

only threatens 7,500,000 Israelis but it's the end of the peace process.”;

Whereas the Israeli blockade has not hindered the transfer of approximately 1,000,000 tons of humanitarian supplies into Gaza over the last 18 months to aid its 1,500,000 residents;

Whereas, on May 28, 2010, the “Free Gaza” flotilla, which included the Mavi Marmara and 5 other ships, departed from a port in Turkey and sailed towards Israel's defensive naval blockade of Gaza;

Whereas the sponsor of the flotilla was a Turkish organization, the Humanitarian Relief Foundation;

Whereas the Humanitarian Relief Foundation has aided al Qaeda in the past, “basically helping al Qaeda when [Osama] bin Laden started to want to target U.S. soil,” according to statements by a former French counterterrorism official, in a June 2, 2010, Associated Press interview;

Whereas the Humanitarian Relief Foundation has a clear link to Hamas, according to a 2008 order of the Government of Israel, and the Humanitarian Relief Foundation is a member of the Union for Good, a United States-designated terrorist organization created by Hamas leaders in 2000 to help fund Hamas;

Whereas there were at least 5 active terrorist operatives among the passengers on the Mavi Marmara, with affiliations with terrorist groups such as al Qaeda and Hamas, according to the Israel Defense Forces;

Whereas the flotilla's primary aim was to break the Israeli blockade of Gaza, under the guise of delivering humanitarian aid to the residents of Gaza;

Whereas, on May 27, 2010, while the flotilla was moving towards Gaza, one of its organizers admitted, “This mission is not about delivering humanitarian supplies, it's about breaking Israel's siege on 1,500,000 Palestinians,” according to news reports;

Whereas, based on interviews with Mavi Marmara passengers after the incident, the actual intention of passengers on the Mavi Marmara had been to achieve “martyrdom” at the hands of the Israel Defense Forces;

Whereas Saleh Al-Azraq, a journalist who was aboard the ship, recounted that, “The moment the ship set sail, the cries of ‘Allahu Akbar’ began. . . It made you feel as if you were going on an Islamic conquest or raid,” according to an interview recorded on Al-Hiwar TV on June 4, 2010;

Whereas Hussein Orush, a Humanitarian Relief Foundation official, read from the diary of a dead Mavi Marmara passenger: “The last lines he wrote before the attack were: ‘Only a short time left before martyrdom. This is the most important stage of my life. Nothing is more beautiful than martyrdom, except for one's love for one's mother. But I don't know what is sweeter—my mother or martyrdom.’”, and also stated, “All the passengers on board the ship were ready for this outcome. Everybody wanted and was ready to become a martyr. . . . Our goal was to reach Gaza or to die trying. All the ship's passengers were ready for this. IHH was ready for this too.”, according to an interview recorded on Al-Jazeera TV on June 5, 2010;

Whereas Ali Haider Banjinin, another dead Mavi Marmara passenger, told his family before departing on the flotilla, “I am going to be a martyr, I dreamed about it,” according to news reports in Turkey;

Whereas Ali Ekber Yaratilmis, another dead Mavi Marmara passenger, “always wanted to become a Martyr,” one of his friends told Al-Hayat Al-Jadida newspaper in an interview on June 3, 2010;

Whereas one female passenger on the deck of the Mavi Marmara stated, “Right now we face one of two happy endings: either mar-

tyrdom or reaching Gaza,” according to Al Jazeera footage taken prior to the incident;

Whereas the Government of Israel had extended a reasonable offer to transfer the flotilla's humanitarian cargo to Gaza;

Whereas the Mavi Marmara and the other ships of the flotilla ignored repeated Israeli calls to turn around or be peacefully escorted to an Israeli port outside of Gaza;

Whereas, on May 31, 2010, the Israeli Navy intercepted the Mavi Marmara 75 miles west of Haifa, Israel, in an effort to maintain the integrity of the blockade and prevent potential smuggling of arms and other materiel into the hands of Hamas;

Whereas, upon the boarding of the Mavi Marmara by the Israeli Navy, the Mavi Marmara's passengers brutally and violently attacked the members of the Israeli Navy with knives, clubs, pipes, and other weapons, injuring several of them;

Whereas the members of the Israeli Navy, under attack and in grave danger, reacted in self-defense and used lethal force against their attackers on the Mavi Marmara, shooting and killing 9 of them;

Whereas the incident has fomented unwarranted international criticism of Israel and its blockade of Gaza;

Whereas, in the time since the attack, the United Nations has unjustly criticized the actions of the Government of Israel and called for an investigation of such actions; and

Whereas the actions of the United Nations are undermining Israel's inherent right to self-defense, compromising its sovereignty, and helping to legitimize Hamas: Now, therefore, be it

*Resolved*, That it is the sense of the Senate—

(1) that Israel has an inherent and undeniable right to defend itself against any threat to the safety of its citizens;

(2) to reaffirm that the United States stands with Israel in pursuit of shared security goals, including the security of Israel;

(3) to condemn the violent attack and provocation by extremists aboard the Mavi Marmara, who created a highly destabilizing incident in a region that cannot afford further instability;

(4) to condemn any future such attempts to break the Israeli blockade of Gaza for the purpose of creating or provoking violent confrontation or otherwise undermining the security of Israel;

(5) to condemn Hamas for its failure to recognize the right of Israel to exist, its human rights abuses against the residents of Gaza, and its continued rejection of a constructive path to peace for the Israeli and Palestinian people;

(6) to condemn the Government of Iran for its role, past and present, in directly supporting Hamas and undermining the security of Israel;

(7) to encourage the Government of Turkey to recognize the importance of continued strong relations with Israel and the necessity of closely scrutinizing organizations with potential ties to terrorist groups; and

(8) to express profound disappointment with the counterproductive actions of the United Nations regarding this incident.

#### AMENDMENTS SUBMITTED AND PROPOSED

SA 4318. Mr. SANDERS (for himself, Mr. WHITEHOUSE, and Mr. WYDEN) submitted an amendment intended to be proposed to amendment SA 4301 proposed by Mr. BAUCUS to the bill H.R. 4213, to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes.

SA 4319. Mr. SANDERS (for himself, Mr. GRASSLEY, and Mr. HARKIN) submitted an

amendment intended to be proposed by him to the bill H.R. 4213, supra; which was ordered to lie on the table.

SA 4320. Mr. SANDERS submitted an amendment intended to be proposed to amendment SA 4301 proposed by Mr. BAUCUS to the bill H.R. 4213, supra; which was ordered to lie on the table.

SA 4321. Mr. CASEY (for himself, Mr. BROWN, of Ohio, Mr. BEGICH, Mr. WHITEHOUSE, Mr. LAUTENBERG, Mr. KERRY, Mr. WYDEN, Mr. HARKIN, Mr. LEVIN, Mr. BURRIS, Mr. FRANKEN, Ms. STABENOW, Mr. REED, and Mrs. GILLIBRAND) submitted an amendment intended to be proposed to amendment SA 4301 proposed by Mr. BAUCUS to the bill H.R. 4213, supra; which was ordered to lie on the table.

SA 4322. Ms. LANDRIEU (for herself and Mr. COCHRAN) submitted an amendment intended to be proposed to amendment SA 4301 proposed by Mr. BAUCUS to the bill H.R. 4213, supra; which was ordered to lie on the table.

SA 4323. Mrs. FEINSTEIN (for herself, Mr. GREGG, Ms. SNOWE, Mr. BARRASSO, and Mr. BROWN of Ohio) submitted an amendment intended to be proposed by her to the bill H.R. 4213, supra; which was ordered to lie on the table.

SA 4324. Mr. WHITEHOUSE (for himself, Mr. BENNET, Mrs. FEINSTEIN, Mr. KAUFMAN, Mr. PRYOR, Mr. SPECTER, Mr. GRAHAM, Ms. LANDRIEU, Mr. MENENDEZ, and Mr. NELSON of Florida) submitted an amendment intended to be proposed to amendment SA 4301 proposed by Mr. BAUCUS to the bill H.R. 4213, supra; which was ordered to lie on the table.

SA 4325. Mr. ROBERTS submitted an amendment intended to be proposed to amendment SA 4301 proposed by Mr. BAUCUS to the bill H.R. 4213, supra.

SA 4326. Mr. BAUCUS (for himself, Mr. KERRY, and Mr. DODD) submitted an amendment intended to be proposed to amendment SA 4301 proposed by Mr. BAUCUS to the bill H.R. 4213, supra.

SA 4327. Ms. MURKOWSKI submitted an amendment intended to be proposed to amendment SA 4301 proposed by Mr. BAUCUS to the bill H.R. 4213, supra; which was ordered to lie on the table.

SA 4328. Ms. MURKOWSKI submitted an amendment intended to be proposed to amendment SA 4301 proposed by Mr. BAUCUS to the bill H.R. 4213, supra; which was ordered to lie on the table.

SA 4329. Mr. KOHL submitted an amendment intended to be proposed to amendment SA 4301 proposed by Mr. BAUCUS to the bill H.R. 4213, supra; which was ordered to lie on the table.

SA 4330. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 4301 proposed by Mr. BAUCUS to the bill H.R. 4213, supra; which was ordered to lie on the table.

SA 4331. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 4213, supra; which was ordered to lie on the table.

SA 4332. Mr. KOHL (for himself, Mr. GRASSLEY, and Ms. COLLINS) submitted an amendment intended to be proposed to amendment SA 4301 proposed by Mr. BAUCUS to the bill H.R. 4213, supra; which was ordered to lie on the table.

SA 4333. Mr. THUNE submitted an amendment intended to be proposed to amendment SA 4301 proposed by Mr. BAUCUS to the bill H.R. 4213, supra; which was ordered to lie on the table.

#### TEXT OF AMENDMENTS

SA 4318. Mr. SANDERS (for himself, Mr. WHITEHOUSE, and Mr. WYDEN) submitted an amendment intended to be

proposed to amendment SA 4301 proposed by Mr. BAUCUS to the bill H.R. 4213, to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle D of title IV, insert the following:

**SEC. —. REPEAL OF EXPENSING AND 60-MONTH AMORTIZATION OF INTANGIBLE DRILLING COSTS.**

Subsection (c) of section 263 is amended by striking the period at the end of the third sentence and inserting “, or to any costs paid or incurred after December 31, 2010.”.

**SEC. —. REPEAL OF PERCENTAGE DEPLETION FOR OIL AND GAS WELLS.**

(a) IN GENERAL.—Section 613 is amended by adding at the end the following new subsection:

“(f) TERMINATION OF PERCENTAGE DEPLETION FOR OIL AND GAS PROPERTIES.—In the case of oil and gas properties, this section shall not apply to any taxable year beginning after December 31, 2010.”.

(b) LIMITATIONS ON PERCENTAGE DEPLETION IN CASE OF OIL AND GAS WELLS.—Section 613A is amended by adding at the end the following new subsection:

“(f) TERMINATION.—This section shall not apply to any taxable year beginning after December 31, 2010.”.

**SEC. —. DENIAL OF DEDUCTION FOR INCOME ATTRIBUTABLE TO DOMESTIC PRODUCTION OF OIL, NATURAL GAS, OR PRIMARY PRODUCTS THEREOF.**

(a) IN GENERAL.—Subparagraph (B) of section 199(c)(4) is amended by striking “or” at the end of clause (ii), by striking the period at the end of clause (iii) and inserting “, or”, and by inserting after clause (iii) the following new clause:

“(iv) the production, refining, processing, transportation, or distribution of oil, natural gas, or any primary product thereof.”.

(b) PRIMARY PRODUCT.—Section 199(c)(4)(B) is amended by adding at the end the following flush sentence:

“For purposes of clause (iv), the term ‘primary product’ has the same meaning as when used in section 927(a)(2)(C), as in effect before its repeal.”.

(c) CONFORMING AMENDMENTS.—

(1) Section 199(c)(4) is amended—

(A) in subparagraph (A)(i)(III) by striking “electricity, natural gas,” and inserting “electricity”, and

(B) in subparagraph (B)(ii) by striking “electricity, natural gas,” and inserting “electricity”.

(2) Section 199(d) is amended by striking paragraph (9) and by redesignating paragraph (10) as paragraph (9).

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2010.

**SEC. —. APPROPRIATION OF FUNDS.**

Out of any funds in the Treasury not otherwise appropriated, there is appropriated to the Energy Efficiency and Conservation Block Grant Program, under subtitle E of the Energy Independence and Security Act of 2007, \$2,000,000,000 for each of fiscal years 2011, 2012, 2013, 2014, and 2015.

**SA 4319.** Mr. SANDERS (for himself, Mr. GRASSLEY, and Mr. HARKIN) submitted an amendment intended to be proposed by him to the bill H.R. 4213, to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. —. CERTIFICATION REQUIREMENT.**

(a) SHORT TITLE.—This section may be cited as the “Employ America Act”.

(b) IN GENERAL.—The Secretary of Homeland Security may not approve a petition by an employer for any visa authorizing employment in the United States unless the employer has provided written certification, under penalty of perjury, to the Secretary of Labor that—

(1) the employer has not provided a notice of a mass layoff pursuant to the Worker Adjustment and Retraining Notification Act (29 U.S.C. 2101 et seq.) during the 12-month period immediately preceding the date on which the alien is scheduled to be hired; and

(2) the employer does not intend to provide a notice of a mass layoff pursuant to such Act.

(c) EFFECT OF MASS LAYOFF.—If an employer provides a notice of a mass layoff pursuant to the Worker Adjustment and Retraining Notification Act after the approval of a visa described in subsection (b), any visas approved during the most recent 12-month period for such employer shall expire on the date that is 60 days after the date on which such notice is provided. The expiration of a visa under this subsection shall not be subject to judicial review.

(d) NOTICE REQUIREMENT.—Upon receiving notification of a mass layoff from an employer, the Secretary of Homeland Security shall inform each employee whose visa is scheduled to expire under subsection (c)—

(1) the date on which such individual will no longer be authorized to work in the United States; and

(2) the date on which such individual will be required to leave the United States unless the individual is otherwise authorized to remain in the United States.

(e) EXEMPTION.—An employer shall be exempt from the requirements under this section if the employer provides written certification, under penalty of perjury, to the Secretary of Labor that the total number of the employer's workers who are United States citizens and are working in the United States have not been, and will not be, reduced as a result of a mass layoff described in subsection (c).

(f) RULEMAKING.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Homeland Security and the Secretary of Labor shall promulgate regulations to carry out this section, including a requirement that employers provide notice to the Secretary of Homeland Security of a mass layoff (as defined in section 2 of the Worker Adjustment and Retraining Notification Act (29 U.S.C. 2101)).

**SA 4320.** Mr. SANDERS submitted an amendment intended to be proposed to amendment SA 4301 proposed by Mr. BAUCUS to the bill H.R. 4213, to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title IV, insert the following:

**SEC. 4 —. ALTERNATIVE MINIMUM TAX RATE FOR PUBLIC CORPORATIONS INCORPORATED IN FOREIGN TAX HAVENS.**

(a) IN GENERAL.—Section 11 of the is amended by adding at the end the following:

“(e) ALTERNATIVE MINIMUM TAX FOR PUBLIC CORPORATIONS INCORPORATED IN FOREIGN TAX HAVENS.—

“(1) TAX IMPOSED.—A tax is hereby imposed (in addition to any other tax imposed by this subtitle) for each taxable year on the net book income of each disqualified corporation.

“(2) AMOUNT OF TAX.—The amount of the tax imposed by paragraph (1) shall be equal to the excess (if any) of—

“(A) 35 percent of the net book income of the disqualified corporation, over

“(B) the sum of any other taxes imposed on the income of such disqualified corporation under this subtitle.

“(3) NOT TREATED AS TAX FOR CERTAIN PURPOSES.—The tax imposed by paragraph (1) shall not be treated as a tax imposed under this chapter for the purpose of determining—

“(A) the amount of any credit allowable under this chapter, or

“(B) the amount of the minimum tax imposed by section 55.

“(4) DISQUALIFIED CORPORATION.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘disqualified corporation’ means any public corporation which—

“(i) is chartered or incorporated in an offshore secrecy jurisdiction, or

“(ii) owns, directly or indirectly, 50 percent or more (by vote or value) of the stock of a corporation chartered or incorporated in an offshore secrecy jurisdiction.

“(B) PUBLIC CORPORATION.—The term ‘public corporation’ means any issuer (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c)), the securities of which are registered under section 12 of that Act (15 U.S.C. 78l), or that is required to file reports under section 15(d) of that Act (15 U.S.C. 78o(d)), or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a et seq.), and that it has not withdrawn.

“(C) OFFSHORE SECRECY JURISDICTION.—

“(i) IN GENERAL.—The term ‘offshore secrecy jurisdiction’ means any foreign jurisdiction which is listed by the Secretary as an offshore secrecy jurisdiction for purposes of this subsection.

“(ii) DETERMINATION OF JURISDICTIONS ON LIST.—A jurisdiction shall be listed under clause (i) if the Secretary determines that such jurisdiction has corporate, business, bank, or tax secrecy rules and practices which, in the judgment of the Secretary, unreasonably restrict the ability of the United States to obtain information relevant to the enforcement of this title, unless the Secretary also determines that such country has effective information exchange practices.

“(iii) SECRECY OR CONFIDENTIALITY RULES AND PRACTICES.—For purposes of clause (ii), corporate, business, bank, or tax secrecy or confidentiality rules and practices include both formal laws and regulations and informal government or business practices having the effect of inhibiting access of law enforcement and tax administration authorities to beneficial ownership and other financial information.

“(iv) INEFFECTIVE INFORMATION EXCHANGE PRACTICES.—For purposes of clause (ii), a jurisdiction shall be deemed to have ineffective information exchange practices unless the Secretary determines, on an annual basis, that—

“(I) such jurisdiction has in effect a treaty or other information exchange agreement with the United States that provides for the prompt, obligatory, and automatic exchange of such information as is foreseeably relevant for carrying out the provisions of the treaty or agreement or the administration or enforcement of this title,

“(II) during the 12-month period preceding the annual determination, the exchange of information between the United States and such jurisdiction was in practice adequate to prevent evasion or avoidance of United States income tax by United States persons and to enable the United States effectively to enforce this title, and

“(III) during the 12-month period preceding the annual determination, such jurisdiction was not identified by an intergovernmental group or organization of which the United States is a member as uncooperative with international tax enforcement or information exchange and the United States concurs in such identification.

