assistance under this Act shall only
12 be made available if the applicant for such assistance has
13 demonstrated to the satisfaction of the Board of Directors
14 that the infrastructure project for which such assistance
15 is being sought—

16 (1) is not for the refinancing of an existing in-
17 frastructure project; and

18 (2) meets—

19 (A) any pertinent requirements set forth in
20 this Act;

21 (B) any criteria established by the Board
22 of Directors or chief executive officer in accord-
23 ance with this Act; and

1 (C) the definition of a transportation infra-
2 structure project, water infrastructure project,
3 or energy infrastructure project.

4 (b) CONSIDERATIONS.—The criteria established by
5 the Board of Directors pursuant to this Act shall provide
6 adequate consideration of—

7 (1) the economic, financial, technical, environ-
8 mental, and public benefits and costs of each infra-
9 structure project under consideration for financial
10 assistance under this Act, prioritizing infrastructure
11 projects that—

12 (A) contribute to regional or national eco-
13 nomic growth;

14 (B) offer value for money to taxpayers;

15 (C) demonstrate a clear and significant
16 public benefit;

17 (D) lead to job creation; and

18 (E) mitigate environmental concerns;

19 (2) the means by which development of the in-
20 frastructure project under consideration is being fi-
21 nanced, including—

22 (A) the terms, conditions, and structure of
23 the proposed financing;

1 (B) the credit worthiness and standing of
2 the project sponsors, providers of equity, and
3 cofinanciers;

4 (C) the financial assumptions and projec-
5 tions on which the infrastructure project is
6 based; and

7 (D) whether there is sufficient State or
8 municipal political support for the successful
9 completion of the infrastructure project;

10 (3) the likelihood that the provision of assist-
11 ance by AIFA will cause such development to pro-
12 ceed more promptly and with lower costs than would
13 be the case without such assistance;

14 (4) the extent to which the provision of assist-
15 ance by AIFA maximizes the level of private invest-
16 ment in the infrastructure project or supports a
17 public-private partnership, while providing a signifi-
18 cant public benefit;

19 (5) the extent to which the provision of assist-
20 ance by AIFA can mobilize the participation of other
21 financing partners in the infrastructure project;

22 (6) the technical and operational viability of the
23 infrastructure project;

24 (7) the proportion of financial assistance from
25 AIFA;

1 (8) the geographic location of the project in an
2 effort to have geographic diversity of projects funded
3 by AIFA;

4 (9) the size of the project and its impact on the
5 resources of AIFA;

6 (10) the infrastructure sector of the project, in
7 an effort to have projects from more than one sector
8 funded by AIFA; and

9 (11) encourages use of innovative procurement,
10 asset management, or financing to minimize the all-
11 in-life-cycle cost, and improve the cost-effectiveness
12 of a project.

13 (c) APPLICATION.—

14 (1) IN GENERAL.—Any eligible entity seeking
15 assistance from AIFA under this Act for an eligible
16 infrastructure project shall submit an application to
17 AIFA at such time, in such manner, and containing
18 such information as the Board of Directors or the
19 chief executive officer may require.

20 (2) REVIEW OF APPLICATIONS.—AIFA shall re-
21 view applications for assistance under this Act on an
22 ongoing basis. The chief executive officer, working
23 with the senior management, shall prepare eligible
24 infrastructure projects for review and approval by
25 the Board of Directors.

1 (3) DEDICATED REVENUE SOURCES.—The Fed-
2 eral credit instrument shall be repayable, in whole or
3 in part, from tolls, user fees, or other dedicated rev-
4 enue sources that also secure the infrastructure
5 project obligations.

6 (d) ELIGIBLE INFRASTRUCTURE PROJECT COSTS.—

7 (1) IN GENERAL.—Except as provided in para-
8 graph (2), to be eligible for assistance under this
9 Act, an infrastructure project shall have project
10 costs that are reasonably anticipated to equal or ex-
11 ceed \$100,000,000.

12 (2) RURAL INFRASTRUCTURE PROJECTS.—To
13 be eligible for assistance under this Act a rural in-
14 frastructure project shall have project costs that are
15 reasonably anticipated to equal or exceed
16 \$25,000,000.

17 (e) LOAN ELIGIBILITY AND MAXIMUM AMOUNTS.—

18 (1) IN GENERAL.—The amount of a direct loan
19 or loan guarantee under this Act shall not exceed
20 the lesser of 50 percent of the reasonably anticipated
21 eligible infrastructure project costs or, if the direct
22 loan or loan guarantee does not receive an invest-
23 ment grade rating, the amount of the senior project
24 obligations.

1 (2) MAXIMUM ANNUAL LOAN AND LOAN GUAR-
2 ANTEE VOLUME.—The aggregate amount of direct
3 loans and loan guarantees made by AIFA in any
4 single fiscal year may not exceed—

5 (A) during the first 2 fiscal years of the
6 operations of AIFA, \$10,000,000,000;

7 (B) during fiscal years 3 through 9 of the
8 operations of AIFA, \$20,000,000,000; or

9 (C) during any fiscal year thereafter,
10 \$50,000,000,000.

11 (f) STATE AND LOCAL PERMITS REQUIRED.—The
12 provision of assistance by the Board of Directors pursuant
13 to this Act shall not be deemed to relieve any recipient
14 of such assistance, or the related infrastructure project,
15 of any obligation to obtain required State and local per-
16 mits and approvals.

17 **SEC. 254. LOAN TERMS AND REPAYMENT.**

18 (a) IN GENERAL.—A direct loan or loan guarantee
19 under this Act with respect to an eligible infrastructure
20 project shall be on such terms, subject to such conditions,
21 and contain such covenants, representations, warranties,
22 and requirements (including requirements for audits) as
23 the chief executive officer determines appropriate.

24 (b) TERMS.—A direct loan or loan guarantee under
25 this Act—

1 (1) shall—

2 (A) be payable, in whole or in part, from
3 tolls, user fees, or other dedicated revenue
4 sources that also secure the senior project obli-
5 gations (such as availability payments and dedi-
6 cated State or local revenues); and

7 (B) include a rate covenant, coverage re-
8 quirement, or similar security feature sup-
9 porting the project obligations; and

10 (2) may have a lien on revenues described in
11 paragraph (1), subject to any lien securing project
12 obligations.

13 (c) **BASE INTEREST RATE.**—The base interest rate
14 on a direct loan under this Act shall be not less than the
15 yield on United States Treasury obligations of a similar
16 maturity to the maturity of the direct loan.

17 (d) **RISK ASSESSMENT.**—Before entering into an
18 agreement for assistance under this Act, the chief execu-
19 tive officer, in consultation with the Director of the Office
20 of Management and Budget and considering rating agency
21 preliminary or final rating opinion letters of the project
22 under this section, shall estimate an appropriate Federal
23 credit subsidy amount for each direct loan and loan guar-
24 antee, taking into account such letter, as well as any com-
25 parable market rates available for such a loan or loan

1 guarantee, should any exist. The final credit subsidy cost
2 for each loan and loan guarantee shall be determined con-
3 sistent with the Federal Credit Reform Act, 2 U.S.C. 661a
4 et seq.

5 (e) CREDIT FEE.—With respect to each agreement
6 for assistance under this Act, the chief executive officer
7 may charge a credit fee to the recipient of such assistance
8 to pay for, over time, all or a portion of the Federal credit
9 subsidy determined under subsection (d), with the remain-
10 der paid by the account established for AIFA; provided,
11 that the source of fees paid under this section shall not
12 be a loan or debt obligation guaranteed by the Federal
13 Government. In the case of a direct loan, such credit fee
14 shall be in addition to the base interest rate established
15 under subsection (c).

16 (f) MATURITY DATE.—The final maturity date of a
17 direct loan or loan guaranteed by AIFA under this Act
18 shall be not later than 35 years after the date of substan-
19 tial completion of the infrastructure project, as determined
20 by the chief executive officer.

21 (g) RATING OPINION LETTER.—

22 (1) IN GENERAL.—The chief executive officer
23 shall require each applicant for assistance under this
24 Act to provide a rating opinion letter from at least
25 1 ratings agency, indicating that the senior obliga-

1 tions of the infrastructure project, which may be the
2 Federal credit instrument, have the potential to
3 achieve an investment-grade rating.

4 (2) RURAL INFRASTRUCTURE PROJECTS.—With
5 respect to a rural infrastructure project, a rating
6 agency opinion letter described in paragraph (1)
7 shall not be required, except that the loan or loan
8 guarantee shall receive an internal rating score,
9 using methods similar to the ratings agencies gen-
10 erated by AIFA, measuring the proposed direct loan
11 or loan guarantee against comparable direct loans or
12 loan guarantees of similar credit quality in a similar
13 sector.

14 (h) INVESTMENT-GRADE RATING REQUIREMENT.—

15 (1) LOANS AND LOAN GUARANTEES.—The exe-
16 cution of a direct loan or loan guarantee under this
17 Act shall be contingent on the senior obligations of
18 the infrastructure project receiving an investment-
19 grade rating.

20 (2) RATING OF AIFA OVERALL PORTFOLIO.—
21 The average rating of the overall portfolio of AIFA
22 shall be not less than investment grade after 5 years
23 of operation.

24 (i) TERMS AND REPAYMENT OF DIRECT LOANS.—

1 (1) SCHEDULE.—The chief executive officer
2 shall establish a repayment schedule for each direct
3 loan under this Act, based on the projected cash
4 flow from infrastructure project revenues and other
5 repayment sources.

6 (2) COMMENCEMENT.—Scheduled loan repay-
7 ments of principal or interest on a direct loan under
8 this Act shall commence not later than 5 years after
9 the date of substantial completion of the infrastruc-
10 ture project, as determined by the chief executive of-
11 ficer of AIFA.

12 (3) DEFERRED PAYMENTS OF DIRECT
13 LOANS.—

14 (A) AUTHORIZATION.—If, at any time
15 after the date of substantial completion of an
16 infrastructure project assisted under this Act,
17 the infrastructure project is unable to generate
18 sufficient revenues to pay the scheduled loan re-
19 payments of principal and interest on the direct
20 loan under this Act, the chief executive officer
21 may allow the obligor to add unpaid principal
22 and interest to the outstanding balance of the
23 direct loan, if the result would benefit the tax-
24 payer.

1 (B) INTEREST.—Any payment deferred
2 under subparagraph (A) shall—

3 (i) continue to accrue interest, in ac-
4 cordance with the terms of the obligation,
5 until fully repaid; and

6 (ii) be scheduled to be amortized over
7 the remaining term of the loan.

8 (C) CRITERIA.—

9 (i) IN GENERAL.—Any payment defer-
10 ral under subparagraph (A) shall be con-
11 tingent on the infrastructure project meet-
12 ing criteria established by the Board of Di-
13 rectors.

14 (ii) REPAYMENT STANDARDS.—The
15 criteria established under clause (i) shall
16 include standards for reasonable assurance
17 of repayment.

18 (4) PREPAYMENT OF DIRECT LOANS.—

19 (A) USE OF EXCESS REVENUES.—Any ex-
20 cess revenues that remain after satisfying
21 scheduled debt service requirements on the in-
22 frastructure project obligations and direct loan
23 and all deposit requirements under the terms of
24 any trust agreement, bond resolution, or similar
25 agreement securing project obligations under

1 this Act may be applied annually to prepay the
2 direct loan, without penalty.

3 (B) USE OF PROCEEDS OF REFI-
4 NANCING.—A direct loan under this Act may be
5 prepaid at any time, without penalty, from the
6 proceeds of refinancing from non-Federal fund-
7 ing sources.

8 (5) SALE OF DIRECT LOANS.—

9 (A) IN GENERAL.—As soon as is prac-
10 ticable after substantial completion of an infra-
11 structure project assisted under this Act, and
12 after notifying the obligor, the chief executive
13 officer may sell to another entity, or reoffer into
14 the capital markets, a direct loan for the infra-
15 structure project, if the chief executive officer
16 determines that the sale or reoffering can be
17 made on favorable terms for the taxpayer.

18 (B) CONSENT OF OBLIGOR.—In making a
19 sale or reoffering under subparagraph (A), the
20 chief executive officer may not change the origi-
21 nal terms and conditions of the direct loan,
22 without the written consent of the obligor.

23 (j) LOAN GUARANTEES.—

24 (1) TERMS.—The terms of a loan guaranteed
25 by AIFA under this Act shall be consistent with the

1 terms set forth in this section for a direct loan, ex-
2 cept that the rate on the guaranteed loan and any
3 payment, pre-payment, or refinancing features shall
4 be negotiated between the obligor and the lender,
5 with the consent of the chief executive officer.

6 (2) GUARANTEED LENDER.—A guaranteed
7 lender shall be limited to those lenders meeting the
8 definition of that term in section 601(a) of title 23,
9 United States Code.

10 (k) COMPLIANCE WITH FCRA—IN GENERAL.—Di-
11 rect loans and loan guarantees authorized by this Act shall
12 be subject to the provisions of the Federal Credit Reform
13 Act of 1990 (2 U.S.C. 661 et seq.), as amended.

14 **SEC. 255. COMPLIANCE AND ENFORCEMENT.**

15 (a) CREDIT AGREEMENT.—Notwithstanding any
16 other provision of law, each eligible entity that receives
17 assistance under this Act from AIFA shall enter into a
18 credit agreement that requires such entity to comply with
19 all applicable policies and procedures of AIFA, in addition
20 to all other provisions of the loan agreement.

21 (b) AIFA AUTHORITY ON NONCOMPLIANCE.—In any
22 case in which a recipient of assistance under this Act is
23 materially out of compliance with the loan agreement, or
24 any applicable policy or procedure of AIFA, the Board of
25 Directors may take action to cancel unutilized loan

1 amounts, or to accelerate the repayment terms of any out-
2 standing obligation.

3 (c) Nothing in this Act is intended to affect existing
4 provisions of law applicable to the planning, development,
5 construction, or operation of projects funded under the
6 Act.

7 **SEC. 256. AUDITS; REPORTS TO THE PRESIDENT AND CON-**
8 **GRESS.**

9 (a) ACCOUNTING.—The books of account of AIFA
10 shall be maintained in accordance with generally accepted
11 accounting principles, and shall be subject to an annual
12 audit by independent public accountants of nationally rec-
13 ognized standing appointed by the Board of Directors.

14 (b) REPORTS.—

15 (1) BOARD OF DIRECTORS.—Not later than 90
16 days after the last day of each fiscal year, the Board
17 of Directors shall submit to the President and Con-
18 gress a complete and detailed report with respect to
19 the preceding fiscal year, setting forth—

20 (A) a summary of the operations of AIFA,
21 for such fiscal year;

22 (B) a schedule of the obligations of AIFA
23 and capital securities outstanding at the end of
24 such fiscal year, with a statement of the

1 amounts issued and redeemed or paid during
2 such fiscal year;

3 (C) the status of infrastructure projects re-
4 ceiving funding or other assistance pursuant to
5 this Act during such fiscal year, including all
6 nonperforming loans, and including disclosure
7 of all entities with a development, ownership, or
8 operational interest in such infrastructure
9 projects;

10 (D) a description of the successes and
11 challenges encountered in lending to rural com-
12 munities, including the role of the Center for
13 Excellence and the Office of Rural Assistance
14 established under this Act; and

15 (E) an assessment of the risks of the port-
16 folio of AIFA, prepared by an independent
17 source.

18 (2) GAO.—Not later than 5 years after the
19 date of enactment of this Act, the Comptroller Gen-
20 eral of the United States shall conduct an evaluation
21 of, and shall submit to Congress a report on, activi-
22 ties of AIFA for the fiscal years covered by the re-
23 port that includes an assessment of the impact and
24 benefits of each funded infrastructure project, in-
25 cluding a review of how effectively each such infra-

1 structure project accomplished the goals prioritized
2 by the infrastructure project criteria of AIFA.

3 (c) BOOKS AND RECORDS.—

4 (1) IN GENERAL.—AIFA shall maintain ade-
5 quate books and records to support the financial
6 transactions of AIFA, with a description of financial
7 transactions and infrastructure projects receiving
8 funding, and the amount of funding for each such
9 project maintained on a publically accessible data-
10 base.

11 (2) AUDITS BY THE SECRETARY AND GAO.—
12 The books and records of AIFA shall at all times be
13 open to inspection by the Secretary of the Treasury,
14 the Special Inspector General, and the Comptroller
15 General of the United States.

16 **PART III—FUNDING OF AIFA**

17 **SEC. 257. ADMINISTRATIVE FEES.**

18 (a) IN GENERAL.—In addition to fees that may be
19 collected under section 254(e), the chief executive officer
20 shall establish and collect fees from eligible funding recipi-
21 ents with respect to loans and loan guarantees under this
22 Act that—

23 (1) are sufficient to cover all or a portion of the
24 administrative costs to the Federal Government for
25 the operations of AIFA, including the costs of expert

1 firms, including counsel in the field of municipal and
2 project finance, and financial advisors to assist with
3 underwriting, credit analysis, or other independent
4 reviews, as appropriate;

5 (2) may be in the form of an application or
6 transaction fee, or other form established by the
7 CEO; and

8 (3) may be based on the risk premium associ-
9 ated with the loan or loan guarantee, taking into
10 consideration—

11 (A) the price of United States Treasury
12 obligations of a similar maturity;

13 (B) prevailing market conditions;

14 (C) the ability of the infrastructure project
15 to support the loan or loan guarantee; and

16 (D) the total amount of the loan or loan
17 guarantee.

18 (b) AVAILABILITY OF AMOUNTS.—Amounts collected
19 under subsections (a)(1), (a)(2), and (a)(3) shall be avail-
20 able without further action; provided further, that the
21 source of fees paid under this section shall not be a loan
22 or debt obligation guaranteed by the Federal Government.

23 **SEC. 258. EFFICIENCY OF AIFA.**

24 The chief executive officer shall, to the extent pos-
25 sible, take actions consistent with this Act to minimize the

1 risk and cost to the taxpayer of AIFA activities. Fees and
2 premiums for loan guarantee or insurance coverage will
3 be set at levels that minimize administrative and Federal
4 credit subsidy costs to the Government, as defined in Sec-
5 tion 502 of the Federal Credit Reform Act of 1990, as
6 amended, of such coverage, while supporting achievement
7 of the program's objectives, consistent with policies as set
8 forth in the Business Plan.

9 **SEC. 259. FUNDING.**

10 There is hereby appropriated to AIFA to carry out
11 this Act, for the cost of direct loans and loan guarantees
12 subject to the limitations under Section 253, and for ad-
13 ministrative costs, \$10,000,000,000, to remain available
14 until expended; Provided, That such costs, including the
15 costs of modifying such loans, shall be as defined in sec-
16 tion 502 of the Federal Credit Reform Act of 1990, as
17 amended; Provided further, that of this amount, not more
18 than \$25,000,000 for each of fiscal years 2012 through
19 2013, and not more than \$50,000,000 for fiscal year 2014
20 may be used for administrative costs of AIFA; provided
21 further, that not more than 5 percent of such amount shall
22 be used to offset subsidy costs associated with rural
23 projects. Amounts authorized shall be available without
24 further action.

1 **PART IV—EXTENSION OF EXEMPTION FROM AL-**
2 **TERNATIVE MINIMUM TAX TREATMENT FOR**
3 **CERTAIN TAX-EXEMPT BONDS**

4 **SEC. 260. EXTENSION OF EXEMPTION FROM ALTERNATIVE**
5 **MINIMUM TAX TREATMENT FOR CERTAIN**
6 **TAX-EXEMPT BONDS.**

7 (a) **IN GENERAL.**—Clause (vi) of section 57(a)(5)(C)
8 of the Internal Revenue Code of 1986 is amended—

9 (1) by striking “January 1, 2011” in subclause
10 (I) and inserting “January 1, 2013”; and

11 (2) by striking “AND 2010” in the heading and
12 inserting “, 2010, 2011, AND 2012”.

13 (b) **ADJUSTED CURRENT EARNINGS.**—Clause (iv) of
14 section 56(g)(4)(B) of the Internal Revenue Code of 1986
15 is amended—

16 (1) by striking “January 1, 2011” in subclause
17 (I) and inserting “January 1, 2013”; and

18 (2) by striking “AND 2010” in the heading and
19 inserting “, 2010, 2011, AND 2012”.

20 (c) **EFFECTIVE DATE.**—The amendments made by
21 this section shall apply to obligations issued after Decem-
22 ber 31, 2010.

23 **Subtitle G—Project Rebuild**

24 **SEC. 261. PROJECT REBUILD.**

25 (a) **DIRECT APPROPRIATIONS.**—There is appro-
26 priated, out of any money in the Treasury not otherwise

1 appropriated, \$15,000,000,000, to remain available until
2 September 30, 2014, for assistance to eligible entities in-
3 cluding States and units of general local government (as
4 such terms are defined in section 102 of the Housing and
5 Community Development Act of 1974 (42 U.S.C. 5302)),
6 and qualified nonprofit organizations, businesses or con-
7 sortia of eligible entities for the redevelopment of aban-
8 doned and foreclosed-upon properties and for the stabiliza-
9 tion of affected neighborhoods.

10 (b) ALLOCATION OF APPROPRIATED AMOUNTS.—

11 (1) IN GENERAL.—Of the amounts appro-
12 priated, two thirds shall be allocated to States and
13 units of general local government based on a funding
14 formula established by the Secretary of Housing and
15 Urban Development (in this subtitle referred to as
16 the “Secretary”). Of the amounts appropriated, one
17 third shall be distributed competitively to eligible en-
18 tities.

19 (2) FORMULA TO BE DEVISED SWIFTLY.—The
20 funding formula required under paragraph (1) shall
21 be established and the Secretary shall announce for-
22 mula funding allocations, not later than 30 days
23 after the date of enactment of this section.

24 (3) FORMULA CRITERIA.—The Secretary may
25 establish a minimum grant size, and the funding for-

1 mula required under paragraph (1) shall ensure that
2 any amounts appropriated or otherwise made avail-
3 able under this section are allocated to States and
4 units of general local government with the greatest
5 need, as such need is determined in the discretion of
6 the Secretary based on—

7 (A) the number and percentage of home
8 foreclosures in each State or unit of general
9 local government;

10 (B) the number and percentage of homes
11 in default or delinquency in each State or unit
12 of general local government; and

13 (C) other factors such as established pro-
14 gram designs, grantee capacity and perform-
15 ance, number and percentage of commercial
16 foreclosures, overall economic conditions, and
17 other market needs data, as determined by the
18 Secretary.

19 (4) COMPETITION CRITERIA.—

20 (A) For the funds distributed competi-
21 tively, eligible entities shall be States, units of
22 general local government, nonprofit entities,
23 for-profit entities, and consortia of eligible enti-
24 ties that demonstrate capacity to use funding
25 within the period of this program.

1 (B) In selecting grantees, the Secretary
2 shall ensure that grantees are in areas with the
3 greatest number and percentage of residential
4 and commercial foreclosures and other market
5 needs data, as determined by the Secretary. Ad-
6 ditional award criteria shall include dem-
7 onstrated grantee capacity to execute projects
8 involving acquisition and rehabilitation or rede-
9 velopment of foreclosed residential and commer-
10 cial property and neighborhood stabilization, le-
11 verage, knowledge of market conditions and of
12 effective stabilization activities to address iden-
13 tified conditions, and any additional factors de-
14 termined by the Secretary.

15 (C) The Secretary may establish a min-
16 imum grant size; and

17 (D) The Secretary shall publish competi-
18 tion criteria for any grants awarded under this
19 heading not later than 60 days after appropria-
20 tion of funds, and applications shall be due to
21 the Secretary within 120 days.

22 (c) USE OF FUNDS.—

23 (1) OBLIGATION AND EXPENDITURE.—The Sec-
24 retary shall obligate all funding within 150 days of
25 enactment of this Act. Any eligible entity that re-

1 ceives amounts pursuant to this section shall expend
2 all funds allocated to it within three years of the
3 date the funds become available to the grantee for
4 obligation. Furthermore, the Secretary shall by No-
5 tice establish intermediate expenditure benchmarks
6 at the one and two year dates from the date the
7 funds become available to the grantee for obligation.

8 (2) PRIORITIES.—

9 (A) JOB CREATION.—Each grantee or eli-
10 gible entity shall describe how its proposed use
11 of funds will prioritize job creation, and sec-
12 ondly, will address goals to stabilize neighbor-
13 hoods, reverse vacancy, or increase or stabilize
14 residential and commercial property values.

15 (B) TARGETING.—Any State or unit of
16 general local government that receives formula
17 amounts pursuant to this section shall, in dis-
18 tributing and targeting such amounts give pri-
19 ority emphasis and consideration to those met-
20 ropolitan areas, metropolitan cities, urban
21 areas, rural areas, low- and moderate-income
22 areas, and other areas with the greatest need,
23 including those—

24 (i) with the greatest percentage of
25 home foreclosures;

1 (ii) identified as likely to face a sig-
2 nificant rise in the rate of residential or
3 commercial foreclosures; and

4 (iii) with higher than national average
5 unemployment rate.

6 (C) LEVERAGE.—Each grantee or eligible
7 entity shall describe how its proposed use of
8 funds will leverage private funds.

9 (3) ELIGIBLE USES.—Amounts made available
10 under this section may be used to—

11 (A) establish financing mechanisms for the
12 purchase and redevelopment of abandoned and
13 foreclosed-upon properties, including such
14 mechanisms as soft-seconds, loan loss reserves,
15 and shared-equity loans for low- and moderate-
16 income homebuyers;

17 (B) purchase and rehabilitate properties
18 that have been abandoned or foreclosed upon,
19 in order to sell, rent, or redevelop such prop-
20 erties;

21 (C) establish and operate land banks for
22 properties that have been abandoned or fore-
23 closed upon;

24 (D) demolish blighted structures;

1 (E) redevelop abandoned, foreclosed, de-
2 molished, or vacant properties; and

3 (F) engage in other activities, as deter-
4 mined by the Secretary through notice, that are
5 consistent with the goals of creating jobs, stabi-
6 lizing neighborhoods, reversing vacancy reduc-
7 tion, and increasing or stabilizing residential
8 and commercial property values.

9 (d) LIMITATIONS.—

10 (1) ON PURCHASES.—Any purchase of a prop-
11 erty under this section shall be at a price not to ex-
12 ceed its current market value, taking into account
13 its current condition.

14 (2) REHABILITATION.—Any rehabilitation of an
15 eligible property under this section shall be to the
16 extent necessary to comply with applicable laws, and
17 other requirements relating to safety, quality, mar-
18 ketability, and habitability, in order to sell, rent, or
19 redevelop such properties or provide a renewable en-
20 ergy source or sources for such properties.

21 (3) SALE OF HOMES.—If an abandoned or fore-
22 closed-upon home is purchased, redeveloped, or oth-
23 erwise sold to an individual as a primary residence,
24 then such sale shall be in an amount equal to or less
25 than the cost to acquire and redevelop or rehabilitate

1 such home or property up to a decent, safe, market-
2 able, and habitable condition.

3 (4) ON DEMOLITION OF PUBLIC HOUSING.—
4 Public housing, as defined at section 3(b)(6) of the
5 United States Housing Act of 1937, may not be de-
6 molished with funds under this section.

7 (5) ON DEMOLITION ACTIVITIES.—No more
8 than 10 percent of any grant made under this sec-
9 tion may be used for demolition activities unless the
10 Secretary determines that such use represents an
11 appropriate response to local market conditions.

12 (6) ON USE OF FUNDS FOR NON-RESIDENTIAL
13 PROPERTY.—No more than 30 percent of any grant
14 made under this section may be used for eligible ac-
15 tivities under subparagraphs (A), (B), and (E) of
16 subsection (c)(3) that will not result in residential
17 use of the property involved unless the Secretary de-
18 termines that such use represents an appropriate re-
19 sponse to local market conditions.

20 (e) RULES OF CONSTRUCTION.—

21 (1) IN GENERAL.—Except as otherwise pro-
22 vided by this section, amounts appropriated, reve-
23 nues generated, or amounts otherwise made avail-
24 able to eligible entities under this section shall be
25 treated as though such funds were community devel-

1 opment block grant funds under title I of the Hous-
2 ing and Community Development Act of 1974 (42
3 U.S.C. 5301 et seq.).

4 (2) NO MATCH.—No matching funds shall be
5 required in order for an eligible entity to receive any
6 amounts under this section.

7 (3) TENANT PROTECTIONS.—An eligible entity
8 receiving a grant under this section shall comply
9 with the 14th, 17th, 18th, 19th, 20th, 21st, 22nd
10 and 23rd provisos of the American Recovery and Re-
11 investment Act of 2009 (Public Law 111–5, 123
12 Stat. 218–19), as amended by section 1497(b)(2) of
13 the Dodd-Frank Wall Street Reform and Consumer
14 Protection Act (Public Law 111–203, 124 Stat.
15 2211).

16 (4) VICINITY HIRING.—An eligible entity receiv-
17 ing a grant under this section shall comply with sec-
18 tion 1497(a)(8) of the Dodd-Frank Wall Street Re-
19 form and Consumer Protection Act (Public Law
20 111–203, 129 Stat. 2210).

21 (5) BUY AMERICAN.—Section 1605 of Title
22 XVI—General Provisions of the American Recovery
23 and Reinvestment Act of 2009—shall apply to
24 amounts appropriated, revenues generated, and

1 amounts otherwise made available to eligible entities
2 under this section.

3 (f) AUTHORITY TO SPECIFY ALTERNATIVE RE-
4 QUIREMENTS.—

5 (1) IN GENERAL.—In administering the pro-
6 gram under this section, the Secretary may specify
7 alternative requirements to any provision under title
8 I of the Housing and Community Development Act
9 of 1974 or under title I of the Cranston-Gonzalez
10 National Affordable Housing Act of 1990 (except for
11 those provisions in these laws related to fair hous-
12 ing, nondiscrimination, labor standards, and the en-
13 vironment) for the purpose of expediting and facili-
14 tating the use of funds under this section.

15 (2) NOTICE.—The Secretary shall provide writ-
16 ten notice of intent to the public via internet to exer-
17 cise the authority to specify alternative requirements
18 under paragraph.

19 (3) LOW AND MODERATE INCOME REQUIRE-
20 MENT.—

21 (A) IN GENERAL.—Notwithstanding the
22 authority of the Secretary under paragraph

23 (1)—

24 (i) all of the formula and competitive
25 grantee funds appropriated or otherwise

1 made available under this section shall be
2 used with respect to individuals and fami-
3 lies whose income does not exceed 120 per-
4 cent of area median income; and

5 (ii) not less than 25 percent of the
6 formula and competitive grantee funds ap-
7 propriated or otherwise made available
8 under this section shall be used for the
9 purchase and redevelopment of eligible
10 properties that will be used to house indi-
11 viduals or families whose incomes do not
12 exceed 50 percent of area median income.

13 (B) RECURRENT REQUIREMENT.—The
14 Secretary shall, by rule or order, ensure, to the
15 maximum extent practicable and for the longest
16 feasible term, that the sale, rental, or redevelop-
17 ment of abandoned and foreclosed-upon homes
18 and residential properties under this section re-
19 main affordable to individuals or families de-
20 scribed in subparagraph (A).

21 (g) NATIONWIDE DISTRIBUTION OF RESOURCES.—
22 Notwithstanding any other provision of this section or the
23 amendments made by this section, each State shall receive
24 not less than \$20,000,000 of formula funds.

1 (h) LIMITATION ON USE OF FUNDS WITH RESPECT
2 TO EMINENT DOMAIN.—No State or unit of general local
3 government may use any amounts received pursuant to
4 this section to fund any project that seeks to use the power
5 of eminent domain, unless eminent domain is employed
6 only for a public use, which shall not be construed to in-
7 clude economic development that primarily benefits pri-
8 vate entities.

9 (i) LIMITATION ON DISTRIBUTION OF FUNDS.—

10 (1) IN GENERAL.—None of the funds made
11 available under this title or title IV shall be distrib-
12 uted to—

13 (A) an organization which has been in-
14 dicted for a violation under Federal law relating
15 to an election for Federal office; or

16 (B) an organization which employs applica-
17 ble individuals.

18 (2) APPLICABLE INDIVIDUALS DEFINED.—In
19 this section, the term “applicable individual” means
20 an individual who—

21 (A) is—

22 (i) employed by the organization in a
23 permanent or temporary capacity;

24 (ii) contracted or retained by the or-
25 ganization; or

1 (iii) acting on behalf of, or with the
2 express or apparent authority of, the orga-
3 nization; and

4 (B) has been indicted for a violation under
5 Federal law relating to an election for Federal
6 office.

7 (j) RENTAL HOUSING PREFERENCES.—Each State
8 and local government receiving formula amounts shall es-
9 tablish procedures to create preferences for the develop-
10 ment of affordable rental housing.

11 (k) JOB CREATION.—If a grantee chooses to use
12 funds to create jobs by establishing and operating a pro-
13 gram to maintain eligible neighborhood properties, not
14 more than 10 percent of any grant may be used for that
15 purpose.

16 (l) PROGRAM SUPPORT AND CAPACITY BUILDING.—
17 The Secretary may use up to 0.75 percent of the funds
18 appropriated for capacity building of and support for eligi-
19 ble entities and grantees undertaking neighborhood sta-
20 bilization programs, staffing, training, technical assist-
21 ance, technology, monitoring, travel, enforcement, re-
22 search and evaluation activities.

23 (1) Funds set aside for the purposes of this
24 subparagraph shall remain available until September
25 30, 2016;

1 (2) Any funds made available under this sub-
2 paragraph and used by the Secretary for personnel
3 expenses related to administering funding under this
4 subparagraph shall be transferred to “Personnel
5 Compensation and Benefits, Community Planning
6 and Development”;

7 (3) Any funds made available under this sub-
8 paragraph and used by the Secretary for training or
9 other administrative expenses shall be transferred to
10 “Administration, Operations, and Management,
11 Community Planning and Development” for non-
12 personnel expenses; and

13 (4) Any funds made available under this sub-
14 paragraph and used by the Secretary for technology
15 shall be transferred to “Working Capital Fund”.

16 (m) ENFORCEMENT AND PREVENTION OF FRAUD
17 AND ABUSE.—The Secretary shall establish and imple-
18 ment procedures to prevent fraud and abuse of funds
19 under this section, and shall impose a requirement that
20 grantees have an internal auditor to continuously monitor
21 grantee performance to prevent fraud, waste, and abuse.
22 Grantees shall provide the Secretary and citizens with
23 quarterly progress reports. The Secretary shall recapture
24 funds from formula and competitive grantees that do not
25 expend 100 percent of allocated funds within 3 years of

1 the date that funds become available, and from underper-
2 forming or mismanaged grantees, and shall re-allocate
3 those funds by formula to target areas with the greatest
4 need, as determined by the Secretary through notice. The
5 Secretary may take an alternative sanctions action only
6 upon determining that such action is necessary to achieve
7 program goals in a timely manner.

8 (n) The Secretary of Housing and Urban Develop-
9 ment shall to the extent feasible conform policies and pro-
10 cedures for grants made under this section to the policies
11 and practices already in place for the grants made under
12 Section 2301 of the Housing and Economic Recovery Act
13 of 2008; Division A, Title XII of the American Recovery
14 and Reinvestment Act of 2009; or Section 1497 of the
15 Dodd-Frank Wall Street Reform and Consumer Protec-
16 tion Act.

17 **Subtitle H—National Wireless** 18 **Initiative**

19 **SEC. 271. DEFINITIONS.**

20 In this subtitle, the following definitions shall apply:

21 (1) 700 MHZ BAND.—The term “700 MHz
22 band” means the portion of the electromagnetic
23 spectrum between the frequencies from 698 mega-
24 hertz to 806 megahertz.

1 (2) 700 MHz D BLOCK SPECTRUM.—The term
2 “700 MHz D block spectrum” means the portion of
3 the electromagnetic spectrum frequencies from 758
4 megahertz to 763 megahertz and from 788 mega-
5 hertz to 793 megahertz.

6 (3) APPROPRIATE COMMITTEES OF CON-
7 GRESS.—Except as otherwise specifically provided,
8 the term “appropriate committees of Congress”
9 means—

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

12 (B) the Committee on Energy and Com-
13 merce of the House of Representatives.

14 (4) ASSISTANT SECRETARY.—The term “Assist-
15 ant Secretary” means the Assistant Secretary of
16 Commerce for Communications and Information.

17 (5) COMMISSION.—The term “Commission”
18 means the Federal Communications Commission.

19 (6) CORPORATION.—The term “Corporation”
20 means the Public Safety Broadband Corporation es-
21 tablished in section 284.