“(v) INITIAL LIST OF OFFSHORE SECRECY JURISDICTIONS.—For purposes of this subparagraph, each of the following foreign jurisdictions, which have been previously and publicly identified by the Internal Revenue Service as secrecy jurisdictions in Federal court proceedings, shall be deemed listed by the Secretary as an offshore secrecy jurisdiction unless delisted by the Secretary under clause (vi)(II):

- “(I) Anguilla.
- “(II) Antigua and Barbuda.
- “(III) Aruba.
- “(IV) Bahamas.
- “(V) Barbados.
- “(VI) Belize.
- “(VII) Bermuda.
- “(VIII) British Virgin Islands.
- “(IX) Cayman Islands.
- “(X) Cook Islands.
- “(XI) Costa Rica.
- “(XII) Cyprus.
- “(XIII) Dominica.
- “(XIV) Gibraltar.
- “(XV) Grenada.
- “(XVI) Guernsey/Sark/Alderney.
- “(XVII) Hong Kong.
- “(XVIII) Isle of Man.
- “(XIX) Jersey.
- “(XX) Latvia.
- “(XXI) Liechtenstein.
- “(XXII) Luxembourg.
- “(XXIII) Malta.
- “(XXIV) Nauru.
- “(XXV) Netherlands Antilles.
- “(XXVI) Panama.
- “(XXVII) Samoa.
- “(XXVIII) St. Kitts and Nevis.
- “(XXIX) St. Lucia.
- “(XXX) St. Vincent and the Grenadines.
- “(XXXI) Singapore.
- “(XXXII) Switzerland.
- “(XXXIII) Turks and Caicos.
- “(XXXIV) Vanuatu.

“(vi) MODIFICATIONS TO LIST.—The Secretary—

“(I) shall add to the list under clause (i) jurisdictions which meet the requirements of clause (ii), and

“(II) may remove from such list only those jurisdictions which do not meet the requirements of clause (ii).

“(5) NET BOOK INCOME.—For purposes of this subsection, the term ‘net book income’ means, with respect to a taxable year, the net income (if any) reported by the disqualified corporation in its financial statement to its shareholders, subject to such regulations as the Secretary may prescribe.

“(6) CONTROLLED GROUP.—For purposes of applying this subsection, all component members of a controlled group of corporations (as defined in section 1563) shall be treated as one corporation.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2010.

**SA 4321.** Mr. CASEY (for himself, Mr. BROWN of Ohio, Mr. BEGICH, Mr. WHITEHOUSE, Mr. LAUTENBERG, Mr. KERRY, Mr. WYDEN, Mr. HARKIN, Mr. LEVIN, Mr. BURRIS, Mr. FRANKEN, Ms. STABENOW, Mr. REED, and Mrs. GILLIBRAND) submitted an amendment intended to be proposed to amendment SA 4301 proposed by Mr. BAUCUS to the bill H.R. 4213, to amend the Internal Revenue Code of 1986 to extend certain

expiring provisions, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place in subtitle B of title V of the amendment, insert the following:

**SEC. \_\_\_\_ . EXTENSION AND IMPROVEMENT OF PREMIUM ASSISTANCE FOR COBRA BENEFITS.**

(a) EXTENSION OF ELIGIBILITY PERIOD.—Subsection (a)(3)(A) of section 3001 of division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), as amended by section 3(a) of the Continuing Extension Act of 2010 (Public Law 111-157), is amended by striking “May 31, 2010” and inserting “November 30, 2010”.

(b) RULES RELATING TO 2010 EXTENSION.—Subsection (a) of section 3001 of division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), as amended by section 3(b) of the Continuing Extension Act of 2010 (Public Law 111-157), is amended by adding at the end the following:

“(19) ADDITIONAL RULES RELATED TO 2010 EXTENSION.—In the case of an individual who, with regard to coverage described in paragraph (10)(B), experiences a qualifying event related to a termination of employment on or after June 1, 2010, and prior to the date of the enactment of this paragraph, rules similar to those in paragraphs (4)(A) and (7)(C) shall apply with respect to all continuation coverage, including State continuation coverage programs.”.

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the provisions of section 3001 of division B of the American Recovery and Reinvestment Act of 2009.

**SA 4322.** Ms. LANDRIEU (for herself and Mr. COCHRAN) submitted an amendment intended to be proposed to amendment SA 4301 proposed by Mr. BAUCUS to the bill H.R. 4213, to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes; which was ordered to lie on the table; as follows:

On page 363, between lines 3 and 4, insert the following:

**SEC. 621. DISASTER LOANS PROGRAM ACCOUNT.**

(a) IN GENERAL.—From unobligated balances in the appropriations account appropriated under the heading “DISASTER LOANS PROGRAM ACCOUNT” under the heading “SMALL BUSINESS ADMINISTRATION”, up to \$100,000,000 shall be available to the Administrator of the Small Business Administration (in this section referred to as the “Administrator”) to waive the payment, for a period of not more than 3 years, of not more than \$15,000 in interest on loans made under section 7(b) of the Small Business Act (15 U.S.C. 636(b)) to businesses located in an area affected by a hurricane occurring during 2005 or 2008 for which the President declared a major disaster under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170).

(b) PRIORITY.—The Administrator shall, to the extent practicable, give priority to an application for a waiver of interest under the program established under this section by a small business concern (as defined under section 3 of the Small Business Act (15 U.S.C. 632)) with not more than 50 employees or that the Administrator determines suffered a substantial economic injury as a result of the Deepwater Horizon oil spill of 2010.

(c) TERMINATION.—The Administrator may not approve an application under the program established under this section after December 31, 2010.

(d) OTHER DISASTERS.—If a disaster is declared under section 7(b) of the Small Business

Act (15 U.S.C. 636(b)) during the period beginning on the date of enactment of this Act and ending on December 31, 2010, and to the extent there are inadequate funds in the appropriations account described in subsection (a) to provide assistance relating to the disaster under section 7(b) of the Small Business Act and waive the payment of interest under the program established under this section, the Administrator shall give priority in using the funds to applications under section 7(b) of the Small Business Act relating to the disaster.

(e) BUDGETARY PROVISION.—This section is designated as an emergency for purposes of pay-as-you-go principles. The amount made available under this section is designated as an emergency requirement pursuant to sections 403(a) and 423(b) of S. Con. Res. 13 (111th Congress), the concurrent resolution on the budget for fiscal year 2010. The amount made available under this section is designated as an emergency requirement pursuant to section 4(g) of the Statutory Pay-As-You-Go Act of 2010 (Public Law 111-139; 2 U.S.C. 933(g)).

**SA 4323.** Mrs. FEINSTEIN (for herself, Mr. GREGG, Ms. SNOWE, Mr. BARRASSO, and Mr. BROWN of Ohio) submitted an amendment intended to be proposed by her to the bill H.R. 4213, to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. \_\_\_\_ . TREATMENT OF SOCIAL SECURITY ACCOUNT NUMBERS ON GOVERNMENT CHECKS IN PRISON EMPLOYMENT PROGRAMS.**

(a) PROHIBITION OF USE OF SOCIAL SECURITY ACCOUNT NUMBERS ON CHECKS ISSUED FOR PAYMENT BY GOVERNMENTAL AGENCIES.—

(1) IN GENERAL.—Section 205(c)(2)(C) of the Social Security Act (42 U.S.C. 405(c)(2)(C)) is amended by adding at the end the following:

“(x) No Federal, State, or local agency may display the Social Security account number of any individual, or any derivative of such number, on any check issued for any payment by the Federal, State, or local agency.”.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply with respect to checks issued after the date that is 3 years after the date of enactment of this Act.

(b) PROHIBITION OF INMATE ACCESS TO SOCIAL SECURITY ACCOUNT NUMBERS.—

(1) IN GENERAL.—Section 205(c)(2)(C) of the Social Security Act (42 U.S.C. 405(c)(2)(C)) (as amended by subsection (a)) is amended by adding at the end the following:

“(xi) No Federal, State, or local agency may employ, or enter into a contract for the use or employment of, prisoners in any capacity that would allow such prisoners access to the Social Security account numbers of other individuals. For purposes of this clause, the term ‘prisoner’ means an individual confined in a jail, prison, or other penal institution or correctional facility pursuant to such individual’s conviction of a criminal offense.”.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply with respect to employment of prisoners, or entry into contract with prisoners, after the date that is 1 year after the date of enactment of this Act.

**SA 4324.** Mr. WHITEHOUSE (for himself, Mr. BENNET, Mrs. FEINSTEIN, Mr.

KAUFMAN, Mr. PRYOR, and Mr. SPEC-TER) submitted an amendment intended to be proposed to amendment SA 4301 proposed by Mr. BAUCUS to the bill H.R. 4213, to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes; which was ordered to lie on the table; as follows:

On page 364, after line 4, add the following:

**TITLE VIII—REGISTRATION OF AGENTS OF FOREIGN MANUFACTURERS AUTHORIZED TO ACCEPT SERVICE OF PROCESS**

**SEC. 801. FINDINGS.**

Congress makes the following findings:

(1) Each year, many people in the United States are injured by defective products manufactured or produced by foreign entities and imported into the United States.

(2) Both consumers and businesses in the United States have been harmed by injuries to people in the United States caused by defective products manufactured or produced by foreign entities.

(3) People in the United States injured by defective products manufactured or produced by foreign entities often have difficulty recovering damages from the foreign manufacturers and producers responsible for such injuries.

(4) The difficulty described in paragraph (3) is caused by the obstacles in bringing a foreign manufacturer or producer into a United States court and subsequently enforcing a judgment against that manufacturer or producer.

(5) Obstacles to holding a responsible foreign manufacturer or producer liable for an injury to a person in the United States undermine the purpose of the tort laws of the United States.

(6) The difficulty of applying the tort laws of the United States to foreign manufacturers and producers puts United States manufacturers and producers at a competitive disadvantage because United States manufacturers and producers must—

(A) abide by common law and statutory safety standards; and

(B) invest substantial resources to ensure that they do so.

(7) Foreign manufacturers and producers can avoid the expenses necessary to make their products safe if they know that they will not be held liable for violations of United States product safety laws.

(8) Businesses in the United States undertake numerous commercial relationships with foreign manufacturers, exposing the businesses to additional tort liability when foreign manufacturers or producers evade United States courts.

(9) Businesses in the United States engaged in commercial relationships with foreign manufacturers or producers often cannot vindicate their contractual rights if such manufacturers or producers seek to avoid responsibility in United States courts.

(10) One of the major obstacles facing businesses and individuals in the United States who are injured and who seek compensation for economic or personal injuries caused by foreign manufacturers and producers is the challenge of serving process on such manufacturers and producers.

(11) An individual or business injured in the United States by a foreign company must rely on a foreign government to serve process when that company is located in a country that is a signatory to the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters done at The Hague November 15, 1965 (20 UST 361; TIAS 6638).

(12) An injured person in the United States must rely on the cumbersome system of letters rogatory to effect service in a country that did not sign the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters. These countries do not have an enforceable obligation to serve process as requested.

(13) The procedures described in paragraphs (11) and (12) add time and expense to litigation in the United States, thereby discouraging or frustrating meritorious lawsuits brought by persons injured in the United States against foreign manufacturers and producers.

(14) Foreign manufacturers and producers often seek to avoid judicial consideration of their actions by asserting that United States courts lack personal jurisdiction over them.

(15) The due process clauses of the fifth amendment to and section 1 of the 14th amendment to the Constitution govern United States court assertions of personal jurisdiction over defendants.

(16) The due process clauses described in paragraph (15) are satisfied when a defendant consents to the jurisdiction of a court.

(17) United States markets present many opportunities for foreign manufacturers.

(18) Creating a competitive advantage for either foreign or domestic manufacturers violates the principles of United States trade agreements with other countries.

(19) In choosing to import products into the United States, a foreign manufacturer or producer subjects itself to the laws of the United States. Such a foreign manufacturer or producer thereby acknowledges that it is subject to the personal jurisdiction of the State and Federal courts in at least one State.

**SEC. 802. SENSE OF CONGRESS.**

It is the sense of Congress that—

(1) foreign manufacturers and producers whose products are sold in the United States should not be able to avoid liability simply because of difficulties relating to serving process upon them;

(2) to avoid such lack of accountability, foreign manufacturers and producers of foreign products distributed in the United States should be required, by regulation, to register an agent in the United States who is authorized to accept service of process for such manufacturer or producer;

(3) it is unfair to United States consumers and businesses that foreign manufacturers and producers often seek to avoid judicial consideration of their actions by asserting that United States courts lack personal jurisdiction over them;

(4) those who benefit from importing products into United States markets should expect to be subject to the jurisdiction of at least one court within the United States;

(5) importing products into the United States should be understood as consent to the accountability that the legal system of the United States ensures for all manufacturers and producers, foreign, and domestic;

(6) importers recognize the scope of opportunities presented to them by United States markets but also should recognize that products imported into the United States must satisfy Federal and State safety standards established by statute, regulation, and common law;

(7) foreign manufacturers should recognize that they are responsible for the contracts they enter into with United States companies;

(8) foreign manufacturers should act responsibly and recognize that they operate within the constraints of the United States legal system when they import products into the United States;

(9) foreign manufacturers who are unwilling to act and recognize as described in para-

graphs (6), (7), and (8) should not have access to United States markets;

(10) United States laws and the laws of United States trading partners should not put burdens on foreign manufacturers and importers that do not apply to domestic companies;

(11) it is fair to ensure that foreign manufacturers, whose products are distributed in commerce in the United States, are subject to the jurisdiction of State and Federal courts in at least one State because all United States manufacturers are subject to the jurisdiction of the State and Federal courts in at least one State; and

(12) it should be understood that, by registering an agent for service of process in the United States, the foreign manufacturer or producer acknowledges consent to the jurisdiction of the State in which the registered agent is located.

**SEC. 803. DEFINITIONS.**

In this title:

(1) **APPLICABLE AGENCY.**—The term “applicable agency” means, with respect to covered products—

(A) described in subparagraphs (A) and (B) of paragraph (3), the Food and Drug Administration;

(B) described in paragraph (3)(C), the Consumer Product Safety Commission;

(C) described in subparagraphs (D) and (E) of paragraph (3), the Environmental Protection Agency.

(2) **COMMERCE.**—The term “commerce” means trade, traffic, commerce, or transportation—

(A) between a place in a State and any place outside thereof; or

(B) which affects trade, traffic, commerce, or transportation described in subparagraph (A).

(3) **COVERED PRODUCT.**—The term “covered product” means any of the following:

(A) Drugs, devices, and cosmetics, as such terms are defined in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

(B) A biological product, as such term is defined in section 351(i) of the Public Health Service Act (42 U.S.C. 262(i)).

(C) A consumer product, as such term is used in section 3(a) of the Consumer Product Safety Act (15 U.S.C. 2052).

(D) A chemical substance or new chemical substance, as such terms are defined in section 3 of the Toxic Substances Control Act (15 U.S.C. 2602).

(E) A pesticide, as such term is defined in section 2 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136).

(4) **DISTRIBUTE IN COMMERCE.**—The term “distribute in commerce” means to sell in commerce, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce.

**SEC. 804. REGISTRATION OF AGENTS OF FOREIGN MANUFACTURERS AUTHORIZED TO ACCEPT SERVICE OF PROCESS IN THE UNITED STATES.**

(a) **REGISTRATION.**—

(1) **IN GENERAL.**—Not later than 180 days after the date of the enactment of this Act and except as provided in paragraph (3), the head of each applicable agency shall require foreign manufacturers and producers of covered products distributed in commerce (or component parts that will be used in the United States to manufacture such products) to establish a registered agent in the United States who is authorized to accept service of process on behalf of such manufacturer or producer for the purpose of all civil and regulatory actions in State and Federal courts, if such service is made in accord with the State or Federal rules for service of process in the

State in which the case or regulatory action is brought.

(2) **LOCATION.**—The head of each applicable agency shall require that an agent of a foreign manufacturer or producer registered under paragraph (1) be located in a State with a substantial connection to the importation, distribution, or sale of the products of such foreign manufacturer or producer.

(3) **MINIMUM SIZE.**—Paragraph (1) shall only apply to foreign manufacturers and producers that manufacture or produce covered products (or component parts that will be used in the United States to manufacture such products) in excess of a minimum value or quantity established by the head of the applicable agency under this section.

(b) **REGISTRY OF AGENTS OF FOREIGN MANUFACTURERS.**—

(1) **IN GENERAL.**—The Secretary of Commerce shall, in cooperation with each head of an applicable agency, establish and keep up to date a registry of agents registered under subsection (a).

(2) **AVAILABILITY.**—The Secretary of Commerce shall make the registry established under paragraph (1) available to the public through the Internet website of the Department of Commerce.

(c) **CONSENT TO JURISDICTION.**—A foreign manufacturer or producer of covered products that registers an agent under this section thereby consents to the personal jurisdiction of the State or Federal courts of the State in which the registered agent is located for the purpose of any civil or regulatory proceeding.

(d) **REGULATIONS.**—Not later than the date described in subsection (a)(1), the Secretary of Commerce and each head of an applicable agency shall prescribe regulations to carry out this section.

#### **SEC. 805. PROHIBITION OF IMPORTATION OF PRODUCTS OF MANUFACTURERS WITHOUT REGISTERED AGENTS IN UNITED STATES.**

(a) **IN GENERAL.**—Beginning on the date that is 180 days after the date the regulations required under section 804(d) are prescribed, a person may not import into the United States a covered product (or component part that will be used in the United States to manufacture a covered product) if such product (or component part) or any part of such product (or component part) was manufactured or produced outside the United States by a manufacturer or producer who does not have a registered agent described in section 804(a) whose authority is in effect on the date of the importation.

(b) **ENFORCEMENT.**—The Secretary of Homeland Security shall prescribe regulations to enforce the prohibition in subsection (a).

#### **SEC. 806. STUDY ON REGISTRATION OF AGENTS OF FOREIGN FOOD PRODUCERS AUTHORIZED TO ACCEPT SERVICE OF PROCESS IN THE UNITED STATES.**

Not later than 1 year after the date of the enactment of this Act, the Secretary of Agriculture and the Commissioner of Food and Drugs shall jointly—

(1) complete a study on the feasibility and advisability of requiring foreign producers of food distributed in commerce to establish a registered agent in the United States who is authorized to accept service of process on behalf of such producers for the purpose of all civil and regulatory actions in State and Federal courts; and

(2) submit to Congress a report on the findings of the Secretary with respect to such study.

#### **SEC. 807. RELATIONSHIP WITH OTHER LAWS.**

Nothing in this title shall affect the authority of any State to establish or continue in effect a provision of State law relating to service of process or personal jurisdiction, except to the extent that such provision of

law is inconsistent with the provisions of this title, and then only to the extent of such inconsistency.

**SA 4325.** Mr. ROBERTS submitted an amendment intended to be proposed to amendment SA 4301 proposed by Mr. BAUCUS to the bill H.R. 4213, to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title VI, add the following:

#### **SEC. \_\_\_\_ . EXEMPTION FOR PEDIATRIC MEDICAL DEVICES.**

(a) **IN GENERAL.**—Paragraph (2) of section 4191(b) of the Internal Revenue Code of 1986 is amended by striking “and” at the end of subparagraph (C), by redesignating subparagraph (D) as subparagraph (E), and by inserting after subparagraph (C) the following new subparagraph:

“(D) medical devices primarily designed to be used by or for pediatric patients, and”.

(b) **EXPANSION OF AFFORDABILITY EXCEPTION TO INDIVIDUAL MANDATE.**—Section 5000A(e)(1)(A) of the Internal Revenue Code of 1986 is amended by striking “8 percent” and inserting “5 percent”.

**SA 4326.** Mr. BAUCUS (for himself, Mr. KERRY, and Mr. DODD) submitted an amendment intended to be proposed to amendment SA 4301 proposed by Mr. BAUCUS to the bill H.R. 4213, to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

#### **TITLE \_\_\_\_ —TRANSPARENCY REQUIREMENTS FOR FOREIGN-HELD DEBT**

##### **SEC. .01. SHORT TITLE.**

This title may be cited as the “Foreign-Held Debt Transparency and Threat Assessment Act”.

##### **SEC. .02. DEFINITIONS.**

In this title:

(1) **APPROPRIATE CONGRESSIONAL COMMITTEES.**—The term “appropriate congressional committees” means the following:

(A) The Committee on Armed Services, the Committee on Foreign Relations, the Committee on Finance, the Committee on Banking, Housing, and Urban Affairs, and the Committee on the Budget of the Senate.

(B) The Committee on Armed Services, the Committee on Foreign Affairs, the Committee on Ways and Means, the Committee on Financial Services, and the Committee on the Budget of the House of Representatives.

(2) **DEBT INSTRUMENTS OF THE UNITED STATES.**—The term “debt instruments of the United States” means all bills, notes, and bonds held by the public and issued or guaranteed by the United States or by an entity of the United States Government.

##### **SEC. .03. SENSE OF CONGRESS.**

It is the sense of Congress that—

(1) the growing Federal debt of the United States has the potential to jeopardize the national security and economic stability of the United States;

(2) large foreign holdings of debt instruments of the United States have the potential to make the United States vulnerable to undue influence by foreign creditors in national security and economic policymaking;

(3) the People's Republic of China, Japan, and the United Kingdom are the 3 largest foreign holders of debt instruments of the United States; and

(4) the current level of transparency in the scope and extent of foreign holdings of debt

instruments of the United States is inadequate and needs to be improved.

#### **SEC. .04. ANNUAL REPORT ON RISKS POSED BY FOREIGN HOLDINGS OF DEBT INSTRUMENTS OF THE UNITED STATES.**

(a) **ANNUAL REPORT.**—Not later than March 31 of each year, the Secretary of the Treasury shall submit to the appropriate congressional committees a report on the risks posed by foreign holdings of debt instruments of the United States, in both classified and unclassified form.

(b) **MATTERS TO BE INCLUDED.**—Each report submitted under this section shall include the following:

(1) The most recent data available on foreign holdings of debt instruments of the United States, which data shall not be older than the date that is 9 months preceding the date of the report.

(2) The total amount of debt instruments of the United States that are held by foreign residents, broken out by the residents' country of domicile and by public and private residents.

(3) An analysis of the current and foreseeable risks to the long-term national security and economic stability of the United States posed by foreign holdings of debt instruments of the United States.

(c) **PUBLIC AVAILABILITY.**—The Secretary of the Treasury shall make each report required by subsection (a) available, in its unclassified form, to the public by posting it on the Internet in a conspicuous manner and location.

#### **SEC. .05. ANNUAL REPORT ON RISKS POSED BY THE FEDERAL DEBT OF THE UNITED STATES.**

(a) **IN GENERAL.**—Not later than March 31 of each year, the Comptroller General of the United States shall submit to the appropriate congressional committees a report on the risks to the United States posed by the Federal debt of the United States.

(b) **CONTENT OF REPORT.**—Each report submitted under this section shall include the following:

(1) An analysis of the current and foreseeable risks to the long-term national security and economic stability of the United States posed by the Federal debt of the United States.

(2) Specific recommendations for reducing the levels of risk resulting from the Federal debt.

#### **SEC. .06. CORRECTIVE ACTION TO ADDRESS UNACCEPTABLE RISKS TO UNITED STATES NATIONAL SECURITY AND ECONOMIC STABILITY.**

If the President determines that foreign holdings of debt instruments of the United States pose an unacceptable risk to the long-term national security or economic stability of the United States, the President shall, within 30 days of the determination—

(1) formulate a plan of action to reduce such risk;

(2) submit to the appropriate congressional committees a report on the plan of action that includes a timeline for the implementation of the plan and recommendations for any legislative action that would be required to fully implement the plan; and

(3) move expeditiously to implement the plan in order to protect the long-term national security and economic stability of the United States.

**SA 4327.** Ms. MURKOWSKI submitted an amendment intended to be proposed to amendment SA 4301 proposed by Mr. BAUCUS to the bill H.R. 4213, to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes; which was ordered to lie on the table; as follows:

At the end of part I of subtitle B of title II, add the following:

**SEC. \_\_\_\_ . PERMANENT EXTENSION OF ELECTIVE TAX TREATMENT FOR ALASKA NATIVE SETTLEMENT TRUSTS.**

(a) IN GENERAL.—Section 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001 (relating to sunset provisions) shall not apply to the provisions of, and amendments made by, section 671 of such Act (relating to tax treatment and information requirements of Alaska Native Settlement Trusts).

(b) EFFECTIVE DATE.—The amendments made by this section shall be effective upon the date of enactment of this Act.

**SA 4328.** Ms. MURKOWSKI submitted an amendment intended to be proposed to amendment SA 4301 proposed by Mr. BAUCUS to the bill H.R. 4213, to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes; which was ordered to lie on the table; as follows:

After section 251, insert the following:

**SEC. 251A. CHARITABLE CONTRIBUTIONS OF APPARENTLY WHOLESOME FOOD TO INDIAN TRIBES.**

(a) IN GENERAL.—Section 170(e)(3) (relating to special rule for contributions of inventory and other property) is amended—

(1) by redesignating subparagraph (E) as subparagraph (F); and

(2) by inserting after subparagraph (D) the following new subparagraph:

“(E) SPECIAL RULE FOR INDIAN TRIBES.—

“(i) IN GENERAL.—For purposes of this paragraph, an Indian tribe (as defined in section 7871(c)(3)(E)(ii)) shall be treated as an organization eligible to be a donee under subparagraph (A) with respect to apparently wholesome food (as defined in section 22(b)(2) of the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. 1791(b)(2)) (as in effect on the date of the enactment of this subparagraph)) only.

“(ii) USE OF PROPERTY.—For purposes of subparagraph (A)(i), if the use of the apparently wholesome food donated is related to the exercise of an essential governmental function of the Indian tribal government (within the meaning of section 7871), such use shall be treated as related to the purpose or function constituting the basis for the organization's exemption.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2009.

**SA 4329.** Mr. KOHL submitted an amendment intended to be proposed to amendment SA 4301 proposed by Mr. BAUCUS to the bill H.R. 4213, to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes; which was ordered to lie on the table; as follows:

At the end, add the following:

**TITLE VIII—PENSION BENEFIT GUARANTY CORPORATION GOVERNANCE IMPROVEMENT**

**SEC. 801. SHORT TITLE.**

This title may be cited as the “Pension Benefit Guaranty Corporation Governance Improvement Act of 2010”.

**SEC. 802. BOARD OF DIRECTORS OF THE PENSION BENEFIT GUARANTY CORPORATION.**

(a) IN GENERAL.—Section 4002(d) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1302(d)) is amended to read as follows:

“(d)(1) The board of directors of the corporation consists of—

“(A) the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Commerce;

“(B) a member that is a representative of employers offering defined benefit plans;

“(C) a member that is a representative of organized labor and employees; and

“(D) 2 other members.

“(2)(A) The members of the board of directors described under subparagraphs (B) through (D) of paragraph (1)—

“(i) shall be appointed by the President by and with the advice and consent of the Senate—

“(I) at the beginning of the second year of the President's term of office, with respect to such members described under subparagraphs (B) and (C) of paragraph (1); and

“(II) at the beginning of the fourth year of the President's term of office, with respect to such members described under subparagraph (D) of paragraph (1); and

“(ii) shall serve for a term of 4 years.

“(B) Not more than 2 members of the board of directors described under subparagraphs (B) through (D) of paragraph (1) shall be affiliated with the same political party.

“(C) Each member of the board of directors described under subparagraphs (B) through (D) of paragraph (1) shall not have a direct financial interest in the decisions of the corporation.

“(3) Each member of the board of directors described under subparagraph (A) of paragraph (1) shall designate in writing an official, not below the level of Assistant Secretary, to serve as the voting representative of such member on the board. Such designation shall be effective until revoked or until a date or event specified therein. Any such representative may refer for board action any matter under consideration by the designating board member.

“(4) The members of the board of directors described under—

“(A) subparagraph (A) of paragraph (1), shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of their duties as members of the board; and

“(B) subparagraphs (B) through (D) of paragraph (1) shall, for each day (including traveltime) during which they are attending meetings or conferences of the board or otherwise engaged in the business of the board, be compensated at a rate fixed by the corporation which is not in excess of the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code.

“(5)(A) The Secretary of Labor is the chairman of the board of directors.

“(B) The President shall designate 1 of the members appointed under paragraph (2) as the vice-chairman of the board of directors.

“(6) The Inspector General of the corporation shall report to the board of directors, and not less than twice a year, shall attend a meeting of the board of directors to provide a report on the activities and findings of the Inspector General, including with respect to monitoring and review of the operations of the corporation.

“(7) The General Counsel of the corporation shall—

“(A) serve as the secretary to the board of directors, and shall advise such board as needed; and

“(B) have overall responsibility for all legal matters affecting the corporation and provide the corporation with legal advice and opinions on all matters of law affecting the corporation, except that the authority of

the General Counsel shall not extend to the Office of Inspector General and the independent legal counsel of such Office.

“(8) Notwithstanding any other provision of this Act, the Office of Inspector General and the legal counsel of such Office is independent of the management of the corporation and the General Counsel of the corporation.”.

(b) NUMBER OF MEETINGS; PUBLIC AVAILABILITY.—Section 4002(e) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1302(e)) is amended—

(1) by striking “The board” and inserting “(1) The board”;

(2) by striking “the corporation.” and inserting “the corporation, but in no case less than 4 times a year with a quorum of not less than 5 members. Not less than 1 meeting of the board of directors during each year shall be a joint meeting with the advisory committee under subsection (h).”; and

(3) by adding at the end the following:

“(2) The chairman of the board of directors shall make available to the public the minutes from each meeting of the board, unless the chairman designates a meeting or portion of a meeting as closed to the public, based on the confidentiality of the matters to be discussed during such meeting.”.

(c) ADVISORY COMMITTEE.—

(1) ISSUES CONSIDERED BY THE COMMITTEE.—Section 4002(h)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1302(h)(1)) is amended—

(A) by striking “, and (D)” and inserting “, (D)”; and

(B) by striking “time to time.” and inserting “time to time, and (E) other issues as determined appropriate by the advisory committee.”.

(2) JOINT MEETING.—Section 4002(h)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1302(h)(3)) is amended by adding at the end the following: “Not less than 1 meeting of the advisory committee during each year shall be a joint meeting with the board of directors under subsection (e).”.

**SEC. 803. AVOIDING CONFLICTS OF INTEREST.**

Section 4002 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1302) is amended by adding at the end the following:

“(j) The Director of the corporation, and each member of the board of directors described under subparagraphs (B) through (D) of subsection (d)(1), shall agree in writing to recuse him or herself from participation in activities which present a potential conflict of interest or appearance of such conflict, including by not serving on a technical evaluation panel.”.

**SEC. 804. SENSE OF CONGRESS.**

(a) FORMATION OF COMMITTEES.—It is the sense of Congress that the board of directors of the Pension Benefit Guaranty Corporation established under section 4002 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1302), as amended by this title, should form committees, including an audit committee and an investment committee, to enhance the overall effectiveness of the board of directors.

(b) RISK MANAGEMENT POSITION.—It is the sense of Congress that the Pension Benefit Guaranty Corporation established under section 4002 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1302), as amended by this title, should establish a risk management position that evaluates and mitigates the risk that the corporation might experience. The individual in such position should coordinate the risk management efforts of the corporation, explain risks and controls to senior management and the board of directors of the corporation, and make recommendations.

**SA 4330.** Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 4301 proposed by Mr. BAUCUS to the bill H.R. 4213, to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title VI, insert the following:  
**SEC. \_\_\_\_ PARTICIPATION OF PRESIDENT, VICE PRESIDENT, MEMBERS OF CONGRESS, POLITICAL APPOINTEES, AND CONGRESSIONAL STAFF IN THE HEALTH INSURANCE EXCHANGES.**

(a) IN GENERAL.—Section 1312(d)(3)(D) of the Patient Protection and Affordable Care Act is amended to read as follows:

“(D) PRESIDENT, VICE PRESIDENT, MEMBERS OF CONGRESS, POLITICAL APPOINTEES, AND CONGRESSIONAL STAFF IN THE EXCHANGE.—

“(i) IN GENERAL.—Notwithstanding chapter 89 of title 5, United States Code, or any provision of this title—

“(I) the President, Vice President, each Member of Congress, each political appointee, and each Congressional employee shall be treated as a qualified individual entitled to the right under this paragraph to enroll in a qualified health plan in the individual market offered through an Exchange in the State in which the individual resides; and

“(II) any employer contribution under such chapter on behalf of the President, Vice President, any Member of Congress, any political appointee, and any Congressional employee may be paid only to the issuer of a qualified health plan in which the individual enrolled in through such Exchange and not to the issuer of a plan offered through the Federal employees health benefit program under such chapter.

This subparagraph shall not apply to any individual until an Exchange is operating in the State in which the individual resides.

“(ii) PAYMENTS BY FEDERAL GOVERNMENT.—The Secretary, in consultation with the Director of the Office of Personnel Management, shall establish procedures under which—

“(I) the employer contributions under such chapter on behalf of the President, Vice President, each Member of Congress, each political appointee, and each Congressional employee are determined and actuarially adjusted for individual or family coverage, rating areas, and age (in accordance with clauses (i) through (iii) of section 2701(a)(1)(A) of the Public Health Service Act); and

“(II) the employer contributions may be made directly to an Exchange for payment to an issuer.

“(iii) POLITICAL APPOINTEE.—In this subparagraph, the term ‘political appointee’ means any individual who—

“(I) is employed in a position described under sections 5312 through 5316 of title 5, United States Code, (relating to the Executive Schedule);

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

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

“(iv) CONGRESSIONAL EMPLOYEE.—In this subparagraph, the term ‘Congressional employee’ means an employee whose pay is disbursed by the Secretary of the Senate or the Chief Administrative Officer of the House of Representatives.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the Patient Protection and Affordable Care Act.

**SA 4331.** Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 4213, to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the amendment, insert the following:

**TITLE \_\_\_\_—OFFSETTING THE COSTS OF THIS ACT**

**SEC. \_\_\_\_01. DISCLOSING TRUE COST OF CONGRESSIONAL BORROWING AND SPENDING.**

(a) IN GENERAL.—The Secretary of the Senate shall post prominently on the front page of the public website of the Senate (<http://www.senate.gov/>) the following information:

(1) The total amount of discretionary and direct spending passed by the Senate that has not been paid for, including emergency designated spending or spending otherwise exempted from PAYGO requirements.

(2) The total amount of net spending authorized in legislation passed by the Senate, as scored by Congressional Budget Office.

(3) The number of new Government programs created in legislation passed by the Senate.

(4) The totals for paragraphs (1) through (3) as passed by both Houses of Congress and signed into law by the President.

(b) DISPLAY.—The information tallies required by subsection (a) shall be itemized by bill and date, updated weekly, and archived by calendar year.

(c) EFFECTIVE DATE.—The PAYGO tally required by subsection (a)(1) shall begin with the date of enactment of the Statutory Pay-As-You-Go Act of 2010 and the authorization tally required by subsection (a)(2) shall apply to all legislation passed beginning January 1, 2010.

**SEC. \_\_\_\_02. REDUCING BUDGETS OF MEMBERS OF CONGRESS.**

Of the funds made available under Public Law 111-68 for the legislative branch, \$100,000,000 in unobligated balances are permanently rescinded with \$50,000,000 from the House of Representatives and \$50,000,000 from the Senate: Provided, That the rescissions made by the section shall not apply to funds made available to the Capitol Police.