22 (7) EXISTING PUBLIC SAFETY BROADBAND
23 SPECTRUM.—The term “existing public safety
24 broadband spectrum” means the portion of the elec-
25 tromagnetic spectrum between the frequencies—

1 (A) from 763 megahertz to 768 megahertz;

2 (B) from 793 megahertz to 798 mega-
3 hertz;

4 (C) from 768 megahertz to 769 megahertz;
5 and

6 (D) from 798 megahertz to 799 mega-
7 hertz.

8 (8) FEDERAL ENTITY.—The term “Federal en-
9 tity” has the same meaning as in section 113(i) of
10 the National Telecommunications and Information
11 Administration Organization Act (47 U.S.C. 923(i)).

12 (9) NARROWBAND SPECTRUM.—The term
13 “narrowband spectrum” means the portion of the
14 electromagnetic spectrum between the frequencies
15 from 769 megahertz to 775 megahertz and between
16 the frequencies from 799 megahertz to 805 mega-
17 hertz.

18 (10) NIST.—The term “NIST” means the Na-
19 tional Institute of Standards and Technology.

20 (11) NTIA.—The term “NTIA” means the Na-
21 tional Telecommunications and Information Admin-
22 istration.

23 (12) PUBLIC SAFETY ENTITY.—The term “pub-
24 lic safety entity” means an entity that provides pub-
25 lic safety services.

1 (13) PUBLIC SAFETY SERVICES.—The term
2 “public safety services”—

3 (A) has the meaning given the term in sec-
4 tion 337(f) of the Communications Act of 1934
5 (47 U.S.C. 337(f)); and

6 (B) includes services provided by emer-
7 gency response providers, as that term is de-
8 fined in section 2 of the Homeland Security Act
9 of 2002 (6 U.S.C. 101).

10 **PART I—AUCTIONS OF SPECTRUM AND**
11 **SPECTRUM MANAGEMENT**

12 **SEC. 272. CLARIFICATION OF AUTHORITIES TO REPURPOSE**
13 **FEDERAL SPECTRUM FOR COMMERCIAL PUR-**
14 **POSES.**

15 (a) Paragraph (1) of subsection 113(g) of the Na-
16 tional Telecommunications and Information Administra-
17 tion Organization Act (47 U.S.C. 923(g)(1)) is amended
18 by striking paragraph (1) and inserting the following:

19 “(1) ELIGIBLE FEDERAL ENTITIES.—Any Fed-
20 eral entity that operates a Federal Government sta-
21 tion authorized to use a band of frequencies speci-
22 fied in paragraph (2) and that incurs relocation
23 costs because of planning for a potential auction of
24 spectrum frequencies, a planned auction of spectrum
25 frequencies or the reallocation of spectrum fre-

1 frequencies from Federal use to exclusive non-Federal
2 use, or shared Federal and non-Federal use may re-
3 ceive payment for such costs from the Spectrum Re-
4 location Fund, in accordance with section 118 of
5 this Act. For purposes of this paragraph, Federal
6 power agencies exempted under subsection (c)(4)
7 that choose to relocate from the frequencies identi-
8 fied for reallocation pursuant to subsection (a), are
9 eligible to receive payment under this paragraph.”.

10 (b) ELIGIBLE FREQUENCIES.—Section 113(g)(2)(B)
11 of the National Telecommunications and Information Ad-
12 ministration Organization Act (47 U.S.C. 923(g)(2)) is
13 amended by deleting and replacing subsection (B) with the
14 following:

15 “(B) any other band of frequencies reallo-
16 cated from Federal use to non-Federal or
17 shared use after January 1, 2003, that is as-
18 signed by competitive bidding pursuant to sec-
19 tion 309(j) of the Communications Act of 1934
20 (47 U.S.C. 309(j)) or is assigned as a result of
21 later legislation or other administrative direc-
22 tion.”.

23 (c) Paragraph (3) of subsection 113(g) of the Na-
24 tional Telecommunications and Information Administra-
25 tion Organization Act (47 U.S.C. 923(g)(3)) is amended

1 by striking it in its entirety and replacing it with the fol-
2 lowing:

3 “(3) DEFINITION OF RELOCATION AND SHAR-
4 ING COSTS.—For purposes of this subsection, the
5 terms ‘relocation costs’ and ‘sharing costs’ mean the
6 costs incurred by a Federal entity to plan for a po-
7 tential or planned auction or sharing of spectrum
8 frequencies and to achieve comparable capability of
9 systems, regardless of whether that capability is
10 achieved by relocating to a new frequency assign-
11 ment, relocating a Federal Government station to a
12 different geographic location, modifying Federal gov-
13 ernment equipment to mitigate interference or use
14 less spectrum, in terms of bandwidth, geography or
15 time, and thereby permitting spectrum sharing (in-
16 cluding sharing among relocated Federal entities
17 and incumbents to make spectrum available for non-
18 Federal use) or relocation, or by utilizing an alter-
19 native technology. Comparable capability of systems
20 includes the acquisition of state-of-the-art replace-
21 ment systems intended to meet comparable oper-
22 ational scope, which may include incidental increases
23 in functionality. Such costs include—

24 “(A) the costs of any modification or re-
25 placement of equipment, spares, associated an-

1 cillary equipment, software, facilities, operating
2 manuals, training costs, or regulations that are
3 attributable to relocation or sharing;

4 “(B) the costs of all engineering, equip-
5 ment, software, site acquisition and construc-
6 tion costs, as well as any legitimate and pru-
7 dent transaction expense, including term-limited
8 Federal civil servant and contractor staff nec-
9 essary, which may be renewed, to carry out the
10 relocation activities of an eligible Federal entity,
11 and reasonable additional costs incurred by the
12 Federal entity that are attributable to reloca-
13 tion or sharing, including increased recurring
14 costs above recurring costs of the system before
15 relocation for the remaining estimated life of
16 the system being relocated;

17 “(C) the costs of research, engineering
18 studies, economic analyses, or other expenses
19 reasonably incurred in connection with (i) cal-
20 culating the estimated relocation costs that are
21 provided to the Commission pursuant to para-
22 graph (4) of this subsection, or in calculating
23 the estimated sharing costs; (ii) determining the
24 technical or operational feasibility of relocation
25 to one or more potential relocation bands; or

1 (iii) planning for or managing a relocation or
2 sharing project (including spectrum coordina-
3 tion with auction winners) or potential reloca-
4 tion or sharing project;

5 “(D) the one-time costs of any modifica-
6 tion of equipment reasonably necessary to ac-
7 commodate commercial use of shared fre-
8 quencies or, in the case of frequencies reallo-
9 cated to exclusive commercial use, prior to the
10 termination of the Federal entity’s primary allo-
11 cation or protected status, when the eligible fre-
12 quencies as defined in paragraph (2) of this
13 subsection are made available for private sector
14 uses by competitive bidding and a Federal enti-
15 ty retains primary allocation or protected status
16 in those frequencies for a period of time after
17 the completion of the competitive bidding proc-
18 ess;

19 “(E) the costs associated with the acceler-
20 ated replacement of systems and equipment if
21 such acceleration is necessary to ensure the
22 timely relocation of systems to a new frequency
23 assignment or the timely accommodation of
24 sharing of Federal frequencies; and

1 “(F) the costs of the use of commercial
2 systems and services (including systems not uti-
3 lizing spectrum) to replace Federal systems dis-
4 continued or relocated pursuant to this Act, in-
5 cluding lease, subscription, and equipment costs
6 over an appropriate period, such as the antici-
7 pated life of an equivalent Federal system or
8 other period determined by the Director of the
9 Office of Management and Budget.”.

10 (d) A new subsection (7) is added to Section 113(g)
11 as follows:

12 “(7) SPECTRUM SHARING.—Federal entities are
13 permitted to allow access to their frequency assign-
14 ments by non-Federal entities upon approval of the
15 terms of such access by NTIA, in consultation with
16 the Office of Management and Budget. Such non-
17 Federal entities must comply with all applicable
18 rules of the Commission and NTIA, including any
19 regulations promulgated pursuant to this section.
20 Remuneration associated with such access shall be
21 deposited into the Spectrum Relocation Fund. Fed-
22 eral entities that incur costs as a result of such ac-
23 cess are eligible for payment from the Fund for the
24 purposes specified in subsection (3) of this section.

1 The revenue associated with such access must be at
2 least 110 percent of the estimated Federal costs.”.

3 (e) Section 118 of such Act (47 U.S.C. 928) is
4 amended by:

5 (1) In subsection (b), adding at the end, “and
6 any payments made by non-Federal entities for ac-
7 cess to Federal spectrum pursuant to 47 U.S.C.
8 113(g)(7)”;

9 (2) replacing subsection (c) with the following:
10 “‘The amounts in the Fund from auctions of eligible
11 frequencies are authorized to be used to pay relocation
12 costs, as defined in section (g)(3) of this title, of an eligible
13 Federal entity incurring such costs with respect to reloca-
14 tion from any eligible frequency. In addition, the amounts
15 in the Fund from payments by non-Federal entities for
16 access to Federal spectrum are authorized to be used to
17 pay Federal costs associated with such sharing, as defined
18 in section (g)(3) of this title. The Director of the Office
19 of Management and Budget (OMB) may transfer at any
20 time (including prior to any auction or contemplated auc-
21 tion, or sharing initiative) such sums as may be available
22 in the Fund to an eligible Federal entity to pay eligible
23 relocation or sharing costs related to pre-auction estimates
24 or research as defined in subparagraph (C) of section
25 923(g)(3) of this title. However, the Director may not

1 transfer more than \$100,000,000 associated with author-
2 ized pre-auction activities before an auction is completed
3 and proceeds are deposited in the Spectrum Relocation
4 Fund. Within the \$100,000,000 that may be transferred
5 before an auction, the Director of OMB may transfer up
6 to \$10,000,000 in total to eligible federal entities for eligi-
7 ble relocation or sharing costs related to pre-auction esti-
8 mates or research as defined in subparagraph (C) of sec-
9 tion 923(g)(3) of this title for costs incurred prior to the
10 enactment of this legislation, but after June 28th, 2010.
11 These amounts transferred pursuant to the previous pro-
12 viso are in addition to amounts that the Director of OMB
13 may transfer after the enactment of this legislation.”;

14 (3) amending subsection (d)(1) to add, “and
15 sharing” before “costs”;

16 (4) amending subsection (d)(2)(B) to add, “and
17 sharing” before “costs”, and adding at the end,
18 “and sharing”;

19 (5) replacing subsection (d)(3) with the fol-
20 lowing:

21 “Any amounts in the Fund that are remaining after
22 the payment of the relocation and sharing costs that are
23 payable from the Fund shall revert to and be deposited
24 in the general fund of the Treasury not later than 15 years
25 after the date of the deposit of such proceeds to the Fund,

1 unless the Director of OMB, in consultation with the As-
2 sistant Secretary for Communications and Information,
3 notifies the Committees on Appropriations and Energy
4 and Commerce of the House of Representatives and the
5 Committees on Appropriations and Commerce, Science,
6 and Transportation of the Senate at least 60 days in ad-
7 vance of the reversion of the funds to the general fund
8 of the Treasury that such funds are needed to complete
9 or to implement current or future relocations or sharing
10 initiatives.”;

11 (6) amending subsection (e)(2) by adding “and
12 sharing” before “costs”; by adding “or sharing” be-
13 fore “is complete”; and by adding “or sharing” be-
14 fore “in accordance”; and

15 (7) adding a new subsection at the end thereof:
16 “(f) Notwithstanding subsections (c) through (e) of
17 this section and after the amount specified in subsection
18 (b), up to twenty percent of the amounts deposited in the
19 Spectrum Relocation Fund from the auction of licenses
20 following the date of enactment of this section for fre-
21 quencies vacated by Federal entities, or up to twenty per-
22 cent of the amounts paid by non-Federal entities for shar-
23 ing of Federal spectrum, after the date of enactment are
24 hereby appropriated and available at the discretion of the
25 Director of the Office of Management and Budget, in con-

1 sultation with the Assistant Secretary for Communications
2 and Information, for payment to the eligible Federal enti-
3 ties, in addition to the relocation and sharing costs defined
4 in paragraph (3) of subsection 923(g), for the purpose of
5 encouraging timely access to those frequencies, provided
6 that:

7 “(1) Such payments may be based on the mar-
8 ket value of the spectrum, timeliness of clearing, and
9 needs for agencies’ essential missions;

10 “(2) Such payments are authorized for:

11 “(A) the purposes of achieving enhanced
12 capabilities of systems that are affected by the
13 activities specified in subparagraphs (A)
14 through (F) of paragraph (3) of subsection
15 923(g) of this title; and

16 “(B) other communications, radar and
17 spectrum-using investments not directly af-
18 fected by such reallocation or sharing but essen-
19 tial for the missions of the Federal entity that
20 is relocating its systems or sharing frequencies;

21 “(3) The increase to the Fund due to any one
22 auction after any payment is not less than 10 per-
23 cent of the winning bids in the relevant auction, or
24 is not less than 10 percent of the payments from

1 non-Federal entities in the relevant sharing agree-
2 ment;

3 “(4) Payments to eligible entities must be based
4 on the proceeds generated in the auction that an eli-
5 gible entity participates in; and

6 “(5) Such payments will not be made until 30
7 days after the Director of OMB has notified the
8 Committees on Appropriations and Commerce,
9 Science, and Transportation of the Senate, and the
10 Committees on Appropriations and Energy and
11 Commerce of the House of Representatives.”.

12 (f) Subparagraph D of section 309 (j)(8) of the Com-
13 munications Act of 1934 (47 U.S.C. 309(j)(8)(D)) is
14 amended by adding “, after the retention of revenue de-
15 scribed in subparagraph (B),” before “attributable” and
16 “and frequencies identified by the Federal Communica-
17 tions Commission to be auctioned in conjunction with eli-
18 gible frequencies described in 47 U.S.C. 923(g)(2)” before
19 the first “shall” in the subparagraph.

20 (g) If the head of an executive agency of the Federal
21 Government determines that public disclosure of any in-
22 formation contained in notifications and reports required
23 by sections 923 or 928 of Title 47 of the United States
24 Code would reveal classified national security information
25 or other information for which there is a legal basis for

1 nondisclosure and such public disclosure would be detri-
2 mental to national security, homeland security, public
3 safety, or jeopardize law enforcement investigations the
4 head of the executive agency shall notify the NTIA of that
5 determination prior to release of such information. In that
6 event, such information shall be included in a separate
7 annex, as needed and to the extent the agency head deter-
8 mines is consistent with national security or law enforce-
9 ment purposes. These annexes shall be provided to the ap-
10 propriate subcommittee in accordance with applicable stip-
11 ulations, but shall not be disclosed to the public or pro-
12 vided to any unauthorized person through any other
13 means.

14 **SEC. 273. INCENTIVE AUCTION AUTHORITY.**

15 (a) Paragraph (8) of section 309(j) of the Commu-
16 nications Act of 1934 (47 U.S.C. 309(j)) is amended—

17 (1) in subparagraph (A), by deleting “and (E)”
18 and inserting “(E) and (F)” after “subparagraphs
19 (B), (D),”; and

20 (2) by adding at the end the following new sub-
21 paragraphs:

22 “(F) Notwithstanding any other provision
23 of law, if the Commission determines that it is
24 consistent with the public interest in utilization
25 of the spectrum for a licensee to voluntarily re-

1 linquish some or all of its licensed spectrum
2 usage rights in order to permit the assignment
3 of new initial licenses through a competitive
4 bidding process subject to new service rules, or
5 the designation of spectrum for unlicensed use,
6 the Commission may pay to such licensee a por-
7 tion of any auction proceeds that the Commis-
8 sion determines, in its discretion, are attrib-
9 utable to the spectrum usage rights voluntarily
10 relinquished by such licensee. If the Commis-
11 sion also determines that it is in the public in-
12 terest to modify the spectrum usage rights of
13 any incumbent licensee in order to facilitate the
14 assignment of such new initial licenses subject
15 to new service rules, or the designation of spec-
16 trum for unlicensed use, the Commission may
17 pay to such licensee a portion of the auction
18 proceeds for the purpose of relocating to any al-
19 ternative frequency or location that the Com-
20 mission may designate; Provided, however, that
21 with respect to frequency bands between 54
22 megahertz and 72 megahertz, 76 megahertz
23 and 88 megahertz, 174 megahertz and 216
24 megahertz, and 470 megahertz and 698 mega-
25 hertz ('the specified bands'), any spectrum

1 made available for alternative use utilizing pay-
2 ments authorized under this subsection shall be
3 assigned via the competitive bidding process
4 until the winning bidders for licenses covering
5 at least 84 megahertz from the specified bands
6 deposit the full amount of their bids in accord-
7 ance with the Commission's instructions. In ad-
8 dition, if more than 84 megahertz of spectrum
9 from the specified bands is made available for
10 alternative use utilizing payments under this
11 subsection, and such spectrum is assigned via
12 competitive bidding, a portion of the proceeds
13 may be disbursed to licensees of other fre-
14 quency bands for the purpose of making addi-
15 tional spectrum available, provided that a ma-
16 jority of such additional spectrum is assigned
17 via competitive bidding. Also, provided that in
18 exercising the authority provided under this sec-
19 tion:

20 “(i) The Chairman of the Commis-
21 sion, in consultation with the Director of
22 OMB, shall notify the Committees on Ap-
23 propriations and Commerce, Science, and
24 Transportation of the Senate, and the
25 Committees on Appropriations and Energy

1 and Commerce of the House of Represent-
2 atives of the methodology for calculating
3 such payments to licensees at least 3
4 months in advance of the relevant auction,
5 and that such methodology consider the
6 value of spectrum vacated in its current
7 use and the timeliness of clearing; and

8 “(ii) Notwithstanding subparagraph
9 (A), and except as provided in subpara-
10 graphs (B), (C), and (D), all proceeds (in-
11 cluding deposits and up front payments
12 from successful bidders) from the auction
13 of spectrum under this section and section
14 106 of this Act shall be deposited with the
15 Public Safety Trust Fund established
16 under section 217 of this Act.

17 “(G) ESTABLISHMENT OF INCENTIVE AUC-
18 TION RELOCATION FUND.—

19 “(i) IN GENERAL.—There is estab-
20 lished in the Treasury of the United States
21 a fund to be known as the ‘Incentive Auc-
22 tion Relocation Fund’.

23 “(ii) ADMINISTRATION.—The Assist-
24 ant Secretary shall administer the Incen-
25 tive Auction Relocation Fund using the

1 amounts deposited pursuant to this sec-
2 tion.

3 “(iii) CREDITING OF RECEIPTS.—

4 There shall be deposited into or credited to
5 the Incentive Auction Relocation Fund any
6 amounts specified in section 217 of this
7 Act.

8 “(iv) AVAILABILITY.—Amounts in the
9 Incentive Auction Relocation Fund shall be
10 available to the NTIA for use—

11 “(I) without fiscal year limita-
12 tion;

13 “(II) for a period not to exceed
14 18 months following the later of—

15 “(aa) the completion of in-
16 centive auction from which such
17 amounts were derived;

18 “(bb) the date on which the
19 Commission issues all the new
20 channel assignments pursuant to
21 any repacking required under
22 subparagraph (F)(ii); or

23 “(cc) the issuance of a con-
24 struction permit by the Commis-
25 sion for a station to change chan-

1 nels, geographic locations, to col-
2 locate on the same channel or no-
3 tification by a station to the As-
4 sistant Secretary that it is im-
5 pacted by such a change; and

6 “(III) without further appropria-
7 tion.

8 “(v) USE OF FUNDS.—Amounts in the
9 Incentive Auction Relocation Fund may
10 only be used by the NTIA, in consultation
11 with the Commission, to cover—

12 “(I) the reasonable costs of tele-
13 vision broadcast stations that are relo-
14 cated to a different spectrum channel
15 or geographic location following an in-
16 centive auction under subparagraph
17 (F), or that are impacted by such re-
18 locations, including to cover the cost
19 of new equipment, installation, and
20 construction; and

21 “(II) the costs incurred by multi-
22 channel video programming distribu-
23 tors for new equipment, installation,
24 and construction related to the car-
25 riage of such relocated stations or the

1 carriage of stations that voluntarily
2 elect to share a channel, but retain
3 their existing rights to carriage pursu-
4 ant to sections 338, 614, and 615.”.

5 **SEC. 274. REQUIREMENTS WHEN REPURPOSING CERTAIN**
6 **MOBILE SATELLITE SERVICES SPECTRUM**
7 **FOR TERRESTRIAL BROADBAND USE.**

8 To the extent that the Commission makes available
9 terrestrial broadband rights on spectrum primarily li-
10 censed for mobile satellite services, the Commission shall
11 recover a significant portion of the value of such right ei-
12 ther through the authority provided in section 309(j) of
13 the Communications Act of 1934 (47 U.S.C. 309(j)) or
14 by section 278 of this subtitle.

15 **SEC. 275. PERMANENT EXTENSION OF AUCTION AUTHOR-**
16 **ITY.**

17 Section 309(j)11 of the Communications Act of 1934
18 (47 U.S.C. 309 (j)(11)) is repealed.

19 **SEC. 276. AUTHORITY TO AUCTION LICENSES FOR DOMES-**
20 **TIC SATELLITE SERVICES.**

21 Section 309(j) of the Communications Act of 1934
22 is amended by adding the following new subsection at the
23 end thereof:

24 “(17) Notwithstanding any other provision of
25 law, the Commission shall use competitive bidding

1 under this subsection to assign any license, construc-
2 tion permit, reservation, or similar authorization or
3 modification thereof, that may be used solely or pre-
4 dominantly for domestic satellite communications
5 services, including satellite-based television or radio
6 services. A service is defined to be predominantly for
7 domestic satellite communications services if the ma-
8 jority of customers that may be served are located
9 within the geographic boundaries of the United
10 States. The Commission may, however, use an alter-
11 native approach to assignment of such licenses or
12 similar authorities if it finds that such an alternative
13 to competitive bidding would serve the public inter-
14 est, convenience, and necessity. This paragraph shall
15 be effective on the date of its enactment and shall
16 apply to all Commission assignments or reservations
17 of spectrum for domestic satellite services, including,
18 but not limited to, all assignments or reservations
19 for satellite-based television or radio services as of
20 the effective date.”.

21 **SEC. 277. DIRECTED AUCTION OF CERTAIN SPECTRUM.**

22 (a) IDENTIFICATION OF SPECTRUM.—Not later than
23 1 year after the date of enactment of this subtitle, the
24 Assistant Secretary shall identify and make available for
25 immediate reallocation, at a minimum, 15 megahertz of

1 contiguous spectrum at frequencies located between 1675
2 megahertz and 1710 megahertz, inclusive, minus the geo-
3 graphic exclusion zones, or any amendment thereof, identi-
4 fied in NTIA's October 2010 report entitled "An Assess-
5 ment of Near-Term Viability of Accommodating Wireless
6 Broadband Systems in 1675–1710 MHz, 1755–1780
7 MHz, 3500–3650 MHz, and 4200–4220 MHz, 4380–
8 4400 MHz Bands", to be made available for reallocation
9 or sharing with incumbent Government operations.

10 (b) AUCTION.—Not later than January 31, 2016, the
11 Commission shall conduct, in such combination as deemed
12 appropriate by the Commission, the auctions of the fol-
13 lowing licenses covering at least the frequencies described
14 in this section, by commencing the bidding for:

15 (1) The spectrum between the frequencies of
16 1915 megahertz and 1920 megahertz, inclusive.

17 (2) The spectrum between the frequencies of
18 1995 megahertz and 2000 megahertz, inclusive.

19 (3) The spectrum between the frequencies of
20 2020 megahertz and 2025 megahertz, inclusive.

21 (4) The spectrum between the frequencies of
22 2155 megahertz and 2175 megahertz, inclusive.

23 (5) The spectrum between the frequencies of
24 2175 megahertz and 2180 megahertz, inclusive.

1 (6) At least 25 megahertz of spectrum between
2 the frequencies of 1755 megahertz and 1850 mega-
3 hertz, minus appropriate geographic exclusion zones
4 if necessary, unless the President of the United
5 States determines that—

6 (A) such spectrum should not be reallo-
7 cated due to the need to protect incumbent
8 Federal operations; or reallocation must be de-
9 layed or progressed in phases to ensure protec-
10 tion or continuity of Federal operations; and

11 (B) allocation of other spectrum—

12 (i) better serves the public interest,
13 convenience, and necessity; and

14 (ii) can reasonably be expected to
15 produce receipts comparable to auction of
16 spectrum frequencies identified in this
17 paragraph.

18 (7) The Commission may substitute alternative
19 spectrum frequencies for the spectrum frequencies
20 identified in paragraphs (1) through (5) of this sub-
21 section, if the Commission determines that alter-
22 native spectrum would better serve the public inter-
23 est and the Office of Management and Budget cer-
24 tifies that such alternative spectrum frequencies are
25 reasonably expected to produce receipts comparable

1 to auction of the spectrum frequencies identified in
2 paragraphs (1) through (5) of this subsection.

3 (c) AUCTION ORGANIZATION.—The Commission may,
4 if technically feasible and consistent with the public inter-
5 est, combine the spectrum identified in paragraphs (4),
6 (5), and the portion of paragraph (6) between the fre-
7 quencies of 1755 megahertz and 1850 megahertz, inclu-
8 sive, of subsection (b) in an auction of licenses for paired
9 spectrum blocks.

10 (d) FURTHER REALLOCATION OF CERTAIN OTHER
11 SPECTRUM.—

12 (1) COVERED SPECTRUM.—For purposes of this
13 subsection, the term “covered spectrum” means the
14 portion of the electromagnetic spectrum between the
15 frequencies of 3550 to 3650 megahertz, inclusive,
16 minus the geographic exclusion zones, or any amend-
17 ment thereof, identified in NTLA’s October 2010 re-
18 port entitled “An Assessment of Near-Term Viabil-
19 ity of Accommodating Wireless Broadband Systems
20 in 1675–1710 MHz, 1755–1780 MHz, 3500–3650
21 MHz, and 4200–4220 MHz, 4380–4400 MHz
22 Bands”.

23 (2) IN GENERAL.—Consistent with require-
24 ments of section 309(j) of the Communications Act
25 of 1934, the Commission shall reallocate covered

1 spectrum for assignment by competitive bidding or
2 allocation to unlicensed use, minus appropriate ex-
3 clusion zones if necessary, unless the President of
4 the United States determines that—

5 (A) such spectrum cannot be reallocated
6 due to the need to protect incumbent Federal
7 systems from interference; or

8 (B) allocation of other spectrum—

9 (i) better serves the public interest,
10 convenience, and necessity; and

11 (ii) can reasonably be expected to
12 produce receipts comparable to what the
13 covered spectrum might auction for with-
14 out the geographic exclusion zones.

15 (3) ACTIONS REQUIRED IF COVERED SPECTRUM
16 CANNOT BE REALLOCATED.—

17 (A) IN GENERAL.—If the President makes
18 a determination under paragraph (2) that the
19 covered spectrum cannot be reallocated, then
20 the President shall, within 1 year after the date
21 of such determination—

22 (i) identify alternative bands of fre-
23 quencies totaling more than 20 megahertz
24 and no more than 100 megahertz of spec-
25 trum used primarily by Federal agencies

1 that satisfy the requirements of clauses (i)
2 and (ii) of paragraph (2)(B);

3 (ii) report to the appropriate commit-
4 tees of Congress and the Commission an
5 identification of such alternative spectrum
6 for assignment by competitive bidding; and

7 (iii) make such alternative spectrum
8 for assignment immediately available for
9 reallocation.

10 (B) AUCTION.—If the President makes a
11 determination under paragraph (2) that the
12 covered spectrum cannot be reallocated, the
13 Commission shall commence the bidding of the
14 alternative spectrum identified pursuant to sub-
15 paragraph (A) within 3 years of the date of en-
16 actment of this subtitle.

17 (4) ACTIONS REQUIRED IF COVERED SPECTRUM
18 CAN BE REALLOCATED.—If the President does not
19 make a determination under paragraph (1) that the
20 covered spectrum cannot be reallocated, the Commis-
21 sion shall commence the competitive bidding for the
22 covered spectrum within 3 years of the date of en-
23 actment of this subtitle.

24 (e) AMENDMENTS TO DESIGN REQUIREMENTS RE-
25 LATED TO COMPETITIVE BIDDING.—Section 309(j) of the

1 Communications Act of 1934 (47 U.S.C. 309(j)) is
2 amended—

3 (1) in paragraph (3)—

4 (A) in subparagraph (E)(ii), by striking “;
5 and” and inserting a semicolon; and

6 (B) in subparagraph (F), by striking the
7 period at the end and inserting a semicolon;
8 and

9 (2) by amending clause (i) of the second sen-
10 tence of paragraph (8)(C) to read as follows:

11 “(i) the deposits—

12 “(I) of successful bidders of any
13 auction conducted pursuant to sub-
14 paragraph (F) of section 106 of this
15 act shall be paid to the Public Safety
16 Trust Fund established under section
17 217 of such Act; and

18 “(II) of successful bidders of any
19 other auction shall be paid to the
20 Treasury;”.

21 **SEC. 278. AUTHORITY TO ESTABLISH SPECTRUM LICENSE**

22 **USER FEES.**

23 Section 309 of the Communications Act of 1934 is
24 amended by adding the following new subsection at the
25 end thereof:

1 “(m) USE OF SPECTRUM LICENSE USER FEES.—
2 For initial licenses or construction permits that are not
3 granted through the use of competitive bidding as set
4 forth in subsection (j), and for renewals or modifications
5 of initial licenses or other authorizations, whether granted
6 through competitive bidding or not, the Commission may,
7 where warranted, establish, assess, and collect annual user
8 fees on holders of spectrum licenses or construction per-
9 mits, including their successors or assignees, in order to
10 promote efficient and effective use of the electromagnetic
11 spectrum.

12 “(1) REQUIRED COLLECTIONS.—The Commis-
13 sion shall collect at least the following amounts—

14 “(A) \$200,000,000 in fiscal year 2012;

15 “(B) \$300,000,000 in fiscal year 2013;

16 “(C) \$425,000,000 in fiscal year 2014;

17 “(D) \$550,000,000 in fiscal year 2015;

18 “(E) \$550,000,000 in fiscal year 2016;

19 “(F) \$550,000,000 in fiscal year 2017;

20 “(G) \$550,000,000 in fiscal year 2018;

21 “(H) \$550,000,000 in fiscal year 2019;

22 “(I) \$550,000,000 in fiscal year 2020; and

23 “(J) \$550,000,000 in fiscal year 2021.

24 “(2) DEVELOPMENT OF SPECTRUM FEE REGU-
25 LATIONS.—

1 “(A) The Commission shall, by regulation,
2 establish a methodology for assessing annual
3 spectrum user fees and a schedule for collection
4 of such fees on classes of spectrum licenses or
5 construction permits or other instruments of
6 authorization, consistent with the public inter-
7 est, convenience and necessity. The Commission
8 may determine over time different classes of
9 spectrum licenses or construction permits upon
10 which such fees may be assessed. In estab-
11 lishing the fee methodology, the Commission
12 may consider the following factors:

13 “(i) the highest value alternative spec-
14 trum use forgone;

15 “(ii) scope and type of permissible
16 services and uses;

17 “(iii) amount of spectrum and li-
18 censed coverage area;

19 “(iv) shared versus exclusive use;

20 “(v) level of demand for spectrum li-
21 censes or construction permits within a
22 certain spectrum band or geographic area;

23 “(vi) the amount of revenue raised on
24 comparable licenses awarded through an
25 auction; and

1 “(vii) such factors that the Commis-
2 sion determines, in its discretion, are nec-
3 essary to promote efficient and effective
4 spectrum use.

5 “(B) In addition, the Commission shall, by
6 regulation, establish a methodology for assess-
7 ing annual user fees and a schedule for collec-
8 tion of such fees on entities holding Ancillary
9 Terrestrial Component authority in conjunction
10 with Mobile Satellite Service spectrum licenses,
11 where the Ancillary Terrestrial Component au-
12 thority was not assigned through use of com-
13 petitive bidding. The Commission shall not col-
14 lect less from the holders of such authority than
15 a reasonable estimate of the value of such au-
16 thority over its term, regardless of whether ter-
17 restrial services is actually provided during this
18 term. In determining a reasonable estimate of
19 the value of such authority, the Commission
20 may consider factors listed in subsection (A).

21 “(C) Within 60 days of enactment of this
22 Act, the Commission shall commence a rule-
23 making to develop the fee methodology and reg-
24 ulations. The Commission shall take all actions
25 necessary so that it can collect fees from the

1 first class or classes of spectrum license or con-
2 struction permit holders no later than Sep-
3 tember 30, 2012.

4 “(D) The Commission, from time to time,
5 may commence further rulemakings (separate
6 from or in connection with other rulemakings or
7 proceedings involving spectrum-based services,
8 licenses, permits and uses) and modify the fee
9 methodology or revise its rules required by
10 paragraph (B) to add or modify classes of spec-
11 trum license or construction permit holders that
12 must pay fees, and assign or adjust such fee as
13 a result of the addition, deletion, reclassification
14 or other change in a spectrum-based service or
15 use, including changes in the nature of a spec-
16 trum-based service or use as a consequence of
17 Commission rulemaking proceedings or changes
18 in law. Any resulting changes in the classes of
19 spectrum licenses, construction permits or fees
20 shall take effect upon the dates established in
21 the Commission’s rulemaking proceeding in ac-
22 cordance with applicable law.

23 “(E) The Commission shall exempt from
24 such fees holders of licenses for broadcast tele-
25 vision and public safety services. The term

1 ‘emergency response providers’ includes State,
2 local, and tribal, emergency public safety, law
3 enforcement, firefighter, emergency response,
4 emergency medical (including hospital emer-
5 gency facilities), and related personnel, agencies
6 and authorities.

7 “(3) PENALTIES FOR LATE PAYMENT.—The
8 Commission shall prescribe by regulation an addi-
9 tional charge which shall be assessed as a penalty
10 for late payment of fees required by this subsection.

11 “(4) REVOCATION OF LICENSE OR PERMIT.—
12 The Commission may revoke any spectrum license or
13 construction permit for a licensee’s or permittee’s
14 failure to pay in a timely manner any fee or penalty
15 to the Commission under this subsection. Such rev-
16 ocation action may be taken by the Commission
17 after notice of the Commission’s intent to take such
18 action is sent to the licensee by registered mail, re-
19 turn receipt requested, at the licensee’s last known
20 address. The notice will provide the licensee at least
21 30 days to either pay the fee or show cause why the
22 fee does not apply to the licensee or should otherwise
23 be waived or payment deferred. A hearing is not re-
24 quired under this subsection unless the licensee’s re-
25 sponse presents a substantial and material question

1 of fact. In any case where a hearing is conducted
2 pursuant to this section, the hearing shall be based
3 on written evidence only, and the burden of pro-
4 ceeding with the introduction of evidence and the
5 burden of proof shall be on the licensee. Unless the
6 licensee substantially prevails in the hearing, the
7 Commission may assess the licensee for the costs of
8 such hearing. Any Commission order adopted pursu-
9 ant to this subsection shall determine the amount
10 due, if any, and provide the licensee with at least 30
11 days to pay that amount or have its authorization
12 revoked. No order of revocation under this sub-
13 section shall become final until the licensee has ex-
14 hausted its right to judicial review of such order
15 under section 402(b)(5) of this title.

16 “(5) TREATMENT OF REVENUES.—All proceeds
17 obtained pursuant to the regulations required by this
18 subsection shall be deposited in the General Fund of
19 the Treasury.”.

20 **PART II—PUBLIC SAFETY BROADBAND NETWORK**

21 **SEC. 281. REALLOCATION OF D BLOCK FOR PUBLIC SAFE-**

22 **TY.**

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

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

4 (1) by striking “24” in paragraph (1) and in-
5 serting “34”; and

6 (2) by striking “36” in paragraph (2) and in-
7 serting “26”.

8 **SEC. 282. FLEXIBLE USE OF NARROWBAND SPECTRUM.**

9 The Commission may allow the narrowband spectrum
10 to be used in a flexible manner, including usage for public
11 safety broadband communications, subject to such tech-
12 nical and interference protection measures as the Commis-
13 sion may require and subject to interoperability require-
14 ments of the Commission and the Corporation established
15 in section 204 of this subtitle.

16 **SEC. 283. SINGLE PUBLIC SAFETY WIRELESS NETWORK LI-**
17 **CENSEE.**

18 (a) REALLOCATION AND GRANT OF LICENSE.—Not-
19 withstanding any other provision of law, and subject to
20 the provisions of this subtitle, including section 290, the
21 Commission shall grant a license to the Public Safety
22 Broadband Corporation established under section 284 for
23 the use of the 700 MHz D block spectrum and existing
24 public safety broadband spectrum.

25 (b) TERM OF LICENSE.—

1 ther an agency nor establishment of the United States
2 Government or the District of Columbia Government.