**SEC. \_\_\_\_03. ENACTING THE WHITE HOUSE'S PROPOSED 5 PERCENT CUT ON GOVERNMENT SPENDING.**

(a) RESCISSIONS OF EXCESSIVE SPENDING.—There is rescinded an amount equal to 5 percent of—

(1) the budget authority provided (or obligation limit imposed) for fiscal year 2010 for any discretionary account in any other fiscal year 2010 appropriation Act;

(2) the budget authority provided in any advance appropriation for fiscal year 2010 for any discretionary account in any prior fiscal year appropriation Act; and

(3) the contract authority provided in fiscal year 2010 for any program subject to limitation contained in any fiscal year 2010 appropriation Act.

(b) EXCEPTIONS.—This section shall not apply to discretionary authority appropriated or otherwise made available to the Department of Veterans Affairs and the Department of Defense: Provided, That the Secretary of Defense shall submit a report to Congress no later than one year after the enactment of this Act outlining potential savings within the Department that could be obtained by eliminating outdated, unneeded,

inefficient, poorly performing, or duplicative programs and initiatives.

(c) OMB REPORT.—Within 30 days after the date of enactment of this section, the Director of the Office of Management and Budget shall submit to the Committees on Appropriations of the House of Representatives and the Senate a report specifying the account and amount of each rescission made pursuant to this section and the report shall be posted on the public website of the Office of Management and Budget.

**SEC. \_\_\_\_04. ELIMINATING NONESSENTIAL GOVERNMENT TRAVEL.**

Within 60 days after the date of enactment of this Act, the Director of the Office of Management and Budget, in consultation with the heads of the Federal departments and agencies, shall establish a definition of “non-essential travel” and criteria to determine if travel-related expenses and requests by Federal employees meet the definition of “non-essential travel”. No travel expenses paid for, in whole or in part, with Federal funds shall be paid by the Federal Government unless a request is made prior to the travel and the requested travel meets the criteria established by this section. Any travel request that does not meet the definition and criteria shall be disallowed, including reimbursement for air flights, automobile rentals, train tickets, lodging, per diem, and other travel-related costs. The definition established by the Director of the Office of Management and Budget may include exemptions in the definition, including travel related to national defense, homeland security, border security, national disasters, and other emergencies. The Director of the Office of Management and Budget shall ensure that all travel costs paid for in part or whole by the Federal Government not related to national defense, homeland security, border security, national disasters, and other emergencies do not exceed \$5,000,000,000 annually.

**SEC. \_\_\_\_05. REDUCING UNNECESSARY PRINTING AND PUBLISHING COSTS OF GOVERNMENT DOCUMENTS.**

Not later than 180 days after the date of enactment of this Act, the Director of the Office of Management and Budget shall coordinate with the heads of Federal departments and independent agencies to—

(1) determine which Government publications could be available on Government websites and no longer printed and to devise a strategy to reduce overall Government printing costs over the 10-year period beginning with fiscal year 2010, except that the Director shall ensure that essential printed documents prepared for Social Security recipients, Medicare beneficiaries, and other populations in areas with limited internet access or use continue to remain available;

(2) establish government-wide Federal guidelines on employee printing;

(3) issue on the Office of Management and Budget's public website the results of a cost-benefit analysis on implementing a digital signature system and on establishing employee printing identification systems, such as the use of individual employee cards or codes, to monitor the amount of printing done by Federal employees; except that the Director of the Office of Management and Budget shall ensure that Federal employee printing costs unrelated to national defense, homeland security, border security, national disasters, and other emergencies do not exceed \$860,000,000 annually; and

(4) issue guidelines requiring every department, agency, commission or office to list at a prominent place near the beginning of each publication distributed to the public and issued or paid for by the Federal Government the following:

(A) The name of the issuing agency, department, commission or office.

(B) The total number of copies of the document printed.

(C) The collective cost of producing and printing all of the copies of the document.

(D) The name of the firm publishing the document.

**SEC. 06. DISPOSING OF UNNEEDED AND UNUSED GOVERNMENT PROPERTY.**

(a) IN GENERAL.—Chapter 5 of subtitle I of title 40, United States Code, is amended by adding at the end the following:

**“SUBCHAPTER VII—EXPEDITED DISPOSAL OF REAL PROPERTY**

**“§ 621. Definitions**

“In this subchapter:

“(1) DIRECTOR.—The term ‘Director’ means the Director of the Office of Management and Budget.

“(2) EXPEDITED DISPOSAL OF A REAL PROPERTY.—The term ‘expedited disposal of a real property’ means a demolition of real property or a sale of real property for cash that is conducted under the requirements of section 545.

“(3) LANDHOLDING AGENCY.—The term ‘landholding agency’ means a landholding agency as defined under section 501(i)(3) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411(i)(3)).

“(4) REAL PROPERTY.—

“(A) IN GENERAL.—The term ‘real property’ means—

“(i) a parcel of real property under the administrative jurisdiction of the Federal Government that is—

“(I) excess;

“(II) surplus;

“(III) underperforming; or

“(IV) otherwise not meeting the needs of the Federal Government, as determined by the Director; and

“(ii) a building or other structure located on real property described under clause (i).

“(B) EXCLUSION.—The term ‘real property’ excludes any parcel of real property or building or other structure located on such real property that is to be closed or realigned under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

**“§ 622. Disposal program**

“(a) The Director of the Office of Management and Budget shall dispose of by sale or auction not less than \$15,000,000 worth of real property that is not meeting Federal Government from fiscal year 2010 to fiscal year 2015.

“(b) Agencies shall recommend candidate disposition real properties to the Director for participation in the pilot program established under section 622.

“(c) The Director, with the concurrence of the head of the executive agency concerned and consistent with the criteria established in this subchapter, may then select such candidate real properties for participation in the program and notify the recommending agency accordingly.

“(d) The Director shall ensure that all real properties selected for disposition under this section are listed on a website that shall—

“(1) be updated routinely; and

“(2) include the functionality to allow members of the public, at their option, to receive such updates through electronic mail.

“(e) The Director may transfer real property identified in the enactment of this section to the Department of Housing and Urban Development if the Secretary of Housing and Urban Development has determined such properties are suitable for use to assist the homeless.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 5 of

subtitle I of title 40, United States Code, is amended by inserting after the item relating to section 611 the following:

**“SUBCHAPTER VII—EXPEDITED DISPOSAL OF REAL PROPERTY**

“Sec. 621. Definitions.

“Sec. 622. Disposal program.”.

**SEC. 07. AUCTIONING AND SELLING OF UNUSED AND UNNEEDED EQUIPMENT.**

(a) IN GENERAL.—Notwithstanding section 1033 of the National Defense Authorization Act of 1997 or any other provision of law, the Secretary of Defense shall auction or sell unused, unnecessary, or surplus supplies and equipment without providing preference to State or local governments.

(b) EXCEPTIONS.—The Secretary may make exceptions to the sale or auction of such equipment for transfers of excess military property to state and local law enforcement agencies related to counter-drug efforts, counter-terrorism activities, or other efforts determined to be related to national defense or homeland security. The Secretary of Defense may sell such equipment to State and local agencies at fair market value.

**SEC. 08. CAPPING THE TOTAL NUMBER OF FEDERAL EMPLOYEES.**

(a) IN GENERAL.—Not later than 3 months after the date of enactment of this Act, the head of each relevant Federal department or agency shall collaborate with the Director of the Office of Management and Budget to determine how many full-time employees the department or agency employs. For each new full-time employee added to any Federal department or agency for any purpose, the head of such department or agency shall ensure that the addition of such new employee is offset by a reduction of one existing full-time employee at such department or agency.

(b) INFORMATION ON TOTAL EMPLOYEES.—The Director of the Office of Management and Budget shall publicly disclose the total number of Federal employees, as well as a breakdown of Federal employees by agency and the annual salary by title of each Federal employee at an agency and update such information not less than once a year.

**SEC. 09. TEMPORARY ONE-YEAR FREEZE ON COST OF FEDERAL EMPLOYEES SALARIES.**

Notwithstanding any other provision of law, the total amount of funds expended on salaries for civilian employees of the Federal Government in fiscal year 2011 shall not exceed the total costs for such salaries in Fiscal Year 2009: Provided the amounts spent on salaries of members of the armed forces are exempt from the provisions of this section: Provided further, nothing in this section prohibits an employee from receiving an increase in salary or other compensation so long as such an increase does not increase an agency’s net expenditures for employee salaries.

**SEC. 10. COLLECTION OF UNPAID TAXES FROM EMPLOYEES OF THE FEDERAL GOVERNMENT.**

(a) IN GENERAL.—Chapter 73 of title 5, United States Code, is amended by adding at the end the following:

**“SUBCHAPTER VIII—COLLECTION OF UNPAID TAXES FROM EMPLOYEES OF THE FEDERAL GOVERNMENT**

**“§ 7381. Collection of unpaid taxes from employees of the Federal Government**

“(a) DEFINITION.—For purposes of this section—

“(1) the term ‘seriously delinquent tax debt’ means an outstanding debt under the Internal Revenue Code of 1986 for which a notice of lien has been filed in public records pursuant to section 6323 of such Code, except that such term does not include—

“(A) a debt that is being paid in a timely manner pursuant to an agreement under section 6159 or section 7122 of such Code; and

“(B) a debt with respect to which a collection due process hearing under section 6330 of such Code, or relief under subsection (a), (b), or (f) of section 6015 of such Code, is requested or pending; and

“(2) the term ‘Federal employee’ means—

“(A) an employee, as defined by section 2105; and

“(B) an employee of the United States Congress, including Members of the House of Representatives and Senators.

“(b) COLLECTION OF UNPAID TAXES.—The Internal Revenue Service shall coordinate with the Department of the Treasury and the hiring agency of a Federal employee who has a seriously delinquent tax debt to collect such taxes by withholding a portion of the employee’s salary over a period set by the hiring agency to ensure prompt payment.”.

(b) CLERICAL AMENDMENT.—The analysis for chapter 73 of title 5, United States Code, is amended by adding at the end the following:

**“SUBCHAPTER VIII—COLLECTION OF UNPAID TAXES FROM EMPLOYEES OF THE FEDERAL GOVERNMENT**

“Sec. 7381. Collection of unpaid taxes from employees of the Federal Government.”.

**SEC. 11. REDUCING EXCESSIVE DUPLICATION AND OVERHEAD WITHIN THE FEDERAL GOVERNMENT.**

(a) REDUCING DUPLICATION.—The Director of the Office of Management Budget and the Secretary of each department (or head of each independent agency) shall work with the Chairman and ranking member of the relevant congressional appropriations subcommittees and the congressional authorizing committees and the Director of the Office of Management Budget to consolidate programs with duplicative goals, missions, and initiatives.

(b) CONTROLLING BUREAUCRATIC OVERHEAD COSTS.—Each Federal department and agency shall reduce annual administrative expenses by at least five percent in fiscal year 2011.

**SEC. 12. ELIMINATING BONUSES FOR POOR PERFORMANCE BY GOVERNMENT CONTRACTORS.**

(a) GUIDANCE ON LINKING OF AWARD AND INCENTIVE FEES TO OUTCOMES.—Not later than 180 days after the date of enactment of this Act, each Federal department or agency shall issue guidance, with detailed implementation instructions (including definitions), on the appropriate use of award and incentive fees in department or agency programs.

(b) ELEMENTS.—The guidance under subsection (a) shall—

(1) ensure that all new contracts using award fees link such fees to outcomes (which shall be defined in terms of program cost, schedule, and performance);

(2) establish standards for identifying the appropriate level of officials authorized to approve the use of award and incentive fees in new contracts;

(3) provide guidance on the circumstances in which contractor performance may be judged to be excellent or superior and the percentage of the available award fee which contractors should be paid for such performance;

(4) establish standards for determining the percentage of the available award fee, if any, which contractors should be paid for performance that is judged to be acceptable, average, expected, good, or satisfactory;

(5) ensure that no award fee may be paid for contractor performance that is judged to be below satisfactory performance or performance that does not meet the basic requirements of the contract;

(6) provide specific direction on the circumstances, if any, in which it may be appropriate to roll over award fees that are not earned in one award fee period to a subsequent award fee period or periods;

(7) ensure that the Department or agency—  
(A) collects relevant data on award and incentive fees paid to contractors; and

(B) has mechanisms in place to evaluate such data on a regular basis; and

(8) include performance measures to evaluate the effectiveness of award and incentive fees as a tool for improving contractor performance and achieving desired program outcomes.

(c) **RETURN OF UNEARNED BONUSES.**—Any funds intended to be awarded as incentive fees that are not paid due to contractors inability to meet the criteria established by this section shall be returned to the Treasury.

**SEC. 13. \$1 BILLION LIMITATION ON VOLUNTARY PAYMENTS TO THE UNITED NATIONS.**

Notwithstanding any other provision of law, the Secretary of State shall ensure no more than \$1,000,000,000 is provided to the United Nations each year in excess of the United States' annual assessed contributions.

**SEC. 14. RETURNING EXCESSIVE FUNDS FROM AN UNNECESSARY, UNNEEDED, UNREQUESTED, DUPLICATIVE RESERVE FUND THAT MAY NEVER BE SPENT.**

Notwithstanding any other provision of law, unobligated funds for the Women, Infants and Children special supplemental nutrition program appropriated and placed in reserve by Public Law 111-5 are rescinded.

**SEC. 15. RESCINDING A STATE DEPARTMENT TRAINING FACILITY UNWANTED BY RESIDENTS OF THE COMMUNITY IN WHICH IT IS IT IS PLANNED TO BE CONSTRUCTED.**

Notwithstanding any other provision of law, no Federal funds may be spent to construct a State Department training facility in Ruthsburg, Maryland, and any funding obligated for the facility by Public Law 111-5 are rescinded, except that, this section does not prohibit funds otherwise appropriated to be spent by the State Department for training facilities in other jurisdictions in accordance with law.

**SEC. 16. ELIMINATING A WASTEFUL AND INEFFICIENT GOVERNMENT PROGRAM.**

Within 30 days after the date of enactment of this Act, the Energy Star program administered by the United States Environmental Protection Agency shall be terminated and no Federal tax rebates or tax credits related to the Energy Star program shall be any longer available.

**SEC. 17. RESCINDING UNSPENT FEDERAL FUNDS.**

(a) **IN GENERAL.**—Notwithstanding any other provision of law, of all unobligated Federal funds available, \$100,000,000,000 in appropriated discretionary unexpired funds are rescinded.

(b) **IMPLEMENTATION.**—Not later than 60 days after the date of enactment of this Act, the Director of the Office of Management and Budget shall—

(1) identify the accounts and amounts rescinded to implement subsection (a); and

(2) submit a report to the Secretary of the Treasury and Congress of the accounts and amounts identified under paragraph (1) for rescission.

(c) **EXCEPTION.**—This section shall not apply to the unobligated Federal funds of the Department of Defense or the Department of Veterans Affairs.

**SEC. 18. REDUCING WASTEFUL ENERGY COSTS BY THE DEPARTMENT OF ENERGY.**

Notwithstanding any other provision of law, \$13,800,000 is rescinded from the Department of Energy intended for administrative funds, except that the Secretary of Energy shall implement policies to reduce unnecessary energy costs by the Department by \$13,800,000.

**SEC. 19. STRIKING AN EARMARK THAT INCREASES THE MEDICARE PAYMENTS FOR SOME CALIFORNIA DOCTORS.**

Notwithstanding any other provision of this Act, section 522, relating to adjustment to Medicare payment localities, shall have no force or effect of law.

**SEC. 20. NO NEW TAXES.**

Notwithstanding any other provision of this Act, title IV, relating to revenue offsets, shall have no force or effect of law.

**SA 4332.** Mr. KOHL (for himself, Mr. GRASSLEY, and Ms. COLLINS) submitted an amendment intended to be proposed to amendment SA 4301 proposed by Mr. BAUCUS to the bill H.R. 4213, to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the amendment, insert the following:

**TITLE —PRESERVE ACCESS TO AFFORDABLE GENERICS ACT**

**SEC. 01. SHORT TITLE.**

This title be cited as the "Preserve Access to Affordable Generics Act".

**SEC. 02. UNLAWFUL COMPENSATION FOR DELAY.**

(a) **IN GENERAL.**—The Federal Trade Commission Act (15 U.S.C. 44 et seq.) is amended by—

(1) redesignating section 28 as section 29; and

(2) inserting before section 29, as redesignated, the following:

**"SEC. 28. PRESERVING ACCESS TO AFFORDABLE GENERICS.**

**"(a) IN GENERAL.**—

**"(1) ENFORCEMENT PROCEEDING.**—The Federal Trade Commission may initiate a proceeding to enforce the provisions of this section against the parties to any agreement resolving or settling, on a final or interim basis, a patent infringement claim, in connection with the sale of a drug product.

**"(2) PRESUMPTION.**—

**"(A) IN GENERAL.**—Subject to subparagraph (B), in such a proceeding, an agreement shall be presumed to have anticompetitive effects and be unlawful if—

**"(i)** an ANDA filer receives anything of value; and

**"(ii)** the ANDA filer agrees to limit or forego research, development, manufacturing, marketing, or sales of the ANDA product for any period of time.

**"(B) EXCEPTION.**—The presumption in subparagraph (A) shall not apply if the parties to such agreement demonstrate by clear and convincing evidence that the procompetitive benefits of the agreement outweigh the anticompetitive effects of the agreement.

**"(b) COMPETITIVE FACTORS.**—In determining whether the settling parties have met their burden under subsection (a)(2)(B), the fact finder shall consider—

**"(1)** the length of time remaining until the end of the life of the relevant patent, compared with the agreed upon entry date for the ANDA product;

**"(2)** the value to consumers of the competition from the ANDA product allowed under the agreement;

**"(3)** the form and amount of consideration received by the ANDA filer in the agreement

resolving or settling the patent infringement claim;

**"(4)** the revenue the ANDA filer would have received by winning the patent litigation;

**"(5)** the reduction in the NDA holder's revenues if it had lost the patent litigation;

**"(6)** the time period between the date of the agreement conveying value to the ANDA filer and the date of the settlement of the patent infringement claim; and

**"(7)** any other factor that the fact finder, in its discretion, deems relevant to its determination of competitive effects under this subsection.

**"(c) LIMITATIONS.**—In determining whether the settling parties have met their burden under subsection (a)(2)(B), the fact finder shall not presume—

**"(1)** that entry would not have occurred until the expiration of the relevant patent or statutory exclusivity; or

**"(2)** that the agreement's provision for entry of the ANDA product prior to the expiration of the relevant patent or statutory exclusivity means that the agreement is procompetitive, although such evidence may be relevant to the fact finder's determination under this section.

**"(d) EXCLUSIONS.**—Nothing in this section shall prohibit a resolution or settlement of a patent infringement claim in which the consideration granted by the NDA holder to the ANDA filer as part of the resolution or settlement includes only one or more of the following:

**"(1)** The right to market the ANDA product in the United States prior to the expiration of—

**"(A)** any patent that is the basis for the patent infringement claim; or

**"(B)** any patent right or other statutory exclusivity that would prevent the marketing of such drug.

**"(2)** A payment for reasonable litigation expenses not to exceed \$7,500,000.

**"(3)** A covenant not to sue on any claim that the ANDA product infringes a United States patent.

**"(e) REGULATIONS AND ENFORCEMENT.**—

**"(1) REGULATIONS.**—The Federal Trade Commission may issue, in accordance with section 553 of title 5, United States Code, regulations implementing and interpreting this section. These regulations may exempt certain types of agreements described in subsection (a) if the Commission determines such agreements will further market competition and benefit consumers. Judicial review of any such regulation shall be in the United States District Court for the District of Columbia pursuant to section 706 of title 5, United States Code.

**"(2) ENFORCEMENT.**—A violation of this section shall be treated as a violation of section 5.

**"(3) JUDICIAL REVIEW.**—Any person, partnership or corporation that is subject to a final order of the Commission, issued in an administrative adjudicative proceeding under the authority of subsection (a)(1), may, within 30 days of the issuance of such order, petition for review of such order in the United States Court of Appeals for the District of Columbia Circuit or the United States Court of Appeals for the circuit in which the ultimate parent entity, as defined at 16 C.F.R. 801.1(a)(3), of the NDA holder is incorporated as of the date that the NDA is filed with the Secretary of the Food and Drug Administration, or the United States Court of Appeals for the circuit in which the ultimate parent entity of the ANDA filer is incorporated as of the date that the ANDA is filed with the Secretary of the Food and Drug Administration. In such a review proceeding, the findings of the Commission as to

the facts, if supported by evidence, shall be conclusive.

“(f) ANTITRUST LAWS.—Nothing in this section shall be construed to modify, impair or supersede the applicability of the antitrust laws as defined in subsection (a) of the 1st section of the Clayton Act (15 U.S.C. 12(a)) and of section 5 of this title to the extent that section 5 applies to unfair methods of competition. Nothing in this section shall modify, impair, limit or supersede the right of an ANDA filer to assert claims or counterclaims against any person, under the antitrust laws or other laws relating to unfair competition.

“(g) PENALTIES.—

“(1) FORFEITURE.—Each person, partnership or corporation that violates or assists in the violation of this section shall forfeit and pay to the United States a civil penalty sufficient to deter violations of this section, but in no event greater than 3 times the value received by the party that is reasonably attributable to a violation of this section. If no such value has been received by the NDA holder, the penalty to the NDA holder shall be shall be sufficient to deter violations, but in no event greater than 3 times the value given to the ANDA filer reasonably attributable to the violation of this section. Such penalty shall accrue to the United States and may be recovered in a civil action brought by the Federal Trade Commission, in its own name by any of its attorneys designated by it for such purpose, in a district court of the United States against any person, partnership or corporation that violates this section. In such actions, the United States district courts are empowered to grant mandatory injunctions and such other and further equitable relief as they deem appropriate.

“(2) CEASE AND DESIST.—

“(A) IN GENERAL.—If the Commission has issued a cease and desist order with respect to a person, partnership or corporation in an administrative adjudicative proceeding under the authority of subsection (a)(1), an action brought pursuant to paragraph (1) may be commenced against such person, partnership or corporation at any time before the expiration of one year after such order becomes final pursuant to section 5(g).

“(B) EXCEPTION.—In an action under subparagraph (A), the findings of the Commission as to the material facts in the administrative adjudicative proceeding with respect to such person's, partnership's or corporation's violation of this section shall be conclusive unless—

“(i) the terms of such cease and desist order expressly provide that the Commission's findings shall not be conclusive; or

“(ii) the order became final by reason of section 5(g)(1), in which case such finding shall be conclusive if supported by evidence.

“(3) CIVIL PENALTY.—In determining the amount of the civil penalty described in this section, the court shall take into account—

“(A) the nature, circumstances, extent, and gravity of the violation;

“(B) with respect to the violator, the degree of culpability, any history of violations, the ability to pay, any effect on the ability to continue doing business, profits earned by the NDA holder, compensation received by the ANDA filer, and the amount of commerce affected; and

“(C) other matters that justice requires.

“(4) REMEDIES IN ADDITION.—Remedies provided in this subsection are in addition to, and not in lieu of, any other remedy provided by Federal law. Nothing in this paragraph shall be construed to affect any authority of the Commission under any other provision of law.

“(h) DEFINITIONS.—In this section:

“(1) AGREEMENT.—The term ‘agreement’ means anything that would constitute an agreement under section 1 of the Sherman Act (15 U.S.C. 1) or section 5 of this Act.

“(2) AGREEMENT RESOLVING OR SETTLING A PATENT INFRINGEMENT CLAIM.—The term ‘agreement resolving or settling a patent infringement claim’ includes any agreement that is entered into within 30 days of the resolution or the settlement of the claim, or any other agreement that is contingent upon, provides a contingent condition for, or is otherwise related to the resolution or settlement of the claim.

“(3) ANDA.—The term ‘ANDA’ means an abbreviated new drug application, as defined under section 505(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)).

“(4) ANDA FILER.—The term ‘ANDA filer’ means a party who has filed an ANDA with the Food and Drug Administration.

“(5) ANDA PRODUCT.—The term ‘ANDA product’ means the product to be manufactured under the ANDA that is the subject of the patent infringement claim.

“(6) DRUG PRODUCT.—The term ‘drug product’ means a finished dosage form (e.g., tablet, capsule, or solution) that contains a drug substance, generally, but not necessarily, in association with 1 or more other ingredients, as defined in section 314.3(b) of title 21, Code of Federal Regulations.

“(7) NDA.—The term ‘NDA’ means a new drug application, as defined under section 505(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(b)).

“(8) NDA HOLDER.—The term ‘NDA holder’ means—

“(A) the party that received FDA approval to market a drug product pursuant to an NDA;

“(B) a party owning or controlling enforcement of the patent listed in the Approved Drug Products With Therapeutic Equivalence Evaluations (commonly known as the ‘FDA Orange Book’) in connection with the NDA; or

“(C) the predecessors, subsidiaries, divisions, groups, and affiliates controlled by, controlling, or under common control with any of the entities described in subparagraphs (A) and (B) (such control to be presumed by direct or indirect share ownership of 50 percent or greater), as well as the licensees, licensors, successors, and assigns of each of the entities.

“(9) PATENT INFRINGEMENT.—The term ‘patent infringement’ means infringement of any patent or of any filed patent application, extension, reissue, renewal, division, continuation, continuation in part, reexamination, patent term restoration, patents of addition and extensions thereof.

“(10) PATENT INFRINGEMENT CLAIM.—The term ‘patent infringement claim’ means any allegation made to an ANDA filer, whether or not included in a complaint filed with a court of law, that its ANDA or ANDA product may infringe any patent held by, or exclusively licensed to, the NDA holder of the drug product.

“(11) STATUTORY EXCLUSIVITY.—The term ‘statutory exclusivity’ means those prohibitions on the approval of drug applications under clauses (ii) through (iv) of section 505(c)(3)(E) (5- and 3-year data exclusivity), section 527 (orphan drug exclusivity), or section 505A (pediatric exclusivity) of the Federal Food, Drug, and Cosmetic Act.”

(b) EFFECTIVE DATE.—Section 28 of the Federal Trade Commission Act, as added by this section, shall apply to all agreements described in section 28(a)(1) of that Act entered into after November 15, 2009. Section 28(g) of the Federal Trade Commission Act, as added by this section, shall not apply to agreements entered into before the date of enactment of this title.

## SEC. 03. NOTICE AND CERTIFICATION OF AGREEMENTS.

(a) NOTICE OF ALL AGREEMENTS.—Section 1112(c)(2) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (21 U.S.C. 355 note) is amended by—

(1) striking “the Commission the” and inserting the following: “the Commission—

“(1) the”;

(2) striking the period and inserting “; and”;

(3) inserting at the end the following:

“(2) any other agreement the parties enter into within 30 days of entering into an agreement covered by subsection (a) or (b).”.

(b) CERTIFICATION OF AGREEMENTS.—Section 1112 of such Act is amended by adding at the end the following:

“(d) CERTIFICATION.—The Chief Executive Officer or the company official responsible for negotiating any agreement required to be filed under subsection (a), (b), or (c) shall execute and file with the Assistant Attorney General and the Commission a certification as follows: ‘I declare that the following is true, correct, and complete to the best of my knowledge: The materials filed with the Federal Trade Commission and the Department of Justice under section 1112 of subtitle B of title XI of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, with respect to the agreement referenced in this certification: (1) represent the complete, final, and exclusive agreement between the parties; (2) include any ancillary agreements that are contingent upon, provide a contingent condition for, or are otherwise related to, the referenced agreement; and (3) include written descriptions of any oral agreements, representations, commitments, or promises between the parties that are responsive to subsection (a) or (b) of such section 1112 and have not been reduced to writing.’.”

## SEC. 04. FORFEITURE OF 180-DAY EXCLUSIVITY PERIOD.

Section 505(j)(5)(D)(i)(V) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 355(j)(5)(D)(i)(V)) is amended by inserting “section 28 of the Federal Trade Commission Act or” after “that the agreement has violated”.

## SEC. 05. COMMISSION LITIGATION AUTHORITY.

Section 16(a)(2) of the Federal Trade Commission Act (15 U.S.C. 56(a)(2)) is amended—

(1) in subparagraph (D), by striking “or” after the semicolon;

(2) in subparagraph (E), by inserting “or” after the semicolon; and

(3) inserting after subparagraph (E) the following:

“(F) under section 28;”.

## SEC. 06. STATUTE OF LIMITATIONS.

The Commission shall commence any enforcement proceeding described in section 28 of the Federal Trade Commission Act, as added by section 3, except for an action described in section 28(g)(2) of the Federal Trade Commission Act, not later than 3 years after the date on which the parties to the agreement file the Notice of Agreement as provided by sections 1112(c)(2) and (d) of the Medicare Prescription Drug Improvement and Modernization Act of 2003 (21 U.S.C. 355 note).

## SEC. 07. SEVERABILITY.

If any provision of this title, an amendment made by this title, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this title, the amendments made by this title, and the application of the provisions of such title or amendments to any person or circumstance shall not be affected thereby.

**SA 4333.** Mr. THUNE submitted an amendment intended to be proposed to

amendment SA 4301 proposed by Mr. BAUCUS to the bill H.R. 4213, to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after the first word and insert the following:

**1. SHORT TITLE; AMENDMENT OF 1986 CODE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “American Jobs and Closing Tax Loopholes Act of 2010”.

(b) **AMENDMENT OF 1986 CODE.**—Except as otherwise expressly provided, whenever in titles I, II, and IV of this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

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

Sec. 1. Short title; amendment of 1986 Code; table of contents.

**TITLE I—INFRASTRUCTURE INCENTIVES**

Sec. 101. Exempt-facility bonds for sewage and water supply facilities.

Sec. 102. Extension of exemption from alternative minimum tax treatment for certain tax-exempt bonds.

Sec. 103. Allowance of new markets tax credit against alternative minimum tax.

Sec. 104. Extension of tax-exempt eligibility for loans guaranteed by Federal home loan banks.

Sec. 105. Extension of temporary small issuer rules for allocation of tax-exempt interest expense by financial institutions.

**TITLE II—EXTENSION OF EXPIRING PROVISIONS**

**Subtitle A—Energy**

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- Sec. 521. Extension of MMA section 508 reclassifications.
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- Sec. 541. Expansion of affordability exception to individual mandate.
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- Sec. 551. Short title.

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- Sec. 601. Extension of national flood insurance program.
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- Sec. 603. Summer employment for youth.
- Sec. 604. Expansion of eligibility for concurrent receipt of military retired pay and veterans' disability compensation to include all chapter 61 disability retirees regardless of disability rating percentage or years of service.
- Sec. 605. Extension of use of 2009 poverty guidelines.
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#### TITLE VII—BUDGETARY PROVISIONS

- Sec. 701. Determination of budgetary effects.

#### TITLE I—INFRASTRUCTURE INCENTIVES

##### SEC. 101. EXEMPT-FACILITY BONDS FOR SEWAGE AND WATER SUPPLY FACILITIES.

(a) BONDS FOR WATER AND SEWAGE FACILITIES EXEMPT FROM VOLUME CAP ON PRIVATE ACTIVITY BONDS.—

(1) IN GENERAL.—Paragraph (3) of section 146(g) is amended by inserting “(4), (5),” after “(2),”.

(2) CONFORMING AMENDMENT.—Paragraphs (2) and (3)(B) of section 146(k) are both amended by striking “(4), (5), (6),” and inserting “(6)”.

(b) TAX-EXEMPT ISSUANCE BY INDIAN TRIBAL GOVERNMENTS.—

(1) IN GENERAL.—Subsection (c) of section 7871 is amended by adding at the end the following new paragraph:

“(4) EXCEPTION FOR BONDS FOR WATER AND SEWAGE FACILITIES.—Paragraph (2) shall not apply to an exempt facility bond 95 percent or more of the net proceeds (as defined in section 150(a)(3)) of which are to be used to provide facilities described in paragraph (4) or (5) of section 142(a).”.

(2) CONFORMING AMENDMENT.—Paragraph (2) of section 7871(c) is amended by striking “paragraph (3)” and inserting “paragraphs (3) and (4)”.

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

##### SEC. 102. EXTENSION OF EXEMPTION FROM ALTERNATIVE MINIMUM TAX TREATMENT FOR CERTAIN TAX-EXEMPT BONDS.

(a) IN GENERAL.—Clause (vi) of section 57(a)(5)(C) is amended—

(1) by striking “January 1, 2011” in subclause (I) and inserting “January 1, 2012”; and

(2) by striking “AND 2010” in the heading and inserting “, 2010, AND 2011”.

(b) ADJUSTED CURRENT EARNINGS.—Clause (iv) of section 56(g)(4)(B) is amended—

(1) by striking “January 1, 2011” in subclause (I) and inserting “January 1, 2012”; and

(2) by striking “AND 2010” in the heading and inserting “, 2010, AND 2011”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after December 31, 2010.

##### SEC. 103. ALLOWANCE OF NEW MARKETS TAX CREDIT AGAINST ALTERNATIVE MINIMUM TAX.

(a) IN GENERAL.—Subparagraph (B) of section 38(c)(4), as amended by the Patient Protection and Affordable Care Act, is amended by redesignating clauses (v) through (ix) as clauses (vi) through (x), respectively, and by inserting after clause (iv) the following new clause:

“(v) the credit determined under section 45D, but only with respect to credits determined with respect to qualified equity investments (as defined in section 45D(b)) initially made before January 1, 2012.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to credits determined with respect to qualified equity investments (as defined in section 45D(b) of the Internal Revenue Code of 1986) initially made after March 15, 2010.

##### SEC. 104. EXTENSION OF TAX-EXEMPT ELIGIBILITY FOR LOANS GUARANTEED BY FEDERAL HOME LOAN BANKS.

Clause (iv) of section 149(b)(3)(A) is amended by striking “December 31, 2010” and inserting “December 31, 2011”.

##### SEC. 105. EXTENSION OF TEMPORARY SMALL ISSUER RULES FOR ALLOCATION OF TAX-EXEMPT INTEREST EXPENSE BY FINANCIAL INSTITUTIONS.

(a) IN GENERAL.—Clauses (i), (ii), and (iii) of section 265(b)(3)(G) are each amended by striking “or 2010” and inserting “, 2010, or 2011”.

(b) CONFORMING AMENDMENT.—Subparagraph (G) of section 265(b)(3) is amended by striking “AND 2010” in the heading and inserting “, 2010, AND 2011”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after December 31, 2010.

#### TITLE II—EXTENSION OF EXPIRING PROVISIONS

##### Subtitle A—Energy

##### SEC. 201. ALTERNATIVE MOTOR VEHICLE CREDIT FOR NEW QUALIFIED HYBRID MOTOR VEHICLES OTHER THAN PASSENGER AUTOMOBILES AND LIGHT TRUCKS.

(a) IN GENERAL.—Paragraph (3) of section 30B(k) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to property purchased after December 31, 2009.

##### SEC. 202. INCENTIVES FOR BIODIESEL AND RENEWABLE DIESEL.

(a) CREDITS FOR BIODIESEL AND RENEWABLE DIESEL USED AS FUEL.—Subsection (g) of section 40A is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) EXCISE TAX CREDITS AND OUTLAY PAYMENTS FOR BIODIESEL AND RENEWABLE DIESEL FUEL MIXTURES.—

(1) Paragraph (6) of section 6426(c) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(2) Subparagraph (B) of section 6427(e)(6) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel sold or used after December 31, 2009.

##### SEC. 203. EXTENSION AND MODIFICATION OF CREDIT FOR STEEL INDUSTRY FUEL.

(a) CREDIT PERIOD.—

(1) IN GENERAL.—Subclause (II) of section 45(e)(8)(D)(ii) is amended to read as follows:

“(II) CREDIT PERIOD.—In lieu of the 10-year period referred to in clauses (i) and (ii)(II) of subparagraph (A), the credit period shall be

the period beginning on the date that the facility first produces steel industry fuel that is sold to an unrelated person after September 30, 2008, and ending 2 years after such date.”.