3 (b) APPLICATION OF PROVISIONS.—The Corporation
4 shall be subject to the provisions of this subtitle, and, to
5 the extent consistent with this subtitle, to the District of
6 Columbia Nonprofit Corporation Act (sec. 29–301.01 et
7 seq., D.C. Official Code).

8 (c) RESIDENCE.—The Corporation shall have its
9 place of business in the District of Columbia and shall be
10 considered, for purposes of venue in civil actions, to be
11 a resident of the District of Columbia.

12 (d) POWERS UNDER DC ACT.—In order to carry out
13 the duties and activities of the Corporation, the Corpora-
14 tion shall have the usual powers conferred upon a non-
15 profit corporation by the District of Columbia Nonprofit
16 Corporation Act.

17 (e) INCORPORATION.—The members of the initial
18 Board of Directors of the Corporation shall serve as
19 incorporators and shall take whatever steps that are nec-
20 essary to establish the Corporation under the District of
21 Columbia Nonprofit Corporation Act.

22 **SEC. 285. BOARD OF DIRECTORS OF THE CORPORATION.**

23 (a) MEMBERSHIP.—The management of the Corpora-
24 tion shall be vested in a Board of Directors (referred to

1 in this Title as the “Board”), which shall consist of the
2 following members:

3 (1) FEDERAL MEMBERS.—The following indi-
4 viduals, or their respective designees, shall serve as
5 Federal members:

6 (A) The Secretary of Commerce.

7 (B) The Secretary of Homeland Security.

8 (C) The Attorney General of the United
9 States.

10 (D) The Director of the Office of Manage-
11 ment and Budget.

12 (2) NON-FEDERAL MEMBERS.—

13 (A) IN GENERAL.—The Secretary of Com-
14 merce, in consultation with the Secretary of
15 Homeland Security and the Attorney General of
16 the United States, shall appoint 11 individuals
17 to serve as non-Federal members of the Board.

18 (B) STATE, TERRITORIAL, TRIBAL AND
19 LOCAL GOVERNMENT INTERESTS.—In making
20 appointments under subparagraph (A), the Sec-
21 retary of Commerce should—

22 (i) appoint at least 3 individuals with
23 significant expertise in the collective inter-
24 ests of State, territorial, tribal and local
25 governments; and

1 (ii) seek to ensure geographic and re-
2 gional representation of the United States
3 in such appointments; and

4 (iii) seek to ensure rural and urban
5 representation in such appointments.

6 (C) PUBLIC SAFETY INTERESTS.—In mak-
7 ing appointments under subparagraph (A), the
8 Secretary of Commerce should appoint at least
9 3 individuals who have served or are currently
10 serving as public safety professionals.

11 (D) REQUIRED QUALIFICATIONS.—

12 (i) IN GENERAL.—Each non-Federal
13 member appointed under subparagraph (A)
14 should meet at least 1 of the following cri-
15 teria:

16 (I) PUBLIC SAFETY EXPERI-
17 ENCE.—Knowledge and experience in
18 the use of Federal, State, local, or
19 tribal public safety or emergency re-
20 sponse.

21 (II) TECHNICAL EXPERTISE.—
22 Technical expertise and fluency re-
23 garding broadband communications,
24 including public safety communica-
25 tions and cybersecurity.

1 (III) NETWORK EXPERTISE.—

2 Expertise in building, deploying, and
3 operating commercial telecommuni-
4 cations networks.

5 (IV) FINANCIAL EXPERTISE.—

6 Expertise in financing and funding
7 telecommunications networks.

8 (ii) EXPERTISE TO BE REP-
9 RESENTED.—In making appointments
10 under subparagraph (A), the Secretary of
11 Commerce should appoint—

12 (I) at least one individual who
13 satisfies the requirement under sub-
14 clause (II) of clause (i);

15 (II) at least one individual who
16 satisfies the requirement under sub-
17 clause (III) of clause (i); and

18 (III) at least one individual who
19 satisfies the requirement under sub-
20 clause (IV) of clause (i).

21 (E) INDEPENDENCE.—

22 (i) IN GENERAL.—Each non-Federal
23 member of the Board shall be independent
24 and neutral and maintain a fiduciary rela-

1 tionship with the Corporation in per-
2 forming his or her duties.

3 (ii) INDEPENDENCE DETERMINA-
4 TION.—In order to be considered inde-
5 pendent for purposes of this subparagraph,
6 a member of the Board—

7 (I) may not, other than in his or
8 her capacity as a member of the
9 Board or any committee thereof—

10 (aa) accept any consulting,
11 advisory, or other compensatory
12 fee from the Corporation; or

13 (bb) be a person associated
14 with the Corporation or with any
15 affiliated company thereof; and

16 (II) shall be disqualified from
17 any deliberation involving any trans-
18 action of the Corporation in which the
19 Board member has a financial interest
20 in the outcome of the transaction.

21 (F) NOT OFFICERS OR EMPLOYEES.—The
22 non-Federal members of the Board shall not, by
23 reason of such membership, be considered to be
24 officers or employees of the United States Gov-

1 ernment or of the District of Columbia Govern-
2 ment.

3 (G) CITIZENSHIP.—No individual other
4 than a citizen of the United States may serve
5 as a non-Federal member of the Board.

6 (H) CLEARANCE FOR CLASSIFIED INFOR-
7 MATION.—In order to have the threat and vul-
8 nerability information necessary to make risk
9 management decisions regarding the network,
10 the non-Federal members of the Board shall be
11 required, prior to appointment, to obtain a
12 clearance held by the Director of National In-
13 telligence that permits them to receive informa-
14 tion classified at the level of Top Secret, Special
15 Compartmented Information.

16 (b) TERMS OF APPOINTMENT.—

17 (1) INITIAL APPOINTMENT DEADLINE.—Mem-
18 bers of the Board shall be appointed not later than
19 180 days after the date of the enactment of this
20 subtitle.

21 (2) TERMS.—

22 (A) LENGTH.—

23 (i) FEDERAL MEMBERS.—Each Fed-
24 eral member of the Board shall serve as a
25 member of the Board for the life of the

1 Corporation while serving in their ap-
2 pointed capacity.

3 (ii) NON-FEDERAL MEMBERS.—The
4 term of office of each non-Federal member
5 of the Board shall be 3 years. No non-Fed-
6 eral member of the Board may serve more
7 than 2 consecutive full 3-year terms.

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

13 (C) APPOINTMENT TO FILL VACANCY.—
14 Any non-Federal member appointed to fill a va-
15 cancy occurring prior to the expiration of the
16 term for which that member's predecessor was
17 appointed shall be appointed for the remainder
18 of the predecessor's term.

19 (D) STAGGERED TERMS.—With respect to
20 the initial non-Federal members of the Board—

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

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

1 (iii) 3 members shall serve for a term
2 of 1 year.

3 (3) VACANCIES.—A vacancy in the membership
4 of the Board shall not affect the Board’s powers,
5 and shall be filled in the same manner as the origi-
6 nal member was appointed.

7 (c) CHAIR.—

8 (1) SELECTION.—The Secretary of Commerce,
9 in consultation with the Secretary of Homeland Se-
10 curity and the Attorney General of the United
11 States, shall select, from among the members of the
12 Board, an individual to serve for a 2-year term as
13 Chair of the Board.

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

17 (3) REMOVAL FOR CAUSE.—The Secretary of
18 Commerce, in consultation with the Secretary of
19 Homeland Security and the Attorney General of the
20 United States, may remove the Chair of the Board
21 and any non-Federal member for good cause.

22 (d) REMOVAL.—All members of the Board may by
23 majority vote—

24 (1) remove any non-Federal member of the
25 Board from office for conduct determined by the

1 Board to be detrimental to the Board or Corpora-
2 tion; and

3 (2) request that the Secretary of Commerce ex-
4 ercise his or her authority to remove the Chair of
5 the Board for conduct determined by the Board to
6 be detrimental to the Board or Corporation.

7 (e) MEETINGS.—

8 (1) FREQUENCY.—The Board shall meet in ac-
9 cordance with the bylaws of the Corporation—

10 (A) at the call of the Chairperson; and

11 (B) not less frequently than once each
12 quarter.

13 (2) TRANSPARENCY.—Meetings of the Board,
14 including any committee of the Board, shall be open
15 to the public. The Board may, by majority vote,
16 close any such meeting only for the time necessary
17 to preserve the confidentiality of commercial or fi-
18 nancial information that is privileged or confidential,
19 to discuss personnel matters, to discuss security
20 vulnerabilities when making those vulnerabilities
21 public would increase risk to the network or other-
22 wise materially threaten network operations, or to
23 discuss legal matters affecting the Corporation, in-
24 cluding pending or potential litigation.

1 (f) QUORUM.—Eight members of the Board shall
2 constitute a quorum.

3 (g) BYLAWS.—A majority of the members of the
4 Board of Directors may amend the bylaws of the Corpora-
5 tion.

6 (h) ATTENDANCE.—Members of the Board of Direc-
7 tors may attend meetings of the Corporation and vote in
8 person, via telephone conference, or via video conference.

9 (i) PROHIBITION ON COMPENSATION.—Members of
10 the Board of the Corporation shall serve without pay, and
11 shall not otherwise benefit, directly or indirectly, as a re-
12 sult of their service to the Corporation, but shall be al-
13 lowed a per diem allowance for travel expenses, at rates
14 authorized for an employee of an agency under subchapter
15 I of chapter 57 of title 5, United States Code, while away
16 from the home or regular place of business of the member
17 in the performance of the duties of the Corporation.

18 **SEC. 286. OFFICERS, EMPLOYEES, AND COMMITTEES OF**

19 **THE CORPORATION.**

20 (a) OFFICERS AND EMPLOYEES.—

21 (1) IN GENERAL.—The Corporation shall have
22 a Chief Executive Officer, and such other officers
23 and employees as may be named and appointed by
24 the Board for terms and at rates of compensation
25 fixed by the Board pursuant to this subsection. The

1 Chief Executive Officer may name and appoint such
2 employees as are necessary. All officers and employ-
3 ees shall serve at the pleasure of the Board.

4 (2) LIMITATION.—No individual other than a
5 citizen of the United States may be an officer of the
6 Corporation.

7 (3) NONPOLITICAL NATURE OF APPOINT-
8 MENT.—No political test or qualification shall be
9 used in selecting, appointing, promoting, or taking
10 other personnel actions with respect to officers,
11 agents, or employees of the Corporation.

12 (4) COMPENSATION.—

13 (A) IN GENERAL.—The Board may hire
14 and fix the compensation of employees hired
15 under this subsection as may be necessary to
16 carry out the purposes of the Corporation.

17 (B) APPROVAL BY COMPENSATION BY FED-
18 ERAL MEMBERS.—Notwithstanding any other
19 provision of law, or any bylaw adopted by the
20 Corporation, all rates of compensation, includ-
21 ing benefit plans and salary ranges, for officers
22 and employees of the Board, shall be jointly ap-
23 proved by the Federal members of the Board.

24 (C) LIMITATION ON OTHER COMPENSA-
25 TION.—No officer or employee of the Corpora-

1 tion may receive any salary or other compensa-
2 tion (except for compensation for services on
3 boards of directors of other organizations that
4 do not receive funds from the Corporation, on
5 committees of such boards, and in similar ac-
6 tivities for such organizations) from any sources
7 other than the Corporation for services ren-
8 dered during the period of the employment of
9 the officer or employee by the Corporation, un-
10 less unanimously approved by all voting mem-
11 bers of the Corporation.

12 (5) SERVICE ON OTHER BOARDS.—Service by
13 any officer on boards of directors of other organiza-
14 tions, on committees of such boards, and in similar
15 activities for such organizations shall be subject to
16 annual advance approval by the Board and subject
17 to the provisions of the Corporation’s Statement of
18 Ethical Conduct.

19 (6) RULE OF CONSTRUCTION.—No officer or
20 employee of the Board or of the Corporation shall be
21 considered to be an officer or employee of the United
22 States Government or of the government of the Dis-
23 trict of Columbia.

24 (7) CLEARANCE FOR CLASSIFIED INFORMA-
25 TION.—In order to have the threat and vulnerability

1 information necessary to make risk management de-
2 cisions regarding the network, at a minimum the
3 Chief Executive Officer and any officers filling the
4 roles normally titled as Chief Information Officers,
5 Chief Information Security Officer, and Chief Oper-
6 ations Officer shall—

7 (A) be required, within six months of being
8 hired, to obtain a clearance held by the Director
9 of National Intelligence that permits them to
10 receive information classified at the level of Top
11 Secret, Special Compartmented Information.

12 (b) ADVISORY COMMITTEES.—The Board—

13 (1) shall establish a standing public safety advi-
14 sory committee to assist the Board in carrying out
15 its duties and responsibilities under this title; and

16 (2) may establish additional standing or ad hoc
17 committees, panels, or councils as the Board deter-
18 mines are necessary.

19 **SEC. 287. NONPROFIT AND NONPOLITICAL NATURE OF THE**
20 **CORPORATION.**

21 (a) STOCK.—The Corporation shall have no power to
22 issue any shares of stock, or to declare or pay any divi-
23 dends.

24 (b) PROFIT.—No part of the income or assets of the
25 Corporation shall inure to the benefit of any director, offi-

1 cer, employee, or any other individual associated with the
2 Corporation, except as salary or reasonable compensation
3 for services.

4 (c) POLITICS.—The Corporation may not contribute
5 to or otherwise support any political party or candidate
6 for elective public office.

7 (d) PROHIBITION ON LOBBYING ACTIVITIES.—The
8 Corporation shall not engage in lobbying activities (as de-
9 fined in section 3(7) of the Lobbying Disclosure Act of
10 1995 (5 U.S.C. 1602(7))).

11 **SEC. 288. POWERS, DUTIES, AND RESPONSIBILITIES OF THE**
12 **CORPORATION.**

13 (a) GENERAL POWERS.—The Corporation shall have
14 the authority to do the following:

15 (1) To adopt and use a corporate seal.

16 (2) To have succession until dissolved by an Act
17 of Congress.

18 (3) To prescribe, through the actions of its
19 Board, bylaws not inconsistent with Federal law and
20 the laws of the District of Columbia, regulating the
21 manner in which the Corporation's general business
22 may be conducted and the manner in which the
23 privileges granted to the Corporation by law may be
24 exercised.

1 (4) To exercise, through the actions of its
2 Board, all powers specifically granted by the provi-
3 sions of this title, and such incidental powers as
4 shall be necessary.

5 (5) To hold such hearings, sit and act at such
6 times and places, take such testimony, and receive
7 such evidence as the Corporation considers necessary
8 to carry out its responsibilities and duties.

9 (6) To obtain grants and funds from and make
10 contracts with individuals, private companies, orga-
11 nizations, institutions, and Federal, State, regional,
12 and local agencies, pursuant to guidelines estab-
13 lished by the Director of the Office of Management
14 and Budget.

15 (7) To accept, hold, administer, and utilize
16 gifts, donations, and bequests of property, both real
17 and personal, for the purposes of aiding or facili-
18 tating the work of the Corporation.

19 (8) To issue notes or bonds, which shall not be
20 guaranteed or backed in any manner by the Govern-
21 ment of the United States, to purchasers of such in-
22 struments in the private capital markets.

23 (9) To incur indebtedness, which shall be the
24 sole liability of the Corporation and shall not be
25 guaranteed or backed by the Government of the

1 United States, to carry out the purposes of this
2 Title.

3 (10) To spend funds under paragraph (6) in a
4 manner authorized by the Board, but only for pur-
5 poses that will advance or enhance public safety
6 communications consistent with this subtitle.

7 (11) To establish reserve accounts with funds
8 that the Corporation may receive from time to time
9 that exceed the amounts required by the Corporation
10 to timely pay its debt service and other obligations.

11 (12) To expend the funds placed in any reserve
12 accounts established under paragraph (11) (includ-
13 ing interest earned on any such amounts) in a man-
14 ner authorized by the Board, but only for purposes
15 that—

16 (A) will advance or enhance public safety
17 communications consistent with this subtitle; or

18 (B) are otherwise approved by an Act of
19 Congress.

20 (13) To build, operate and maintain the public
21 safety interoperable broadband network.

22 (14) To take such other actions as the Corpora-
23 tion (through its Board) may from time to time de-
24 termine necessary, appropriate, or advisable to ac-
25 complish the purposes of this subtitle.

1 (b) DUTY AND RESPONSIBILITY TO DEPLOY AND
2 OPERATE A NATIONWIDE PUBLIC SAFETY INTEROPER-
3 ABLE BROADBAND NETWORK.—

4 (1) IN GENERAL.—The Corporation shall hold
5 the single public safety wireless license granted
6 under section 281 and take all actions necessary to
7 ensure the building, deployment, and operation of a
8 secure and resilient nationwide public safety inter-
9 operable broadband network in consultation with
10 Federal, State, tribal, and local public safety enti-
11 ties, the Director of NIST, the Commission, and the
12 public safety advisory committee established in sec-
13 tion 284(b)(1), including by—

14 (A) ensuring nationwide standards includ-
15 ing encryption requirements for use and access
16 of the network;

17 (B) issuing open, transparent, and com-
18 petitive requests for proposals to private sector
19 entities for the purposes of building, operating,
20 and maintaining the network;

21 (C) managing and overseeing the imple-
22 mentation and execution of contracts or agree-
23 ments with non-Federal entities to build, oper-
24 ate, and maintain the network; and

1 (D) establishing policies regarding Federal
2 and public safety support use.

3 (2) INTEROPERABILITY, SECURITY AND STAND-
4 ARDS.—In carrying out the duties and responsibil-
5 ities of this subsection, including issuing requests for
6 proposals, the Corporation shall—

7 (A) ensure the safety, security, and resil-
8 iency of the network, including requirements for
9 protecting and monitoring the network to pro-
10 tect against cyber intrusions or cyberattack;

11 (B) be informed of and manage supply
12 chain risks to the network, including require-
13 ments to provide insight into the suppliers and
14 supply chains for critical network components
15 and to implement risk management best prac-
16 tice in network design, contracting, operations
17 and maintenance;

18 (C) promote competition in the equipment
19 market, including devices for public safety com-
20 munications, by requiring that equipment and
21 devices for use on the network be—

22 (i) built to open, non-proprietary,
23 commercially available standards;

1 (ii) capable of being used across the
2 nationwide public safety broadband net-
3 work operating in the 700 MHz band;

4 (iii) be able to be interchangeable with
5 other vendors' equipment; and

6 (iv) backward-compatible with existing
7 second and third generation commercial
8 networks to the extent that such capabili-
9 ties are necessary and technically and eco-
10 nomicallly reasonable; and

11 (D) promote integration of the network
12 with public safety answering points or their
13 equivalent.

14 (3) RURAL COVERAGE.—In carrying out the du-
15 ties and responsibilities of this subsection, including
16 issuing requests for proposals, the Corporation, con-
17 sistent with the license granted under section 281,
18 shall require deployment phases with substantial
19 rural coverage milestones as part of each phase of
20 the construction and deployment of the network.

21 (4) EXECUTION OF AUTHORITY.—In carrying
22 out the duties and responsibilities of this subsection,
23 the Corporation may—

1 (A) obtain grants from and make contracts
2 with individuals, private companies, and Fed-
3 eral, State, regional, and local agencies;

4 (B) hire or accept voluntary services of
5 consultants, experts, advisory boards, and pan-
6 els to aid the Corporation in carrying out such
7 duties and responsibilities;

8 (C) receive payment for use of—

9 (i) network capacity licensed to the
10 Corporation; and

11 (ii) network infrastructure con-
12 structed, owned, or operated by the Cor-
13 poration; and

14 (D) take such other actions as may be nec-
15 essary to accomplish the purposes set forth in
16 this subsection.

17 (c) OTHER SPECIFIC DUTIES AND RESPONSIBIL-
18 ITIES.—

19 (1) ESTABLISHMENT OF NETWORK POLICIES.—

20 In carrying out the requirements under subsection
21 (b), the Corporation shall take such actions as may
22 be necessary, including the development of requests
23 for proposals—

24 (A) request for proposals should include—

- 1 (i) build timetables, including by tak-
2 ing into consideration the time needed to
3 build out to rural areas;
- 4 (ii) coverage areas, including coverage
5 in rural and nonurban areas;
- 6 (iii) service levels;
- 7 (iv) performance criteria; and
- 8 (v) other similar matters for the con-
9 struction and deployment of such network;
- 10 (B) the technical, operational and security
11 requirements of the network and, as appro-
12 priate, network suppliers;
- 13 (C) practices, procedures, and standards
14 for the management and operation of such net-
15 work;
- 16 (D) terms of service for the use of such
17 network, including billing practices; and
- 18 (E) ongoing compliance review and moni-
19 toring of the—
- 20 (i) management and operation of such
21 network;
- 22 (ii) practices and procedures of the
23 entities operating on and the personnel
24 using such network; and

1 (iii) training needs of entities oper-
2 ating on and personnel using such net-
3 work.

4 (2) STATE AND LOCAL PLANNING.—

5 (A) REQUIRED CONSULTATION.—In devel-
6 oping requests for proposal and otherwise car-
7 rying out its responsibilities under this subtitle,
8 the Corporation shall consult with regional,
9 State, tribal, and local jurisdictions regarding
10 the distribution and expenditure of any
11 amounts required to carry out the policies es-
12 tablished under paragraph (1), including with
13 regard to the—

14 (i) construction of an Evolved Packet
15 Core or Cores and any Radio Access Net-
16 work build out;

17 (ii) placement of towers;

18 (iii) coverage areas of the network,
19 whether at the regional, State, tribal, or
20 local level;

21 (iv) adequacy of hardening, security,
22 reliability, and resiliency requirements;

23 (v) assignment of priority to local
24 users;

1 (vi) assignment of priority and selec-
2 tion of entities seeking access to or use of
3 the nationwide public safety interoperable
4 broadband network established under sub-
5 section (b); and

6 (vii) training needs of local users.

7 (B) METHOD OF CONSULTATION.—The
8 consultation required under subparagraph (A)
9 shall occur between the Corporation and the
10 single officer or governmental body designated
11 under section 294(d).

12 (3) LEVERAGING EXISTING INFRASTRUC-
13 TURE.—In carrying out the requirement under sub-
14 section (b), the Corporation shall enter into agree-
15 ments to utilize, to the maximum economically desir-
16 able, existing—

17 (A) commercial or other communications
18 infrastructure; and

19 (B) Federal, State, tribal, or local infra-
20 structure.

21 (4) MAINTENANCE AND UPGRADES.—The Cor-
22 poration shall ensure through the maintenance, op-
23 eration, and improvement of the nationwide public
24 safety interoperable broadband network established
25 under subsection (b), including by ensuring that the

1 Corporation updates and revises any policies estab-
2 lished under paragraph (1) to take into account new
3 and evolving technologies and security concerns.

4 (5) ROAMING AGREEMENTS.—The Corporation
5 shall negotiate and enter into, as it determines ap-
6 propriate, roaming agreements with commercial net-
7 work providers to allow the nationwide public safety
8 interoperable broadband users to roam onto com-
9 mercial networks and gain prioritization of public
10 safety communications over such networks in times
11 of an emergency.

12 (6) NETWORK INFRASTRUCTURE AND DEVICE
13 CRITERIA.—The Director of NIST, in consultation
14 with the Corporation and the Commission, shall en-
15 sure the development of a list of certified devices
16 and components meeting appropriate protocols,
17 encryption requirements, and standards for public
18 safety entities and commercial vendors to adhere to,
19 if such entities or vendors seek to have access to, use
20 of, or compatibility with the nationwide public safety
21 interoperable broadband network established under
22 subsection (b).

23 (7) REPRESENTATION BEFORE STANDARD SET-
24 TING ENTITIES.—The Corporation, in consultation
25 with the Director of NIST, the Commission, and the

1 public safety advisory committee established under
2 section 284(b)(1), shall represent the interests of
3 public safety users of the nationwide public safety
4 interoperable broadband network established under
5 subsection (b) before any proceeding, negotiation, or
6 other matter in which a standards organization,
7 standards body, standards development organization,
8 or any other recognized standards-setting entity re-
9 garding the development of standards relating to
10 interoperability.

11 (8) PROHIBITION ON NEGOTIATION WITH FOR-
12 EIGN GOVERNMENTS.—Except as authorized by the
13 President, the Corporation shall not have the au-
14 thority to negotiate or enter into any agreements
15 with a foreign government on behalf of the United
16 States.

17 (d) USE OF MAILS.—The Corporation may use the
18 United States mails in the same manner and under the
19 same conditions as the departments and agencies of the
20 United States.

21 **SEC. 289. INITIAL FUNDING FOR CORPORATION.**

22 (a) NTIA PROVISION OF INITIAL FUNDING TO THE
23 CORPORATION.—

24 (1) IN GENERAL.—Prior to the commencement
25 of incentive auctions to be carried out under section

1 309(j)(8)(F) of the Communications Act of 1934 or
2 the auction of spectrum pursuant to section 273 of
3 this subtitle, the NTIA is hereby appropriated
4 \$50,000,000 for reasonable administrative expenses
5 and other costs associated with the establishment of
6 the Corporation, and that may be transferred as
7 needed to the Corporation for expenses before the
8 commencement of incentive auction: Provided, That
9 funding shall expire on September 30, 2014.

10 (2) CONDITION OF FUNDING.—At the time of
11 application for, and as a condition to, any such
12 funding, the Corporation shall file with the NTIA a
13 statement with respect to the anticipated use of the
14 proceeds of this funding.

15 (3) NTIA APPROVAL.—If the NTIA determines
16 that such funding is necessary for the Corporation
17 to carry out its duties and responsibilities under this
18 title and that Corporation has submitted a plan,
19 then the NTIA shall notify the appropriate commit-
20 tees of Congress 30 days before each transfer of
21 funds takes place.

22 **SEC. 290. PERMANENT SELF-FUNDING; DUTY TO ASSESS**
23 **AND COLLECT FEES FOR NETWORK USE.**

24 (a) IN GENERAL.—The Corporation shall have the
25 authority to assess and collect the following fees:

1 (1) NETWORK USER FEE.—A user or subscrip-
2 tion fee from each entity, including any public safety
3 entity or secondary user, that seeks access to or use
4 of the nationwide public safety interoperable
5 broadband network established under this title.

6 (2) LEASE FEES RELATED TO NETWORK CA-
7 PACITY.—

8 (A) IN GENERAL.—A fee from any non-
9 Federal entity that seeks to enter into a covered
10 leasing agreement.

11 (B) COVERED LEASING AGREEMENT.—For
12 purposes of subparagraph (A), a “covered leas-
13 ing agreement” means a written agreement be-
14 tween the Corporation and secondary user to
15 permit—

16 (i) access to network capacity on a
17 secondary basis for non-public safety serv-
18 ices; and

19 (ii) the spectrum allocated to such en-
20 tity to be used for commercial trans-
21 missions along the dark fiber of the long-
22 haul network of such entity.

23 (3) LEASE FEES RELATED TO NETWORK EQUIP-
24 MENT AND INFRASTRUCTURE.—A fee from any non-
25 Federal entity that seeks access to or use of any

1 equipment or infrastructure, including antennas or
2 towers, constructed or otherwise owned by the Cor-
3 poration.

4 (b) ESTABLISHMENT OF FEE AMOUNTS; PERMA-
5 NENT SELF-FUNDING.—The total amount of the fees as-
6 sessed for each fiscal year pursuant to this section shall
7 be sufficient, and shall not exceed the amount necessary,
8 to recoup the total expenses of the Corporation in carrying
9 out its duties and responsibilities described under this title
10 for the fiscal year involved.

11 (c) REQUIRED REINVESTMENT OF FUNDS.—The
12 Corporation shall reinvest amounts received from the as-
13 sessment of fees under this section in the nationwide pub-
14 lic safety interoperable broadband network by using such
15 funds only for constructing, maintaining, managing or im-
16 proving the network.

17 **SEC. 291. AUDIT AND REPORT.**

18 (a) AUDIT.—

19 (1) IN GENERAL.—The financial transactions of
20 the Corporation for any fiscal year during which
21 Federal funds are available to finance any portion of
22 its operations shall be audited by the Comptroller
23 General of the United States in accordance with the
24 principles and procedures applicable to commercial
25 corporate transactions and under such rules and

1 regulations as may be prescribed by the Comptroller
2 General.

3 (2) LOCATION.—Any audit conducted under
4 paragraph (1) shall be conducted at the place or
5 places where accounts of the Corporation are nor-
6 mally kept.

7 (3) ACCESS TO CORPORATION BOOKS AND DOC-
8 UMENTS.—

9 (A) IN GENERAL.—For purposes of an
10 audit conducted under paragraph (1), the rep-
11 resentatives of the Comptroller General shall—

12 (i) have access to all books, accounts,
13 records, reports, files, and all other papers,
14 things, or property belonging to or in use
15 by the Corporation that pertain to the fi-
16 nancial transactions of the Corporation
17 and are necessary to facilitate the audit;
18 and

19 (ii) be afforded full facilities for
20 verifying transactions with the balances or
21 securities held by depositories, fiscal
22 agents, and custodians.

23 (B) REQUIREMENT.—All books, accounts,
24 records, reports, files, papers, and property of

1 the Corporation shall remain in the possession
2 and custody of the Corporation.

3 (b) REPORT.—

4 (1) IN GENERAL.—The Comptroller General of
5 the United States shall submit a report of each
6 audit conducted under subsection (a) to—

7 (A) the appropriate committees of Con-
8 gress;

9 (B) the President; and

10 (C) the Corporation.

11 (2) CONTENTS.—Each report submitted under
12 paragraph (1) shall contain—

13 (A) such comments and information as the
14 Comptroller General determines necessary to in-
15 form Congress of the financial operations and
16 condition of the Corporation;

17 (B) any recommendations of the Comp-
18 troller General relating to the financial oper-
19 ations and condition of the Corporation; and

20 (C) a description of any program, expendi-
21 ture, or other financial transaction or under-
22 taking of the Corporation that was observed
23 during the course of the audit, which, in the
24 opinion of the Comptroller General, has been

1 carried on or made without the authority of
2 law.

3 **SEC. 292. ANNUAL REPORT TO CONGRESS.**

4 (a) **IN GENERAL.**—Not later than 1 year after the
5 date of enactment of this subtitle, and each year there-
6 after, the Corporation shall submit an annual report cov-
7 ering the preceding fiscal year to the President and the
8 appropriate committees of Congress.

9 (b) **REQUIRED CONTENT.**—The report required
10 under subsection (a) shall include—

11 (1) a comprehensive and detailed report of the
12 operations, activities, financial condition, and accom-
13 plishments of the Corporation under this section;
14 and

15 (2) such recommendations or proposals for leg-
16 islative or administrative action as the Corporation
17 deems appropriate.

18 (c) **AVAILABILITY TO TESTIFY.**—The directors, offi-
19 cers, employees, and agents of the Corporation shall be
20 available to testify before the appropriate committees of
21 the Congress with respect to—

22 (1) the report required under subsection (a);

23 (2) the report of any audit made by the Comp-
24 troller General under section 291; or

1 (3) any other matter which such committees
2 may determine appropriate.

3 **SEC. 293. PROVISION OF TECHNICAL ASSISTANCE.**

4 The Commission and the Departments of Homeland
5 Security, Justice and Commerce may provide technical as-
6 sistance to the Corporation and may take any action at
7 the request of the Corporation in effectuating its duties
8 and responsibilities under this title.

9 **SEC. 294. STATE AND LOCAL IMPLEMENTATION.**

10 (a) ESTABLISHMENT OF STATE AND LOCAL IMPLE-
11 MENTATION GRANT PROGRAM.—The Assistant Secretary,
12 in consultation with the Corporation, shall take such ac-
13 tion as is necessary to establish a grant program to make
14 grants to States to assist State, regional, tribal, and local
15 jurisdictions to identify, plan, and implement the most ef-
16 ficient and effective way for such jurisdictions to utilize
17 and integrate the infrastructure, equipment, and other ar-
18 chitecture associated with the nationwide public safety
19 interoperable broadband network established in this sub-
20 title to satisfy the wireless communications and data serv-
21 ices needs of that jurisdiction, including with regards to
22 coverage, siting, identity management for public safety
23 users and their devices, and other needs.

24 (b) MATCHING REQUIREMENTS; FEDERAL SHARE.—

1 (1) IN GENERAL.—The Federal share of the
2 cost of any activity carried out using a grant under
3 this section may not exceed 80 percent of the eligible
4 costs of carrying out that activity, as determined by
5 the Assistant Secretary, in consultation with the
6 Corporation.

7 (2) WAIVER.—The Assistant Secretary may
8 waive, in whole or in part, the requirements of para-
9 graph (1) for good cause shown if the Assistant Sec-
10 retary determines that such a waiver is in the public
11 interest.

12 (c) PROGRAMMATIC REQUIREMENTS.—Not later than
13 6 months after the establishment of the bylaws of the Cor-
14 poration pursuant to section 286 of this subtitle, the As-
15 sistant Secretary, in consultation with the Corporation,
16 shall establish requirements relating to the grant program
17 to be carried out under this section, including the fol-
18 lowing:

19 (1) Defining eligible costs for purposes of sub-
20 section (b)(1).

21 (2) Determining the scope of eligible activities
22 for grant funding under this section.

23 (3) Prioritizing grants for activities that ensure
24 coverage in rural as well as urban areas.

1 (d) CERTIFICATION AND DESIGNATION OF OFFICER
2 OR GOVERNMENTAL BODY.—In carrying out the grant
3 program established under this section, the Assistant Sec-
4 retary shall require each State to certify in its application
5 for grant funds that the State has designated a single offi-
6 cer or governmental body to serve as the coordinator of
7 implementation of the grant funds.

8 **SEC. 295. STATE AND LOCAL IMPLEMENTATION FUND.**

9 (a) ESTABLISHMENT.—There is established in the
10 Treasury of the United States a fund to be known as the
11 “State and Local Implementation Fund”.

12 (b) PURPOSE.—The Assistant Secretary shall estab-
13 lish and administer the grant program authorized under
14 section 294 of this subtitle using funds deposited in the
15 State and Local Implementation Fund.

16 (c) CREDITING OF RECEIPTS.—There shall be depos-
17 ited into or credited to the State and Local Implementa-
18 tion Fund—

19 (1) any amounts specified in section 297; and

20 (2) any amounts borrowed by the Assistant
21 Secretary under subsection (d).

22 (d) BORROWING AUTHORITY.—

23 (1) IN GENERAL.—The Assistant Secretary
24 may borrow from the General Fund of the Treasury
25 beginning on October 1, 2011, such sums as may be

1 necessary, but not to exceed \$100,000,000 to imple-
2 ment section 294.

3 (2) REIMBURSEMENT.—The Assistant Sec-
4 retary shall reimburse the General Fund of the
5 Treasury, with interest, for any amounts borrowed
6 under subparagraph (1) as funds are deposited into
7 the State and Local Implementation Fund.

8 **SEC. 296. PUBLIC SAFETY WIRELESS COMMUNICATIONS RE-**
9 **SEARCH AND DEVELOPMENT.**

10 (a) NIST DIRECTED RESEARCH AND DEVELOPMENT
11 PROGRAM.—From amounts made available from the Pub-
12 lic Safety Trust Fund established under section 297, the
13 Director of NIST, in consultation with the Commission,
14 the Secretary of Homeland Security, and the National In-
15 stitute of Justice of the Department of Justice, as appro-
16 priate, shall conduct research and assist with the develop-
17 ment of standards, technologies, and applications to ad-
18 vance wireless public safety communications.

19 (b) REQUIRED ACTIVITIES.—In carrying out the re-
20 quirement under subsection (a), the Director of NIST, in
21 consultation with the Corporation and the public safety
22 advisory committee established under section 286(b)(1),
23 shall—

24 (1) document public safety wireless communica-
25 tions technical requirements;

1 (2) accelerate the development of the capability
2 for communications between currently deployed pub-
3 lic safety narrowband systems and the nationwide
4 public safety interoperable broadband network to be
5 established under this title;

6 (3) establish a research plan, and direct re-
7 search, that addresses the wireless communications
8 needs of public safety entities beyond what can be
9 provided by the current generation of broadband
10 technology;

11 (4) accelerate the development of mission crit-
12 ical voice, including device-to-device “talkaround”
13 standards for broadband networks, if necessary and
14 practical, public safety prioritization, authentication
15 capabilities, as well as a standard application pro-
16 gramming interfaces for the nationwide public safety
17 interoperable broadband network to be established
18 under this title, if necessary and practical;

19 (5) seek to develop technologies, standards,
20 processes, and architectures that provide a signifi-
21 cant improvement in network security, resiliency and
22 trustworthiness; and

23 (6) convene working groups of relevant govern-
24 ment and commercial parties to achieve the require-
25 ments in paragraphs (1) through (5).