(2) CONFORMING AMENDMENT.—Section 45(e)(8)(D) is amended by striking clause (iii) and by redesignating clause (iv) as clause (iii).

(b) EXTENSION OF PLACED-IN-SERVICE DATE.—Subparagraph (A) of section 45(d)(8) is amended—

(1) by striking “(or any modification to a facility)”;

(2) by striking “2010” and inserting “2011”.

(c) CLARIFICATIONS.—

(1) STEEL INDUSTRY FUEL.—Subclause (I) of section 45(c)(7)(C)(i) is amended by inserting “, a blend of coal and petroleum coke, or other coke feedstock” after “on coal”.

(2) OWNERSHIP INTEREST.—Section 45(d)(8) is amended by adding at the end the following new flush sentence:

“With respect to a facility producing steel industry fuel, no person (including a ground lessor, customer, supplier, or technology licensor) shall be treated as having an ownership interest in the facility or as otherwise entitled to the credit allowable under subsection (a) with respect to such facility if such person’s rent, license fee, or other entitlement to net payments from the owner of such facility is measured by a fixed dollar amount or a fixed amount per ton, or otherwise determined without regard to the profit or loss of such facility.”.

(3) PRODUCTION AND SALE.—Subparagraph (D) of section 45(e)(8), as amended by subsection (a)(2), is amended by redesignating clause (iii) as clause (iv) and by inserting after clause (ii) the following new clause:

“(iii) PRODUCTION AND SALE.—The owner of a facility producing steel industry fuel shall be treated as producing and selling steel industry fuel where that owner manufactures such steel industry fuel from coal, a blend of coal and petroleum coke, or other coke feedstock to which it has title. The sale of such steel industry fuel by the owner of the facility to a person who is not the owner of the facility shall not fail to qualify as a sale to an unrelated person solely because such purchaser may also be a ground lessor, supplier, or customer.”.

(d) SPECIFIED CREDIT FOR PURPOSES OF ALTERNATIVE MINIMUM TAX EXCLUSION.—Subclause (II) of section 38(c)(4)(B)(iii) is amended by inserting “(in the case of a refined coal production facility producing steel industry fuel, during the credit period set forth in section 45(e)(8)(D)(ii)(II))” after “service”.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsections (a), (b), and (d) shall take effect on the date of the enactment of this Act.

(2) CLARIFICATIONS.—The amendments made by subsection (c) shall take effect as if included in the amendments made by the Energy Improvement and Extension Act of 2008.

#### SEC. 204. CREDIT FOR PRODUCING FUEL FROM COKE OR COKE GAS.

(a) IN GENERAL.—Paragraph (1) of section 45K(g) is amended by striking “January 1, 2010” and inserting “January 1, 2011”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to facilities placed in service after December 31, 2009.

#### SEC. 205. NEW ENERGY EFFICIENT HOME CREDIT.

(a) IN GENERAL.—Subsection (g) of section 45L is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to homes acquired after December 31, 2009.

#### SEC. 206. SPECIAL RULE FOR SALES OR DISPOSITIONS TO IMPLEMENT FERC OR STATE ELECTRIC RESTRUCTURING POLICY FOR QUALIFIED ELECTRIC UTILITIES.

(a) IN GENERAL.—Paragraph (3) of section 451(i) is amended by striking “January 1, 2010” and inserting “January 1, 2011”.

(b) MODIFICATION OF DEFINITION OF INDEPENDENT TRANSMISSION COMPANY.—

(1) IN GENERAL.—Clause (i) of section 451(i)(4)(B) is amended to read as follows:

“(i) who the Federal Energy Regulatory Commission determines in its authorization of the transaction under section 203 of the Federal Power Act (16 U.S.C. 824b) or by declaratory order—

“(I) is not itself a market participant as determined by the Commission, and also is not controlled by any such market participant, or

“(II) to be independent from market participants or to be an independent transmission company within the meaning of such Commission’s rules applicable to independent transmission providers, and”.

(2) RELATED PERSONS.—Paragraph (4) of section 451(i) is amended by adding at the end the following flush sentence:

“For purposes of subparagraph (B)(i)(I), a person shall be treated as controlled by another person if such persons would be treated as a single employer under section 52.”.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to dispositions after December 31, 2009.

(2) MODIFICATIONS.—The amendments made by subsection (b) shall apply to dispositions after the date of the enactment of this Act.

#### SEC. 207. SUSPENSION OF LIMITATION ON PERCENTAGE DEPLETION FOR OIL AND GAS FROM MARGINAL WELLS.

(a) IN GENERAL.—Clause (ii) of section 613A(c)(6)(H) is amended by striking “January 1, 2010” and inserting “January 1, 2011”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2009.

#### SEC. 208. DIRECT PAYMENT OF ENERGY EFFICIENT APPLIANCES TAX CREDIT.

In the case of any taxable year which includes the last day of calendar year 2009 or calendar year 2010, a taxpayer who elects to waive the credit which would otherwise be determined with respect to the taxpayer under section 45M of the Internal Revenue Code of 1986 for such taxable year shall be treated as making a payment against the tax imposed under subtitle A of such Code for such taxable year in an amount equal to 85 percent of the amount of the credit which would otherwise be so determined. Such payment shall be treated as made on the later of the due date of the return of such tax or the date on which such return is filed. Elections under this section may be made separately for 2009 and 2010, but once made shall be irrevocable. No amount shall be includable in gross income or alternative minimum taxable income by reason of this section.

#### SEC. 209. MODIFICATION OF STANDARDS FOR WINDOWS, DOORS, AND SKYLIGHTS WITH RESPECT TO THE CREDIT FOR NONBUSINESS ENERGY PROPERTY.

(a) IN GENERAL.—Paragraph (4) of section 25C(c) is amended by striking “unless” and all that follows and inserting “unless—

“(A) in the case of any component placed in service after the date which is 90 days after the date of the enactment of the American Jobs and Closing Tax Loopholes Act of 2010, such component meets the criteria for such components established by the 2010 Energy Star Program Requirements for Residential Windows, Doors, and Skylights, Version 5.0 (or any subsequent version of such requirements which is in effect after January 4, 2010),

“(B) in the case of any component placed in service after the date of the enactment of the American Jobs and Closing Tax Loopholes Act of 2010 and on or before the date which is 90 days after such date, such component meets the criteria described in subparagraph (A) or is equal to or below a U factor of 0.30 and SHGC of 0.30, and

“(C) in the case of any component which is a garage door, such component is equal to or below a U factor of 0.30 and SHGC of 0.30.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to property placed in service after the date of the enactment of this Act.

#### SEC. 210. CREDIT FOR ELECTRICITY PRODUCED AT CERTAIN OPEN-LOOP BIOMASS FACILITIES.

(a) IN GENERAL.—Clause (ii) of section 45(b)(4)(B) is amended by striking “5-year period” and inserting “6-year period”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to electricity produced and sold after December 31, 2009.

#### SEC. 211. EXCISE TAX CREDITS AND OUTLAY PAYMENTS FOR ALTERNATIVE FUEL AND ALTERNATIVE FUEL MIXTURES.

(a) IN GENERAL.—Sections 6426(d)(5), 6426(e)(3), and 6427(e)(6)(C) are each amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel sold or used after December 31, 2009.

#### SEC. 212. CREDIT FOR REFINED COAL FACILITIES.

(a) IN GENERAL.—Subparagraphs (A) and (B) of section 45(d)(8) are each amended by striking “January 1, 2010” and inserting “January 1, 2011”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to facilities placed in service after December 31, 2009.

#### SEC. 213. CREDIT FOR PRODUCTION OF LOW SULFUR DIESEL FUEL.

(a) APPLICABLE PERIOD.—Paragraph (4) of section 45H(c) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in section 339 of the American Jobs Creation Act of 2004.

#### Subtitle B—Individual Tax Relief

##### PART I—MISCELLANEOUS PROVISIONS

#### SEC. 221. DEDUCTION FOR CERTAIN EXPENSES OF ELEMENTARY AND SECONDARY SCHOOL TEACHERS.

(a) IN GENERAL.—Subparagraph (D) of section 62(a)(2) is amended by striking “or 2009” and inserting “2009, or 2010”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2009.

#### SEC. 222. ADDITIONAL STANDARD DEDUCTION FOR STATE AND LOCAL REAL PROPERTY TAXES.

(a) IN GENERAL.—Subparagraph (C) of section 63(c)(1) is amended by striking “or 2009” and inserting “2009, or 2010”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2009.

#### SEC. 223. DEDUCTION OF STATE AND LOCAL SALES TAXES.

(a) IN GENERAL.—Subparagraph (I) of section 164(b)(5) is amended by striking “January 1, 2010” and inserting “January 1, 2011”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2009.

#### SEC. 224. CONTRIBUTIONS OF CAPITAL GAIN REAL PROPERTY MADE FOR CONSERVATION PURPOSES.

(a) IN GENERAL.—Clause (vi) of section 170(b)(1)(E) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) CONTRIBUTIONS BY CERTAIN CORPORATE FARMERS AND RANCHERS.—Clause (iii) of section 170(b)(2)(B) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made in taxable years beginning after December 31, 2009.

**SEC. 225. ABOVE-THE-LINE DEDUCTION FOR QUALIFIED TUITION AND RELATED EXPENSES.**

(a) IN GENERAL.—Subsection (e) of section 222 is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2009.

**SEC. 226. TAX-FREE DISTRIBUTIONS FROM INDIVIDUAL RETIREMENT PLANS FOR CHARITABLE PURPOSES.**

(a) IN GENERAL.—Subparagraph (F) of section 408(d)(8) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions made in taxable years beginning after December 31, 2009.

**SEC. 227. LOOK-THRU OF CERTAIN REGULATED INVESTMENT COMPANY STOCK IN DETERMINING GROSS ESTATE OF NONRESIDENTS.**

(a) IN GENERAL.—Paragraph (3) of section 2105(d) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to estates of decedents dying after December 31, 2009.

**PART II—LOW-INCOME HOUSING CREDITS**  
**SEC. 231. ELECTION FOR DIRECT PAYMENT OF LOW-INCOME HOUSING CREDIT FOR 2010.**

(a) IN GENERAL.—Section 42 is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

“(n) ELECTION FOR REFUNDABLE CREDITS.—

“(1) IN GENERAL.—The housing credit agency of each State shall be allowed a credit in an amount equal to such State’s 2010 low-income housing refundable credit election amount, which shall be payable by the Secretary as provided in paragraph (5).

“(2) 2010 LOW-INCOME HOUSING REFUNDABLE CREDIT ELECTION AMOUNT.—For purposes of this subsection, the term ‘2010 low-income housing refundable credit election amount’ means, with respect to any State, such amount as the State may elect which does not exceed 85 percent of the product of—

“(A) the sum of—

“(i) 100 percent of the State housing credit ceiling for 2010 which is attributable to amounts described in clauses (i) and (iii) of subsection (h)(3)(C), plus any increase in the State housing credit ceiling for 2010 made by reason of section 1400N(c) (including as such section is applied by reason of sections 702(d)(2) and 704(b) of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008), and

“(ii) 40 percent of the State housing credit ceiling for 2010 which is attributable to amounts described in clauses (ii) and (iv) of such subsection, plus any increase in the State housing credit ceiling for 2010 made by reason of the application of such section 702(d)(2) and 704(b), multiplied by

“(B) 10.

For purposes of subparagraph (A)(ii), in the case of any area to which section 702(d)(2) or 704(b) of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008 applies, section 1400N(c)(1)(A) shall be applied without regard to clause (i).

“(3) COORDINATION WITH NON-REFUNDABLE CREDIT.—For purposes of this section, the

amounts described in clauses (i) through (iv) of subsection (h)(3)(C) with respect to any State for 2010 shall each be reduced by so much of such amount as is taken into account in determining the amount of the credit allowed with respect to such State under paragraph (1).

“(4) SPECIAL RULE FOR BASIS.—Basis of a qualified low-income building shall not be reduced by the amount of any payment made under this subsection.

“(5) PAYMENT OF CREDIT; USE TO FINANCE LOW-INCOME BUILDINGS.—The Secretary shall pay to the housing credit agency of each State an amount equal to the credit allowed under paragraph (1). Rules similar to the rules of subsections (c) and (d) of section 1602 of the American Recovery and Reinvestment Tax Act of 2009 shall apply with respect to any payment made under this paragraph, except that such subsection (d) shall be applied by substituting ‘January 1, 2012’ for ‘January 1, 2011’.

(b) CONFORMING AMENDMENT.—Section 1324(b)(2) of title 31, United States Code, is amended by inserting “42(n),” after “36C.”

**Subtitle C—Business Tax Relief**

**SEC. 241. RESEARCH CREDIT.**

(a) IN GENERAL.—Subparagraph (B) of section 41(h)(1) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) CONFORMING AMENDMENT.—Subparagraph (D) of section 45C(b)(1) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after December 31, 2009.

**SEC. 242. INDIAN EMPLOYMENT TAX CREDIT.**

(a) IN GENERAL.—Subsection (f) of section 45A is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2009.

**SEC. 243. NEW MARKETS TAX CREDIT.**

(a) IN GENERAL.—Subparagraph (F) of section 45D(f)(1) is amended by inserting “and 2010” after “2009”.

(b) CONFORMING AMENDMENT.—Paragraph (3) of section 45D(f) is amended by striking “2014” and inserting “2015”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar years beginning after 2009.

**SEC. 244. RAILROAD TRACK MAINTENANCE CREDIT.**

(a) IN GENERAL.—Subsection (f) of section 45G is amended by striking “January 1, 2010” and inserting “January 1, 2011”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to expenditures paid or incurred in taxable years beginning after December 31, 2009.

**SEC. 245. MINE RESCUE TEAM TRAINING CREDIT.**

(a) IN GENERAL.—Subsection (e) of section 45N is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) CREDIT ALLOWABLE AGAINST AMT.—Subparagraph (B) of section 38(c)(4), as amended by section 104, is amended—

(1) by redesignating clauses (vii) through (x) as clauses (viii) through (xi), respectively; and

(2) by inserting after clause (vi) the following new clause:

“(vii) the credit determined under section 45N.”

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 2009.

(2) ALLOWANCE AGAINST AMT.—The amendments made by subsection (b) shall apply to

credits determined for taxable years beginning after December 31, 2009, and to carrybacks of such credits.

**SEC. 246. EMPLOYER WAGE CREDIT FOR EMPLOYEES WHO ARE ACTIVE DUTY MEMBERS OF THE UNIFORMED SERVICES.**

(a) IN GENERAL.—Subsection (f) of section 45P is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to payments made after December 31, 2009.

**SEC. 247. 5-YEAR DEPRECIATION FOR FARMING BUSINESS MACHINERY AND EQUIPMENT.**

(a) IN GENERAL.—Clause (vii) of section 168(e)(3)(B) is amended by striking “January 1, 2010” and inserting “January 1, 2011”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to property placed in service after December 31, 2009.

**SEC. 248. 15-YEAR STRAIGHT-LINE COST RECOVERY FOR QUALIFIED LEASEHOLD IMPROVEMENTS, QUALIFIED RESTAURANT BUILDINGS AND IMPROVEMENTS, AND QUALIFIED RETAIL IMPROVEMENTS.**

(a) IN GENERAL.—Clauses (iv), (v), and (ix) of section 168(e)(3)(E) are each amended by striking “January 1, 2010” and inserting “January 1, 2011”.

(b) CONFORMING AMENDMENTS.—

(1) Clause (i) of section 168(e)(7)(A) is amended by striking “if such building is placed in service after December 31, 2008, and before January 1, 2010.”

(2) Paragraph (8) of section 168(e) is amended by striking subparagraph (E).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2009.

**SEC. 249. 7-YEAR RECOVERY PERIOD FOR MOTORSPORTS ENTERTAINMENT COMPLEXES.**

(a) IN GENERAL.—Subparagraph (D) of section 168(i)(15) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to property placed in service after December 31, 2009.

**SEC. 250. ACCELERATED DEPRECIATION FOR BUSINESS PROPERTY ON AN INDIAN RESERVATION.**

(a) IN GENERAL.—Paragraph (8) of section 168(j) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to property placed in service after December 31, 2009.

**SEC. 251. ENHANCED CHARITABLE DEDUCTION FOR CONTRIBUTIONS OF FOOD INVENTORY.**

(a) IN GENERAL.—Clause (iv) of section 170(e)(3)(C) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions made after December 31, 2009.

**SEC. 252. ENHANCED CHARITABLE DEDUCTION FOR CONTRIBUTIONS OF BOOK INVENTORIES TO PUBLIC SCHOOLS.**

(a) IN GENERAL.—Clause (iv) of section 170(e)(3)(D) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions made after December 31, 2009.

**SEC. 253. ENHANCED CHARITABLE DEDUCTION FOR CORPORATE CONTRIBUTIONS OF COMPUTER INVENTORY FOR EDUCATIONAL PURPOSES.**

(a) IN GENERAL.—Subparagraph (G) of section 170(e)(6) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to contributions made in taxable years beginning after December 31, 2009.

**SEC. 254. ELECTION TO EXPENSE MINE SAFETY EQUIPMENT.**

(a) **IN GENERAL.**—Subsection (g) of section 179E is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to property placed in service after December 31, 2009.

**SEC. 255. SPECIAL EXPENSING RULES FOR CERTAIN FILM AND TELEVISION PRODUCTIONS.**

(a) **IN GENERAL.**—Subsection (f) of section 181 is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to productions commencing after December 31, 2009.

**SEC. 256. EXPENSING OF ENVIRONMENTAL REMEDIATION COSTS.**

(a) **IN GENERAL.**—Subsection (h) of section 198 is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to expenditures paid or incurred after December 31, 2009.

**SEC. 257. DEDUCTION ALLOWABLE WITH RESPECT TO INCOME ATTRIBUTABLE TO DOMESTIC PRODUCTION ACTIVITIES IN PUERTO RICO.**

(a) **IN GENERAL.**—Subparagraph (C) of section 199(d)(8) is amended—

(1) by striking “first 4 taxable years” and inserting “first 5 taxable years”; and

(2) by striking “January 1, 2010” and inserting “January 1, 2011”.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 2009.