1 (c) TRANSFER AUTHORITY.—If in the determination
2 of the Director of NIST another Federal agency is better
3 suited to carry out and oversee the research and develop-
4 ment of any activity to be carried out in accordance with
5 the requirements of this section, the Director may transfer
6 any amounts provided under this section to such agency,
7 including to the National Institute of Justice of the De-
8 partment of Justice and the Department of Homeland Se-
9 curity.

10 **SEC. 297. PUBLIC SAFETY TRUST FUND.**

11 (a) ESTABLISHMENT OF PUBLIC SAFETY TRUST
12 FUND.—

13 (1) IN GENERAL.—There is established in the
14 Treasury of the United States a trust fund to be
15 known as the “Public Safety Trust Fund”.

16 (2) CREDITING OF RECEIPTS.—

17 (A) IN GENERAL.—There shall be depos-
18 ited into or credited to the Public Safety Trust
19 Fund the proceeds from the auction of spec-
20 trum carried out pursuant to—

21 (i) section 273 of this subtitle; and

22 (ii) section 309(j)(8)(F) of the Com-
23 munications Act of 1934, as added by sec-
24 tion 273 of this subtitle.

1 (B) AVAILABILITY.—Amounts deposited
2 into or credited to the Public Safety Trust
3 Fund in accordance with subparagraph (A)
4 shall remain available until the end of fiscal
5 year 2018. Upon the expiration of the period
6 described in the prior sentence such amounts
7 shall be deposited in the General Fund of the
8 Treasury, where such amounts shall be dedi-
9 cated for the sole purpose of deficit reduction.

10 (b) USE OF FUND.—Amounts deposited in the Public
11 Safety Trust Fund shall be used in the following manner:

12 (1) PAYMENT OF AUCTION INCENTIVE.—

13 (A) REQUIRED DISBURSALS.—Amounts in
14 the Public Safety Trust Fund shall be used to
15 make any required disbursement of payments to li-
16 censees required pursuant to clause (i) and sub-
17 clause (IV) of clause (ii) of section 309(j)(8)(F)
18 of the Communications Act of 1934.

19 (B) NOTIFICATION TO CONGRESS.—

20 (i) IN GENERAL.—At least 3 months
21 in advance of any incentive auction con-
22 ducted pursuant to subparagraph (F) of
23 section 309(j)(8) of the Communications
24 Act of 1934, the Chairman of the Commis-
25 sion, in consultation with the Director of

1 the Office of Management and Budget,
2 shall notify the appropriate committees of
3 Congress—

4 (I) of the methodology for calcu-
5 lating the disbursal of payments to
6 certain licensees required pursuant to
7 clause (i) and subclauses (III) and
8 (IV) of clause of (ii) of such section;

9 (II) that such methodology con-
10 siders the value of the spectrum vol-
11 untarily relinquished in its current use
12 and the timeliness with which the li-
13 censee cleared its use of such spec-
14 trum; and

15 (III) of the estimated payments
16 to be made from the Incentive Auction
17 Relocation Fund established under
18 section 309(j)(8)(G) of the Commu-
19 nications Act of 1934.

20 (ii) DEFINITION.—In this clause, the
21 term “appropriate committees of Con-
22 gress” means—

23 (I) the Committee on Commerce,
24 Science, and Transportation of the
25 Senate;

1 (II) the Committee on Appropria-
2 tions of the Senate;

3 (III) the Committee on Energy
4 and Commerce of the House of Rep-
5 resentatives; and

6 (IV) the Committee on Appro-
7 priations of the House of Representa-
8 tives.

9 (2) INCENTIVE AUCTION RELOCATION FUND.—
10 Not more than \$1,000,000,000 shall be deposited in
11 the Incentive Auction Relocation Fund established
12 under section 309(j)(8)(G) of the Communications
13 Act of 1934.

14 (3) STATE AND LOCAL IMPLEMENTATION
15 FUND.—\$200,000,000 shall be deposited in the
16 State and Local Implementation Fund established
17 under section 294.

18 (4) PUBLIC SAFETY BROADBAND CORPORA-
19 TION.—\$6,450,000,000 shall be deposited with the
20 Public Safety Broadband Corporation established
21 under section 284, of which pursuant to its respon-
22 sibilities and duties set forth under section 288 to
23 deploy and operate a nationwide public safety inter-
24 operable broadband network. Funds deposited with
25 the Public Safety Broadband Corporation shall be

1 available after submission of a five-year budget by
2 the Corporation and approval by the Secretary of
3 Commerce, in consultation with the Secretary of
4 Homeland Security, Director of the Office of Man-
5 agement and Budget and Attorney General of the
6 United States.

7 (5) PUBLIC SAFETY RESEARCH AND DEVELOP-
8 MENT.—After approval by the Office of Management
9 and Budget of a spend plan developed by the Direc-
10 tor of NIST, a Wireless Innovation (WIN) Fund of
11 up to \$300,000,000 shall be made available for use
12 by the Director of NIST to carry out the research
13 program established under section 296 and be avail-
14 able until expended. If less than \$300,000,000 is ap-
15 proved by the Office of Management and Budget,
16 the remainder shall be transferred to the Public
17 Safety Broadband Corporation established in section
18 284 and be available for duties set forth under sec-
19 tion 288 to deploy and operate a nationwide public
20 safety interoperable broadband network.

21 (6) DEFICIT REDUCTION.—Any amounts re-
22 maining after the deduction of the amounts required
23 under paragraphs (1) through (5) shall be deposited
24 in the General Fund of the Treasury, where such

1 amounts shall be dedicated for the sole purpose of
2 deficit reduction.

3 **SEC. 298. FCC REPORT ON EFFICIENT USE OF PUBLIC**
4 **SAFETY SPECTRUM.**

5 (a) IN GENERAL.—Not later than 180 days after the
6 date of the enactment of this subtitle and every 2 years
7 thereafter, the Commission shall, in consultation with the
8 Assistant Secretary and the Director of NIST, conduct a
9 study and submit to the appropriate committees of Con-
10 gress a report on the spectrum allocated for public safety
11 use.

12 (b) CONTENTS.—The report required by subsection
13 (a) shall include—

14 (1) an examination of how such spectrum is
15 being used;

16 (2) recommendations on how such spectrum
17 may be used more efficiently;

18 (3) an assessment of the feasibility of public
19 safety entities relocating from other bands to the
20 public safety broadband spectrum; and

21 (4) an assessment of whether any spectrum
22 made available by the relocation described in para-
23 graph (3) could be returned to the Commission for
24 reassignment through auction, including through use
25 of incentive auction authority under subparagraph

1 (G) of section 309(j)(8) of the Communications Act
2 of 1934 (47 U.S.C. 309(j)(8)), as added by section
3 273(a).

4 **SEC. 299. PUBLIC SAFETY ROAMING AND PRIORITY AC-**
5 **CESS.**

6 The Commission may adopt rules, if necessary in the
7 public interest, to improve the ability of public safety users
8 to roam onto commercial networks and to gain priority
9 access to commercial networks in an emergency if—

10 (1) the public safety entity equipment is tech-
11 nically compatible with the commercial network;

12 (2) the commercial network is reasonably com-
13 pensated; and

14 (3) such access does not preempt or otherwise
15 terminate or degrade all existing voice conversations
16 or data sessions.

17 **TITLE III—ASSISTANCE FOR THE**
18 **UNEMPLOYED AND PATH-**
19 **WAYS BACK TO WORK**
20 **Subtitle A—Supporting**
21 **Unemployed Workers**

22 **SEC. 301. SHORT TITLE.**

23 This subtitle may be cited as the “Supporting Unem-
24 ployed Workers Act of 2011”.

1 **PART I—EXTENSION OF EMERGENCY UNEMPLOY-**
2 **MENT COMPENSATION AND CERTAIN EX-**
3 **TENDED BENEFITS PROVISIONS, AND ESTAB-**
4 **LISHMENT OF SELF-EMPLOYMENT ASSIST-**
5 **ANCE PROGRAM**

6 **SEC. 311. EXTENSION OF EMERGENCY UNEMPLOYMENT**
7 **COMPENSATION PROGRAM.**

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

11 (1) by striking “January 3, 2012” each place
12 it appears and inserting “January 3, 2013”;

13 (2) in the heading for subsection (b)(2), by
14 striking “January 3, 2012” and inserting “January
15 3, 2013”; and

16 (3) in subsection (b)(3), by striking “June 9,
17 2012” and inserting “June 8, 2013”.

18 (b) FUNDING.—Section 4004(e)(1) of the Supple-
19 mental Appropriations Act, 2008 (Public Law 110–252;
20 26 U.S.C. 3304 note), is amended—

21 (1) in subparagraph (F), by striking “and” at
22 the end; and

23 (2) by inserting after subparagraph (G) the fol-
24 lowing:

1 “(H) the amendments made by section 101
2 of the Supporting Unemployed Workers Act of
3 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 Unemployment Compensation Extension Act
7 of 2010 (Public Law 111–205).

8 **SEC. 312. TEMPORARY EXTENSION OF EXTENDED BENEFIT**
9 **PROVISIONS.**

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

14 (1) by striking “January 4, 2012” each place
15 it appears and inserting “January 4, 2013”;

16 (2) in the heading for subsection (b)(2), by
17 striking “JANUARY 4, 2012” and inserting “JANU-
18 ARY 4, 2013”; and

19 (3) in subsection (c), by striking “June 11,
20 2012” and inserting “June 11, 2013”.

21 (b) EXTENSION OF MATCHING FOR STATES WITH
22 NO WAITING WEEK.—Section 5 of the Unemployment
23 Compensation Extension Act of 2008 (Public Law 110–
24 449; 26 U.S.C. 3304 note) is amended by striking “June
25 10, 2012” and inserting “June 9, 2013”.

1 (c) EXTENSION OF MODIFICATION OF INDICATORS
2 UNDER THE EXTENDED BENEFIT PROGRAM.—Section
3 502 of the Tax Relief, Unemployment Insurance Reau-
4 thorization, and Job Creation Act of 2010 (Public Law
5 111–312; 26 U.S.C. 3304 note) is amended—

6 (1) in subsection (a) by striking “December 31,
7 2011” and inserting “December 31, 2012”; and

8 (2) in subsection (b)(2) by striking “December
9 31, 2011” and inserting “December 31, 2012”.

10 (d) EFFECTIVE DATE.—The amendments made by
11 this section shall take effect as if included in the enact-
12 ment of the Unemployment Compensation Extension Act
13 of 2010 (Public Law 111–205).

14 **SEC. 313. REEMPLOYMENT SERVICES AND REEMPLOYMENT**
15 **AND ELIGIBILITY ASSESSMENT ACTIVITIES.**

16 (a) IN GENERAL.—

17 (1) PROVISION OF SERVICES AND ACTIVITIES.—
18 Section 4001 of the Supplemental Appropriations
19 Act, 2008, (Public Law 110–252; 26 U.S.C. 3304
20 note), is amended by inserting the following new
21 subsection (h):

22 “(h) IN GENERAL.—

23 “(1) REQUIRED PROVISION OF SERVICES AND
24 ACTIVITIES.—An agreement under this section shall
25 require that the State provide reemployment services

1 and reemployment and eligibility assessment activi-
2 ties to each individual receiving emergency unem-
3 ployment compensation who, on or after the date
4 that is 30 days after the date of enactment of the
5 Supporting Unemployed Workers Act of 2011, es-
6 tablishes an account under section 4002(b), com-
7 mences receiving the amounts described in section
8 4002(c), commences receiving the amounts described
9 in section 4002(d), or commences receiving the
10 amounts described in subsection 4002(e), whichever
11 occurs first. Such services and activities shall be pro-
12 vided by the staff of the State agency responsible for
13 administration of the State unemployment com-
14 pensation law or the Wagner-Peyser Act from funds
15 available pursuant to section 4004(c)(2) and may
16 also be provided from funds available under the
17 Wagner-Peyser Act.

18 “(2) DESCRIPTION OF SERVICES AND ACTIVI-
19 TIES.—The reemployment services and in-person re-
20 employment and eligibility assessment activities pro-
21 vided to individuals receiving emergency unemploy-
22 ment compensation described in paragraph (1)—

23 “(A) shall include—

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

1 “(ii) an assessment of the skills of the
2 individual;

3 “(iii) orientation to the services avail-
4 able through the One-Stop centers estab-
5 lished under title I of the Workforce In-
6 vestment Act of 1998;

7 “(iv) job search counseling and the
8 development or review of an individual re-
9 employment plan that includes participa-
10 tion in job search activities and appro-
11 priate workshops and may include referrals
12 to appropriate training services; and

13 “(v) review of the eligibility of the in-
14 dividual for emergency unemployment com-
15 pensation relating to the job search activi-
16 ties of the individual; and

17 “(B) may include the provision of—

18 “(i) comprehensive and specialized as-
19 sessments;

20 “(ii) individual and group career
21 counseling; and

22 “(iii) additional reemployment serv-
23 ices.

24 “(3) PARTICIPATION REQUIREMENT.—As a con-
25 dition of continuing eligibility for emergency unem-

1 employment compensation for any week, an individual
2 who has been referred to reemployment services or
3 reemployment and eligibility assessment activities
4 under this subsection shall participate, or shall have
5 completed participation in, such services or activi-
6 ties, unless the State agency responsible for the ad-
7 ministration of State unemployment compensation
8 law determines that there is justifiable cause for fail-
9 ure to participate or complete such services or activi-
10 ties, as defined in guidance to be issued by the Sec-
11 retary of Labor.”.

12 (2) ISSUANCE OF GUIDANCE.—Not later than
13 30 days after the date of enactment of this Act, the
14 Secretary shall issue guidance on the implementation
15 of the reemployment services and reemployment and
16 eligibility assessments activities required to be pro-
17 vided under the amendments made by paragraph
18 (1).

19 (b) FUNDING.—

20 (1) IN GENERAL.—Section 4004(c) of the Sup-
21 plemental Appropriations Act, 2008 (Public Law
22 110–252; 26 U.S.C. 3304 note), is amended—

23 (A) by striking “There” and inserting “(1)
24 ADMINISTRATION.—There”; and

1 (B) by inserting the following new para-
2 graph:

3 “(2) REEMPLOYMENT SERVICES AND REEM-
4 PLOYMENT AND ELIGIBILITY ASSESSMENT ACTIVI-
5 TIES.—

6 “(A) APPROPRIATION.—There are appro-
7 priated from the general fund of the Treasury,
8 without fiscal year limitation, out of the em-
9 ployment security administration account as es-
10 tablished by section 901(a) of the Social Secu-
11 rity Act, such sums as determined by the Sec-
12 retary of Labor in accordance with subpara-
13 graph (B) to assist States in providing reem-
14 ployment services and reemployment and eligi-
15 bility assessment activities described in section
16 4001(h)(2).

17 “(B) DETERMINATION OF TOTAL
18 AMOUNT.—The amount referred to in subpara-
19 graph (A) is the amount the Secretary esti-
20 mates is equal to—

21 “(i) the number of individuals who
22 will receive reemployment services and re-
23 employment eligibility and assessment ac-
24 tivities described in section 4001(h)(2) in

1 all States through the date specified in sec-
2 tion 4007(b)(3), multiplied by

3 “(ii) \$200.

4 “(C) DISTRIBUTION AMONG STATES.—Of
5 the amounts appropriated under subparagraph
6 (A), the Secretary of Labor shall distribute
7 amounts to each State, in accordance with sec-
8 tion 4003(c), that the Secretary estimates is
9 equal to—

10 “(i) the number of individuals who
11 will receive reemployment services and re-
12 employment and eligibility assessment ac-
13 tivities described in section 4001(h)(2) in
14 such State through the date specified in
15 section 4007(b)(3), multiplied by

16 “(ii) \$200.”.

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

20 (A) in paragraph (2), by striking the pe-
21 riod and inserting “; and”; and

22 (B) by inserting the following paragraph
23 (3):

24 “(3) to the Employment Ssecurity Administra-
25 tion account (as established by section 901(a) of the

1 Social Security Act) such sums as the Secretary of
2 Labor determines to be necessary in accordance with
3 subsection (c)(2) to assist States in providing reem-
4 ployment services and reemployment eligibility and
5 assessment activities described in section
6 4001(h)(2).”.

7 **SEC. 314. FEDERAL-STATE AGREEMENTS TO ADMINISTER A**
8 **SELF-EMPLOYMENT ASSISTANCE PROGRAM.**

9 Section 4001 of the Supplemental Appropriations
10 Act, 2008 (Public Law 110–252; 26 U.S.C. 3304 note),
11 as amended by section 313, is further amended by insert-
12 ing a new subsection (i) as follows:

13 “(i) **AUTHORITY TO CONDUCT SELF-EMPLOYMENT**
14 **ASSISTANCE PROGRAM.—**

15 “(1) **IN GENERAL.—**

16 “(A) **ESTABLISHMENT.—**Any agreement
17 under subsection (a) may provide that the State
18 agency of the State shall establish a self-em-
19 ployment assistance program described in para-
20 graph (2), to provide for the payment of emer-
21 gency unemployment compensation as self-em-
22 ployment assistance allowances to individuals
23 who meet the eligibility criteria specified in sub-
24 section (b).

1 “(B) PAYMENT OF ALLOWANCES.—The
2 self-employment assistance allowance described
3 in subparagraph (A) shall be paid for up to 26
4 weeks to an eligible individual from such indi-
5 vidual’s emergency unemployment compensation
6 account described in section 4002, and the
7 amount in such account shall be reduced ac-
8 cordingly.

9 “(2) DEFINITION OF ‘SELF-EMPLOYMENT AS-
10 SISTANCE PROGRAM’.—For the purposes of this title,
11 the term ‘self-employment assistance program’
12 means a program as defined under section 3306(t)
13 of the Internal Revenue Code of 1986 (26 U.S.C.
14 3306(t)), except as follows:

15 “(A) all references to ‘regular unemploy-
16 ment compensation under the State law’ shall
17 be deemed to refer instead to ‘emergency unem-
18 ployment compensation under title IV of the
19 Supplemental Appropriations Act, 2008 (Public
20 Law 110–252; 26 U.S.C. 3304 note)’;

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

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

24 “(i) include any entrepreneurial
25 training that the State may provide in co-

1 ordination with programs of training of-
2 fered by the Small Business Administra-
3 tion, which may include business coun-
4 seling, mentorship for participants, access
5 to small business development resources,
6 and technical assistance; and’;

7 “(D) the reference to ‘5 percent’ in para-
8 graph (4) shall be deemed to refer instead to ‘1
9 percent’; and

10 “(E) paragraph (5) shall not apply.

11 “(3) AVAILABILITY OF SELF-EMPLOYMENT AS-
12 SISTANCE ALLOWANCES.—In the case of an indi-
13 vidual who has received any emergency unemploy-
14 ment compensation payment under this title, such
15 individual shall not receive self-employment assist-
16 ance allowances under this subsection unless the
17 State agency has a reasonable expectation that such
18 individual will be entitled to at least 26 times the in-
19 dividual’s average weekly benefit amount of emer-
20 gency unemployment compensation.

21 “(4) PARTICIPANT OPTION TO TERMINATE PAR-
22 TICIPATION IN SELF-EMPLOYMENT ASSISTANCE PRO-
23 GRAM.—

24 “(A) TERMINATION.—An individual who is
25 participating in a State’s self-employment as-

1 assistance program may opt to discontinue par-
2 ticipation in such program.

3 “(B) CONTINUED ELIGIBILITY FOR EMER-
4 GENCY UNEMPLOYMENT COMPENSATION.—An
5 individual whose participation in the self-em-
6 ployment assistance program is terminated as
7 described in paragraph (1) or who has com-
8 pleted participation in such program, and who
9 continues to meet the eligibility requirements
10 for emergency unemployment compensation
11 under this title, shall receive emergency unem-
12 ployment compensation payments with respect
13 to subsequent weeks of unemployment, to the
14 extent that amounts remain in the account es-
15 tablished for such individual under section
16 4002(b) or to the extent that such individual
17 commences receiving the amounts described in
18 subsections (c), (d), or (e) of such section, re-
19 spectively.”.

20 **SEC. 315. CONFORMING AMENDMENT ON PAYMENT OF**
21 **BRIDGE TO WORK WAGES.**

22 Section 4001 of the Supplemental Appropriations
23 Act, 2008 (Public Law 110–252; 26 U.S.C. 3304 note),
24 as amended by section 103, is further amended by insert-
25 ing a new subsection (j) as follows:

1 “(j) AUTHORIZATION TO PAY WAGES FOR PURPOSES
 2 OF A BRIDGE TO WORK PROGRAM.—Any State that estab-
 3 lishes a Bridge to Work program under section 204 of the
 4 Supporting Unemployed Workers Act of 2011 is author-
 5 ized to deduct from an emergency unemployment com-
 6 pensation account established for such individual under
 7 section 4002 such sums as may be necessary to pay wages
 8 for such individual as authorized under section 204(b)(1)
 9 of such Act.”.

10 **SEC. 316. ADDITIONAL EXTENDED UNEMPLOYMENT BENE-**
 11 **FITS UNDER THE RAILROAD UNEMPLOY-**
 12 **MENT INSURANCE ACT.**

13 (a) EXTENSION.—Section 2(c)(2)(D)(iii) of the Rail-
 14 road Unemployment Insurance Act, as added by section
 15 2006 of the American Recovery and Reinvestment Act of
 16 2009 (Public Law 111–5) and as amended by section 9
 17 of the Worker, Homeownership, and Business Assistance
 18 Act of 2009 (Public Law 111–92), is amended—

19 (1) by striking “June 30, 2011” and inserting
 20 “June 30, 2012”; and

21 (2) by striking “December 31, 2011” and in-
 22 serting “December 31, 2012”.

23 (b) CLARIFICATION ON AUTHORITY TO USE
 24 FUNDS.—Funds appropriated under either the first or
 25 second sentence of clause (iv) of section 2(c)(2)(D) of the

1 Railroad Unemployment Insurance Act shall be available
2 to cover the cost of additional extended unemployment
3 benefits provided under such section 2(c)(2)(D) by reason
4 of the amendments made by subsection (a) as well as to
5 cover the cost of such benefits provided under such section
6 2(c)(2)(D), as in effect on the day before the date of the
7 enactment of this Act.

8 **PART II—REEMPLOYMENT NOW PROGRAM**

9 **SEC. 321. ESTABLISHMENT OF REEMPLOYMENT NOW PRO-**
10 **GRAM.**

11 (a) IN GENERAL.—There is hereby established the
12 Reemployment NOW program to be carried out by the
13 Secretary of Labor in accordance with this part in order
14 to facilitate the reemployment of individuals who are re-
15 ceiving emergency unemployment compensation under title
16 IV of the Supplemental Appropriations Act, 2008 (Public
17 Law 110–252; 26 U.S.C. 3304 note) (hereafter in this
18 part referred to as “EUC claimants”).

19 (b) AUTHORIZATION AND APPROPRIATION.—There
20 are authorized to be appropriated and appropriated from
21 the general fund of the Treasury for fiscal year 2012
22 \$4,000,000,000 to carry out the Reemployment NOW pro-
23 gram under this part.

1 **SEC. 322. DISTRIBUTION OF FUNDS.**

2 (a) IN GENERAL.—Of the funds appropriated under
3 section 321(b) to carry out this part, the Secretary of
4 Labor shall—

5 (1) reserve up to 1 percent for the costs of Fed-
6 eral administration and for carrying out rigorous
7 evaluations of the activities conducted under this
8 part; and

9 (2) allot the remainder of the funds not re-
10 served under paragraph (1) in accordance with the
11 requirements of subsection (b) and (c) to States that
12 have approved plans under section 323.

13 (b) ALLOTMENT FORMULA.—

14 (1) FORMULA FACTORS.—The Secretary of
15 Labor shall allot the funds available under sub-
16 section (a)(2) as follows:

17 (A) two-thirds of such funds shall be allot-
18 ted on the basis of the relative number of un-
19 employed individuals in each State, compared to
20 the total number of unemployed individuals in
21 all States; and

22 (B) one-third of such funds shall be allot-
23 ted on the basis of the relative number of indi-
24 viduals in each State who have been unem-
25 ployed for 27 weeks or more, compared to the

1 total number of individuals in all States who
2 have been unemployed for 27 weeks or more.

3 (2) CALCULATION.—For purposes of paragraph
4 (1), the number of unemployed individuals and the
5 number of individuals unemployed for 27 weeks or
6 more shall be based on the data for the most recent
7 12-month period, as determined by the Secretary.

8 (c) REALLOTMENT.—

9 (1) FAILURE TO SUBMIT STATE PLAN.—If a
10 State does not submit a State plan by the time spec-
11 ified in section 323(b), or a State does not receive
12 approval of a State plan, the amount the State
13 would have been eligible to receive pursuant to the
14 formula under subsection (b) shall be allotted to
15 States that receive approval of the State plan under
16 section 323 in accordance with the relative allot-
17 ments of such States as determined by the Secretary
18 under subsection (b).

19 (2) FAILURE TO IMPLEMENT ACTIVITIES ON A
20 TIMELY BASIS.—The Secretary of Labor may, in ac-
21 cordance with procedures and criteria established by
22 the Secretary, recapture the portion of the State al-
23 lotment under this part that remains unobligated if
24 the Secretary determines such funds are not being
25 obligated at a rate sufficient to meet the purposes

1 of this part. The Secretary shall reallocate such recaptured
2 funds to other States that are not subject to
3 recapture in accordance with the relative share of
4 the allotments of such States as determined by the
5 Secretary under subsection (b).

6 (3) RECAPTURE OF FUNDS.—Funds recaptured
7 under paragraph (2) shall be available for reobliga-
8 tion not later than December 31, 2012.

9 **SEC. 323. STATE PLAN.**

10 (a) IN GENERAL.—For a State to be eligible to re-
11 ceive an allotment under section 322, a State shall submit
12 to the Secretary of Labor a State plan in such form and
13 containing such information as the Secretary may require,
14 which at a minimum shall include—

15 (1) a description of the activities to be carried
16 out by the State to assist in the reemployment of eli-
17 gible individuals to be served in accordance with this
18 part, including which of the activities authorized in
19 sections 324–328 the State intends to carry out and
20 an estimate of the amounts the State intends to allo-
21 cate to the activities, respectively;

22 (2) a description of the performance outcomes
23 to be achieved by the State through the activities
24 carried out under this part, including the employ-
25 ment outcomes to be achieved by participants and

1 the processes the State will use to track perform-
2 ance, consistent with guidance provided by the Sec-
3 retary of Labor regarding such outcomes and proc-
4 esses;

5 (3) a description of coordination of activities to
6 be carried out under this part with activities under
7 title I of the Workforce Investment Act of 1998, the
8 Wagner-Peyser Act, and other appropriate Federal
9 programs;

10 (4) the timelines for implementation of the ac-
11 tivities described in the plan and the number of
12 EUC claimants expected to be enrolled in such ac-
13 tivities by quarter;

14 (5) assurances that the State will participate in
15 the evaluation activities carried out by the Secretary
16 of Labor under this section;

17 (6) assurances that the State will provide ap-
18 propriate reemployment services, including coun-
19 seling, to any EUC claimant who participates in any
20 of the programs authorized under this part; and

21 (7) assurances that the State will report such
22 information as the Secretary may require relating to
23 fiscal, performance and other matters, including em-
24 ployment outcomes and effects, which the Secretary

1 determines are necessary to effectively monitor the
2 activities carried out under this part.

3 (b) PLAN SUBMISSION AND APPROVAL.—A State
4 plan under this section shall be submitted to the Secretary
5 of Labor for approval not later than 30 days after the
6 Secretary issues guidance relating to submission of such
7 plan. The Secretary shall approve such plans if the Sec-
8 retary determines that the plans meet the requirements
9 of this part and are appropriate and adequate to carry
10 out the purposes of this part.

11 (c) PLAN MODIFICATIONS.—A State may submit
12 modifications to a State plan that has been approved
13 under this part, and the Secretary of Labor may approve
14 such modifications, if the plan as modified would meet the
15 requirements of this part and are appropriate and ade-
16 quate to carry out the purposes of this part.

17 **SEC. 324. BRIDGE TO WORK PROGRAM.**

18 (a) IN GENERAL.—A State may use funds allotted
19 to the State under this part to establish and administer
20 a Bridge to Work program described in this section.

21 (b) DESCRIPTION OF PROGRAM.—In order to in-
22 crease individuals' opportunities to move to permanent
23 employment, a State may establish a Bridge to Work pro-
24 gram to provide an EUC claimant with short-term work

1 experience placements with an eligible employer, during
2 which time such individual—

3 (1) shall be paid emergency unemployment
4 compensation payable under title IV of the Supple-
5 mental Appropriations Act, 2008 (Public Law 110–
6 252; 26 U.S.C. 3304 note), as wages for work per-
7 formed, and as specified in subsection (c);

8 (2) shall be paid the additional amount de-
9 scribed in subsection (e) as augmented wages for
10 work performed; and

11 (3) may be paid compensation in addition to
12 the amounts described in paragraphs (1) and (2) by
13 a State or by a participating employer as wages for
14 work performed.

15 (c) PROGRAM ELIGIBILITY AND OTHER REQUIRE-
16 MENTS.—For purposes of this program—

17 (1) individuals who, except for the requirements
18 described in paragraph (3), are eligible to receive
19 emergency unemployment compensation payments
20 under title IV of the Supplemental Appropriations
21 Act, 2008 (Public Law 110–252; 26 U.S.C. 3304
22 note), and who choose to participate in the program
23 described in subsection (b), shall receive such pay-
24 ments as wages for work performed during their vol-

1 untary participation in the program described under
2 subsection (b);

3 (2) the wages payable to individuals described
4 in paragraph (1) shall be paid from the emergency
5 unemployment compensation account for such indi-
6 vidual as described in section 4002 of the Supple-
7 mental Appropriations Act, 2008 (Public Law 110-
8 252; 26 U.S.C. 3304 note), and the amount in such
9 individual's account shall be reduced accordingly;

10 (3) the wages payable to an individual described
11 in paragraph (1) shall be payable in the same
12 amount, at the same interval, on the same terms,
13 and subject to the same conditions under title IV of
14 the Supplemental Appropriations Act, 2008 (Public
15 Law 110-252; 26 U.S.C. 3304 note), except that—

16 (A) State requirements applied under such
17 Act relating to availability for work and active
18 search for work are not applicable to such indi-
19 viduals who participate for at least 25 hours
20 per week in the program described in subsection
21 (b) for the duration of such individual's partici-
22 pation in the program;

23 (B) State requirements applied under such
24 act relating to disqualifying income regarding
25 wages earned shall not apply to such individuals

1 who participate for at least 25 hours per week
2 in the program described in subsection (b), and
3 shall not apply with respect to—

4 (i) the wages described under sub-
5 section (b); and

6 (ii) any wages, in addition to those de-
7 scribed under subsection (b), whether paid
8 by a State or a participating employer for
9 the same work activities;

10 (C) State prohibitions or limitations ap-
11 plied under such Act relating to employment
12 status shall not apply to such individuals who
13 participate in the program described in sub-
14 section (b); and

15 (D) State requirements applied under such
16 Act relating to an individual's acceptance of an
17 offer of employment shall not apply with regard
18 to an offer of long-term employment from a
19 participating employer made to such individual
20 who is participating in the program described in
21 subsection (b) in a work experience provided by
22 such employer, where such long-term employ-
23 ment is expected to commence or commences at
24 the conclusion of the duration specified in para-
25 graph (4)(A);

1 (4) the program shall be structured so that in-
2 dividuals described in paragraph (1) may participate
3 in the program for up to—

4 (A) 8 weeks, and

5 (B) 38 hours for each such week;

6 (5) a State shall ensure that all individuals par-
7 ticipating in the program are covered by a workers'
8 compensation insurance program; and

9 (6) the program meets such other requirements
10 as the Secretary of Labor determines to be appro-
11 priate in guidance issued by the Secretary.

12 (d) STATE REQUIREMENTS.—

13 (1) CERTIFICATION OF ELIGIBLE EMPLOYER.—

14 A State may certify as eligible for participation in
15 the program under this section any employer that
16 meets the eligibility criteria as established in guid-
17 ance by the Secretary of Labor, except that an em-
18 ployer shall not be certified as eligible for participa-
19 tion in the program described under subsection

20 (b)—

21 (A) if such employer—

22 (i) is a Federal, State, or local govern-
23 ment entity;

24 (ii) would engage an eligible individual
25 in work activities under any employer's

1 grant, contract, or subcontract with a Fed-
2 eral, State, or local government entity, ex-
3 cept with regard to work activities under
4 any employer's supply contract or sub-
5 contract;

6 (iii) is delinquent with respect to any
7 taxes or employer contributions described
8 under sections 3301 and 3303(a)(1) of the
9 Internal Revenue Code of 1986 or with re-
10 spect to any related reporting require-
11 ments;

12 (iv) is engaged in the business of sup-
13 plying workers to other employers and
14 would participate in the program for the
15 purpose of supplying individuals partici-
16 pating in the program to other employers;
17 or

18 (v) has previously participated in the
19 program and the State has determined
20 that such employer has failed to abide by
21 any of the requirements specified in sub-
22 sections (h), (i), or (j), or by any other re-
23 quirements that the Secretary may estab-
24 lish for employers under subsection (c)(6);
25 and

1 (B) unless such employer provides assur-
2 ances that it has not displaced existing workers
3 pursuant to the requirements of subsection (h).

4 (2) AUTHORIZED ACTIVITIES.—Funds allotted
5 to a State under this part for the program—

6 (A) shall be used to—

7 (i) recruit employers for participation
8 in the program;

9 (ii) review and certify employers iden-
10 tified by eligible individuals seeking to par-
11 ticipate in the program;

12 (iii) ensure that reemployment and
13 counseling services are available for pro-
14 gram participants, including services de-
15 scribing the program under subsection (b),
16 prior to an individual's participation in
17 such program;

18 (iv) establish and implement processes
19 to monitor the progress and performance
20 of individual participants for the duration
21 of the program;

22 (v) prevent misuse of the program;
23 and

1 (vi) pay augmented wages to eligible
2 individuals, if necessary, as described in
3 subsection (e); and

4 (B) may be used—

5 (i) to pay workers' compensation in-
6 surance premiums to cover all individuals
7 participating in the program, except that,
8 if a State opts not to make such payments
9 directly to a State administered workers'
10 compensation program, the State involved
11 shall describe in the approved State plan
12 the means by which such State shall en-
13 sure workers' compensation or equivalent
14 coverage for all individuals who participate
15 in the program;

16 (ii) to pay compensation to a partici-
17 pating individual that is in addition to the
18 amounts described in subsections (c)(1)
19 and (e) as wages for work performed;

20 (iii) to provide supportive services,
21 such as transportation, child care, and de-
22 pendent care, that would enable individuals
23 to participate in the program;

24 (iv) for the administration and over-
25 sight of the program; and

1 (v) to fulfill additional program re-
2 quirements included in the approved State
3 plan.

4 (e) PAYMENT OF AUGMENTED WAGES IF NEC-
5 ESSARY.—In the event that the wages described in sub-
6 section (c)(1) are not sufficient to equal or exceed the min-
7 imum wages that are required to be paid by an employer
8 under section 6(a)(1) of the Fair Labor Standards Act
9 of 1938 (29 U.S.C. 206(a)(1)) or the applicable State or
10 local minimum wage law, whichever is higher, a State shall
11 pay augmented wages to a program participant in any
12 amount necessary to cover the difference between—

- 13 (1) such minimum wages amount; and
14 (2) the wages payable under subsection (c)(1).

15 (f) EFFECT OF WAGES ON ELIGIBILITY FOR OTHER
16 PROGRAMS.—None of the wages paid under this section
17 shall be considered as income for the purposes of deter-
18 mining eligibility for and the amount of income transfer
19 and in-kind aid furnished under any Federal or federally
20 assisted program based on need.

21 (g) EFFECT OF WAGES, WORK ACTIVITIES, AND
22 PROGRAM PARTICIPATION ON CONTINUING ELIGIBILITY
23 FOR EMERGENCY UNEMPLOYMENT COMPENSATION.—
24 Any wages paid under this section and any additional
25 wages paid by an employer to an individual described in

1 subsection (c)(1), and any work activities performed by
2 such individual as a participant in the program, shall not
3 be construed so as to render such individual ineligible to
4 receive emergency unemployment compensation under title
5 IV of the Supplemental Appropriations Act, 2008 (Public
6 Law 110–252; 26 U.S.C. 3304 note).

7 (h) NONDISPLACEMENT OF EMPLOYEES.—

8 (1) PROHIBITION.—An employer shall not use a
9 program participant to displace (including a partial
10 displacement, such as a reduction in the hours of
11 non-overtime work, wages, or employment benefits)
12 any current employee (as of the date of the partici-
13 pation).

14 (2) OTHER PROHIBITIONS.—An employer shall
15 not permit a program participant to perform work
16 activities related to any job for which—

17 (A) any other individual is on layoff from
18 the same or any substantially equivalent posi-
19 tion;

20 (B) the employer has terminated the em-
21 ployment of any employee or otherwise reduced
22 the workforce of the employer with the inten-
23 tion of filling or partially filling the vacancy so
24 created with the work activities to be performed
25 by a program participant;

1 (C) there is a strike or lock out at the
2 worksite that is the participant's place of em-
3 ployment; or

4 (D) the job is created in a manner that
5 will infringe in any way upon the promotional
6 opportunities of currently employed individuals
7 (as of the date of the participation).

8 (i) PROHIBITION ON IMPAIRMENT OF CONTRACTS.—

9 An employer shall not, by means of assigning work activi-
10 ties under this section, impair an existing contract for
11 services or a collective bargaining agreement, and no such
12 activity that would be inconsistent with the terms of a col-
13 lective bargaining agreement shall be undertaken without
14 the written concurrence of the labor organization that is
15 signatory to the collective bargaining agreement.

16 (j) LIMITATION ON EMPLOYER PARTICIPATION.—If,

17 after 24 weeks of participation in the program, an em-
18 ployer has not made an offer of suitable long-term employ-
19 ment to any individual described under subsection (c)(1)
20 who was placed with such employer and has completed the
21 program, a State shall bar such employer from further
22 participation in the program. States may impose addi-
23 tional conditions on participating employers to ensure that
24 an appropriate number of participants receive offers of
25 suitable long term employment.

1 (k) FAILURE TO MEET PROGRAM REQUIREMENTS.—
2 If a State makes a determination based on information
3 provided to the State, or acquired by the State by means
4 of its administration and oversight functions, that a par-
5 ticipating employer under this section has violated a re-
6 quirement of this section, the State shall bar such em-
7 ployer from further participation in the program. The
8 State shall establish a process whereby an individual de-
9 scribed in subsection (c)(1), or any other affected indi-
10 vidual or entity, may file a complaint with the State relat-
11 ing to a violation of any requirement or prohibition under
12 this section.

13 (l) PARTICIPANT OPTION TO TERMINATE PARTICIPA-
14 TION IN BRIDGE TO WORK PROGRAM.—

15 (1) TERMINATION.—An individual who is par-
16 ticipating in a program described in subsection (b)
17 may opt to discontinue participation in such pro-
18 gram.

19 (2) CONTINUED ELIGIBILITY FOR EMERGENCY
20 UNEMPLOYMENT COMPENSATION.—An individual
21 who opts to discontinue participation in such pro-
22 gram, is terminated from such program by a partici-
23 pating employer, or who has completed participation
24 in such program, and who continues to meet the eli-
25 gibility requirements for emergency unemployment

1 compensation under title IV of the Supplemental
2 Appropriations Act, 2008 (Public Law 110–252; 26
3 U.S.C. 3304 note), shall receive emergency unem-
4 ployment compensation payments with respect to
5 subsequent weeks of unemployment, to the extent
6 that amounts remain in the account established for
7 such individual under section 4002(b) of such Act or
8 to the extent that such individual commences receiv-
9 ing the amounts described in subsections (c), (d), or
10 (e) of such section, respectively.

11 (m) EFFECT OF OTHER LAWS.—Unless otherwise
12 provided in this section, nothing in this section shall be
13 construed to alter or affect the rights or obligations under
14 any Federal, State, or local laws with respect to any indi-
15 vidual described in subsection (c)(1) and with respect to
16 any participating employer under this section.

17 (n) TREATMENT OF PAYMENTS.—All wages or other
18 payments to an individual under this section shall be treat-
19 ed as payments of unemployment insurance for purposes
20 of section 209 of the Social Security Act (42 U.S.C. 409)
21 and for purposes of subtitle A and sections 3101 and 3111
22 of the Internal Revenue Code of 1986.

1 **SEC. 325. WAGE INSURANCE.**

2 (a) IN GENERAL.—A State may use the funds allot-
3 ted to the State under this part to provide a wage insur-
4 ance program for EUC claimants.

5 (b) BENEFITS.—The wage insurance program pro-
6 vided under this section may use funds allotted to the
7 State under this part to pay, for a period not to exceed
8 2 years, to a worker described in subsection (c), up to 50
9 percent of the difference between—

10 (1) the wages received by the worker at the
11 time of separation; and

12 (2) the wages received by the worker for reem-
13 ployment.

14 (c) INDIVIDUAL ELIGIBILITY.—The benefits de-
15 scribed in subsection (b) may be paid to an individual who
16 is an EUC claimant at the time such individual obtains
17 reemployment and who—

18 (1) is at least 50 years of age;

19 (2) earns not more than \$50,000 per year in
20 wages from reemployment;

21 (3) is employed on a full-time basis as defined
22 by the law of the State; and

23 (4) is not employed by the employer from which
24 the individual was last separated.

25 (d) TOTAL AMOUNT OF PAYMENTS.—A State shall
26 establish a maximum amount of payments per individual

1 for purposes of payments described in subsection (b) dur-
2 ing the eligibility period described in such subsection.

3 (e) NON-DISCRIMINATION REGARDING WAGES.—An
4 employer shall not pay a worker described in subsection
5 (c) less than such employer pays to a regular worker in
6 the same or substantially equivalent position.

7 **SEC. 326. ENHANCED REEMPLOYMENT STRATEGIES.**

8 (a) IN GENERAL.—A State may use funds allotted
9 under this part to provide a program of enhanced reem-
10 ployment services to EUC claimants. In addition to the
11 provision of services to such claimants, the program may
12 include the provision of reemployment services to individ-
13 uals who are unemployed and have exhausted their rights
14 to emergency unemployment compensation under title IV
15 of the Supplemental Appropriations Act, 2008, (Public
16 Law 110–252; 26 U.S.C. 3304 note). The program shall
17 provide reemployment services that are more intensive
18 than the reemployment services provided by the State
19 prior to the receipt of the allotment under this part.

20 (b) TYPES OF SERVICES.—The enhanced reemploy-
21 ment services described in subsection (a) may include serv-
22 ices such as—

23 (1) assessments, counseling, and other intensive
24 services that are provided by staff on a one-to-one
25 basis and may be customized to meet the reemploy-

1 ment needs of EUC claimants and individuals de-
2 scribed in subsection (a);

3 (2) comprehensive assessments designed to
4 identify alternative career paths;

5 (3) case management;

6 (4) reemployment services that are provided
7 more frequently and more intensively than such re-
8 employment services have previously been provided
9 by the State; and

10 (5) services that are designed to enhance com-
11 munication skills, interviewing skills, and other skills
12 that would assist in obtaining reemployment.

13 **SEC. 327. SELF-EMPLOYMENT PROGRAMS.**

14 A State may use funds allotted to the State under
15 this part, in an amount specified under an approved State
16 plan, for the administrative costs associated with starting
17 up the self-employment assistance program described in
18 section 4001(i) of the Supplemental Appropriations Act,
19 2008, (Public Law 110–252; 26 U.S.C. 3304 note).

20 **SEC. 328. ADDITIONAL INNOVATIVE PROGRAMS.**

21 (a) IN GENERAL.—A State may use funds allotted
22 under this part to provide a program for innovative activi-
23 ties, which use a strategy that is different from the reem-
24 ployment strategies described in sections 324–327 and
25 which are designed to facilitate the reemployment of EUC

1 claimants. In addition to the provision of activities to such
2 claimants, the program may include the provision of activi-
3 ties to individuals who are unemployed and have exhausted
4 their rights to emergency unemployment compensation
5 under title IV of the Supplemental Appropriations Act,
6 2008, (Public Law 110–252; 26 U.S.C. 3304 note).

7 (b) CONDITIONS.—The innovative activities approved
8 in accordance with subsection (a)—

9 (1) shall directly benefit EUC claimants and, if
10 applicable, individuals described in subsection (a), ei-
11 ther as a benefit paid to such claimant or individual
12 or as a service provided to such claimant or indi-
13 vidual;

14 (2) shall not result in a reduction in the dura-
15 tion or amount of, emergency unemployment com-
16 pensation for which EUC claimants would otherwise
17 be eligible;

18 (3) shall not include a reduction in the dura-
19 tion, amount of or eligibility for regular compensa-
20 tion or extended benefits;

21 (4) shall not be used to displace (including a
22 partial displacement, such as a reduction in the
23 hours of non-overtime work, wages, or employment
24 benefits) any currently employed employee (as of the
25 date of the participation) or allow a program partici-

1 pant to perform work activities related to any job for
2 which—

3 (A) any other individual is on layoff from
4 the same or any substantially equivalent job;

5 (B) the employer has terminated the em-
6 ployment of any regular employee or otherwise
7 reduced the workforce of the employer with the
8 intention of filling or partially filling the va-
9 cancy so created with the work activities to be
10 performed by a program participant;

11 (C) there is a strike or lock out at the
12 worksite that is the participant's place of em-
13 ployment; or

14 (D) the job is created in a manner that
15 will infringe in any way upon the promotional
16 opportunities of currently employed individuals
17 (as of the date of the participation);

18 (5) shall not be in violation of any Federal,
19 State, or local law.

20 **SEC. 329. GUIDANCE AND ADDITIONAL REQUIREMENTS.**

21 The Secretary of Labor may establish through guid-
22 ance, without regard to the requirements of section 553
23 of title 5, United States Code, such additional require-
24 ments, including requirements regarding the allotment, re-
25 capture, and reallocation of funds, and reporting require-

1 ments, as the Secretary determines to be necessary to en-
 2 sure fiscal integrity, effective monitoring, and appropriate
 3 and prompt implementation of the activities under this
 4 Act.

5 **SEC. 330. REPORT OF INFORMATION AND EVALUATIONS TO**
 6 **CONGRESS AND THE PUBLIC.**

7 The Secretary of Labor shall provide to the appro-
 8 priate Committees of the Congress and make available to
 9 the public the information reported pursuant to section
 10 329 and the evaluations of activities carried out pursuant
 11 to the funds reserved under section 322(a)(1).

12 **SEC. 331. STATE.**

13 For purposes of this part, the term “State” has the
 14 meaning given that term in section 205 of the Federal-
 15 State Extended Unemployment Compensation Act of 1970
 16 (26 U.S.C. 3304 note).

17 **PART III—SHORT-TIME COMPENSATION**
 18 **PROGRAM**

19 **SEC. 341. TREATMENT OF SHORT-TIME COMPENSATION**
 20 **PROGRAMS.**

21 (a) DEFINITION.—

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

1 “(v) SHORT-TIME COMPENSATION PROGRAM.—For
2 purposes of this chapter, the term ‘short-time compensa-
3 tion program’ means a program under which—

4 “(1) the participation of an employer is vol-
5 untary;

6 “(2) an employer reduces the number of hours
7 worked by employees in lieu of layoffs;

8 “(3) such employees whose workweeks have
9 been reduced by at least 10 percent, and by not
10 more than the percentage, if any, that is determined
11 by the State to be appropriate (but in no case more
12 than 60 percent), are eligible for unemployment
13 compensation;

14 “(4) the amount of unemployment compensa-
15 tion payable to any such employee is a pro rata por-
16 tion of the unemployment compensation which would
17 otherwise be payable to the employee if such em-
18 ployee were totally unemployed from the partici-
19 pating employer;

20 “(5) such employees meet the availability for
21 work and work search test requirements while col-
22 lecting short-time compensation benefits, by being
23 available for their workweek as required by their
24 participation in the short-time compensation pro-
25 gram;

1 “(6) eligible employees may participate, as ap-
2 propriate, in training (including employer-sponsored
3 training or worker training funded under the Work-
4 force Investment Act of 1998) to enhance job skills
5 if such program has been approved by the State
6 agency;

7 “(7) the State agency shall require employers to
8 certify that if the employer provides health benefits
9 and retirement benefits under a defined benefit plan
10 (as defined in section 414(j)) or contributions under
11 a defined contribution plan (as defined in section
12 414(i)) to any employee whose workweek is reduced
13 under the program that such benefits will continue
14 to be provided to employees participating in the
15 short-time compensation program under the same
16 terms and conditions as though the workweek of
17 such employee had not been reduced or to the same
18 extent as other employees not participating in the
19 short-time compensation program, subject to other
20 requirements in this section;

21 “(8) the State agency shall require an employer
22 to submit a written plan describing the manner in
23 which the requirements of this subsection will be im-
24 plemented (including a plan for giving advance no-
25 tice, where feasible, to an employee whose workweek

1 is to be reduced) together with an estimate of the
2 number of layoffs that would have occurred absent
3 the ability to participate in short-time compensation
4 and such other information as the Secretary of
5 Labor determines is appropriate;

6 “(9) in the case of employees represented by a
7 union as the sole and exclusive representative, the
8 appropriate official of the union has agreed to the
9 terms of the employer’s written plan and implemen-
10 tation is consistent with employer obligations under
11 the applicable Federal laws; and

12 “(10) upon request by the State and approval
13 by the Secretary of Labor, only such other provi-
14 sions are included in the State law that are deter-
15 mined to be appropriate for purposes of a short-time
16 compensation program.”.

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

20 (3) TRANSITION PERIOD FOR EXISTING PRO-
21 GRAMS.—In the case of a State that is administering
22 a short-time compensation program as of the date of
23 the enactment of this Act and the State law cannot
24 be administered consistent with the amendment

1 made by paragraph (1), such amendment shall take
2 effect on the earlier of—

3 (A) the date the State changes its State
4 law in order to be consistent with such amend-
5 ment; or

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

8 (b) CONFORMING AMENDMENTS.—

9 (1) INTERNAL REVENUE CODE OF 1986.—

10 (A) Subparagraph (E) of section
11 3304(a)(4) of the Internal Revenue Code of
12 1986 is amended to read as follows:

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

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

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

22 “(5) amounts may be withdrawn for the pay-
23 ment of short-time compensation under a short-time
24 compensation program (as defined in subsection (v));
25 and”; and

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

4 (2) SOCIAL SECURITY ACT.—Section 303(a)(5)
5 of the Social Security Act is amended by striking
6 “the payment of short-time compensation under a
7 plan approved by the Secretary of Labor” and in-
8 serting “the payment of short-time compensation
9 under a short-time compensation program (as de-
10 fined in section 3306(v) of the Internal Revenue
11 Code of 1986)”.

12 (3) UNEMPLOYMENT COMPENSATION AMEND-
13 MENTS OF 1992.—Subsections (b) through (d) of sec-
14 tion 401 of the Unemployment Compensation
15 Amendments of 1992 (26 U.S.C. 3304 note) are re-
16 pealed.

17 **SEC. 342. TEMPORARY FINANCING OF SHORT-TIME COM-**
18 **PENSATION PAYMENTS IN STATES WITH PRO-**
19 **GRAMS IN LAW.**

20 (a) PAYMENTS TO STATES.—

21 (1) IN GENERAL.—Subject to paragraph (3),
22 there shall be paid to a State an amount equal to
23 100 percent of the amount of short-time compensa-
24 tion paid under a short-time compensation program
25 (as defined in section 3306(v) of the Internal Rev-

1 enue Code of 1986, as added by section 341(a))
2 under the provisions of the State law.

3 (2) TERMS OF PAYMENTS.—Payments made to
4 a State under paragraph (1) shall be payable by way
5 of reimbursement in such amounts as the Secretary
6 estimates the State will be entitled to receive under
7 this section for each calendar month, reduced or in-
8 creased, as the case may be, by any amount by
9 which the Secretary finds that the Secretary's esti-
10 mates for any prior calendar month were greater or
11 less than the amounts which should have been paid
12 to the State. Such estimates may be made on the
13 basis of such statistical, sampling, or other method
14 as may be agreed upon by the Secretary and the
15 State agency of the State involved.

16 (3) LIMITATIONS ON PAYMENTS.—

17 (A) GENERAL PAYMENT LIMITATIONS.—

18 No payments shall be made to a State under
19 this section for short-time compensation paid to
20 an individual by the State during a benefit year
21 in excess of 26 times the amount of regular
22 compensation (including dependents' allow-
23 ances) under the State law payable to such in-
24 dividual for a week of total unemployment.

1 (B) EMPLOYER LIMITATIONS.—No pay-
2 ments shall be made to a State under this sec-
3 tion for benefits paid to an individual by the
4 State under a short-time compensation program
5 if such individual is employed by the partici-
6 pating employer on a seasonal, temporary, or
7 intermittent basis.

8 (b) APPLICABILITY.—

9 (1) IN GENERAL.—Payments to a State under
10 subsection (a) shall be available for weeks of unem-
11 ployment—

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

14 (B) ending on or before the date that is 3
15 years and 6 months after the date of the enact-
16 ment of this Act.

17 (2) THREE-YEAR FUNDING LIMITATION FOR
18 COMBINED PAYMENTS UNDER THIS SECTION AND
19 SECTION 343.—States may receive payments under
20 this section and section 343 with respect to a total
21 of not more than 156 weeks.

22 (c) TWO-YEAR TRANSITION PERIOD FOR EXISTING
23 PROGRAMS.—During any period that the transition provi-
24 sion under section 341(a)(3) is applicable to a State with
25 respect to a short-time compensation program, such State

1 shall be eligible for payments under this section. Subject
2 to paragraphs (1)(B) and (2) of subsection (b), if at any
3 point after the date of the enactment of this Act the State
4 enacts a State law providing for the payment of short-
5 time compensation under a short-time compensation pro-
6 gram that meets the definition of such a program under
7 section 3306(v) of the Internal Revenue Code of 1986, as
8 added by section 341(a), the State shall be eligible for pay-
9 ments under this section after the effective date of such
10 enactment.

11 (d) FUNDING AND CERTIFICATIONS.—

12 (1) FUNDING.—There are appropriated, out of
13 moneys in the Treasury not otherwise appropriated,
14 such sums as may be necessary for purposes of car-
15 rying out this section.

16 (2) CERTIFICATIONS.—The Secretary shall
17 from time to time certify to the Secretary of the
18 Treasury for payment to each State the sums pay-
19 able to such State under this section.

20 (e) DEFINITIONS.—In this section:

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

23 (2) STATE; STATE AGENCY; STATE LAW.—The
24 terms “State”, “State agency”, and “State law”
25 have the meanings given those terms in section 205

1 of the Federal-State Extended Unemployment Com-
2 pensation Act of 1970 (26 U.S.C. 3304 note).

3 **SEC. 343. TEMPORARY FINANCING OF SHORT-TIME COM-**
4 **PENSATION AGREEMENTS.**

5 (a) FEDERAL-STATE AGREEMENTS.—

6 (1) IN GENERAL.—Any State which desires to
7 do so may enter into, and participate in, an agree-
8 ment under this section with the Secretary provided
9 that such State's law does not provide for the pay-
10 ment of short-time compensation under a short-time
11 compensation program (as defined in section
12 3306(v) of the Internal Revenue Code of 1986, as
13 added by section 341(a)).

14 (2) ABILITY TO TERMINATE.—Any State which
15 is a party to an agreement under this section may,
16 upon providing 30 days' written notice to the Sec-
17 retary, terminate such agreement.

18 (b) PROVISIONS OF FEDERAL-STATE AGREEMENT.—

19 (1) IN GENERAL.—Any agreement under this
20 section shall provide that the State agency of the
21 State will make payments of short-time compensa-
22 tion under a plan approved by the State. Such plan
23 shall provide that payments are made in accordance
24 with the requirements under section 3306(v) of the

1 Internal Revenue Code of 1986, as added by section
2 341(a).

3 (2) LIMITATIONS ON PLANS.—

4 (A) GENERAL PAYMENT LIMITATIONS.—A
5 short-time compensation plan approved by a
6 State shall not permit the payment of short-
7 time compensation to an individual by the State
8 during a benefit year in excess of 26 times the
9 amount of regular compensation (including de-
10 pendents' allowances) under the State law pay-
11 able to such individual for a week of total un-
12 employment.

13 (B) EMPLOYER LIMITATIONS.—A short-
14 time compensation plan approved by a State
15 shall not provide payments to an individual if
16 such individual is employed by the participating
17 employer on a seasonal, temporary, or intermit-
18 tent basis.

19 (3) EMPLOYER PAYMENT OF COSTS.—Any
20 short-time compensation plan entered into by an em-
21 ployer must provide that the employer will pay the
22 State an amount equal to one-half of the amount of
23 short-time compensation paid under such plan. Such
24 amount shall be deposited in the State's unemploy-
25 ment fund and shall not be used for purposes of cal-

1 culating an employer's contribution rate under sec-
2 tion 3303(a)(1) of the Internal Revenue Code of
3 1986.

4 (c) PAYMENTS TO STATES.—

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

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

11 (B) any additional administrative expenses
12 incurred by the State by reason of such agree-
13 ment (as determined by the Secretary).

14 (2) TERMS OF PAYMENTS.—Payments made to
15 a State under paragraph (1) shall be payable by way
16 of reimbursement in such amounts as the Secretary
17 estimates the State will be entitled to receive under
18 this section for each calendar month, reduced or in-
19 creased, as the case may be, by any amount by
20 which the Secretary finds that the Secretary's esti-
21 mates for any prior calendar month were greater or
22 less than the amounts which should have been paid
23 to the State. Such estimates may be made on the
24 basis of such statistical, sampling, or other method

1 as may be agreed upon by the Secretary and the
2 State agency of the State involved.

3 (3) FUNDING.—There are appropriated, out of
4 moneys in the Treasury not otherwise appropriated,
5 such sums as may be necessary for purposes of car-
6 rying out this section.

7 (4) CERTIFICATIONS.—The Secretary shall
8 from time to time certify to the Secretary of the
9 Treasury for payment to each State the sums pay-
10 able to such State under this section.

11 (d) APPLICABILITY.—

12 (1) IN GENERAL.—An agreement entered into
13 under this section shall apply to weeks of unemploy-
14 ment—

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

17 (B) ending on or before the date that is 2
18 years and 13 weeks after the date of the enact-
19 ment of this Act.

20 (2) TWO-YEAR FUNDING LIMITATION.—States
21 may receive payments under this section with re-
22 spect to a total of not more than 104 weeks.

23 (e) SPECIAL RULE.—If a State has entered into an
24 agreement under this section and subsequently enacts a
25 State law providing for the payment of short-time com-

1 pensionation under a short-time compensation program that
 2 meets the definition of such a program under section
 3 3306(v) of the Internal Revenue Code of 1986, as added
 4 by section 341(a), the State—

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

8 (2) subject to paragraphs (1)(B) and (2) of sec-
 9 tion 342(b), shall be eligible to receive payments
 10 under section 342 after the effective date of such
 11 State law.

12 (f) DEFINITIONS.—In this section:

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

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

20 **SEC. 344. GRANTS FOR SHORT-TIME COMPENSATION PRO-**
 21 **GRAMS.**

22 (a) GRANTS.—

23 (1) FOR IMPLEMENTATION OR IMPROVED AD-
 24 MINISTRATION.—The Secretary shall award grants
 25 to States that enact short-time compensation pro-

1 grams (as defined in subsection (i)(2)) for the pur-
2 pose of implementation or improved administration
3 of such programs.

4 (2) FOR PROMOTION AND ENROLLMENT.—The
5 Secretary shall award grants to States that are eligi-
6 ble and submit plans for a grant under paragraph
7 (1) for such States to promote and enroll employers
8 in short-time compensation programs (as so de-
9 fined).

10 (3) ELIGIBILITY.—

11 (A) IN GENERAL.—The Secretary shall de-
12 termine eligibility criteria for the grants under
13 paragraphs (1) and (2).

14 (B) CLARIFICATION.—A State admin-
15 istering a short-time compensation program, in-
16 cluding a program being administered by a
17 State that is participating in the transition
18 under the provisions of sections 341(a)(3) and
19 342(c), that does not meet the definition of a
20 short-time compensation program under section
21 3306(v) of the Internal Revenue Code of 1986
22 (as added by 341(a)), and a State with an
23 agreement under section 343, shall not be eligi-
24 ble to receive a grant under this section until
25 such time as the State law of the State provides

1 for payments under a short-time compensation
2 program that meets such definition and such
3 law.

4 (b) AMOUNT OF GRANTS.—

5 (1) IN GENERAL.—The maximum amount avail-
6 able for making grants to a State under paragraphs
7 (1) and (2) shall be equal to the amount obtained
8 by multiplying \$700,000,000 (less the amount used
9 by the Secretary under subsection (e)) by the same
10 ratio as would apply under subsection (a)(2)(B) of
11 section 903 of the Social Security Act (42 U.S.C.
12 1103) for purposes of determining such State's
13 share of any excess amount (as described in sub-
14 section (a)(1) of such section) that would have been
15 subject to transfer to State accounts, as of October
16 1, 2010, under the provisions of subsection (a) of
17 such section.

18 (2) AMOUNT AVAILABLE FOR DIFFERENT
19 GRANTS.—Of the maximum incentive payment deter-
20 mined under paragraph (1) with respect to a
21 State—

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

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

1 (c) GRANT APPLICATION AND DISBURSAL.—

2 (1) APPLICATION.—Any State seeking a grant
3 under paragraph (1) or (2) of subsection (a) shall
4 submit an application to the Secretary at such time,
5 in such manner, and complete with such information
6 as the Secretary may require. In no case may the
7 Secretary award a grant under this section with re-
8 spect to an application that is submitted after De-
9 cember 31, 2014.

10 (2) NOTICE.—The Secretary shall, within 30
11 days after receiving a complete application, notify
12 the State agency of the State of the Secretary’s find-
13 ings with respect to the requirements for a grant
14 under paragraph (1) or (2) (or both) of subsection
15 (a).

16 (3) CERTIFICATION.—If the Secretary finds
17 that the State law provisions meet the requirements
18 for a grant under subsection (a), the Secretary shall
19 thereupon make a certification to that effect to the
20 Secretary of the Treasury, together with a certifi-
21 cation as to the amount of the grant payment to be
22 transferred to the State account in the Unemploy-
23 ment Trust Fund (as established in section 904(a)
24 of the Social Security Act (42 U.S.C. 1104(a))) pur-
25 suant to that finding. The Secretary of the Treasury

1 shall make the appropriate transfer to the State ac-
2 count within 7 days after receiving such certifi-
3 cation.

4 (4) REQUIREMENT.—No certification of compli-
5 ance with the requirements for a grant under para-
6 graph (1) or (2) of subsection (a) may be made with
7 respect to any State whose—

8 (A) State law is not otherwise eligible for
9 certification under section 303 of the Social Se-
10 curity Act (42 U.S.C. 503) or approvable under
11 section 3304 of the Internal Revenue Code of
12 1986; or

13 (B) short-time compensation program is
14 subject to discontinuation or is not scheduled to
15 take effect within 12 months of the certifi-
16 cation.

17 (d) USE OF FUNDS.—The amount of any grant
18 awarded under this section shall be used for the implemen-
19 tation of short-time compensation programs and the over-
20 all administration of such programs and the promotion
21 and enrollment efforts associated with such programs,
22 such as through—

23 (1) the creation or support of rapid response
24 teams to advise employers about alternatives to lay-
25 offs;

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

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

7 (A) the submission and approval of plans;
8 and

9 (B) the filing and approval of new and on-
10 going short-time compensation claims.

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

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

22 (1) terminated the State’s short-time compensa-
23 tion program; or

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

4 (g) FUNDING.—There are appropriated, out of mon-
5 eys in the Treasury not otherwise appropriated, to the
6 Secretary, \$700,000,000 to carry out this section, to re-
7 main available without fiscal year limitation.

8 (h) REPORTING.—The Secretary may establish re-
9 porting requirements for States receiving a grant under
10 this section in order to provide oversight of grant funds.

11 (i) DEFINITIONS.—In this section:

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

14 (2) SHORT-TIME COMPENSATION PROGRAM.—
15 The term “short-time compensation program” has
16 the meaning given such term in section 3306(v) of
17 the Internal Revenue Code of 1986, as added by sec-
18 tion 341(a).

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

1 **SEC. 345. ASSISTANCE AND GUIDANCE IN IMPLEMENTING**
2 **PROGRAMS.**

3 (a) IN GENERAL.—In order to assist States in estab-
4 lishing, qualifying, and implementing short-time com-
5 pensation programs (as defined in section 3306(v) of the
6 Internal Revenue Code of 1986, as added by section
7 341(a)), the Secretary of Labor (in this section referred
8 to as the “Secretary”) shall—

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

13 (2) provide technical assistance and guidance in
14 developing, enacting, and implementing such pro-
15 grams;

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

18 (A) the number of estimated averted lay-
19 offs;

20 (B) the number of participating employers
21 and workers; and

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

24 (b) MODEL LANGUAGE AND GUIDANCE.—The model
25 language and guidance developed under subsection (a)
26 shall allow sufficient flexibility by States and participating

1 employers while ensuring accountability and program in-
2 tegrity.

3 (c) CONSULTATION.—In developing the model legisla-
4 tive language and guidance under subsection (a), and in
5 order to meet the requirements of subsection (b), the Sec-
6 retary shall consult with employers, labor organizations,
7 State workforce agencies, and other program experts.

8 **SEC. 346. REPORTS.**

9 (a) REPORT.—

10 (1) IN GENERAL.—Not later than 4 years after
11 the date of the enactment of this Act, the Secretary
12 of Labor shall submit to Congress and to the Presi-
13 dent a report or reports on the implementation of
14 the provisions of this Act.

15 (2) REQUIREMENTS.—Any report under para-
16 graph (1) shall at a minimum include the following:

17 (A) A description of best practices by
18 States and employers in the administration,
19 promotion, and use of short-time compensation
20 programs (as defined in section 3306(v) of the
21 Internal Revenue Code of 1986, as added by
22 section 341(a)).

23 (B) An analysis of the significant chal-
24 lenges to State enactment and implementation
25 of short-time compensation programs.

1 (C) A survey of employers in States that
2 have not enacted a short-time compensation
3 program or entered into an agreement with the
4 Secretary on a short-time compensation plan to
5 determine the level of interest among such em-
6 ployers in participating in short-time compensa-
7 tion programs.

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

12 **Subtitle B—Long Term**
13 **Unemployed Hiring Preferences**

14 **SEC. 351. LONG TERM UNEMPLOYED WORKERS WORK OP-**
15 **PORTUNITY TAX CREDITS.**

16 (a) IN GENERAL.—Paragraph (3) of section 51(b) of
17 the Internal Revenue Code is amended by inserting
18 “\$10,000 per year in the case of any individual who is
19 a qualified long term unemployed individual by reason of
20 subsection (d)(11), and” before “\$12,000 per year”.

21 (b) LONG TERM UNEMPLOYED INDIVIDUALS TAX
22 CREDITS.—Paragraph (d) of section 51 of the Internal
23 Revenue Code is amended by—

24 (1) inserting “(J) qualified long term unem-
25 ployed individual” at the end of paragraph (d)(1);

1 (2) inserting a new paragraph after paragraph
2 (10) as follows—

3 “(11) QUALIFIED LONG TERM UNEMPLOYED
4 INDIVIDUAL.—

5 “(A) IN GENERAL.—The term ‘qualified
6 long term unemployed individual’ means any in-
7 dividual who was not a student for at least 6
8 months during the 1-year period ending on the
9 hiring date and is certified by the designated
10 local agency as having aggregate periods of un-
11 employment during the 1-year period ending on
12 the hiring date which equal or exceed 6 months.

13 “(B) STUDENT.—For purposes of this sub-
14 section, a student is an individual enrolled at
15 least half-time in a program that leads to a de-
16 gree, certificate, or other recognized educational
17 credential for at least 6 months whether or not
18 consecutive during the 1-year period ending on
19 the hiring date.”; and

20 (3) renumbering current paragraphs (11)
21 through (14) as paragraphs (12) through (15).

22 (c) SIMPLIFIED CERTIFICATION.—Section 51(d) of
23 the Internal Revenue Code is amended by adding a new
24 paragraph 16 as follows:

1 “(16) CREDIT ALLOWED FOR QUALIFIED LONG
2 TERM UNEMPLOYED INDIVIDUALS.—

3 “(A) IN GENERAL.—Any qualified long
4 term unemployed individual under paragraph
5 (11) will be treated as certified by the des-
6 ignated local agency as having aggregate peri-
7 ods of unemployment if—

8 “(i) the individual is certified by the
9 designated local agency as being in receipt
10 of unemployment compensation under
11 State or Federal law for not less than 6
12 months during the 1-year period ending on
13 the hiring date.

14 “(B) REGULATORY AUTHORITY.—The Sec-
15 retary in his discretion may provide alternative
16 methods for certification.”.

17 (d) CREDIT MADE AVAILABLE TO TAX-EXEMPT EM-
18 PLOYERS IN CERTAIN CIRCUMSTANCES.—Section 52(c) of
19 the Internal Revenue Code is amended—

20 (1) by striking the word “No” at the beginning
21 of the section and replacing it with “Except as pro-
22 vided in this subsection, no”; and

23 (2) the following new paragraphs are inserted
24 at the end of section 52(c)—

1 “(1) IN GENERAL.—In the case of a tax-exempt
2 employer, there shall be treated as a credit allowable
3 under subpart C (and not allowable under subpart
4 D) the lesser of—

5 “(A) the amount of the work opportunity
6 credit determined under this subpart with re-
7 spect to such employer that is related to the
8 hiring of qualified long term unemployed indi-
9 viduals described in subsection (d)(11); or

10 “(B) the amount of the payroll taxes of the
11 employer during the calendar year in which the
12 taxable year begins.

13 “(2) CREDIT AMOUNT.—In calculating tax-ex-
14 empt employers, the work opportunity credit shall be
15 determined by substituting ‘26 percent’ for ‘40 per-
16 cent’ in section 51(a) and by substituting ‘16.25
17 percent’ for ‘25 percent’ in section 51(i)(3)(A).

18 “(3) TAX-EXEMPT EMPLOYER.—For purposes
19 of this subtitle, the term ‘tax-exempt employer’
20 means an employer that is—

21 “(A) an organization described in section
22 501(c) and exempt from taxation under section
23 501(a), or

1 “(B) a public higher education institution
2 (as defined in section 101 of the Higher Edu-
3 cation Act of 1965).

4 “(4) PAYROLL TAXES.—For purposes of this
5 subsection—

6 “(A) IN GENERAL.—The term ‘payroll
7 taxes’ means—

8 “(i) amounts required to be withheld
9 from the employees of the tax-exempt em-
10 ployer under section 3401(a),

11 “(ii) amounts required to be withheld
12 from such employees under section 3101,
13 and

14 “(iii) amounts of the taxes imposed on
15 the tax-exempt employer under section
16 3111.”.

17 (e) TREATMENT OF POSSESSIONS.—

18 (1) PAYMENTS TO POSSESSIONS.—

19 (A) MIRROR CODE POSSESSIONS.—The
20 Secretary of the Treasury shall pay to each pos-
21 session of the United States with a mirror code
22 tax system amounts equal to the loss to that
23 possession by reason of the application of this
24 section (other than this subsection). Such
25 amounts shall be determined by the Secretary

1 of the Treasury based on information provided
2 by the government of the respective possession
3 of the United States.

4 (B) OTHER POSSESSIONS.—The Secretary
5 of the Treasury shall pay to each possession of
6 the United States, which does not have a mirror
7 code tax system, amounts estimated by the Sec-
8 retary of the Treasury as being equal to the ag-
9 gregate credits that would have been provided
10 by the possession by reason of the application
11 of this section (other than this subsection) if a
12 mirror code tax system had been in effect in
13 such possession. The preceding sentence shall
14 not apply with respect to any possession of the
15 United States unless such possession has a
16 plan, which has been approved by the Secretary
17 of the Treasury, under which such possession
18 will promptly distribute such payments.

19 (2) COORDINATION WITH CREDIT ALLOWED
20 AGAINST UNITED STATES INCOME TAXES.—No in-
21 crease in the credit determined under section 38(b)
22 of the Internal Revenue Code of 1986 that is attrib-
23 utable to the credit provided by this section (other
24 than this subsection (e)) shall be taken into account
25 with respect to any person—

1 (A) to whom a credit is allowed against
2 taxes imposed by the possession of the United
3 States by reason of this section for such taxable
4 year, or

5 (B) who is eligible for a payment under a
6 plan described in paragraph (1)(B) with respect
7 to such taxable year.

8 (3) DEFINITIONS AND SPECIAL RULES.—

9 (A) POSSESSION OF THE UNITED
10 STATES.—For purposes of this subsection (e),
11 the term “possession of the United States” in-
12 cludes American Samoa, the Commonwealth of
13 the Northern Mariana Islands, the Common-
14 wealth of Puerto Rico, Guam, and the United
15 States Virgin Islands.