**SEC. 258. MODIFICATION OF TAX TREATMENT OF CERTAIN PAYMENTS TO CONTROLLING EXEMPT ORGANIZATIONS.**

(a) **IN GENERAL.**—Clause (iv) of section 512(b)(13)(E) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to payments received or accrued after December 31, 2009.

**SEC. 259. EXCLUSION OF GAIN OR LOSS ON SALE OR EXCHANGE OF CERTAIN BROWNFIELD SITES FROM UNRELATED BUSINESS INCOME.**

(a) **IN GENERAL.**—Subparagraph (K) of section 512(b)(19) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to property acquired after December 31, 2009.

**SEC. 260. TIMBER REIT MODERNIZATION.**

(a) **IN GENERAL.**—Paragraph (8) of section 856(c) is amended by striking “means” and all that follows and inserting “means December 31, 2010.”.

(b) **CONFORMING AMENDMENTS.**—

(1) Subparagraph (I) of section 856(c)(2) is amended by striking “the first taxable year beginning after the date of the enactment of this subparagraph” and inserting “a taxable year beginning on or before the termination date”.

(2) Clause (iii) of section 856(c)(5)(H) is amended by inserting “in taxable years beginning” after “dispositions”.

(3) Clause (v) of section 857(b)(6)(D) is amended by inserting “in a taxable year beginning” after “sale”.

(4) Subparagraph (G) of section 857(b)(6) is amended by inserting “in a taxable year beginning” after “In the case of a sale”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years ending after May 22, 2009.

**SEC. 261. TREATMENT OF CERTAIN DIVIDENDS OF REGULATED INVESTMENT COMPANIES.**

(a) **IN GENERAL.**—Paragraphs (1)(C) and (2)(C) of section 871(k) are each amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 2009.

**SEC. 262. RIC QUALIFIED INVESTMENT ENTITY TREATMENT UNDER FIRPTA.**

(a) **IN GENERAL.**—Clause (ii) of section 897(h)(4)(A) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) **EFFECTIVE DATE.**—

(1) **IN GENERAL.**—The amendment made by subsection (a) shall take effect on January 1, 2010. Notwithstanding the preceding sentence, such amendment shall not apply with respect to the withholding requirement under section 1445 of the Internal Revenue Code of 1986 for any payment made before the date of the enactment of this Act.

(2) **AMOUNTS WITHHELD ON OR BEFORE DATE OF ENACTMENT.**—In the case of a regulated investment company—

(A) which makes a distribution after December 31, 2009, and before the date of the enactment of this Act; and

(B) which would (but for the second sentence of paragraph (1)) have been required to withhold with respect to such distribution under section 1445 of such Code,

such investment company shall not be liable to any person to whom such distribution was made for any amount so withheld and paid over to the Secretary of the Treasury.

**SEC. 263. EXCEPTIONS FOR ACTIVE FINANCING INCOME.**

(a) **IN GENERAL.**—Sections 953(e)(10) and 954(h)(9) are each amended by striking “January 1, 2010” and inserting “January 1, 2011”.

(b) **CONFORMING AMENDMENT.**—Section 953(e)(10) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2009, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends.

**SEC. 264. LOOK-THRU TREATMENT OF PAYMENTS BETWEEN RELATED CONTROLLED FOREIGN CORPORATIONS UNDER FOREIGN PERSONAL HOLDING COMPANY RULES.**

(a) **IN GENERAL.**—Subparagraph (C) of section 954(c)(6) is amended by striking “January 1, 2010” and inserting “January 1, 2011”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2009, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends.

**SEC. 265. BASIS ADJUSTMENT TO STOCK OF S CORPS MAKING CHARITABLE CONTRIBUTIONS OF PROPERTY.**

(a) **IN GENERAL.**—Paragraph (2) of section 1367(a) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to contributions made in taxable years beginning after December 31, 2009.

**SEC. 266. EMPOWERMENT ZONE TAX INCENTIVES.**

(a) **IN GENERAL.**—Section 1391 is amended—

(1) by striking “December 31, 2009” in subsection (d)(1)(A)(i) and inserting “December 31, 2010”; and

(2) by striking the last sentence of subsection (h)(2).

(b) **INCREASED EXCLUSION OF GAIN ON STOCK OF EMPOWERMENT ZONE BUSINESSES.**—Sub-

paragraph (C) of section 1202(a)(2) is amended—

(1) by striking “December 31, 2014” and inserting “December 31, 2015”; and

(2) by striking “2014” in the heading and inserting “2015”.

(c) **TREATMENT OF CERTAIN TERMINATION DATES SPECIFIED IN NOMINATIONS.**—In the case of a designation of an empowerment zone the nomination for which included a termination date which is contemporaneous with the date specified in subparagraph (A)(i) of section 1391(d)(1) of the Internal Revenue Code of 1986 (as in effect before the enactment of this Act), subparagraph (B) of such section shall not apply with respect to such designation unless, after the date of the enactment of this section, the entity which made such nomination reconfirms such termination date, or amends the nomination to provide for a new termination date, in such manner as the Secretary of the Treasury (or the Secretary’s designee) may provide.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to periods after December 31, 2009.

**SEC. 267. RENEWAL COMMUNITY TAX INCENTIVES.**

(a) **IN GENERAL.**—Subsection (b) of section 1400E is amended—

(1) by striking “December 31, 2009” in paragraphs (1)(A) and (3) and inserting “December 31, 2010”; and

(2) by striking “January 1, 2010” in paragraph (3) and inserting “January 1, 2011”.

(b) **ZERO-PERCENT CAPITAL GAINS RATE.**—

(1) **ACQUISITION DATE.**—Paragraphs (2)(A)(i), (3)(A), (4)(A)(i), and (4)(B)(i) of section 1400F(b) are each amended by striking “January 1, 2010” and inserting “January 1, 2011”.

(2) **LIMITATION ON PERIOD OF GAINS.**—Paragraph (2) of section 1400F(c) is amended—

(A) by striking “December 31, 2014” and inserting “December 31, 2015”; and

(B) by striking “2014” in the heading and inserting “2015”.

(3) **CLERICAL AMENDMENT.**—Subsection (d) of section 1400F is amended by striking “and ‘December 31, 2014’ for ‘December 31, 2014’”.

(c) **COMMERCIAL REVITALIZATION DEDUCTION.**—

(1) **IN GENERAL.**—Subsection (g) of section 1400I is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(2) **CONFORMING AMENDMENT.**—Subparagraph (A) of section 1400I(d)(2) is amended by striking “after 2001 and before 2010” and inserting “which begins after 2001 and before the date referred to in subsection (g)”.

(d) **INCREASED EXPENSING UNDER SECTION 179.**—Subparagraph (A) of section 1400J(b)(1) is amended by striking “January 1, 2010” and inserting “January 1, 2011”.

(e) **TREATMENT OF CERTAIN TERMINATION DATES SPECIFIED IN NOMINATIONS.**—In the case of a designation of a renewal community the nomination for which included a termination date which is contemporaneous with the date specified in subparagraph (A) of section 1400E(b)(1) of the Internal Revenue Code of 1986 (as in effect before the enactment of this Act), subparagraph (B) of such section shall not apply with respect to such designation unless, after the date of the enactment of this section, the entity which made such nomination reconfirms such termination date, or amends the nomination to provide for a new termination date, in such manner as the Secretary of the Treasury (or the Secretary’s designee) may provide.

(f) **EFFECTIVE DATES.**—

(1) **IN GENERAL.**—Except as otherwise provided in this subsection, the amendments made by this section shall apply to periods after December 31, 2009.

(2) **ACQUISITIONS.**—The amendments made by subsections (b)(1) and (d) shall apply to acquisitions after December 31, 2009.

(3) COMMERCIAL REVITALIZATION DEDUCTION.—

(A) IN GENERAL.—The amendment made by subsection (c)(1) shall apply to buildings placed in service after December 31, 2009.

(B) CONFORMING AMENDMENT.—The amendment made by subsection (c)(2) shall apply to calendar years beginning after December 31, 2009.

**SEC. 268. TEMPORARY INCREASE IN LIMIT ON COVER OVER OF RUM EXCISE TAXES TO PUERTO RICO AND THE VIRGIN ISLANDS.**

(a) IN GENERAL.—Paragraph (1) of section 7652(f) is amended by striking “January 1, 2010” and inserting “January 1, 2011”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distilled spirits brought into the United States after December 31, 2009.

**SEC. 269. PAYMENT TO AMERICAN SAMOA IN LIEU OF EXTENSION OF ECONOMIC DEVELOPMENT CREDIT.**

The Secretary of the Treasury (or his designee) shall pay \$18,000,000 to the Government of American Samoa for purposes of economic development. The payment made under the preceding sentence shall be treated for purposes of section 1324 of title 31, United States Code, as a refund of internal revenue collections to which such section applies.

**SEC. 270. ELECTION TO TEMPORARILY UTILIZE UNUSED AMT CREDITS DETERMINED BY DOMESTIC INVESTMENT.**

(a) IN GENERAL.—Section 53 is amended by adding at the end the following new subsection:

“(g) ELECTION FOR CORPORATIONS WITH NEW DOMESTIC INVESTMENTS.—

“(1) IN GENERAL.—If a corporation elects to have this subsection apply for its first taxable year beginning after December 31, 2009, the limitation imposed by subsection (c) for such taxable year shall be increased by the AMT credit adjustment amount.

“(2) AMT CREDIT ADJUSTMENT AMOUNT.—For purposes of paragraph (1), the term ‘AMT credit adjustment amount’ means, the lesser of—

“(A) 50 percent of a corporation’s minimum tax credit for its first taxable year beginning after December 31, 2009, determined under subsection (b), or

“(B) 10 percent of new domestic investments made during such taxable year.

“(3) NEW DOMESTIC INVESTMENTS.—For purposes of this subsection, the term ‘new domestic investments’ means the cost of qualified property (as defined in section 168(k)(2)(A)(i))—

“(A) the original use of which commences with the taxpayer during the taxable year, and

“(B) which is placed in service in the United States by the taxpayer during such taxable year.

“(4) CREDIT REFUNDABLE.—For purposes of subsection (b) of section 6401, the aggregate increase in the credits allowable under this part for any taxable year resulting from the application of this subsection shall be treated as allowed under subpart C (and not under any other subpart). For purposes of section 6425, any amount treated as so allowed shall be treated as a payment of estimated income tax for the taxable year.

“(5) ELECTION.—An election under this subsection shall be made at such time and in such manner as prescribed by the Secretary, and once made, may be revoked only with the consent of the Secretary. Not later than 90 days after the date of the enactment of this subsection, the Secretary shall issue guidance specifying such time and manner.

“(6) TREATMENT OF CERTAIN PARTNERSHIP INVESTMENTS.—For purposes of this subsection, a corporation shall take into account its allocable share of any new domes-

tic investments by a partnership for any taxable year if, and only if, more than 90 percent of the capital and profits interests in such partnership are owned by such corporation (directly or indirectly) at all times during such taxable year.

“(7) NO DOUBLE BENEFIT.—

“(A) IN GENERAL.—A corporation making an election under this subsection may not make an election under subparagraph (H) of section 172(b)(1).

“(B) SPECIAL RULES WITH RESPECT TO TAXPAYERS PREVIOUSLY ELECTING APPLICABLE NET OPERATING LOSSES.—In the case of a corporation which made an election under subparagraph (H) of section 172(b)(1) and elects the application of this subsection—

“(i) ELECTION OF APPLICABLE NET OPERATING LOSS TREATED AS REVOKED.—The election under such subparagraph (H) shall (notwithstanding clause (iii)(II) of such subparagraph) be treated as having been revoked by the taxpayer.

“(ii) COORDINATION WITH PROVISION FOR EXPEDITED REFUND.—The amount otherwise treated as a payment of estimated income tax under the last sentence of paragraph (4) shall be reduced (but not below zero) by the aggregate increase in unpaid tax liability determined under this chapter by reason of the revocation of the election under clause (i).

“(iii) APPLICATION OF STATUTE OF LIMITATIONS.—With respect to the revocation of an election under clause (i)—

“(I) the statutory period for the assessment of any deficiency attributable to such revocation shall not expire before the end of the 3-year period beginning on the date of the election to have this subsection apply, and

“(II) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

“(C) EXCEPTION FOR ELIGIBLE SMALL BUSINESSES.—Subparagraphs (A) and (B) shall not apply to an eligible small business as defined in section 172(b)(1)(H)(v)(II).

“(8) REGULATIONS.—The Secretary may issue such regulations or other guidance as may be necessary or appropriate to carry out the purposes of this subsection, including to prevent fraud and abuse under this subsection.”.

(b) CONFORMING AMENDMENTS.—

(1) Section 6211(b)(4)(A) is amended by inserting “53(g),” after “53(e),”.

(2) Section 1324(b)(2) of title 31, United States Code, is amended by inserting “53(g),” after “53(e),”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2009.

**SEC. 271. REDUCTION IN CORPORATE RATE FOR QUALIFIED TIMBER GAIN.**

(a) IN GENERAL.—Paragraph (1) of section 1201(b) is amended by striking “ending” and all that follows through “such date”.

(b) CONFORMING AMENDMENT.—Paragraph (3) of section 1201(b) is amended to read as follows:

“(3) APPLICATION OF SUBSECTION.—The qualified timber gain for any taxable year shall not exceed the qualified timber gain which would be determined by not taking into account any portion of such taxable year after December 31, 2010.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after May 22, 2009.

**SEC. 272. STUDY OF EXTENDED TAX EXPENDITURES.**

(a) FINDINGS.—Congress finds the following:

(1) Currently, the aggregate cost of Federal tax expenditures rivals, or even exceeds, the

amount of total Federal discretionary spending.

(2) Given the escalating public debt, a critical examination of this use of taxpayer dollars is essential.

(3) Additionally, tax expenditures can complicate the Internal Revenue Code of 1986 for taxpayers and complicate tax administration for the Internal Revenue Service.

(4) To facilitate a better understanding of tax expenditures in the future, it is constructive for legislation extending these provisions to include a study of such provisions.

(b) REQUIREMENT TO REPORT.—Not later than November 30, 2010, the Chief of Staff of the Joint Committee on Taxation, in consultation with the Comptroller General of the United States, shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on each tax expenditure (as defined in section 3(3) of the Congressional Budget Impoundment Control Act of 1974 (2 U.S.C. 622(3)) extended by this title.

(c) ROLLING SUBMISSION OF REPORTS.—The Chief of Staff of the Joint Committee on Taxation shall initially submit the reports for each such tax expenditure enacted in this subtitle (relating to business tax relief) and subtitle A (relating to energy) in order of the tax expenditure incurring the least aggregate cost to the greatest aggregate cost (determined by reference to the cost estimate of this Act by the Joint Committee on Taxation). Thereafter, such reports may be submitted in such order as the Chief of Staff determines appropriate.

(d) CONTENTS OF REPORT.—Such reports shall contain the following:

(1) An explanation of the tax expenditure and any relevant economic, social, or other context under which it was first enacted.

(2) A description of the intended purpose of the tax expenditure.

(3) An analysis of the overall success of the tax expenditure in achieving such purpose, and evidence supporting such analysis.

(4) An analysis of the extent to which further extending the tax expenditure, or making it permanent, would contribute to achieving such purpose.

(5) A description of the direct and indirect beneficiaries of the tax expenditure, including identifying any unintended beneficiaries.

(6) An analysis of whether the tax expenditure is the most cost-effective method for achieving the purpose for which it was intended, and a description of any more cost-effective methods through which such purpose could be accomplished.

(7) A description of any unintended effects of the tax expenditure that are useful in understanding the tax expenditure’s overall value.

(8) An analysis of how the tax expenditure could be modified to better achieve its original purpose.

(9) A brief description of any interactions (actual or potential) with other tax expenditures or direct spending programs in the same or related budget function worthy of further study.

(10) A description of any unavailable information the staff of the Joint Committee on Taxation may need to complete a more thorough examination and analysis of the tax expenditure, and what must be done to make such information available.

(e) MINIMUM ANALYSIS BY DEADLINE.—In the event the Chief of Staff of the Joint Committee on Taxation concludes it will not be feasible to complete all reports by the date specified in subsection (a), at a minimum, the reports for each tax expenditure enacted in this subtitle (relating to business tax relief) and subtitle A (relating to energy) shall be completed by such date.

**Subtitle D—Temporary Disaster Relief Provisions**

**PART I—NATIONAL DISASTER RELIEF**

**SEC. 281. WAIVER OF CERTAIN MORTGAGE REVENUE BOND REQUIREMENTS.**

(a) IN GENERAL.—Paragraph (11) of section 143(k) is amended by striking “January 1, 2010” and inserting “January 1, 2011”.

(b) SPECIAL RULE FOR RESIDENCES DESTROYED IN FEDERALLY DECLARED DISASTERS.—Paragraph (13) of section 143(k), as redesignated by subsection (c), is amended by striking “January 1, 2010” in subparagraphs (A)(i) and (B)(i) and inserting “January 1, 2011”.

(c) TECHNICAL AMENDMENT.—Subsection (k) of section 143 is amended by redesignating the second paragraph (12) (relating to special rules for residences destroyed in federally declared disasters) as paragraph (13).

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendment made by this section shall apply to bonds issued after December 31, 2009.

(2) RESIDENCES DESTROYED IN FEDERALLY DECLARED DISASTERS.—The amendments made by subsection (b) shall apply with respect to disasters occurring after December 31, 2009.

(3) TECHNICAL AMENDMENT.—The amendment made by subsection (c) shall take effect as if included in section 709 of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008.

**SEC. 282. LOSSES ATTRIBUTABLE TO FEDERALLY DECLARED DISASTERS.**

(a) IN GENERAL.—Subclause (I) of section 165(h)(3)(B)(i) is amended by striking “January 1, 2010” and inserting “January 1, 2011”.

(b) \$500 LIMITATION.—Paragraph (1) of section 165(h) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to federally declared disasters occurring after December 31, 2009.