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

1 (C) TREATMENT OF PAYMENTS.—For pur-
2 poses of section 1324(b)(2) of title 31, United
3 States Code, rules similar to the rules of section
4 1001(b)(3)(C) of the American Recovery and
5 Reinvestment Tax Act of 2009 shall apply.

6 (f) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to individuals who begin work for
8 the employer after the date of the enactment of this Act.

9 **Subtitle C—Pathways Back to**
10 **Work**

11 **SEC. 361. SHORT TITLE.**

12 This subtitle may be cited as the “Pathways Back
13 to Work Act of 2011”.

14 **SEC. 362. ESTABLISHMENT OF PATHWAYS BACK TO WORK**
15 **FUND.**

16 (a) ESTABLISHMENT.—There is established in the
17 Treasury of the United States a fund which shall be
18 known as the Pathways Back to Work Fund (hereafter
19 in this Act referred to as “the Fund”).

20 (b) DEPOSITS INTO THE FUND.—Out of any
21 amounts in the Treasury of the United States not other-
22 wise appropriated, there are appropriated \$5,000,000,000
23 for payment to the Fund to be used by the Secretary of
24 Labor to carry out this Act.

1 **SEC. 363. AVAILABILITY OF FUNDS.**

2 (a) IN GENERAL.—Of the amounts available to the
3 Fund under section 362(b), the Secretary of Labor shall—

4 (1) allot \$2,000,000,000 in accordance with
5 section 364 to provide subsidized employment to un-
6 employed, low-income adults;

7 (2) allot \$1,500,000,000 in accordance with
8 section 365 to provide summer and year-round em-
9 ployment opportunities to low-income youth;

10 (3) award \$1,500,000,000 in competitive grants
11 in accordance with section 366 to local entities to
12 carry out work-based training and other work-re-
13 lated and educational strategies and activities of
14 demonstrated effectiveness to unemployed, low-in-
15 come adults and low-income youth to provide the
16 skills and assistance needed to obtain employment.

17 (b) RESERVATION.—The Secretary of Labor may re-
18 serve not more than 1 percent of amounts available to the
19 Fund under each of paragraphs (1)–(3) of subsection (a)
20 for the costs of technical assistance, evaluations and Fed-
21 eral administration of this Act.

22 (c) PERIOD OF AVAILABILITY.—The amounts appro-
23 priated under this Act shall be available for obligation by
24 the Secretary of Labor until December 31, 2012, and shall
25 be available for expenditure by grantees and subgrantees
26 until September 30, 2013.

1 **SEC. 364. SUBSIDIZED EMPLOYMENT FOR UNEMPLOYED,**
2 **LOW-INCOME ADULTS.**

3 (a) IN GENERAL.—

4 (1) ALLOTMENTS.—From the funds available
5 under section 363(a)(1), the Secretary of Labor
6 shall make an allotment under subsection (b) to each
7 State that has a State plan approved under sub-
8 section (c) and to each outlying area and Native
9 American grantee under section 166 of the Work-
10 force Investment Act of 1998 that meets the re-
11 quirements of this section, for the purpose of pro-
12 viding subsidized employment opportunities to unem-
13 ployed, low-income adults.

14 (2) GUIDANCE.—Not later than 30 days after
15 the date of enactment of this Act, the Secretary of
16 Labor, in coordination with the Secretary of Health
17 and Human Services, shall issue guidance regarding
18 the implementation of this section. Such guidance
19 shall, consistent with this section, include procedures
20 for the submission and approval of State and local
21 plans and the allotment and allocation of funds, in-
22 cluding reallocation and reallocation of such funds,
23 that promote the expeditious and effective implemen-
24 tation of the activities authorized under this section.

25 (b) STATE ALLOTMENTS.—

1 (1) RESERVATIONS FOR OUTLYING AREAS AND
2 TRIBES.—Of the funds described in subsection
3 (a)(1), the Secretary shall reserve—

4 (A) not more than one-quarter of one per-
5 cent to provide assistance to outlying areas to
6 provide subsidized employment to low-income
7 adults who are unemployed; and

8 (B) 1.5 percent to provide assistance to
9 grantees of the Native American programs
10 under section 166 of the Workforce Investment
11 Act of 1998 to provide subsidized employment
12 to low-income adults who are unemployed.

13 (2) STATES.—After determining the amounts to
14 be reserved under paragraph (1), the Secretary of
15 Labor shall allot the remainder of the amounts de-
16 scribed in subsection (a)(1) among the States as fol-
17 lows:

18 (A) one-third shall be allotted on the basis
19 of the relative number of unemployed individ-
20 uals in areas of substantial unemployment in
21 each State, compared to the total number of
22 unemployed individuals in areas of substantial
23 unemployment in all States;

24 (B) one-third shall be allotted on the basis
25 of the relative excess number of unemployed in-

1 individuals in each State, compared to the total
2 excess number of unemployed individuals in all
3 States; and

4 (C) one-third shall be allotted on the basis
5 of the relative number of disadvantaged adults
6 and youth in each State, compared to the total
7 number of disadvantaged adults and youth in
8 all States.

9 (3) DEFINITIONS.—For purposes of the for-
10 mula described in paragraph (2)—

11 (A) AREA OF SUBSTANTIAL UNEMPLOY-
12 MENT.—The term “area of substantial unem-
13 ployment” means any contiguous area with a
14 population of at least 10,000 and that has an
15 average rate of unemployment of at least 6.5
16 percent for the most recent 12 months, as de-
17 termined by the Secretary.

18 (B) DISADVANTAGED ADULTS AND
19 YOUTH.—The term “disadvantaged adults and
20 youth” means an individual who is age 16 and
21 older (subject to section 132(b)(1)(B)(v)(I) of
22 the Workforce Investment Act of 1998) who re-
23 ceived an income, or is a member of a family
24 that received a total family income, that, in re-

1 lation to family size, does not exceed the higher
2 of—

3 (i) the poverty line; or

4 (ii) 70 percent of the lower living
5 standard income level.

6 (C) EXCESS NUMBER.—The term “excess
7 number” means, used with respect to the excess
8 number of unemployed individuals within a
9 State, the higher of—

10 (i) the number that represents the
11 number of unemployed individuals in ex-
12 cess of 4.5 percent of the civilian labor
13 force in the State; or

14 (ii) the number that represents the
15 number of unemployed individuals in ex-
16 cess of 4.5 percent of the civilian labor
17 force in areas of substantial unemployment
18 in such State.

19 (4) REALLOTMENT.—If the Governor of a State
20 does not submit a State plan by the time specified
21 in subsection (c), or a State does not receive ap-
22 proval of a State plan, the amount the State would
23 have been eligible to receive pursuant to the formula
24 under paragraph (2) shall be transferred within the

1 Fund and added to the amounts available for the
2 competitive grants under section 363(a)(3).

3 (c) STATE PLAN.—

4 (1) IN GENERAL.—For a State to be eligible to
5 receive an allotment of the funds under subsection
6 (b), the Governor of the State shall submit to the
7 Secretary of Labor a State plan in such form and
8 containing such information as the Secretary may
9 require. At a minimum, such plan shall include—

10 (A) a description of the strategies and ac-
11 tivities to be carried out by the State, in coordi-
12 nation with employers in the State, to provide
13 subsidized employment opportunities to unem-
14 ployed, low-income adults, including strategies
15 relating to the level and duration of subsidies
16 consistent with subsection (e)(2);

17 (B) a description of the requirements the
18 State will apply relating to the eligibility of un-
19 employed, low-income adults, consistent with
20 section 368(6), for subsidized employment op-
21 portunities, which may include criteria to target
22 assistance to particular categories of such
23 adults, such as individuals with disabilities or
24 individuals who have exhausted all rights to un-
25 employment compensation;

1 (C) a description of how the funds allotted
2 to provide subsidized employment opportunities
3 will be administered in the State and local
4 areas, in accordance with subsection (d);

5 (D) a description of the performance out-
6 comes to be achieved by the State through the
7 activities carried out under this section and the
8 processes the State will use to track perform-
9 ance, consistent with guidance provided by the
10 Secretary of Labor regarding such outcomes
11 and processes and with section 367(b);

12 (E) a description of the coordination of ac-
13 tivities to be carried out with the funds pro-
14 vided under this section with activities under
15 title I of the Workforce Investment Act of
16 1998, the TANF program under part A of title
17 IV of the Social Security Act, and other appro-
18 priate Federal and State programs that may as-
19 sist unemployed, low-income adults in obtaining
20 and retaining employment;

21 (F) a description of the timelines for im-
22 plementation of the activities described in sub-
23 paragraph (A), and the number of unemployed,
24 low-income adults expected to be placed in sub-
25 sidized employment by quarter;

1 (G) assurances that the State will report
2 such information as the Secretary of Labor may
3 require relating to fiscal, performance and other
4 matters that the Secretary determines is nec-
5 essary to effectively monitor the activities car-
6 ried out under this section; and

7 (H) assurances that the State will ensure
8 compliance with the labor standards and protec-
9 tions described in section 367(a) of this Act.

10 (2) SUBMISSION AND APPROVAL OF STATE
11 PLAN.—

12 (A) SUBMISSION WITH OTHER PLANS.—

13 The State plan described in this subsection may
14 be submitted in conjunction with the State plan
15 modification or request for funds required
16 under section 365, and may be submitted as a
17 modification to a State plan that has been ap-
18 proved under section 112 of the Workforce In-
19 vestment Act of 1998.

20 (B) SUBMISSION AND APPROVAL.—

21 (i) SUBMISSION.—The Governor shall
22 submit a plan to the Secretary of Labor
23 not later than 75 days after the enactment
24 of this Act and the Secretary of Labor
25 shall make a determination regarding the

1 approval or disapproval of such plans not
2 later than 45 days after the submission of
3 such plan. If the plan is disapproved, the
4 Secretary of Labor may provide a reason-
5 able period of time in which a disapproved
6 plan may be amended and resubmitted for
7 approval.

8 (ii) APPROVAL.—The Secretary of
9 Labor shall approve a State plan that the
10 Secretary determines is consistent with re-
11 quirements of this section and reasonably
12 appropriate and adequate to carry out the
13 purposes of this section. If the plan is ap-
14 proved, the Secretary shall allot funds to
15 States within 30 days after such approval.

16 (3) MODIFICATIONS TO STATE PLAN.—The
17 Governor may submit a modification to a State plan
18 under this subsection consistent with the require-
19 ments of this section.

20 (d) ADMINISTRATION WITHIN THE STATE.—

21 (1) OPTION.—The State may administer the
22 funds for activities under this section through—

23 (A) the State and local entities responsible
24 for the administration of the adult formula pro-

1 gram under title I–B of the Workforce Invest-
2 ment Act of 1998;

3 (B) the entities responsible for the admin-
4 istration of the TANF program under part A of
5 title IV of the Social Security Act; or

6 (C) a combination of the entities described
7 in subparagraphs (A) and (B).

8 (2) WITHIN-STATE ALLOCATIONS.—

9 (A) ALLOCATION OF FUNDS.—The Gov-
10 ernor may reserve up to 5 percent of the allot-
11 ment under subsection (b)(2) for administration
12 and technical assistance, and shall allocate the
13 remainder, in accordance with the option elect-
14 ed under paragraph (1)—

15 (i) among local workforce investment
16 areas within the State in accordance with
17 the factors identified in subsection (b)(2),
18 except that for purposes of such allocation
19 references to a State in such paragraph
20 shall be deemed to be references to a local
21 workforce investment area and references
22 to all States shall be deemed to be ref-
23 erences to all local areas in the State in-
24 volved, of which not more than 10 percent
25 of the funds allocated to a local workforce

1 investment area may be used for the costs
2 of administration of this section; or

3 (ii) through entities responsible for
4 the administration of the TANF program
5 under part A of title IV of the Social Secu-
6 rity Act in local areas in such manner as
7 the State may determine appropriate.

8 (B) LOCAL PLANS.—

9 (i) IN GENERAL.—In the case where
10 the responsibility for the administration of
11 activities is to be carried out by the enti-
12 ties described under paragraph (1)(A), in
13 order to receive an allocation under sub-
14 paragraph (A)(i), a local workforce invest-
15 ment board, in partnership with the chief
16 elected official of the local workforce in-
17 vestment area involved, shall submit to the
18 Governor a local plan for the use of such
19 funds under this section not later than 30
20 days after the submission of the State
21 plan. Such local plan may be submitted as
22 a modification to a local plan approved
23 under section 118 of the Workforce Invest-
24 ment Act of 1998.

1 (ii) CONTENTS.—The local plan de-
2 scribed in clause (i) shall contain the ele-
3 ments described in subparagraphs (A)–(H)
4 of subsection (c)(1), as applied to the local
5 workforce investment area.

6 (iii) APPROVAL.—The Governor shall
7 approve or disapprove the local plan sub-
8 mitted under clause (i) within 30 days
9 after submission, or if later, 30 days after
10 the approval of the State plan. The Gov-
11 ernor shall approve the plan unless the
12 Governor determines that the plan is in-
13 consistent with requirements of this section
14 or is not reasonably appropriate and ade-
15 quate to carry out the purposes of this sec-
16 tion. If the Governor has not made a de-
17 termination within the period specified
18 under the first sentence of this clause, the
19 plan shall be considered approved. If the
20 plan is disapproved, the Governor may pro-
21 vide a reasonable period of time in which
22 a disapproved plan may be amended and
23 resubmitted for approval. The Governor
24 shall allocate funds to local workforce in-

1 vestment areas with approved plans within
2 30 days after such approval.

3 (C) REALLOCATION OF FUNDS TO LOCAL
4 AREAS.—If a local workforce investment board
5 does not submit a local plan by the time speci-
6 fied in subparagraph (B) or the Governor does
7 not approve a local plan, the amount the local
8 workforce investment area would have been eli-
9 gible to receive pursuant to the formula under
10 subparagraph (A)(i) shall be allocated to local
11 workforce investment areas that receive ap-
12 proval of the local plan under subparagraph
13 (B). Such reallocations shall be made in accord-
14 ance with the relative share of the allocations to
15 such local workforce investment areas applying
16 the formula factors described under subpara-
17 graph (A)(i).

18 (e) USE OF FUNDS.—

19 (1) IN GENERAL.—The funds under this section
20 shall be used to provide subsidized employment for
21 unemployed, low-income adults. The State and local
22 entities described in subsection (d)(1) may use a va-
23 riety of strategies in recruiting employers and identi-
24 fying appropriate employment opportunities, with a
25 priority to be provided to employment opportunities

1 likely to lead to unsubsidized employment in emerg-
2 ing or in-demand occupations in the local area.
3 Funds under this section may be used to provide
4 support services, such as transportation and child
5 care, that are necessary to enable the participation
6 of individuals in subsidized employment opportuni-
7 ties.

8 (2) LEVEL OF SUBSIDY AND DURATION.—The
9 States or local entities described in subsection (d)(1)
10 may determine the percentage of the wages and
11 costs of employing a participant for which an em-
12 ployer may receive a subsidy with the funds provided
13 under this section, and the duration of such subsidy,
14 in accordance with guidance issued by the Secretary.
15 The State or local entities may establish criteria for
16 determining such percentage or duration using ap-
17 propriate factors such as the size of the employer
18 and types of employment.

19 (f) COORDINATION OF FEDERAL ADMINISTRATION.—
20 The Secretary of Labor shall administer this section in
21 coordination with the Secretary of Health and Human
22 Services to ensure the effective implementation of this sec-
23 tion.

1 guidance, and the allotment and allocation of funds,
2 including reallocation and reallocation of such funds,
3 that promote the expeditious and effective implemen-
4 tation of the activities authorized under this section.

5 (2) REQUIREMENTS.—Except as otherwise pro-
6 vided in the guidance described in paragraph (1)
7 and in this section and other provisions of this Act,
8 the funds provided for activities under this section
9 shall be administered in accordance with subtitles B
10 and E of title I of the Workforce Investment Act of
11 1998 relating to youth activities.

12 (c) STATE ALLOTMENTS.—

13 (1) RESERVATIONS FOR OUTLYING AREAS AND
14 TRIBES.—Of the funds described in subsection (a),
15 the Secretary shall reserve—

16 (A) not more than one-quarter of one per-
17 cent to provide assistance to outlying areas to
18 provide summer and year-round employment
19 opportunities to low-income youth; and

20 (B) 1.5 percent to provide assistance to
21 grantees of the Native American programs
22 under section 166 of the Workforce Investment
23 Act of 1998 to provide summer and year-round
24 employment opportunities to low-income youth.

1 (2) STATES.—After determining the amounts to
2 be reserved under paragraph (1), the Secretary of
3 Labor shall allot the remainder of the amounts de-
4 scribed in subsection (a) among the States in ac-
5 cordance with the factors described in section
6 364(b)(2) of this Act.

7 (3) REALLOTMENT.—If the Governor of a State
8 does not submit a State plan modification or other
9 request for funds specified in guidance under sub-
10 section (b) by the time specified in subsection
11 (d)(2)(B), or a State does not receive approval of
12 such State plan modification or request, the amount
13 the State would have been eligible to receive pursu-
14 ant to the formula under paragraph (2) shall be
15 transferred within the Fund and added to the
16 amounts available for the competitive grants under
17 section 363(a)(3).

18 (d) STATE PLAN MODIFICATION.—

19 (1) IN GENERAL.—For a State to be eligible to
20 receive an allotment of the funds under subsection
21 (c), the Governor of the State shall submit to the
22 Secretary of Labor a modification to a State plan
23 approved under section 112 of the Workforce Invest-
24 ment Act of 1998, or other request for funds de-
25 scribed in guidance in subsection (b), in such form

1 and containing such information as the Secretary
2 may require. At a minimum, such plan modification
3 or request shall include—

4 (A) a description of the strategies and ac-
5 tivities to be carried out to provide summer em-
6 ployment opportunities and year-round employ-
7 ment opportunities, including the linkages to
8 educational activities, consistent with subsection
9 (f);

10 (B) a description of the requirements the
11 States will apply relating to the eligibility of
12 low-income youth, consistent with section
13 368(4), for summer employment opportunities
14 and year-round employment opportunities,
15 which may include criteria to target assistance
16 to particular categories of such low-income
17 youth, such as youth with disabilities, con-
18 sistent with subsection (f);

19 (C) a description of the performance out-
20 comes to be achieved by the State through the
21 activities carried out under this section and the
22 processes the State will use to track perform-
23 ance, consistent with guidance provided by the
24 Secretary of Labor regarding such outcomes
25 and processes and with section 367(b);

1 (D) a description of the timelines for im-
2 plementation of the activities described in sub-
3 paragraph (A), and the number of low-income
4 youth expected to be placed in summer employ-
5 ment opportunities, and year-round employment
6 opportunities, respectively, by quarter;

7 (E) assurances that the State will report
8 such information as the Secretary may require
9 relating to fiscal, performance and other mat-
10 ters that the Secretary determines is necessary
11 to effectively monitor the activities carried out
12 under this section; and

13 (F) assurances that the State will ensure
14 compliance with the labor standards protections
15 described in section 367(a).

16 (2) SUBMISSION AND APPROVAL OF STATE
17 PLAN MODIFICATION OR REQUEST.—

18 (A) SUBMISSION.—The Governor shall
19 submit a modification of the State plan or other
20 request for funds described in guidance in sub-
21 section (b) to the Secretary of Labor not later
22 than 30 days after the issuance of such guid-
23 ance. The State plan modification or request for
24 funds required under this subsection may be

1 submitted in conjunction with the State plan re-
2 quired under section 364.

3 (B) APPROVAL.—The Secretary of Labor
4 shall approve the plan or request submitted
5 under subparagraph (A) within 30 days after
6 submission, unless the Secretary determines
7 that the plan or request is inconsistent with the
8 requirements of this section. If the Secretary
9 has not made a determination within 30 days,
10 the plan or request shall be considered ap-
11 proved. If the plan or request is disapproved,
12 the Secretary may provide a reasonable period
13 of time in which a disapproved plan or request
14 may be amended and resubmitted for approval.
15 If the plan or request is approved, the Sec-
16 retary shall allot funds to States within 30 days
17 after such approval.

18 (3) MODIFICATIONS TO STATE PLAN OR RE-
19 QUEST.—The Governor may submit further modi-
20 fications to a State plan or request for funds identi-
21 fied under subsection (b) to carry out this section in
22 accordance with the requirements of this section.

23 (e) WITHIN-STATE ALLOCATION AND ADMINISTRA-
24 TION.—

1 (1) IN GENERAL.—Of the funds allotted to the
2 State under subsection (c), the Governor—

3 (A) may reserve up to 5 percent of the al-
4 lotment for administration and technical assist-
5 ance; and

6 (B) shall allocate the remainder of the al-
7 lotment among local workforce investment areas
8 within the State in accordance with the factors
9 identified in section 364(b)(2), except that for
10 purposes of such allocation references to a
11 State in such paragraph shall be deemed to be
12 references to a local workforce investment area
13 and references to all States shall be deemed to
14 be references to all local areas in the State in-
15 volved. Not more than 10 percent of the funds
16 allocated to a local workforce investment area
17 may be used for the costs of administration of
18 this section.

19 (2) LOCAL PLAN.—

20 (A) SUBMISSION.—In order to receive an
21 allocation under paragraph (1)(B), the local
22 workforce investment board, in partnership with
23 the chief elected official for the local workforce
24 investment area involved, shall submit to the
25 Governor a modification to a local plan ap-

1 proved under section 118 of the Workforce In-
2 vestment Act of 1998, or other form of request
3 for funds as may be identified in the guidance
4 issued under subsection (b), not later than 30
5 days after the submission by the State of the
6 modification to the State plan or other request
7 for funds identified in subsection (b), describing
8 the strategies and activities to be carried out
9 under this section.

10 (B) APPROVAL.—The Governor shall ap-
11 prove the local plan submitted under subpara-
12 graph (A) within 30 days after submission, un-
13 less the Governor determines that the plan is
14 inconsistent with requirements of this section.
15 If the Governor has not made a determination
16 within 30 days, the plan shall be considered ap-
17 proved. If the plan is disapproved, the Governor
18 may provide a reasonable period of time in
19 which a disapproved plan may be amended and
20 resubmitted for approval. The Governor shall
21 allocate funds to local workforce investment
22 areas with approved plans within 30 days after
23 approval.

24 (3) REALLOCATION.—If a local workforce in-
25 vestment board does not submit a local plan modi-

1 fication (or other request for funds identified in
2 guidance under subsection (b)) by the time specified
3 in paragraph (2), or does not receive approval of a
4 local plan, the amount the local workforce invest-
5 ment area would have been eligible to receive pursu-
6 ant to the formula under paragraph (1)(B) shall be
7 allocated to local workforce investment areas that re-
8 ceive approval of the local plan modification or re-
9 quest for funds under paragraph (2). Such realloca-
10 tions shall be made in accordance with the relative
11 share of the allocations to such local workforce in-
12 vestment areas applying the formula factors de-
13 scribed under paragraph (1)(B).

14 (f) USE OF FUNDS.—

15 (1) IN GENERAL.—The funds provided under
16 this section shall be used—

17 (A) to provide summer employment oppor-
18 tunities for low-income youth, ages 16 through
19 24, with direct linkages to academic and occu-
20 pational learning, and may include the provision
21 of supportive services, such as transportation or
22 child care, necessary to enable such youth to
23 participate; and

24 (B) to provide year-round employment op-
25 portunities, which may be combined with other

1 activities authorized under section 129 of the
2 Workforce Investment Act of 1998, to low-in-
3 come youth, ages 16 through 24, with a priority
4 to out-of-school youth who are—

5 (i) high school dropouts; or

6 (ii) recipients of a secondary school
7 diploma or its equivalent but who are basic
8 skills deficient unemployed or under-
9 employed.

10 (2) PROGRAM PRIORITIES.—In administering
11 the funds under this section, the local board and
12 local chief elected officials shall give a priority to—

13 (A) identifying employment opportunities
14 that are—

15 (i) in emerging or in-demand occupa-
16 tions in the local workforce investment
17 area; or

18 (ii) in the public or nonprofit sector
19 that meet community needs; and

20 (B) linking year-round program partici-
21 pants to training and educational activities that
22 will provide such participants an industry-recog-
23 nized certificate or credential.

24 (3) PERFORMANCE ACCOUNTABILITY.—For ac-
25 tivities funded under this section, in lieu of the re-

1 requirements described in section 136 of the Work-
2 force Investment Act of 1998, State and local work-
3 force investment areas shall provide such reports as
4 the Secretary of Labor may require regarding the
5 performance outcomes described in section
6 367(a)(5).

7 **SEC. 366. WORK-BASED EMPLOYMENT STRATEGIES OF**
8 **DEMONSTRATED EFFECTIVENESS.**

9 (a) IN GENERAL.—From the funds available under
10 section 363(a)(3), the Secretary of Labor shall award
11 grants on a competitive basis to eligible entities to carry
12 out work-based strategies of demonstrated effectiveness.

13 (b) USE OF FUNDS.—The grants awarded under this
14 section shall be used to support strategies and activities
15 of demonstrated effectiveness that are designed to provide
16 unemployed, low-income adults or low-income youth with
17 the skills that will lead to employment as part of or upon
18 completion of participation in such activities. Such strate-
19 gies and activities may include—

20 (1) on-the-job training, registered apprentice-
21 ship programs, or other programs that combine work
22 with skills development;

23 (2) sector-based training programs that have
24 been designed to meet the specific requirements of
25 an employer or group of employers in that sector

1 and where employers are committed to hiring indi-
2 viduals upon successful completion of the training;

3 (3) training that supports an industry sector or
4 an employer-based or labor-management committee
5 industry partnership which includes a significant
6 work-experience component;

7 (4) acquisition of industry-recognized creden-
8 tials in a field identified by the State or local work-
9 force investment area as a growth sector or demand
10 industry in which there are likely to be significant
11 job opportunities in the short-term;

12 (5) connections to immediate work opportuni-
13 ties, including subsidized employment opportunities,
14 or summer employment opportunities for youth, that
15 includes concurrent skills training and other sup-
16 ports;

17 (6) career academies that provide students with
18 the academic preparation and training, including
19 paid internships and concurrent enrollment in com-
20 munity colleges or other postsecondary institutions,
21 needed to pursue a career pathway that leads to
22 postsecondary credentials and high-demand jobs;
23 and

24 (7) adult basic education and integrated basic
25 education and training models for low-skilled adults,

1 hosted at community colleges or at other sites, to
2 prepare individuals for jobs that are in demand in
3 a local area.

4 (c) ELIGIBLE ENTITY.—An eligible entity shall in-
5 clude a local chief elected official, in collaboration with the
6 local workforce investment board for the local workforce
7 investment area involved (which may include a partnership
8 with such officials and boards in the region and in the
9 State), or an entity eligible to apply for an Indian and
10 Native American grant under section 166 of the Work-
11 force Investment Act of 1998, and may include, in part-
12 nership with such officials, boards, and entities, the fol-
13 lowing:

- 14 (1) employers or employer associations;
- 15 (2) adult education providers and postsecondary
16 educational institutions, including community col-
17 leges;
- 18 (3) community-based organizations;
- 19 (4) joint labor-management committees;
- 20 (5) work-related intermediaries; or
- 21 (6) other appropriate organizations.

22 (d) APPLICATION.—An eligible entity seeking to re-
23 ceive a grant under this section shall submit to the Sec-
24 retary of Labor an application at such time, in such man-

1 ner, and containing such information as the Secretary may
2 require. At a minimum, the application shall—

3 (1) describe the strategies and activities of dem-
4 onstrated effectiveness that the eligible entities will
5 carry out to provide unemployed, low-income adults
6 and low-income youth with the skills that will lead
7 to employment upon completion of participation in
8 such activities;

9 (2) describe the requirements that will apply re-
10 lating to the eligibility of unemployed, low-income
11 adults or low-income youth, consistent with para-
12 graphs (4) and (6) of section 368, for activities car-
13 ried out under this section, which may include cri-
14 teria to target assistance to particular categories of
15 such adults and youth, such as individuals with dis-
16 abilities or individuals who have exhausted all rights
17 to unemployment compensation;

18 (3) describe how the strategies and activities
19 address the needs of the target populations identi-
20 fied in paragraph (2) and the needs of employers in
21 the local area;

22 (4) describe the expected outcomes to be
23 achieved by implementing the strategies and activi-
24 ties;

1 (5) provide evidence that the funds provided
2 may be expended expeditiously and efficiently to im-
3 plement the strategies and activities;

4 (6) describe how the strategies and activities
5 will be coordinated with other Federal, State and
6 local programs providing employment, education and
7 supportive activities;

8 (7) provide evidence of employer commitment to
9 participate in the activities funded under this sec-
10 tion, including identification of anticipated occupa-
11 tional and skill needs;

12 (8) provide assurances that the grant recipient
13 will report such information as the Secretary may
14 require relating to fiscal, performance and other
15 matters that the Secretary determines is necessary
16 to effectively monitor the activities carried out under
17 this section; and

18 (9) provide assurances that the use of the funds
19 provided under this section will comply with the
20 labor standards and protections described in section
21 367(a).

22 (e) PRIORITY IN AWARDS.—In awarding grants
23 under this section, the Secretary of Labor shall give a pri-
24 ority to applications submitted by eligible entities from
25 areas of high poverty and high unemployment, as defined

1 by the Secretary, such as Public Use Microdata Areas
2 (PUMAs) as designated by the Census Bureau.

3 (f) COORDINATION OF FEDERAL ADMINISTRATION.—

4 The Secretary of Labor shall administer this section in
5 coordination with the Secretary of Education, Secretary
6 of Health and Human Services, and other appropriate
7 agency heads, to ensure the effective implementation of
8 this section.

9 **SEC. 367. GENERAL REQUIREMENTS.**

10 (a) LABOR STANDARDS AND PROTECTIONS.—Activi-
11 ties provided with funds under this Act shall be subject
12 to the requirements and restrictions, including the labor
13 standards, described in section 181 of the Workforce In-
14 vestment Act of 1998 and the nondiscrimination provi-
15 sions of section 188 of such Act, in addition to other appli-
16 cable federal laws.

17 (b) REPORTING.—The Secretary may require the re-
18 porting of information relating to fiscal, performance and
19 other matters that the Secretary determines is necessary
20 to effectively monitor the activities carried out with funds
21 provided under this Act. At a minimum, grantees and sub-
22 grantees shall provide information relating to—

23 (1) the number of individuals participating in
24 activities with funds provided under this Act and the

1 number of such individuals who have completed such
2 participation;

3 (2) the expenditures of funds provided under
4 the Act;

5 (3) the number of jobs created pursuant to the
6 activities carried out under this Act;

7 (4) the demographic characteristics of individ-
8 uals participating in activities under this Act; and

9 (5) the performance outcomes of individuals
10 participating in activities under this Act, including—

11 (A) for adults participating in activities
12 funded under section 364 of this Act—

13 (i) entry in unsubsidized employment,

14 (ii) retention in unsubsidized employ-
15 ment, and

16 (iii) earnings in unsubsidized employ-
17 ment;

18 (B) for low-income youth participating in
19 summer employment activities under sections
20 365 and 366—

21 (i) work readiness skill attainment
22 using an employer validated checklist;

23 (ii) placement in or return to sec-
24 ondary or postsecondary education or

1 training, or entry into unsubsidized em-
2 ployment;

3 (C) for low-income youth participating in
4 year-round employment activities under section
5 365 or in activities under section 366—

6 (i) placement in or return to post-sec-
7 ondary education;

8 (ii) attainment of high school diploma
9 or its equivalent;

10 (iii) attainment of an industry-recog-
11 nized credential; and

12 (iv) entry into unsubsidized employ-
13 ment, retention, and earnings as described
14 in subparagraph (A);

15 (D) for unemployed, low-income adults
16 participating in activities under section 366—

17 (i) entry into unsubsidized employ-
18 ment, retention, and earnings as described
19 in subparagraph (A); and

20 (ii) the attainment of industry-recog-
21 nized credentials.

22 (c) ACTIVITIES REQUIRED TO BE ADDITIONAL.—

23 Funds provided under this Act shall only be used for ac-
24 tivities that are in addition to activities that would other-

1 wise be available in the State or local area in the absence
2 of such funds.

3 (d) **ADDITIONAL REQUIREMENTS.**—The Secretary of
4 Labor may establish such additional requirements as the
5 Secretary determines may be necessary to ensure fiscal in-
6 tegrity, effective monitoring, and the appropriate and
7 prompt implementation of the activities under this Act.

8 (e) **REPORT OF INFORMATION AND EVALUATIONS TO**
9 **CONGRESS AND THE PUBLIC.**—The Secretary of Labor
10 shall provide to the appropriate Committees of the Con-
11 gress and make available to the public the information re-
12 ported pursuant to subsection (b) and the evaluations of
13 activities carried out pursuant to the funds reserved under
14 section 363(b).

15 **SEC. 368. DEFINITIONS.**

16 In this Act:

17 (1) **LOCAL CHIEF ELECTED OFFICIAL.**—The
18 term “local chief elected official” means the chief
19 elected executive officer of a unit of local govern-
20 ment in a local workforce investment area or in the
21 case where more than one unit of general govern-
22 ment, the individuals designated under an agreement
23 described in section 117(c)(1)(B) of the Workforce
24 Investment Act of 1998.

1 (2) LOCAL WORKFORCE INVESTMENT AREA.—

2 The term “local workforce investment area” means
3 such area designated under section 116 of the Work-
4 force Investment Act of 1998.

5 (3) LOCAL WORKFORCE INVESTMENT BOARD.—

6 The term “local workforce investment board” means
7 such board established under section 117 of the
8 Workforce Investment Act of 1998.

9 (4) LOW-INCOME YOUTH.—The term “low-in-
10 come youth” means an individual who—

11 (A) is aged 16 through 24;

12 (B) meets the definition of a low-income
13 individual provided in section 101(25) of the
14 Workforce Investment Act of 1998, except that
15 States, local workforce investment areas under
16 section 365 and eligible entities under section
17 366(c), subject to approval in the applicable
18 State plans, local plans, and applications for
19 funds, may increase the income level specified
20 in subparagraph (B)(i) of such section to an
21 amount not in excess of 200 percent of the pov-
22 erty line for purposes of determining eligibility
23 for participation in activities under sections 365
24 and 366 of this Act; and

1 (C) is in one or more of the categories
2 specified in section 101(13)(C) of the Work-
3 force Investment Act of 1998.

4 (5) OUTLYING AREA.—The term “outlying
5 area” means the United States Virgin Islands,
6 Guam, American Samoa, the Commonwealth of the
7 Northern Mariana Islands, and the Republic of
8 Palau.

9 (6) UNEMPLOYED, LOW-INCOME ADULT.—The
10 term “unemployed, low-income adult” means an in-
11 dividual who—

12 (A) is age 18 or older;

13 (B) is without employment and is seeking
14 assistance under this Act to obtain employment;
15 and

16 (C) meets the definition of a “low-income
17 individual” under section 101(25) of the Work-
18 force Investment Act of 1998, except that for
19 that States, local entities described in section
20 364(d)(1) and eligible entities under section
21 366(c), subject to approval in the applicable
22 State plans, local plans, and applications for
23 funds, may increase the income level specified
24 in subparagraph (B)(i) of such section to an
25 amount not in excess of 200 percent of the pov-

1 erty line for purposes of determining eligibility
2 for participation in activities under sections 364
3 and 366 of this Act.

4 (7) STATE.—The term “State” means each of
5 the several States of the United States, the District
6 of Columbia, and Puerto Rico.

7 **Subtitle D—Prohibition of Dis-**
8 **crimination in Employment on**
9 **the Basis of an Individual’s Sta-**
10 **tus as Unemployed**

11 **SEC. 371. SHORT TITLE.**

12 This subtitle may be cited as the “Fair Employment
13 Opportunity Act of 2011”.

14 **SEC. 372. FINDINGS AND PURPOSE.**

15 (a) FINDINGS.—Congress finds that denial of em-
16 ployment opportunities to individuals because of their sta-
17 tus as unemployed is discriminatory and burdens com-
18 merce by—

19 (1) reducing personal consumption and under-
20 mining economic stability and growth;

21 (2) squandering human capital essential to the
22 Nation’s economic vibrancy and growth;

23 (3) increasing demands for Federal and State
24 unemployment insurance benefits, reducing trust
25 fund assets, and leading to higher payroll taxes for

1 employers, cuts in benefits for jobless workers, or
2 both;

3 (4) imposing additional burdens on publicly
4 funded health and welfare programs; and

5 (5) depressing income, property, and other tax
6 revenues that the Federal Government, States, and
7 localities rely on to support operations and institu-
8 tions essential to commerce.

9 (b) PURPOSES.—The purposes of this Act are—

10 (1) to prohibit employers and employment agen-
11 cies from disqualifying an individual from employ-
12 ment opportunities because of that individual’s sta-
13 tus as unemployed;

14 (2) to prohibit employers and employment agen-
15 cies from publishing or posting any advertisement or
16 announcement for an employment opportunity that
17 indicates that an individual’s status as unemployed
18 disqualifies that individual for the opportunity; and

19 (3) to eliminate the burdens imposed on com-
20 merce due to the exclusion of such individuals from
21 employment.

22 **SEC. 373. DEFINITIONS.**

23 As used in this Act—

24 (1) the term “affected individual” means any
25 person who was subject to an unlawful employment

1 practice solely because of that individual’s status as
2 unemployed;

3 (2) the term “Commission” means the Equal
4 Employment Opportunity Commission;

5 (3) the term “employee” means—

6 (A) an employee as defined in section
7 701(f) of the Civil Rights Act of 1964 (42
8 U.S.C. 2000e(f));

9 (B) a State employee to which section
10 302(a)(1) of the Government Employee Rights
11 Act of 1991 (42 U.S.C. 2000e–16b(a)(1)) ap-
12 plies;

13 (C) a covered employee, as defined in sec-
14 tion 101 of the Congressional Accountability
15 Act of 1995 (2 U.S.C. 1301) or section 411(c)
16 of title 3, United States Code; or

17 (D) an employee or applicant to which sec-
18 tion 717(a) of the Civil Rights Act of 1964 (42
19 U.S.C. 2000e–16(a)) applies;

20 (4) the term “employer” means—

21 (A) a person engaged in an industry affect-
22 ing commerce (as defined in section 701(h) of
23 the Civil Rights Act of 1964 (42 U.S.C.
24 2000e(h)) who has 15 or more employees for
25 each working day in each of 20 or more cal-

1 endar weeks in the current or preceding cal-
2 endar year, and any agent of such a person, but
3 does not include a bona fide private member-
4 ship club that is exempt from taxation under
5 section 501(c) of the Internal Revenue Code of
6 1986;

7 (B) an employing authority to which sec-
8 tion 302(a)(1) of the Government Employee
9 Rights Act of 1991 applies;

10 (C) an employing office, as defined in sec-
11 tion 101 of the Congressional Accountability
12 Act of 1995 or section 411(c) of title 3, United
13 States Code; or

14 (D) an entity to which section 717(a) of
15 the Civil Rights Act of 1964 (42 U.S.C. 2000e-
16 16(a)) applies;

17 (5) the term “employment agency” means any
18 person regularly undertaking with or without com-
19 pensation to procure employees for an employer or
20 to procure for individuals opportunities to work as
21 employees for an employer and includes an agent of
22 such a person, and any person who maintains an
23 Internet website or print medium that publishes ad-
24 vertisements or announcements of openings in jobs
25 for employees;

1 (6) the term “person” has the meaning given
2 the term in section 701(a) of the Civil Rights Act
3 of 1964 (42 U.S.C. 2000e(a)); and

4 (7) the term “status as unemployed”, used with
5 respect to an individual, means that the individual,
6 at the time of application for employment or at the
7 time of action alleged to violate this Act, does not
8 have a job, is available for work and is searching for
9 work.

10 **SEC. 374. PROHIBITED ACTS.**

11 (a) EMPLOYERS.—It shall be an unlawful employ-
12 ment practice for an employer to—

13 (1) publish in print, on the Internet, or in any
14 other medium, an advertisement or announcement
15 for an employee for any job that includes—

16 (A) any provision stating or indicating that
17 an individual’s status as unemployed disquali-
18 fies the individual for any employment oppor-
19 tunity; or

20 (B) any provision stating or indicating that
21 an employer will not consider or hire an indi-
22 vidual for any employment opportunity based
23 on that individual’s status as unemployed;

1 (2) fail or refuse to consider for employment, or
2 fail or refuse to hire, an individual as an employee
3 because of the individual's status as unemployed; or

4 (3) direct or request that an employment agen-
5 cy take an individual's status as unemployed into ac-
6 count to disqualify an applicant for consideration,
7 screening, or referral for employment as an em-
8 ployee.

9 (b) EMPLOYMENT AGENCIES.—It shall be an unlaw-
10 ful employment practice for an employment agency to—

11 (1) publish, in print or on the Internet or in
12 any other medium, an advertisement or announce-
13 ment for any vacancy in a job, as an employee, that
14 includes—

15 (A) any provision stating or indicating that
16 an individual's status as unemployed disquali-
17 fies the individual for any employment oppor-
18 tunity; or

19 (B) any provision stating or indicating that
20 the employment agency or an employer will not
21 consider or hire an individual for any employ-
22 ment opportunity based on that individual's sta-
23 tus as unemployed;

24 (2) screen, fail or refuse to consider, or fail or
25 refuse to refer an individual for employment as an

1 employee because of the individual's status as unem-
2 ployed; or

3 (3) limit, segregate, or classify any individual in
4 any manner that would limit or tend to limit the in-
5 dividual's access to information about jobs, or con-
6 sideration, screening, or referral for jobs, as employ-
7 ees, solely because of an individual's status as unem-
8 ployed.

9 (c) INTERFERENCE WITH RIGHTS, PROCEEDINGS OR
10 INQUIRIES.—It shall be unlawful for any employer or em-
11 ployment agency to—

12 (1) interfere with, restrain, or deny the exercise
13 of or the attempt to exercise, any right provided
14 under this Act; or

15 (2) fail or refuse to hire, to discharge, or in any
16 other manner to discriminate against any individual,
17 as an employee, because such individual—

18 (A) opposed any practice made unlawful by
19 this Act;

20 (B) has asserted any right, filed any
21 charge, or has instituted or caused to be insti-
22 tuted any proceeding, under or related to this
23 Act;

24 (C) has given, or is about to give, any in-
25 formation in connection with any inquiry or

1 proceeding relating to any right provided under
2 this Act; or

3 (D) has testified, or is about to testify, in
4 any inquiry or proceeding relating to any right
5 provided under this Act.

6 (d) CONSTRUCTION.—Nothing in this Act is intended
7 to preclude an employer or employment agency from con-
8 sidering an individual’s employment history, or from ex-
9 amining the reasons underlying an individual’s status as
10 unemployed, in assessing an individual’s ability to perform
11 a job or in otherwise making employment decisions about
12 that individual. Such consideration or examination may in-
13 clude an assessment of whether an individual’s employ-
14 ment in a similar or related job for a period of time rea-
15 sonably proximate to the consideration of such individual
16 for employment is job-related or consistent with business
17 necessity.

18 **SEC. 375. ENFORCEMENT.**

19 (a) ENFORCEMENT POWERS.—With respect to the
20 administration and enforcement of this Act—

21 (1) the Commission shall have the same powers
22 as the Commission has to administer and enforce—

23 (A) title VII of the Civil Rights Act of
24 1964 (42 U.S.C. 2000e et seq.); or

1 (B) sections 302 and 304 of the Govern-
2 ment Employee Rights Act of 1991 (42 U.S.C.
3 2000e–16b and 2000e–16c),
4 in the case of an affected individual who would be
5 covered by such title, or by section 302(a)(1) of the
6 Government Employee Rights Act of 1991 (42
7 U.S.C. 2000e–16b(a)(1)), respectively;

8 (2) the Librarian of Congress shall have the
9 same powers as the Librarian of Congress has to ad-
10 minister and enforce title VII of the Civil Rights Act
11 of 1964 (42 U.S.C. 2000e et seq.) in the case of an
12 affected individual who would be covered by such
13 title;

14 (3) the Board (as defined in section 101 of the
15 Congressional Accountability Act of 1995 (2 U.S.C.
16 1301)) shall have the same powers as the Board has
17 to administer and enforce the Congressional Ac-
18 countability Act of 1995 (2 U.S.C. 1301 et seq.) in
19 the case of an affected individual who would be cov-
20 ered by section 201(a)(1) of such Act (2 U.S.C.
21 1311(a)(1));

22 (4) the Attorney General shall have the same
23 powers as the Attorney General has to administer
24 and enforce—

1 (A) title VII of the Civil Rights Act of
2 1964 (42 U.S.C. 2000e et seq.); or

3 (B) sections 302 and 304 of the Govern-
4 ment Employee Rights Act of 1991 (42 U.S.C.
5 2000e–16b and 2000e–16c);

6 in the case of an affected individual who would be
7 covered by such title, or of section 302(a)(1) of the
8 Government Employee Rights Act of 1991 (42
9 U.S.C. 2000e–16b(a)(1)), respectively;

10 (5) the President, the Commission, and the
11 Merit Systems Protection Board shall have the same
12 powers as the President, the Commission, and the
13 Board, respectively, have to administer and enforce
14 chapter 5 of title 3, United States Code, in the case
15 of an affected individual who would be covered by
16 section 411 of such title; and

17 (6) a court of the United States shall have the
18 same jurisdiction and powers as the court has to en-
19 force—

20 (A) title VII of the Civil Rights Act of
21 1964 (42 U.S.C. 2000e et seq.) in the case of
22 a claim alleged by such individual for a viola-
23 tion of such title;

24 (B) sections 302 and 304 of the Govern-
25 ment Employee Rights Act of 1991 (42 U.S.C.

1 2000e–16b and 2000e–16c) in the case of a
2 claim alleged by such individual for a violation
3 of section 302(a)(1) of such Act (42 U.S.C.
4 2000e–16b(a)(1));

5 (C) the Congressional Accountability Act
6 of 1995 (2 U.S.C. 1301 et seq.) in the case of
7 a claim alleged by such individual for a viola-
8 tion of section 201(a)(1) of such Act (2 U.S.C.
9 1311(a)(1)); and

10 (D) chapter 5 of title 3, United States
11 Code, in the case of a claim alleged by such in-
12 dividual for a violation of section 411 of such
13 title.

14 (b) PROCEDURES.—The procedures applicable to a
15 claim alleged by an individual for a violation of this Act
16 are—

17 (1) the procedures applicable for a violation of
18 title VII of the Civil Rights Act of 1964 (42 U.S.C.
19 2000e et seq.) in the case of a claim alleged by such
20 individual for a violation of such title;

21 (2) the procedures applicable for a violation of
22 section 302(a)(1) of the Government Employee
23 Rights Act of 1991 (42 U.S.C. 2000e–16b(a)(1)) in
24 the case of a claim alleged by such individual for a
25 violation of such section;

1 (3) the procedures applicable for a violation of
2 section 201(a)(1) of the Congressional Account-
3 ability Act of 1995 (2 U.S.C. 1311(a)(1)) in the
4 case of a claim alleged by such individual for a viola-
5 tion of such section; and

6 (4) the procedures applicable for a violation of
7 section 411 of title 3, United States Code, in the
8 case of a claim alleged by such individual for a viola-
9 tion of such section.

10 (c) REMEDIES.—

11 (1) In any claim alleging a violation of Section
12 374(a)(1) or 374(b)(1) of this Act, an individual, or
13 any person acting on behalf of the individual as set
14 forth in Section 375(a) of this Act, may be awarded,
15 as appropriate—

16 (A) an order enjoining the respondent from
17 engaging in the unlawful employment practice;

18 (B) reimbursement of costs expended as a
19 result of the unlawful employment practice;

20 (C) an amount in liquidated damages not
21 to exceed \$1,000 for each day of the violation;
22 and

23 (D) reasonable attorney's fees (including
24 expert fees) and costs attributable to the pur-
25 suit of a claim under this Act, except that no

1 person identified in Section 103(a) of this Act
2 shall be eligible to receive attorney's fees.

3 (2) In any claim alleging a violation of any
4 other subsection of this Act, an individual, or any
5 person acting on behalf of the individual as set forth
6 in Section 375(a) of this Act, may be awarded, as
7 appropriate, the remedies available for a violation of
8 title VII of the Civil Rights Act of 1964 (42 U.S.C.
9 2000e et seq.), section 302(a)(1) of the Government
10 Employee Rights Act of 1991 (42 U.S.C. 2000e–
11 16b(a)(1)), section 201(a)(1) of the Congressional
12 Accountability Act of 1995 (2 U.S.C. 1311(a)(1)),
13 and section 411 of title 3, United States Code, ex-
14 cept that in a case in which wages, salary, employ-
15 ment benefits, or other compensation have not been
16 denied or lost to the individual, damages may be
17 awarded in an amount not to exceed \$5,000.

18 **SEC. 376. FEDERAL AND STATE IMMUNITY.**

19 (a) ABROGATION OF STATE IMMUNITY.—A State
20 shall not be immune under the 11th Amendment to the
21 Constitution from a suit brought in a Federal court of
22 competent jurisdiction for a violation of this Act.

23 (b) WAIVER OF STATE IMMUNITY.—

24 (1) IN GENERAL.—

1 (A) WAIVER.—A State’s receipt or use of
2 Federal financial assistance for any program or
3 activity of a State shall constitute a waiver of
4 sovereign immunity, under the 11th Amend-
5 ment to the Constitution or otherwise, to a suit
6 brought by an employee or applicant for em-
7 ployment of that program or activity under this
8 Act for a remedy authorized under Section
9 375(c) of this Act.

10 (B) DEFINITION.—In this paragraph, the
11 term “program or activity” has the meaning
12 given the term in section 606 of the Civil
13 Rights Act of 1964 (42 U.S.C. 2000d–4a).

14 (2) EFFECTIVE DATE.—With respect to a par-
15 ticular program or activity, paragraph (1) applies to
16 conduct occurring on or after the day, after the date
17 of enactment of this Act, on which a State first re-
18 ceives or uses Federal financial assistance for that
19 program or activity.

20 (c) REMEDIES AGAINST STATE OFFICIALS.—An offi-
21 cial of a State may be sued in the official capacity of the
22 official by any employee or applicant for employment who
23 has complied with the applicable procedures of this Act,
24 for relief that is authorized under this Act.

1 (d) REMEDIES AGAINST THE UNITED STATES AND
2 THE STATES.—Notwithstanding any other provision of
3 this Act, in an action or administrative proceeding against
4 the United States or a State for a violation of this Act,
5 remedies (including remedies at law and in equity) are
6 available for the violation to the same extent as such rem-
7 edies would be available against a non-governmental enti-
8 ty.

9 **SEC. 377. RELATIONSHIP TO OTHER LAWS.**

10 This Act shall not invalidate or limit the rights, rem-
11 edies, or procedures available to an individual claiming
12 discrimination prohibited under any other Federal law or
13 regulation or any law or regulation of a State or political
14 subdivision of a State.

15 **SEC. 378. SEVERABILITY.**

16 If any provision of this Act, or the application of the
17 provision to any person or circumstance, is held to be in-
18 valid, the remainder of this Act and the application of the
19 provision to any other person or circumstances shall not
20 be affected by the invalidity.

21 **SEC. 379. EFFECTIVE DATE.**

22 This Act shall take effect on the date of enactment
23 of this Act and shall not apply to conduct occurring before
24 the effective date.

1 **TITLE IV—OFFSETS**
2 **Subtitle A—28 Percent Limitation**
3 **on Certain Deductions and Ex-**
4 **clusions**

5 **SEC. 401. 28 PERCENT LIMITATION ON CERTAIN DEDUC-**
6 **TIONS AND EXCLUSIONS.**

7 (a) IN GENERAL.—Part I of subchapter B of chapter
8 1 of the Internal Revenue Code of 1986 is amended by
9 adding at the end the following new section:

10 **“SEC. 69. LIMITATION ON CERTAIN DEDUCTIONS AND EX-**
11 **CLUSIONS.**

12 “(a) IN GENERAL.—In the case of an individual for
13 any taxable year, if—

14 “(1) the taxpayer’s adjusted gross income is
15 above—

16 “(A) \$250,000 in the case of a joint return
17 within the meaning of section 6013,

18 “(B) \$225,000 in the case of a head of
19 household return,

20 “(C) \$125,000 in the case of a married fil-
21 ing separately return, or

22 “(D) \$200,000 in all other cases; and

23 “(2) the taxpayer’s adjusted taxable income for
24 such taxable year exceeds the minimum marginal
25 rate amount,

1 then the tax imposed under section 1 with respect to such
2 taxpayer for such taxable year shall be increased by the
3 amount determined under subsection (b). If the taxpayer
4 is subject to tax under section 55, then in lieu of an in-
5 crease in tax under section 1, the tax imposed under sec-
6 tion 55 with respect to such taxpayer for such taxable year
7 shall be increased by the amount determined under sub-
8 section (c).

9 “(b) ADDITIONAL AMOUNT.—The amount deter-
10 mined under this subsection with respect to any taxpayer
11 for any taxable year is the excess (if any) of—

12 “(1) the tax which would be imposed under sec-
13 tion 1 with respect to such taxpayer for such taxable
14 year if ‘adjusted taxable income’ were substituted
15 for ‘taxable income’ each place it appears therein,
16 over

17 “(2) the sum of—

18 “(A) the tax which would be imposed
19 under such section with respect to such tax-
20 payer for such taxable year on the greater of—

21 “(i) taxable income, or

22 “(ii) the minimum marginal rate
23 amount, plus

1 “(B) 28 percent of the excess (if any) of
2 the taxpayer’s adjusted taxable income over the
3 greater of—

4 “(i) the taxpayer’s taxable income, or
5 “(ii) the minimum marginal rate
6 amount.

7 “(c) ADDITIONAL AMT AMOUNT.—

8 “(1) The amount determined under this sub-
9 section with respect to any taxpayer for any taxable
10 year is the additional amount computed under sub-
11 section (b) multiplied by the ratio that—

12 “(A) the result of—

13 “(i) all itemized deductions (before
14 the application of section 68), plus

15 “(ii) the specified above-the-line de-
16 ductions and specified exclusions, minus

17 “(iii) the amount of deductions dis-
18 allowed under section 56(b)(1)(A) and (B),
19 minus

20 “(iv) the non-preference disallowed de-
21 ductions, bears to

22 “(B) the sum of—

23 “(i) the total of itemized deductions
24 (after the application of section 68), plus

1 “(ii) the specified above-the-line de-
2 ductions and specified exclusions.

3 “(2) If the top of the AMT exemption phase-
4 out range for the taxpayer exceeds the minimum
5 marginal rate amount for the taxpayer and if the
6 taxpayer’s alternative minimum taxable income does
7 not exceed the top of the AMT exemption phase-out
8 range, the taxpayer must increase its additional
9 AMT amount by 7 percent of the excess of—

10 “(A) the lesser of—

11 “(i) the top of the AMT exemption
12 phase-out range, or

13 “(ii) the taxpayer’s alternative min-
14 imum taxable income, computed—

15 “(I) without regard to any
16 itemized deduction or any specified
17 above-the-line deduction, and

18 “(II) by including the amount of
19 any specified exclusion; over

20 “(B) the greater of—

21 “(i) the taxpayer’s alternative min-
22 imum taxable income, or

23 “(ii) the minimum marginal rate
24 amount.

1 “(d) MINIMUM MARGINAL RATE AMOUNT.—For pur-
2 poses of this section, the term ‘minimum marginal rate
3 amount’ means, with respect to any taxpayer for any tax-
4 able year, the highest amount of the taxpayer’s taxable
5 income which would be subject to a marginal rate of tax
6 under section 1 that is less than 36 percent with respect
7 to such taxable year.

8 “(e) ADJUSTED TAXABLE INCOME.—For purposes of
9 this section—

10 “(1) IN GENERAL.—The term ‘adjusted taxable
11 income’ means taxable income computed—

12 “(A) without regard to any itemized deduc-
13 tion or any specified above-the-line deduction,
14 and

15 “(B) by including in gross income any
16 specified exclusion.

17 “(2) SPECIFIED ABOVE-THE-LINE DEDUC-
18 TION.—The term ‘specified above-the-line deduction’
19 means—

20 “(A) the deduction provided under section
21 162(l) (relating to special rules for health insur-
22 ance costs of self-employed individuals),

23 “(B) the deduction provided under section
24 199 (relating to income attributable to domestic
25 production activities), and

1 “(C) the deductions provided under the fol-
2 lowing paragraphs of section 62(a):

3 “(i) Paragraph (2) (relating to certain
4 trade and business deductions of employ-
5 ees), other than subparagraph (A) thereof.

6 “(ii) Paragraph (15) (relating to mov-
7 ing expenses).

8 “(iii) Paragraph (16) (relating to Ar-
9 cher MSAs).

10 “(iv) Paragraph (17) (relating to in-
11 terest on education loans).

12 “(v) Paragraph (18) (relating to high-
13 er education expenses).

14 “(vi) Paragraph (19) (relating to
15 health savings accounts).

16 “(3) SPECIFIED EXCLUSION.—The term ‘speci-
17 fied exclusion’ means—

18 “(A) any interest excluded under section
19 103,

20 “(B) any exclusion with respect to the cost
21 described in section 6051(a)(14) (without re-
22 gard to subparagraph (B) thereof), and

23 “(C) any foreign earned income excluded
24 under section 911.

1 “(f) NON-PREFERENCE DISALLOWED DEDUC-
2 TIONS.—For purposes of this section, the term ‘AMT-al-
3 lowed deductions’ means all itemized deductions dis-
4 allowed by section 68 multiplied by the ratio that—

5 “(1) a taxpayer’s itemized deductions for the
6 taxable year that are subject to section 68 (that is,
7 not including those excluded under section 68(e))
8 and that are not limited under section 56(b)(1)(A)
9 or (B), bears to

10 “(2) the taxpayer’s itemized deductions for the
11 taxable year that are subject to section 68 (that is,
12 not including those excluded under section 68(e)).

13 “(g) REGULATIONS.—The Secretary shall prescribe
14 such regulations as may be appropriate to carry out this
15 section, including regulations which provide appropriate
16 adjustments to the additional AMT amount.”.

17 (b) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to taxable years beginning on or
19 after January 1, 2013.

1 **Subtitle B—Tax Carried Interest in**
2 **Investment Partnerships as Or-**
3 **dinary Income**

4 **SEC. 411. PARTNERSHIP INTERESTS TRANSFERRED IN**
5 **CONNECTION WITH PERFORMANCE OF SERV-**
6 **ICES.**

7 (a) MODIFICATION TO ELECTION TO INCLUDE PART-
8 NERSHIP INTEREST IN GROSS INCOME IN YEAR OF
9 TRANSFER.—Subsection (c) of section 83 of the Internal
10 Revenue Code of 1986 is amended by redesignating para-
11 graph (4) as paragraph (5) and by inserting after para-
12 graph (3) the following new paragraph:

13 “(4) PARTNERSHIP INTERESTS.—Except as
14 provided by the Secretary—

15 “(A) IN GENERAL.—In the case of any
16 transfer of an interest in a partnership in con-
17 nection with the provision of services to (or for
18 the benefit of) such partnership—

19 “(i) the fair market value of such in-
20 terest shall be treated for purposes of this
21 section as being equal to the amount of the
22 distribution which the partner would re-
23 ceive if the partnership sold (at the time of
24 the transfer) all of its assets at fair market
25 value and distributed the proceeds of such

1 sale (reduced by the liabilities of the part-
2 nership) to its partners in liquidation of
3 the partnership, and

4 “(ii) the person receiving such interest
5 shall be treated as having made the elec-
6 tion under subsection (b)(1) unless such
7 person makes an election under this para-
8 graph to have such subsection not apply.

9 “(B) ELECTION.—The election under sub-
10 paragraph (A)(ii) shall be made under rules
11 similar to the rules of subsection (b)(2).”.

12 (b) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to interests in partnerships trans-
14 ferred after December 31, 2012.

15 **SEC. 412. SPECIAL RULES FOR PARTNERS PROVIDING IN-**
16 **VESTMENT MANAGEMENT SERVICES TO**
17 **PARTNERSHIPS.**

18 (a) IN GENERAL.—Part I of subchapter K of chapter
19 1 of the Internal Revenue Code of 1986 is amended by
20 adding at the end the following new section:

1 **“SEC. 710. SPECIAL RULES FOR PARTNERS PROVIDING IN-**
2 **VESTMENT MANAGEMENT SERVICES TO**
3 **PARTNERSHIPS.**

4 “(a) TREATMENT OF DISTRIBUTIVE SHARE OF
5 PARTNERSHIP ITEMS.—For purposes of this title, in the
6 case of an investment services partnership interest—

7 “(1) IN GENERAL.—Notwithstanding section
8 702(b)—

9 “(A) an amount equal to the net capital
10 gain with respect to such interest for any part-
11 nership taxable year shall be treated as ordi-
12 nary income, and

13 “(B) subject to the limitation of paragraph
14 (2), an amount equal to the net capital loss
15 with respect to such interest for any partner-
16 ship taxable year shall be treated as an ordi-
17 nary loss.

18 “(2) RECHARACTERIZATION OF LOSSES LIM-
19 ITED TO RECHARACTERIZED GAINS.—The amount
20 treated as ordinary loss under paragraph (1)(B) for
21 any taxable year shall not exceed the excess (if any)
22 of—

23 “(A) the aggregate amount treated as ordi-
24 nary income under paragraph (1)(A) with re-
25 spect to the investment services partnership in-

1 terest for all preceding partnership taxable
2 years to which this section applies, over

3 “(B) the aggregate amount treated as or-
4 dinary loss under paragraph (1)(B) with re-
5 spect to such interest for all preceding partner-
6 ship taxable years to which this section applies.

7 “(3) ALLOCATION TO ITEMS OF GAIN AND
8 LOSS.—

9 “(A) NET CAPITAL GAIN.—The amount
10 treated as ordinary income under paragraph
11 (1)(A) shall be allocated ratably among the
12 items of long-term capital gain taken into ac-
13 count in determining such net capital gain.

14 “(B) NET CAPITAL LOSS.—The amount
15 treated as ordinary loss under paragraph (1)(B)
16 shall be allocated ratably among the items of
17 long-term capital loss and short-term capital
18 loss taken into account in determining such net
19 capital loss.

20 “(4) TERMS RELATING TO CAPITAL GAINS AND
21 LOSSES.—For purposes of this section—

22 “(A) IN GENERAL.—Net capital gain, long-
23 term capital gain, and long-term capital loss,
24 with respect to any investment services partner-
25 ship interest for any taxable year, shall be de-

1 terminated under section 1222, except that such
2 section shall be applied—

3 “(i) without regard to the recharacter-
4 ization of any item as ordinary income or
5 ordinary loss under this section,

6 “(ii) by only taking into account items
7 of gain and loss taken into account by the
8 holder of such interest under section 702
9 with respect to such interest for such tax-
10 able year,

11 “(iii) by treating property which is
12 taken into account in determining gains
13 and losses to which section 1231 applies as
14 capital assets held for more than 1 year,
15 and

16 “(iv) without regard to section 1202.

17 “(B) NET CAPITAL LOSS.—The term ‘net
18 capital loss’ means the excess of the losses from
19 sales or exchanges of capital assets over the
20 gains from such sales or exchanges. Rules simi-
21 lar to the rules of clauses (i) through (iv) of
22 subparagraph (A) shall apply for purposes of
23 the preceding sentence.

24 “(5) SPECIAL RULES FOR DIVIDENDS.—

1 “(A) INDIVIDUALS.—Any dividend allo-
2 cated to any investment services partnership in-
3 terest shall not be treated as qualified dividend
4 income for purposes of section 1(h).

5 “(B) CORPORATIONS.—No deduction shall
6 be allowed under section 243 or 245 with re-
7 spect to any dividend allocated to any invest-
8 ment services partnership interest.

9 “(b) DISPOSITIONS OF PARTNERSHIP INTERESTS.—
10 “(1) GAIN.—

11 “(A) IN GENERAL.—Any gain on the dis-
12 position of an investment services partnership
13 interest shall be—

14 “(i) treated as ordinary income, and

15 “(ii) recognized notwithstanding any
16 other provision of this subtitle.

17 “(B) EXCEPTIONS—CERTAIN TRANSFERS
18 TO CHARITIES AND RELATED PERSONS.—Sub-
19 paragraph (A) shall not apply to—

20 “(i) a disposition by gift,

21 “(ii) a transfer at death, or

22 “(iii) other disposition identified by
23 the Secretary as a disposition with respect
24 to which it would be inconsistent with the

1 purposes of this section to apply subpara-
2 graph (A),
3 if such gift, transfer, or other disposition is to
4 an organization described in section
5 170(b)(1)(A) (other than any organization de-
6 scribed in section 509(a)(3) or any fund or ac-
7 count described in section 4966(d)(2)) or a per-
8 son with respect to whom the transferred inter-
9 est is an investment services partnership inter-
10 est.

11 “(2) LOSS.—Any loss on the disposition of an
12 investment services partnership interest shall be
13 treated as an ordinary loss to the extent of the ex-
14 cess (if any) of—

15 “(A) the aggregate amount treated as ordi-
16 nary income under subsection (a) with respect
17 to such interest for all partnership taxable
18 years to which this section applies, over

19 “(B) the aggregate amount treated as ordi-
20 nary loss under subsection (a) with respect to
21 such interest for all partnership taxable years
22 to which this section applies.

23 “(3) ELECTION WITH RESPECT TO CERTAIN EX-
24 CHANGES.—Paragraph (1)(A)(ii) shall not apply to
25 the contribution of an investment services partner-

1 ship interest to a partnership in exchange for an in-
2 terest in such partnership if—

3 “(A) the taxpayer makes an irrevocable
4 election to treat the partnership interest re-
5 ceived in the exchange as an investment serv-
6 ices partnership interest, and

7 “(B) the taxpayer agrees to comply with
8 such reporting and recordkeeping requirements
9 as the Secretary may prescribe.

10 “(4) DISTRIBUTIONS OF PARTNERSHIP PROP-
11 erty.—

12 “(A) IN GENERAL.—In the case of any dis-
13 tribution of property by a partnership with re-
14 spect to any investment services partnership in-
15 terest held by a partner, the partner receiving
16 such property shall recognize gain equal to the
17 excess (if any) of—

18 “(i) the fair market value of such
19 property at the time of such distribution,
20 over

21 “(ii) the adjusted basis of such prop-
22 erty in the hands of such partner (deter-
23 mined without regard to subparagraph
24 (C)).

1 “(B) TREATMENT OF GAIN AS ORDINARY
2 INCOME.—Any gain recognized by such partner
3 under subparagraph (A) shall be treated as or-
4 dinary income to the same extent and in the
5 same manner as the increase in such partner’s
6 distributive share of the taxable income of the
7 partnership would be treated under subsection
8 (a) if, immediately prior to the distribution, the
9 partnership had sold the distributed property at
10 fair market value and all of the gain from such
11 disposition were allocated to such partner. For
12 purposes of applying paragraphs (2) and (3) of
13 subsection (a), any gain treated as ordinary in-
14 come under this subparagraph shall be treated
15 as an amount treated as ordinary income under
16 subsection (a)(1)(A).

17 “(C) ADJUSTMENT OF BASIS.—In the case
18 a distribution to which subparagraph (A) ap-
19 plies, the basis of the distributed property in
20 the hands of the distributee partner shall be the
21 fair market value of such property.

22 “(D) SPECIAL RULES WITH RESPECT TO
23 MERGERS, DIVISIONS, AND TECHNICAL TERMI-
24 NATIONS.—In the case of a taxpayer which sat-
25 isfies requirements similar to the requirements

1 of subparagraphs (A) and (B) of paragraph (3),
2 this paragraph and paragraph (1)(A)(ii) shall
3 not apply to the distribution of a partnership
4 interest if such distribution is in connection
5 with a contribution (or deemed contribution) of
6 any property of the partnership to which sec-
7 tion 721 applies pursuant to a transaction de-
8 scribed in paragraph (1)(B) or (2) of section
9 708(b).

10 “(c) INVESTMENT SERVICES PARTNERSHIP INTER-
11 EST.—For purposes of this section—

12 “(1) IN GENERAL.—The term ‘investment serv-
13 ices partnership interest’ means any interest in an
14 investment partnership acquired or held by any per-
15 son in connection with the conduct of a trade or
16 business described in paragraph (2) by such person
17 (or any person related to such person). An interest
18 in an investment partnership held by any person—

19 “(A) shall not be treated as an investment
20 services partnership interest for any period be-
21 fore the first date on which it is so held in con-
22 nection with such a trade or business,

23 “(B) shall not cease to be an investment
24 services partnership interest merely because

1 such person holds such interest other than in
2 connection with such a trade or business, and

3 “(C) shall be treated as an investment
4 services partnership interest if acquired from a
5 related person in whose hands such interest was
6 an investment services partnership interest.

7 “(2) BUSINESSES TO WHICH THIS SECTION AP-
8 PLIES.—A trade or business is described in this
9 paragraph if such trade or business primarily in-
10 volves the performance of any of the following serv-
11 ices with respect to assets held (directly or indi-
12 rectly) by the investment partnership referred to in
13 paragraph (1):

14 “(A) Advising as to the advisability of in-
15 vesting in, purchasing, or selling any specified
16 asset.

17 “(B) Managing, acquiring, or disposing of
18 any specified asset.

19 “(C) Arranging financing with respect to
20 acquiring specified assets.

21 “(D) Any activity in support of any service
22 described in subparagraphs (A) through (C).

23 “(3) INVESTMENT PARTNERSHIP.—

24 “(A) IN GENERAL.—The term ‘investment
25 partnership’ means any partnership if, at the

1 end of any calendar quarter ending after De-
2 cember 31, 2012—

3 “(i) substantially all of the assets of
4 the partnership are specified assets (deter-
5 mined without regard to any section 197
6 intangible within the meaning of section
7 197(d)), and

8 “(ii) more than half of the contributed
9 capital of the partnership is attributable to
10 contributions of property by one or more
11 persons in exchange for interests in the
12 partnership which (in the hands of such
13 persons) constitute property held for the
14 production of income.

15 “(B) SPECIAL RULES FOR DETERMINING
16 IF PROPERTY HELD FOR THE PRODUCTION OF
17 INCOME.—Except as otherwise provided by the
18 Secretary, for purposes of determining whether
19 any interest in a partnership constitutes prop-
20 erty held for the production of income under
21 subparagraph (A)(ii)—

22 “(i) any election under subsection (e)
23 or (f) of section 475 shall be disregarded,
24 and

25 “(ii) paragraph (5)(B) shall not apply.

1 “(C) ANTIABUSE RULES.—The Secretary
2 may issue regulations or other guidance which
3 prevent the avoidance of the purposes of sub-
4 paragraph (A), including regulations or other
5 guidance which treat convertible and contingent
6 debt (and other debt having the attributes of
7 equity) as a capital interest in the partnership.

8 “(D) CONTROLLED GROUPS OF ENTI-
9 TIES.—

10 “(i) IN GENERAL.—In the case of a
11 controlled group of entities, if an interest
12 in the partnership received in exchange for
13 a contribution to the capital of the part-
14 nership by any member of such controlled
15 group would (in the hands of such mem-
16 ber) constitute property not held for the
17 production of income, then any interest in
18 such partnership held by any member of
19 such group shall be treated for purposes of
20 subparagraph (A) as constituting (in the
21 hands of such member) property not held
22 for the production of income.

23 “(ii) CONTROLLED GROUP OF ENTI-
24 TIES.—For purposes of clause (i), the term
25 ‘controlled group of entities’ means a con-

1 trolled group of corporations as defined in
2 section 1563(a)(1), applied without regard
3 to subsections (a)(4) and (b)(2) of section
4 1563. A partnership or any other entity
5 (other than a corporation) shall be treated
6 as a member of a controlled group of enti-
7 ties if such entity is controlled (within the
8 meaning of section 954(d)(3)) by members
9 of such group (including any entity treated
10 as a member of such group by reason of
11 this sentence).

12 “(4) SPECIFIED ASSET.—The term ‘specified
13 asset’ means securities (as defined in section
14 475(c)(2) without regard to the last sentence there-
15 of), real estate held for rental or investment, inter-
16 ests in partnerships, commodities (as defined in sec-
17 tion 475(e)(2)), cash or cash equivalents, or options
18 or derivative contracts with respect to any of the
19 foregoing.

20 “(5) RELATED PERSONS.—

21 “(A) IN GENERAL.—A person shall be
22 treated as related to another person if the rela-
23 tionship between such persons is described in
24 section 267(b) or 707(b).

1 “(B) ATTRIBUTION OF PARTNER SERV-
2 ICES.—Any service described in paragraph (2)
3 which is provided by a partner of a partnership
4 shall be treated as also provided by such part-
5 nership.

6 “(d) EXCEPTION FOR CERTAIN CAPITAL INTER-
7 ESTS.—

8 “(1) IN GENERAL.—In the case of any portion
9 of an investment services partnership interest which
10 is a qualified capital interest, all items of gain and
11 loss (and any dividends) which are allocated to such
12 qualified capital interest shall not be taken into ac-
13 count under subsection (a) if—

14 “(A) allocations of items are made by the
15 partnership to such qualified capital interest in
16 the same manner as such allocations are made
17 to other qualified capital interests held by part-
18 ners who do not provide any services described
19 in subsection (c)(2) and who are not related to
20 the partner holding the qualified capital inter-
21 est, and

22 “(B) the allocations made to such other in-
23 terests are significant compared to the alloca-
24 tions made to such qualified capital interest.

1 “(2) AUTHORITY TO PROVIDE EXCEPTIONS TO
2 ALLOCATION REQUIREMENTS.—To the extent pro-
3 vided by the Secretary in regulations or other guid-
4 ance—

5 “(A) ALLOCATIONS TO PORTION OF QUALI-
6 FIED CAPITAL INTEREST.—Paragraph (1) may
7 be applied separately with respect to a portion
8 of a qualified capital interest.

9 “(B) NO OR INSIGNIFICANT ALLOCATIONS
10 TO NONSERVICE PROVIDERS.—In any case in
11 which the requirements of paragraph (1)(B) are
12 not satisfied, items of gain and loss (and any
13 dividends) shall not be taken into account under
14 subsection (a) to the extent that such items are
15 properly allocable under such regulations or
16 other guidance to qualified capital interests.

17 “(C) ALLOCATIONS TO SERVICE PRO-
18 VIDERS’ QUALIFIED CAPITAL INTERESTS WHICH
19 ARE LESS THAN OTHER ALLOCATIONS.—Alloca-
20 tions shall not be treated as failing to meet the
21 requirement of paragraph (1)(A) merely be-
22 cause the allocations to the qualified capital in-
23 terest represent a lower return than the alloca-
24 tions made to the other qualified capital inter-
25 ests referred to in such paragraph.

1 “(3) SPECIAL RULE FOR CHANGES IN SERVICES
2 AND CAPITAL CONTRIBUTIONS.—In the case of an
3 interest in a partnership which was not an invest-
4 ment services partnership interest and which, by
5 reason of a change in the services with respect to as-
6 sets held (directly or indirectly) by the partnership
7 or by reason of a change in the capital contributions
8 to such partnership, becomes an investment services
9 partnership interest, the qualified capital interest of
10 the holder of such partnership interest immediately
11 after such change shall not, for purposes of this sub-
12 section, be less than the fair market value of such
13 interest (determined immediately before such
14 change).

15 “(4) SPECIAL RULE FOR TIERED PARTNER-
16 SHIPS.—Except as otherwise provided by the Sec-
17 retary, in the case of tiered partnerships, all items
18 which are allocated in a manner which meets the re-
19 quirements of paragraph (1) to qualified capital in-
20 terests in a lower-tier partnership shall retain such
21 character to the extent allocated on the basis of
22 qualified capital interests in any upper-tier partner-
23 ship.

24 “(5) EXCEPTION FOR NO-SELF-CHARGED
25 CARRY AND MANAGEMENT FEE PROVISIONS.—Ex-

1 cept as otherwise provided by the Secretary, an in-
2 terest shall not fail to be treated as satisfying the
3 requirement of paragraph (1)(A) merely because the
4 allocations made by the partnership to such interest
5 do not reflect the cost of services described in sub-
6 section (c)(2) which are provided (directly or indi-
7 rectly) to the partnership by the holder of such in-
8 terest (or a related person).

9 “(6) SPECIAL RULE FOR DISPOSITIONS.—In the
10 case of any investment services partnership interest
11 any portion of which is a qualified capital interest,
12 subsection (b) shall not apply to so much of any
13 gain or loss as bears the same proportion to the en-
14 tire amount of such gain or loss as—

15 “(A) the distributive share of gain or loss
16 that would have been allocated to the qualified
17 capital interest (consistent with the require-
18 ments of paragraph (1)) if the partnership had
19 sold all of its assets at fair market value imme-
20 diately before the disposition, bears to

21 “(B) the distributive share of gain or loss
22 that would have been so allocated to the invest-
23 ment services partnership interest of which such
24 qualified capital interest is a part.

1 “(7) QUALIFIED CAPITAL INTEREST.—For pur-
2 poses of this subsection—

3 “(A) IN GENERAL.—The term ‘qualified
4 capital interest’ means so much of a partner’s
5 interest in the capital of the partnership as is
6 attributable to—

7 “(i) the fair market value of any
8 money or other property contributed to the
9 partnership in exchange for such interest
10 (determined without regard to section
11 752(a)),

12 “(ii) any amounts which have been in-
13 cluded in gross income under section 83
14 with respect to the transfer of such inter-
15 est, and

16 “(iii) the excess (if any) of—

17 “(I) any items of income and
18 gain taken into account under section
19 702 with respect to such interest, over

20 “(II) any items of deduction and
21 loss so taken into account.

22 “(B) ADJUSTMENT TO QUALIFIED CAPITAL
23 INTEREST.—

24 “(i) DISTRIBUTIONS AND LOSSES.—

25 The qualified capital interest shall be re-

1 duced by distributions from the partner-
2 ship with respect to such interest and by
3 the excess (if any) of the amount described
4 in subparagraph (A)(iii)(II) over the
5 amount described in subparagraph
6 (A)(iii)(I).

7 “(ii) SPECIAL RULE FOR CONTRIBU-
8 TIONS OF PROPERTY.—In the case of any
9 contribution of property described in sub-
10 paragraph (A)(i) with respect to which the
11 fair market value of such property is not
12 equal to the adjusted basis of such prop-
13 erty immediately before such contribution,
14 proper adjustments shall be made to the
15 qualified capital interest to take into ac-
16 count such difference consistent with such
17 regulations or other guidance as the Sec-
18 retary may provide.

19 “(C) TECHNICAL TERMINATIONS, ETC.,
20 DISREGARDED.—No increase or decrease in the
21 qualified capital interest of any partner shall re-
22 sult from a termination, merger, consolidation,
23 or division described in section 708, or any
24 similar transaction.

25 “(8) TREATMENT OF CERTAIN LOANS.—

1 “(A) PROCEEDS OF PARTNERSHIP LOANS
2 NOT TREATED AS QUALIFIED CAPITAL INTER-
3 EST OF SERVICE PROVIDING PARTNERS.—For
4 purposes of this subsection, an investment serv-
5 ices partnership interest shall not be treated as
6 a qualified capital interest to the extent that
7 such interest is acquired in connection with the
8 proceeds of any loan or other advance made or
9 guaranteed, directly or indirectly, by any other
10 partner or the partnership (or any person re-
11 lated to any such other partner or the partner-
12 ship). The preceding sentence shall not apply to
13 the extent the loan or other advance is repaid
14 before January 1, 2013 unless such repayment
15 is made with the proceeds of a loan or other ad-
16 vance described in the preceding sentence.

17 “(B) REDUCTION IN ALLOCATIONS TO
18 QUALIFIED CAPITAL INTERESTS FOR LOANS
19 FROM NONSERVICE-PROVIDING PARTNERS TO
20 THE PARTNERSHIP.—For purposes of this sub-
21 section, any loan or other advance to the part-
22 nership made or guaranteed, directly or indi-
23 rectly, by a partner not providing services de-
24 scribed in subsection (c)(2) to the partnership
25 (or any person related to such partner) shall be

1 taken into account in determining the qualified
2 capital interests of the partners in the partner-
3 ship.

4 “(e) OTHER INCOME AND GAIN IN CONNECTION
5 WITH INVESTMENT MANAGEMENT SERVICES.—

6 “(1) IN GENERAL.—If—

7 “(A) a person performs (directly or indi-
8 rectly) investment management services for any
9 investment entity,

10 “(B) such person holds (directly or indi-
11 rectly) a disqualified interest with respect to
12 such entity, and

13 “(C) the value of such interest (or pay-
14 ments thereunder) is substantially related to
15 the amount of income or gain (whether or not
16 realized) from the assets with respect to which
17 the investment management services are per-
18 formed,

19 any income or gain with respect to such interest
20 shall be treated as ordinary income. Rules similar to
21 the rules of subsections (a)(5) and (d) shall apply
22 for purposes of this subsection.

23 “(2) DEFINITIONS.—For purposes of this sub-
24 section—

25 “(A) DISQUALIFIED INTEREST.—

1 “(i) IN GENERAL.—The term ‘dis-
2 qualified interest’ means, with respect to
3 any investment entity—

4 “(I) any interest in such entity
5 other than indebtedness,

6 “(II) convertible or contingent
7 debt of such entity,

8 “(III) any option or other right
9 to acquire property described in sub-
10 clause (I) or (II), and

11 “(IV) any derivative instrument
12 entered into (directly or indirectly)
13 with such entity or any investor in
14 such entity.

15 “(ii) EXCEPTIONS.—Such term shall
16 not include—

17 “(I) a partnership interest,

18 “(II) except as provided by the
19 Secretary, any interest in a taxable
20 corporation, and

21 “(III) except as provided by the
22 Secretary, stock in an S corporation.

23 “(B) TAXABLE CORPORATION.—The term
24 ‘taxable corporation’ means—

25 “(i) a domestic C corporation, or

1 “(ii) a foreign corporation substan-
2 tially all of the income of which is—

3 “(I) effectively connected with
4 the conduct of a trade or business in
5 the United States, or

6 “(II) subject to a comprehensive
7 foreign income tax (as defined in sec-
8 tion 457A(d)(2)).

9 “(C) INVESTMENT MANAGEMENT SERV-
10 ICES.—The term ‘investment management serv-
11 ices’ means a substantial quantity of any of the
12 services described in subsection (c)(2).

13 “(D) INVESTMENT ENTITY.—The term ‘in-
14 vestment entity’ means any entity which, if it
15 were a partnership, would be an investment
16 partnership.

17 “(f) REGULATIONS.—The Secretary shall prescribe
18 such regulations or other guidance as is necessary or ap-
19 propriate to carry out the purposes of this section, includ-
20 ing regulations or other guidance to—

21 “(1) provide modifications to the application of
22 this section (including treating related persons as
23 not related to one another) to the extent such modi-
24 fication is consistent with the purposes of this sec-
25 tion, and

1 “(2) coordinate this section with the other pro-
2 visions of this title.

3 “(g) CROSS REFERENCE.—For 40 percent penalty on
4 certain underpayments due to the avoidance of this sec-
5 tion, see section 6662.”.

6 (b) APPLICATION OF SECTION 751 TO INDIRECT DIS-
7 POSITIONS OF INVESTMENT SERVICES PARTNERSHIP IN-
8 TERESTS.—

9 (1) IN GENERAL.—Subsection (a) of section
10 751 of the Internal Revenue Code of 1986 is amend-
11 ed by striking “or” at the end of paragraph (1), by
12 inserting “or” at the end of paragraph (2), and by
13 inserting after paragraph (2) the following new
14 paragraph:

15 “(3) investment services partnership interests
16 held by the partnership,”.

17 (2) CERTAIN DISTRIBUTIONS TREATED AS
18 SALES OR EXCHANGES.—Subparagraph (A) of sec-
19 tion 751(b)(1) of the Internal Revenue Code of 1986
20 is amended by striking “or” at the end of clause (i),
21 by inserting “or” at the end of clause (ii), and by
22 inserting after clause (ii) the following new clause:

23 “(iii) investment services partnership
24 interests held by the partnership,”.

1 (3) APPLICATION OF SPECIAL RULES IN THE
2 CASE OF TIERED PARTNERSHIPS.—Subsection (f) of
3 section 751 of the Internal Revenue Code of 1986
4 is amended by striking “or” at the end of paragraph
5 (1), by inserting “or” at the end of paragraph (2),
6 and by inserting after paragraph (2) the following
7 new paragraph:

8 “(3) investment services partnership interests
9 held by the partnership,”.

10 (4) INVESTMENT SERVICES PARTNERSHIP IN-
11 TERESTS; QUALIFIED CAPITAL INTERESTS.—Section
12 751 of the Internal Revenue Code of 1986 is amend-
13 ed by adding at the end the following new sub-
14 section:

15 “(g) INVESTMENT SERVICES PARTNERSHIP INTER-
16 ESTS.—For purposes of this section—

17 “(1) IN GENERAL.—The term ‘investment serv-
18 ices partnership interest’ has the meaning given
19 such term by section 710(c).

20 “(2) ADJUSTMENTS FOR QUALIFIED CAPITAL
21 INTERESTS.—The amount to which subsection (a)
22 applies by reason of paragraph (3) thereof shall not
23 include so much of such amount as is attributable
24 to any portion of the investment services partnership
25 interest which is a qualified capital interest (deter-

1 mined under rules similar to the rules of section
2 710(d)).

3 “(3) RECOGNITION OF GAINS.—Any gain with
4 respect to which subsection (a) applies by reason of
5 paragraph (3) thereof shall be recognized notwith-
6 standing any other provision of this title.

7 “(4) COORDINATION WITH INVENTORY
8 ITEMS.—An investment services partnership interest
9 held by the partnership shall not be treated as an
10 inventory item of the partnership.

11 “(5) PREVENTION OF DOUBLE COUNTING.—
12 Under regulations or other guidance prescribed by
13 the Secretary, subsection (a)(3) shall not apply with
14 respect to any amount to which section 710 ap-
15 plies.”.

16 (c) TREATMENT FOR PURPOSES OF SECTION
17 7704.—Subsection (d) of section 7704 of the Internal
18 Revenue Code of 1986 is amended by adding at the end
19 the following new paragraph:

20 “(6) INCOME FROM CERTAIN CARRIED INTER-
21 ESTS NOT QUALIFIED.—

22 “(A) IN GENERAL.—Specified carried in-
23 terest income shall not be treated as qualifying
24 income.

1 “(B) SPECIFIED CARRIED INTEREST IN-
2 COME.—For purposes of this paragraph—

3 “(i) IN GENERAL.—The term ‘speci-
4 fied carried interest income’ means—

5 “(I) any item of income or gain
6 allocated to an investment services
7 partnership interest (as defined in
8 section 710(c)) held by the partner-
9 ship,

10 “(II) any gain on the disposition
11 of an investment services partnership
12 interest (as so defined) or a partner-
13 ship interest to which (in the hands of
14 the partnership) section 751 applies,
15 and

16 “(III) any income or gain taken
17 into account by the partnership under
18 subsection (b)(4) or (e) of section
19 710.

20 “(ii) EXCEPTION FOR QUALIFIED CAP-
21 ITAL INTERESTS.—A rule similar to the
22 rule of section 710(d) shall apply for pur-
23 poses of clause (i).

24 “(C) COORDINATION WITH OTHER PROVI-
25 SIONS.—Subparagraph (A) shall not apply to

1 any item described in paragraph (1)(E) (or so
2 much of paragraph (1)(F) as relates to para-
3 graph (1)(E)).

4 “(D) SPECIAL RULES FOR CERTAIN PART-
5 NERSHIPS.—

6 “(i) CERTAIN PARTNERSHIPS OWNED
7 BY REAL ESTATE INVESTMENT TRUSTS.—
8 Subparagraph (A) shall not apply in the
9 case of a partnership which meets each of
10 the following requirements:

11 “(I) Such partnership is treated
12 as publicly traded under this section
13 solely by reason of interests in such
14 partnership being convertible into in-
15 terests in a real estate investment
16 trust which is publicly traded.

17 “(II) 50 percent or more of the
18 capital and profits interests of such
19 partnership are owned, directly or in-
20 directly, at all times during the tax-
21 able year by such real estate invest-
22 ment trust (determined with the ap-
23 plication of section 267(c)).

1 “(III) Such partnership meets
2 the requirements of paragraphs (2),
3 (3), and (4) of section 856(c).

4 “(ii) CERTAIN PARTNERSHIPS OWN-
5 ING OTHER PUBLICLY TRADED PARTNER-
6 SHIPS.—Subparagraph (A) shall not apply
7 in the case of a partnership which meets
8 each of the following requirements:

9 “(I) Substantially all of the as-
10 sets of such partnership consist of in-
11 terests in one or more publicly traded
12 partnerships (determined without re-
13 gard to subsection (b)(2)).

14 “(II) Substantially all of the in-
15 come of such partnership is ordinary
16 income or section 1231 gain (as de-
17 fined in section 1231(a)(3)).

18 “(E) TRANSITIONAL RULE.—Subpara-
19 graph (A) shall not apply to any taxable year
20 of the partnership beginning before the date
21 which is 10 years after January 1, 2013.”.

22 (d) IMPOSITION OF PENALTY ON UNDERPAY-
23 MENTS.—

24 (1) IN GENERAL.—Subsection (b) of section
25 6662 of the Internal Revenue Code of 1986 is

1 amended by inserting after paragraph (7) the fol-
2 lowing new paragraph:

3 “(8) The application of section 710(e) or the
4 regulations or other guidance prescribed under sec-
5 tion 710(h) to prevent the avoidance of the purposes
6 of section 710.”.

7 (2) AMOUNT OF PENALTY.—

8 (A) IN GENERAL.—Section 6662 of the In-
9 ternal Revenue Code of 1986 is amended by
10 adding at the end the following new subsection:

11 “(k) INCREASE IN PENALTY IN CASE OF PROPERTY
12 TRANSFERRED FOR INVESTMENT MANAGEMENT SERV-
13 ICES.—In the case of any portion of an underpayment to
14 which this section applies by reason of subsection (b)(8),
15 subsection (a) shall be applied with respect to such portion
16 by substituting ‘40 percent’ for ‘20 percent’.”.

17 (B) CONFORMING AMENDMENT.—Subpara-
18 graph (B) of section 6662A(e)(2) is amended
19 by striking “or (i)” and inserting “, (i), or (k)”.

20 (3) SPECIAL RULES FOR APPLICATION OF REA-
21 SONABLE CAUSE EXCEPTION.—Subsection (c) of sec-
22 tion 6664 is amended—

23 (A) by redesignating paragraphs (3) and
24 (4) as paragraphs (4) and (5), respectively;

1 (B) by striking “paragraph (3)” in para-
2 graph (5)(A), as so redesignated, and inserting
3 “paragraph (4)”; and

4 (C) by inserting after paragraph (2) the
5 following new paragraph:

6 “(3) SPECIAL RULE FOR UNDERPAYMENTS AT-
7 TRIBUTABLE TO INVESTMENT MANAGEMENT SERV-
8 ICES.—

9 “(A) IN GENERAL.—Paragraph (1) shall
10 not apply to any portion of an underpayment to
11 which section 6662 applies by reason of sub-
12 section (b)(8) unless—

13 “(i) the relevant facts affecting the
14 tax treatment of the item are adequately
15 disclosed,

16 “(ii) there is or was substantial au-
17 thority for such treatment, and

18 “(iii) the taxpayer reasonably believed
19 that such treatment was more likely than
20 not the proper treatment.

21 “(B) RULES RELATING TO REASONABLE
22 BELIEF.—Rules similar to the rules of sub-
23 section (d)(3) shall apply for purposes of sub-
24 paragraph (A)(iii).”.

1 (e) INCOME AND LOSS FROM INVESTMENT SERVICES
2 PARTNERSHIP INTERESTS TAKEN INTO ACCOUNT IN DE-
3 TERMINING NET EARNINGS FROM SELF-EMPLOYMENT.—

4 (1) INTERNAL REVENUE CODE.—

5 (A) IN GENERAL.—Section 1402(a) of the
6 Internal Revenue Code of 1986 is amended by
7 striking “and” at the end of paragraph (16), by
8 striking the period at the end of paragraph (17)
9 and inserting “; and”, and by inserting after
10 paragraph (17) the following new paragraph:

11 “(18) notwithstanding the preceding provisions
12 of this subsection, in the case of any individual en-
13 gaged in the trade or business of providing services
14 described in section 710(c)(2) with respect to any
15 entity, investment services partnership income or
16 loss (as defined in subsection (m)) of such individual
17 with respect to such entity shall be taken into ac-
18 count in determining the net earnings from self-em-
19 ployment of such individual.”.

20 (B) INVESTMENT SERVICES PARTNERSHIP
21 INCOME OR LOSS.—Section 1402 of the Inter-
22 nal Revenue Code is amended by adding at the
23 end the following new subsection:

24 “(m) INVESTMENT SERVICES PARTNERSHIP INCOME
25 OR LOSS.—For purposes of subsection (a)—

1 “(1) IN GENERAL.—The term ‘investment serv-
2 ices partnership income or loss’ means, with respect
3 to any investment services partnership interest (as
4 defined in section 710(c)), the net of—

5 “(A) the amounts treated as ordinary in-
6 come or ordinary loss under subsections (b) and
7 (e) of section 710 with respect to such interest,

8 “(B) all items of income, gain, loss, and
9 deduction allocated to such interest, and

10 “(C) the amounts treated as realized from
11 the sale or exchange of property other than a
12 capital asset under section 751 with respect to
13 such interest.

14 “(2) EXCEPTION FOR QUALIFIED CAPITAL IN-
15 TERESTS.—A rule similar to the rule of section
16 710(d) shall apply for purposes of applying para-
17 graph (1)(B)(ii).”.

18 (2) SOCIAL SECURITY ACT.—Section 211(a) of
19 the Social Security Act is amended by striking
20 “and” at the end of paragraph (15), by striking the
21 period at the end of paragraph (16) and inserting “;
22 and”, and by inserting after paragraph (16) the fol-
23 lowing new paragraph:

24 “(17) Notwithstanding the preceding provisions
25 of this subsection, in the case of any individual en-

1 gaged in the trade or business of providing services
2 described in section 710(c)(2) of the Internal Rev-
3 enue Code of 1986 with respect to any entity, invest-
4 ment services partnership income or loss (as defined
5 in section 1402(m) of such Code) shall be taken into
6 account in determining the net earnings from self-
7 employment of such individual.”.

8 (f) CONFORMING AMENDMENTS.—

9 (1) Subsection (d) of section 731 of the Inter-
10 nal Revenue Code of 1986 is amended by inserting
11 “section 710(b)(4) (relating to distributions of part-
12 nership property),” after “to the extent otherwise
13 provided by”.

14 (2) Section 741 of the Internal Revenue Code
15 of 1986 is amended by inserting “or section 710 (re-
16 lating to special rules for partners providing invest-
17 ment management services to partnerships)” before
18 the period at the end.

19 (3) The table of sections for part I of sub-
20 chapter K of chapter 1 of the Internal Revenue Code
21 of 1986 is amended by adding at the end the fol-
22 lowing new item:

“Sec. 710. Special rules for partners providing investment management serv-
ices to partnerships.”.

23 (g) EFFECTIVE DATE.—

1 (1) IN GENERAL.—Except as otherwise pro-
2 vided in this subsection, the amendments made by
3 this section shall apply to taxable years ending after
4 December 31, 2012.

5 (2) PARTNERSHIP TAXABLE YEARS WHICH IN-
6 CLUDE EFFECTIVE DATE.—In applying section
7 710(a) of the Internal Revenue Code of 1986 (as
8 added by this section) in the case of any partnership
9 taxable year which includes January 1, 2013, the
10 amount of the net income referred to in such section
11 shall be treated as being the lesser of the net income
12 for the entire partnership taxable year or the net in-
13 come determined by only taking into account items
14 attributable to the portion of the partnership taxable
15 year which is after such date.

16 (3) DISPOSITIONS OF PARTNERSHIP INTER-
17 ESTS.—

18 (A) IN GENERAL.—Section 710(b) of such
19 Code (as added by this section) shall apply to
20 dispositions and distributions after December
21 31, 2012.

22 (B) INDIRECT DISPOSITIONS.—The amend-
23 ments made by subsection (b) shall apply to
24 transactions after December 31, 2012.

1 (4) OTHER INCOME AND GAIN IN CONNECTION
2 WITH INVESTMENT MANAGEMENT SERVICES.—Sec-
3 tion 710(e) of such Code (as added by this section)
4 shall take effect on January 1, 2013.

5 **Subtitle C—Close Loophole for**
6 **Corporate Jet Depreciation**

7 **SECTION 421. GENERAL AVIATION AIRCRAFT TREATED AS**
8 **7-YEAR PROPERTY.**

9 (a) IN GENERAL.—Subparagraph (C) of section
10 168(e)(3) of the Internal Revenue Code of 1986 (relating
11 to classification of certain property) is amended by strik-
12 ing “and” at the end of clause (iv), by redesignating clause
13 (v) as clause (vi), and by inserting after clause (iv) the
14 following new clause:

15 “(v) any general aviation aircraft,
16 and”.

17 (b) CLASS LIFE.—Paragraph (3) of section 168(g)
18 Internal Revenue Code of 1986 is amended by inserting
19 after subparagraph (E) the following new subparagraph:

20 “(F) GENERAL AVIATION AIRCRAFT.—In
21 the case of any general aviation aircraft, the re-
22 covery period used for purposes of paragraph
23 (2) shall be 12 years.”.

24 (c) GENERAL AVIATION AIRCRAFT.—Subsection (i)
25 of section 168 Internal Revenue Code of 1986 is amended

1 by inserting after paragraph (19) the following new para-
2 graph:

3 “(20) GENERAL AVIATION AIRCRAFT.—The
4 term ‘general aviation aircraft’ means any airplane
5 or helicopter (including airframes and engines) not
6 used in commercial or contract carrying of pas-
7 sengers or freight, but which primarily engages in
8 the carrying of passengers.”.

9 (d) EFFECTIVE DATE.—This section shall be effec-
10 tive for property placed in service after December 31,
11 2012.

12 **Subtitle D—Repeal Oil Subsidies**

13 **SEC. 431. REPEAL OF DEDUCTION FOR INTANGIBLE DRILL-** 14 **ING AND DEVELOPMENT COSTS IN THE CASE** 15 **OF OIL AND GAS WELLS.**

16 (a) IN GENERAL.—Section 263(c) of the Internal
17 Revenue Code of 1986 (relating to intangible drilling and
18 development costs) is amended by adding at the end the
19 following new sentence: “This subsection shall not apply
20 in the case of oil and gas wells with respect to amounts
21 paid or incurred after December 31, 2012.”.

22 (b) EFFECTIVE DATE.—The amendment made by
23 this section shall apply to amounts paid or incurred after
24 December 31, 2012.

1 **SEC. 432. REPEAL OF DEDUCTION FOR TERTIARY**
2 **INJECTANTS.**

3 (a) IN GENERAL.—Part VI of subchapter B of chap-
4 ter 1 of the Internal Revenue Code of 1986 (relating to
5 itemized deductions for individuals and corporations) is
6 amended by striking section 193 (relating to tertiary
7 injectants).

8 (b) CLERICAL AMENDMENT.—The table of sections
9 for part VI of subchapter B of chapter 1 of the Internal
10 Revenue Code of 1986 is amended by striking the item
11 relating to section 193.

12 (c) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to amounts paid or incurred after
14 December 31, 2012.

15 **SEC. 433. REPEAL OF PERCENTAGE DEPLETION FOR OIL**
16 **AND GAS WELLS.**

17 (a) IN GENERAL.—Section 613A of the Internal Rev-
18 enue Code of 1986 (relating to limitation on percentage
19 depletion in the case of oil and gas wells) is amended to
20 read as follows:

21 **“SEC. 613A. PERCENTAGE DEPLETION NOT ALLOWED IN**
22 **CASE OF OIL AND GAS WELLS.**

23 “The allowance for depletion under section 611 with
24 respect to any oil and gas well shall be computed without
25 regard to section 613.”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to taxable years beginning after
3 December 31, 2012.

4 **SEC. 434. SECTION 199 DEDUCTION NOT ALLOWED WITH**
5 **RESPECT TO OIL, NATURAL GAS, OR PRIMARY**
6 **PRODUCTS THEREOF.**

7 (a) IN GENERAL.—Subparagraph (B) of section
8 199(c)(4) of the Internal Revenue Code of 1986 (relating
9 to income attributable to domestic production activities)
10 is amended—

11 (1) by striking “or” at the end of clause (ii),

12 (2) by striking the period at the end of clause

13 (iii) and inserting in lieu thereof “, or”, and

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

16 “(iv) the production, refining, proc-
17 essing, transportation, or distribution of
18 oil, natural gas, or any primary product
19 (within the meaning of subsection (d)(9))
20 thereof.”.

21 (b) CONFORMING AMENDMENT.—Paragraph (9) of
22 section 199(d) is amended to read as follows:

23 “(9) PRIMARY PRODUCT.—For purposes of sub-
24 section (c)(4)(B)(iv), the term ‘primary product’ has

1 the same meaning as when used in section
2 927(a)(2)(C) as in effect before its repeal.”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to taxable years beginning after
5 December 31, 2012.

6 **SEC. 435. REPEAL OIL AND GAS WORKING INTEREST EX-**
7 **CEPTION TO PASSIVE ACTIVITY RULES.**

8 (a) IN GENERAL.—Paragraph (3) of section 469(c)
9 of the Internal Revenue Code of 1986 (relating to passive
10 activity defined) is amended by adding at the end thereof
11 the following new subparagraph:

12 “(C) TERMINATION.—Subparagraph (A)
13 shall not apply for any taxable year beginning
14 after December 31 2012.”.

15 (b) EFFECTIVE DATE.—The amendment made by
16 this section shall apply to taxable years beginning after
17 December 31, 2012.

18 **SEC. 436. UNIFORM SEVEN-YEAR AMORTIZATION FOR GEO-**
19 **LOGICAL AND GEOPHYSICAL EXPENDITURES.**

20 (a) IN GENERAL.—Paragraph (1) of section 167(h)
21 of the Internal Revenue Code of 1986 (relating to amorti-
22 zation of geological and geophysical expenditures) is
23 amended by striking “24-month” and inserting in lieu
24 thereof “7-year”.

1 (b) CONFORMING AMENDMENTS.—Section 167(h) is
2 amended—

3 (1) by striking “24-month” in paragraph (4)
4 and inserting in lieu thereof “7-year”, and

5 (2) by striking paragraph (5).

6 (c) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to amounts paid or incurred after
8 December 31, 2012.

9 **SEC. 437. REPEAL ENHANCED OIL RECOVERY CREDIT.**

10 (a) IN GENERAL.—Subpart D of part IV of sub-
11 chapter A of chapter 1 of the Internal Revenue Code of
12 1986 (relating to business related credits) is amended by
13 striking section 43 (relating to enhanced oil recovery cred-
14 it).

15 (b) CLERICAL AMENDMENT.—The table of sections
16 for subpart D of part IV of subchapter A of chapter 1
17 of the Internal Revenue Code of 1986 is amended by strik-
18 ing the item relating to section 43.

19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to taxable years beginning after
21 December 31, 2012.

22 **SEC. 438. REPEAL MARGINAL WELL PRODUCTION CREDIT.**

23 (a) IN GENERAL.—Subpart D of part IV of sub-
24 chapter A of chapter 1 of the Internal Revenue Code of
25 1986 (relating to business related credits) is amended by

1 striking section 45I (relating to credit for producing oil
2 and gas from marginal wells).

3 (b) CLERICAL AMENDMENT.—The table of sections
4 for subpart D of part IV of subchapter A of chapter 1
5 of the Internal Revenue Code of 1986 is amended by strik-
6 ing the item relating to section 45I.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to taxable years beginning after
9 December 31, 2012.

10 **Subtitle E—Dual Capacity** 11 **Taxpayers**

12 **SEC. 441. MODIFICATIONS OF FOREIGN TAX CREDIT RULES** 13 **APPLICABLE TO DUAL CAPACITY TAXPAYERS.**

14 (a) IN GENERAL.—Section 901 of the Internal Rev-
15 enue Code of 1986 (relating to credit for taxes of foreign
16 countries and of possessions of the United States) is
17 amended by redesignating subsection (n) as subsection (o)
18 and by inserting after subsection (m) the following new
19 subsection:

20 “(n) SPECIAL RULES RELATING TO DUAL CAPACITY
21 TAXPAYERS.—

22 “(1) GENERAL RULE.—Notwithstanding any
23 other provision of this chapter, any amount paid or
24 accrued by a dual capacity taxpayer or any member
25 of the worldwide affiliated group of which such dual

1 capacity taxpayer is also a member to any foreign
2 country or to any possession of the United States
3 for any period shall not be considered a tax to the
4 extent such amount exceeds the amount (determined
5 in accordance with regulations) which would have
6 been required to be paid if the taxpayer were not a
7 dual capacity taxpayer.

8 “(2) DUAL CAPACITY TAXPAYER.—For pur-
9 poses of this subsection, the term ‘dual capacity tax-
10 payer’ means, with respect to any foreign country or
11 possession of the United States, a person who—

12 “(A) is subject to a levy of such country or
13 possession, and

14 “(B) receives (or will receive) directly or
15 indirectly a specific economic benefit (as deter-
16 mined in accordance with regulations) from
17 such country or possession.

18 “(3) REGULATIONS.—The Secretary may issue
19 such regulations or other guidance as is necessary or
20 appropriate to carry out the purposes of this sub-
21 section.”.

22 (b) CONTRARY TREATY OBLIGATIONS UPHELD.—

23 The amendments made by this section shall not apply to
24 the extent contrary to any treaty obligation of the United
25 States.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to amounts that, if such amounts
3 were an amount of tax paid or accrued, would be consid-
4 ered paid or accrued in taxable years beginning after De-
5 cember 31, 2012.

6 **SEC. 442. SEPARATE BASKET TREATMENT TAXES PAID ON**
7 **FOREIGN OIL AND GAS INCOME.**

8 (a) SEPARATE BASKET FOR FOREIGN TAX CRED-
9 IT.—Paragraph (1) of section 904(d) of the Internal Rev-
10 enue Code of 1986 is amended by striking “and” at the
11 end of subparagraph (A), by striking the period at the
12 end of subparagraph (B) and inserting “, and”, and by
13 adding at the end the following:

14 “(C) combined foreign oil and gas income
15 (as defined in section 907(b)(1)).”.

16 (b) COORDINATION.—Section 904(d)(2) of such Code
17 is amended by redesignating subparagraphs (J) and (K)
18 as subparagraphs (K) and (L) and by inserting after sub-
19 paragraph (I) the following:

20 “(J) COORDINATION WITH COMBINED FOR-
21 EIGN OIL AND GAS INCOME.—For purposes of
22 this section, passive category income and gen-
23 eral category income shall not include combined
24 foreign oil and gas income (as defined in section
25 907(b)(1)).”.

1 (c) CONFORMING AMENDMENTS.—

2 (1) Section 907(a) is hereby repealed.

3 (2) Section 907(c)(4) is hereby repealed.

4 (3) Section 907(f) is hereby repealed.

5 (d) EFFECTIVE DATES.—

6 (1) IN GENERAL.—The amendments made by
7 this section shall apply to taxable years beginning
8 after December 31, 2012.

9 (2) TRANSITIONAL RULES.—

10 (A) CARRYOVERS.—Any unused foreign oil
11 and gas taxes which under section 907(f) of
12 such Code (as in effect before the amendment
13 made by subsection (c)(3)) would have been al-
14 lowable as a carryover to the taxpayer's first
15 taxable year beginning after December 31,
16 2012 (without regard to the limitation of para-
17 graph (2) of such section 907(f) for first tax-
18 able year) shall be allowed as carryovers under
19 section 904(c) of such Code in the same man-
20 ner as if such taxes were unused taxes under
21 such section 904(c) with respect to foreign oil
22 and gas extraction income.

23 (B) LOSSES.—The amendment made by
24 subsection (c)(2) shall not apply to foreign oil
25 and gas extraction losses arising in taxable

1 years beginning on or before the date of the en-
2 actment of this Act.

3 **Subtitle F—Increased Target and**
4 **Trigger for Joint Select Com-**
5 **mittee on Deficit Reduction**

6 **SEC. 451. INCREASED TARGET AND TRIGGER FOR JOINT**
7 **SELECT COMMITTEE ON DEFICIT REDUC-**
8 **TION.**

9 (a) INCREASED TARGET FOR JOINT SELECT COM-
10 MITTEE.—Section 401(b)(2) of the Budget Control Act of
11 2011 is amended by striking “\$1,500,000,000,000” and
12 inserting “\$1,950,000,000,000”.

13 (b) TRIGGER FOR JOINT SELECT COMMITTEE.—Sec-
14 tion 302 of the Budget Control Act of 2011 is amended
15 by redesignating subsection (b) as subsection (c) and by
16 inserting after subsection (a) the following new subsection:

17 “(b) TRIGGER.—If a joint committee bill achieving
18 an amount greater than ‘\$1,650,000,000,000’ in deficit
19 reduction as provided in section 401(b)(3)(B)(i)(II) of this
20 Act is enacted by January 15, 2012, then the amendments
21 to the Internal Revenue Code of 1986 made by subtitles
22 A through E of title IV of the American Jobs Act of 2011,
23 shall not be in effect for any taxable year.”.

Calendar No. 165

112TH CONGRESS
1ST Session
S. 1549

A BILL

To provide tax relief for American workers and businesses, to put workers back on the job while rebuilding and modernizing America, and to provide pathways back to work for Americans looking for jobs.

SEPTEMBER 14, 2011

Read the second time and placed on the calendar