(2) \$500 LIMITATION.—The amendment made by subsection (b) shall apply to taxable years beginning after December 31, 2009.

**SEC. 283. SPECIAL DEPRECIATION ALLOWANCE FOR QUALIFIED DISASTER PROPERTY.**

(a) IN GENERAL.—Subclause (I) of section 168(n)(2)(A)(ii) is amended by striking “January 1, 2010” and inserting “January 1, 2011”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to disasters occurring after December 31, 2009.

**SEC. 284. NET OPERATING LOSSES ATTRIBUTABLE TO FEDERALLY DECLARED DISASTERS.**

(a) IN GENERAL.—Subclause (I) of section 172(j)(1)(A)(i) is amended by striking “January 1, 2010” and inserting “January 1, 2011”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to losses attributable to disasters occurring after December 31, 2009.

**SEC. 285. EXPENSING OF QUALIFIED DISASTER EXPENSES.**

(a) IN GENERAL.—Subparagraph (A) of section 198A(b)(2) is amended by striking “January 1, 2010” and inserting “January 1, 2011”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to expenditures on account of disasters occurring after December 31, 2009.

**SEC. 286. SPECIAL DEPRECIATION ALLOWANCE.**

(a) IN GENERAL.—Paragraph (6) of section 1400N(d)(6) is amended by striking subparagraph (D).

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to property placed in service after December 31, 2009.

**PART II—REGIONAL PROVISIONS**

**Subpart A—New York Liberty Zone**

**SEC. 291. SPECIAL DEPRECIATION ALLOWANCE FOR NONRESIDENTIAL AND RESIDENTIAL REAL PROPERTY.**

(a) IN GENERAL.—Subparagraph (A) of section 1400L(b)(2) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to property placed in service after December 31, 2009.

**SEC. 292. TAX-EXEMPT BOND FINANCING.**

(a) IN GENERAL.—Subparagraph (D) of section 1400L(d)(2) is amended by striking “January 1, 2010” and inserting “January 1, 2011”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to bonds issued after December 31, 2009.

**Subpart B—GO Zone**

**SEC. 295. INCREASE IN REHABILITATION CREDIT.**

(a) IN GENERAL.—Subsection (h) of section 1400N is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts paid or incurred after December 31, 2009.

**SEC. 296. WORK OPPORTUNITY TAX CREDIT WITH RESPECT TO CERTAIN INDIVIDUALS AFFECTED BY HURRICANE KATRINA FOR EMPLOYERS INSIDE DISASTER AREAS.**

(a) IN GENERAL.—Paragraph (1) of section 201(b) of the Katrina Emergency Tax Relief Act of 2005 is amended by striking “4-year” and inserting “5-year”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to individuals hired after August 27, 2009.

**SEC. 297. EXTENSION OF LOW-INCOME HOUSING CREDIT RULES FOR BUILDINGS IN GO ZONES.**

Section 1400N(c)(5) is amended by striking “January 1, 2011” and inserting “January 1, 2013”.

**SEC. 298. TAX-EXEMPT BOND FINANCING.**

(a) IN GENERAL.—Paragraphs (2)(D) and (7)(C) of section 1400N(a) are each amended by striking “January 1, 2011” and inserting “January 1, 2012”.

(b) CONFORMING AMENDMENTS.—Sections 702(d)(1) and 704(a) of the Heartland Disaster Tax Relief Act of 2008 (Public Law 110-343; 122 Stat. 3913, 3919) are each amended by striking “January 1, 2011” each place it appears and inserting “January 1, 2012”.

**Subpart C—Midwestern Disaster Areas**

**SEC. 299. SPECIAL RULES FOR USE OF RETIREMENT FUNDS.**

(a) IN GENERAL.—Section 702(d)(10) of the Heartland Disaster Tax Relief Act of 2008 (Public Law 110-343; 122 Stat. 3918) is amended—

(1) by striking “January 1, 2010” both places it appears and inserting “January 1, 2011”, and

(2) by striking “December 31, 2009” both places it appears and inserting “December 31, 2010”.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in section 702(d)(10) of the Heartland Disaster Tax Relief Act of 2008.

**SEC. 300. EXCLUSION OF CANCELLATION OF MORTGAGE INDEBTEDNESS.**

(a) IN GENERAL.—Section 702(e)(4)(C) of the Heartland Disaster Tax Relief Act of 2008 (Public Law 110-343; 122 Stat. 3918) is amended by striking “January 1, 2010” and inserting “January 1, 2011”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to discharges of indebtedness after December 31, 2009.

**TITLE III—PENSION PROVISIONS**

**Subtitle A—Single Employer Plans**

**SEC. 301. EXTENDED PERIOD FOR SINGLE-EMPLOYER DEFINED BENEFIT PLANS TO AMORTIZE CERTAIN SHORTFALL AMORTIZATION BASES.**

(a) AMENDMENTS TO ERISA.—

(1) IN GENERAL.—Paragraph (2) of section 303(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1083(c)) is amended by adding at the end the following subparagraph:

“(D) SPECIAL ELECTION FOR ELIGIBLE PLAN YEARS.—

“(i) IN GENERAL.—If a plan sponsor elects to apply this subparagraph with respect to the shortfall amortization base of a plan for any eligible plan year (in this subparagraph and paragraph (7) referred to as an ‘election year’), then, notwithstanding subparagraphs (A) and (B)—

“(I) the shortfall amortization installments with respect to such base shall be determined under clause (ii) or (iii), whichever is specified in the election, and

“(II) the shortfall amortization installment for any plan year in the 9-plan-year period described in clause (ii) or the 15-plan-year period described in clause (iii), respectively, with respect to such shortfall amortization base is the annual installment determined under the applicable clause for that year for that base.

“(ii) 2 PLUS 7 AMORTIZATION SCHEDULE.—The shortfall amortization installments determined under this clause are—

“(I) in the case of the first 2 plan years in the 9-plan-year period beginning with the election year, interest on the shortfall amortization base of the plan for the election year (determined using the effective interest rate for the plan for the election year), and

“(II) in the case of the last 7 plan years in such 9-plan-year period, the amounts necessary to amortize the remaining balance of the shortfall amortization base of the plan for the election year in level annual installments over such last 7 plan years (using the segment rates under subparagraph (C) for the election year).

“(iii) 15-YEAR AMORTIZATION.—The shortfall amortization installments determined under this subparagraph are the amounts necessary to amortize the shortfall amortization base of the plan for the election year in level annual installments over the 15-plan-year period beginning with the election year (using the segment rates under subparagraph (C) for the election year).

“(iv) ELECTION.—

“(I) IN GENERAL.—The plan sponsor of a plan may elect to have this subparagraph apply to not more than 2 eligible plan years with respect to the plan, except that in the case of a plan described in section 106 of the Pension Protection Act of 2006, the plan sponsor may only elect to have this subparagraph apply to a plan year beginning in 2011.

“(II) AMORTIZATION SCHEDULE.—Such election shall specify whether the amortization schedule under clause (ii) or (iii) shall apply to an election year, except that if a plan sponsor elects to have this subparagraph apply to 2 eligible plan years, the plan sponsor must elect the same schedule for both years.

“(III) OTHER RULES.—Such election shall be made at such time, and in such form and manner, as shall be prescribed by the Secretary of the Treasury, and may be revoked only with the consent of the Secretary of the Treasury. The Secretary of the Treasury shall, before granting a revocation request, provide the Pension Benefit Guaranty Corporation an opportunity to comment on the conditions applicable to the treatment of any portion of the election year shortfall

amortization base that remains unamortized as of the revocation date.

“(v) ELIGIBLE PLAN YEAR.—For purposes of this subparagraph, the term ‘eligible plan year’ means any plan year beginning in 2008, 2009, 2010, or 2011, except that a plan year shall only be treated as an eligible plan year if the due date under subsection (j)(1) for the payment of the minimum required contribution for such plan year occurs on or after the date of the enactment of this subparagraph.

“(vi) REPORTING.—A plan sponsor of a plan who makes an election under clause (i) shall—

“(I) give notice of the election to participants and beneficiaries of the plan, and

“(II) inform the Pension Benefit Guaranty Corporation of such election in such form and manner as the Director of the Pension Benefit Guaranty Corporation may prescribe.

“(vii) INCREASES IN REQUIRED INSTALLMENTS IN CERTAIN CASES.—For increases in required contributions in cases of excess compensation or extraordinary dividends or stock redemptions, see paragraph (7).”.

(2) INCREASES IN REQUIRED INSTALLMENTS IN CERTAIN CASES.—Section 303(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1083(c)) is amended by adding at the end the following paragraph:

“(7) INCREASES IN ALTERNATE REQUIRED INSTALLMENTS IN CASES OF EXCESS COMPENSATION OR EXTRAORDINARY DIVIDENDS OR STOCK REDEMPTIONS.—

“(A) IN GENERAL.—If there is an installment acceleration amount with respect to a plan for any plan year in the restriction period with respect to an election year under paragraph (2)(D), then the shortfall amortization installment otherwise determined and payable under such paragraph for such plan year shall, subject to the limitation under subparagraph (B), be increased by such amount.

“(B) TOTAL INSTALLMENTS LIMITED TO SHORTFALL BASE.—Subject to rules prescribed by the Secretary of the Treasury, if a shortfall amortization installment with respect to any shortfall amortization base for an election year is required to be increased for any plan year under subparagraph (A)—

“(i) such increase shall not result in the amount of such installment exceeding the present value of such installment and all succeeding installments with respect to such base (determined without regard to such increase but after application of clause (ii)), and

“(ii) subsequent shortfall amortization installments with respect to such base shall, in reverse order of the otherwise required installments, be reduced to the extent necessary to limit the present value of such subsequent shortfall amortization installments (after application of this paragraph) to the present value of the remaining unamortized shortfall amortization base.

“(C) INSTALLMENT ACCELERATION AMOUNT.—For purposes of this paragraph—

“(i) IN GENERAL.—The term ‘installment acceleration amount’ means, with respect to any plan year in a restriction period with respect to an election year, the sum of—

“(I) the aggregate amount of excess employee compensation determined under subparagraph (D) with respect to all employees for the plan year, plus

“(II) the aggregate amount of extraordinary dividends and redemptions determined under subparagraph (E) for the plan year.

“(ii) ANNUAL LIMITATION.—The installment acceleration amount for any plan year shall not exceed the excess (if any) of—

“(I) the sum of the shortfall amortization installments for the plan year and all preceding plan years in the amortization period

elected under paragraph (2)(D) with respect to the shortfall amortization base with respect to an election year, determined without regard to paragraph (2)(D) and this paragraph, over

“(II) the sum of the shortfall amortization installments for such plan year and all such preceding plan years, determined after application of paragraph (2)(D) (and in the case of any preceding plan year, after application of this paragraph).

“(iii) CARRYOVER OF EXCESS INSTALLMENT ACCELERATION AMOUNTS.—

“(I) IN GENERAL.—If the installment acceleration amount for any plan year (determined without regard to clause (ii)) exceeds the limitation under clause (ii), then, subject to subclause (II), such excess shall be treated as an installment acceleration amount with respect to the succeeding plan year.

“(II) CAP TO APPLY.—If any amount treated as an installment acceleration amount under subclause (I) or this subclause with respect any succeeding plan year, when added to other installment acceleration amounts (determined without regard to clause (ii)) with respect to the plan year, exceeds the limitation under clause (ii), the portion of such amount representing such excess shall be treated as an installment acceleration amount with respect to the next succeeding plan year.

“(III) LIMITATION ON YEARS TO WHICH AMOUNTS CARRIED FOR.—No amount shall be carried under subclause (I) or (II) to a plan year which begins after the first plan year following the last plan year in the restriction period (or after the second plan year following such last plan year in the case of an election year with respect to which 15-year amortization was elected under paragraph (2)(D)).

“(IV) ORDERING RULES.—For purposes of applying subclause (II), installment acceleration amounts for the plan year (determined without regard to any carryover under this clause) shall be applied first against the limitation under clause (ii) and then carryovers to such plan year shall be applied against such limitation on a first-in, first-out basis.

“(D) EXCESS EMPLOYEE COMPENSATION.—For purposes of this paragraph—

“(i) IN GENERAL.—The term ‘excess employee compensation’ means, with respect to any employee for any plan year, the excess (if any) of—

“(I) the aggregate amount includible in income under chapter 1 of the Internal Revenue Code of 1986 for remuneration during the calendar year in which such plan year begins for services performed by the employee for the plan sponsor (whether or not performed during such calendar year), over

“(II) \$1,000,000.

“(ii) AMOUNTS SET ASIDE FOR NONQUALIFIED DEFERRED COMPENSATION.—If during any calendar year assets are set aside or reserved (directly or indirectly) in a trust (or other arrangement as determined by the Secretary of the Treasury), or transferred to such a trust or other arrangement, by a plan sponsor for purposes of paying deferred compensation of an employee under a nonqualified deferred compensation plan (as defined in section 409A of such Code) of the plan sponsor, then, for purposes of clause (i), the amount of such assets shall be treated as remuneration of the employee includible in income for the calendar year unless such amount is otherwise includible in income for such year. An amount to which the preceding sentence applies shall not be taken into account under this paragraph for any subsequent calendar year.

“(iii) ONLY REMUNERATION FOR CERTAIN POST-2009 SERVICES COUNTED.—Remuneration shall be taken into account under clause (i) only to the extent attributable to services

performed by the employee for the plan sponsor after February 28, 2010.

“(iv) EXCEPTION FOR CERTAIN EQUITY PAYMENTS.—

“(I) IN GENERAL.—There shall not be taken into account under clause (i)(I) any amount includible in income with respect to the granting after February 28, 2010, of service recipient stock (within the meaning of section 409A of the Internal Revenue Code of 1986) that, upon such grant, is subject to a substantial risk of forfeiture (as defined under section 83(c)(1) of such Code) for at least 5 years from the date of such grant.

“(II) SECRETARIAL AUTHORITY.—The Secretary of the Treasury may by regulation provide for the application of this clause in the case of a person other than a corporation.

“(v) OTHER EXCEPTIONS.—The following amounts includible in income shall not be taken into account under clause (i)(I):

“(I) COMMISSIONS.—Any remuneration payable on a commission basis solely on account of income directly generated by the individual performance of the individual to whom such remuneration is payable.

“(II) CERTAIN PAYMENTS UNDER EXISTING CONTRACTS.—Any remuneration consisting of nonqualified deferred compensation, restricted stock, stock options, or stock appreciation rights payable or granted under a written binding contract that was in effect on March 1, 2010, and which was not modified in any material respect before such remuneration is paid.

“(vi) SELF-EMPLOYED INDIVIDUAL TREATED AS EMPLOYEE.—The term ‘employee’ includes, with respect to a calendar year, a self-employed individual who is treated as an employee under section 401(c) of such Code for the taxable year ending during such calendar year, and the term ‘compensation’ shall include earned income of such individual with respect to such self-employment.

“(vii) INDEXING OF AMOUNT.—In the case of any calendar year beginning after 2010, the dollar amount under clause (i)(II) shall be increased by an amount equal to—

“(I) such dollar amount, multiplied by

“(II) the cost-of-living adjustment determined under section 1(f)(3) of such Code for the calendar year, determined by substituting ‘calendar year 2009’ for ‘calendar year 1992’ in subparagraph (B) thereof.

If the amount of any increase under clause (i) is not a multiple of \$1,000, such increase shall be rounded to the next lowest multiple of \$1,000.

“(E) EXTRAORDINARY DIVIDENDS AND REDEMPTIONS.—

“(i) IN GENERAL.—The amount determined under this subparagraph for any plan year is the excess (if any) of the sum of the dividends declared during the plan year by the plan sponsor plus the aggregate amount paid for the redemption of stock of the plan sponsor redeemed during the plan year over the greater of—

“(I) the adjusted net income (within the meaning of section 4043) of the plan sponsor for the preceding plan year, determined without regard to any reduction by reason of interest, taxes, depreciation, or amortization, or

“(II) in the case of a plan sponsor that determined and declared dividends in the same manner for at least 5 consecutive years immediately preceding such plan year, the aggregate amount of dividends determined and declared for such plan year using such manner.

“(ii) ONLY CERTAIN POST-2009 DIVIDENDS AND REDEMPTIONS COUNTED.—For purposes of clause (i), there shall only be taken into account dividends declared, and redemptions occurring, after February 28, 2010.

“(iii) EXCEPTION FOR INTRA-GROUP DIVIDENDS.—Dividends paid by one member of a controlled group (as defined in section 302(d)(3)) to another member of such group shall not be taken into account under clause (i).

“(iv) EXCEPTION FOR CERTAIN REDEMPTIONS.—Redemptions that are made pursuant to a plan maintained with respect to employees, or that are made on account of the death, disability, or termination of employment of an employee or shareholder, shall not be taken into account under clause (i).

“(v) EXCEPTION FOR CERTAIN PREFERRED STOCK.—

“(I) IN GENERAL.—Dividends and redemptions with respect to applicable preferred stock shall not be taken into account under clause (i) to the extent that dividends accrue with respect to such stock at a specified rate in all events and without regard to the plan sponsor's income, and interest accrues on any unpaid dividends with respect to such stock.

“(II) APPLICABLE PREFERRED STOCK.—For purposes of subclause (I), the term ‘applicable preferred stock’ means preferred stock which was issued before March 1, 2010 (or which was issued after such date and is held by an employee benefit plan subject to the provisions of this title).

“(F) OTHER DEFINITIONS AND RULES.—For purposes of this paragraph—

“(i) PLAN SPONSOR.—The term ‘plan sponsor’ includes any member of the plan sponsor's controlled group (as defined in section 302(d)(3)).

“(ii) RESTRICTION PERIOD.—The term ‘restriction period’ means, with respect to any election year—

“(I) except as provided in subclause (II), the 3-year period beginning with the election year (or, if later, the first plan year beginning after December 31, 2009), and

“(II) if the plan sponsor elects 15-year amortization for the shortfall amortization base for the election year, the 5-year period beginning with the election year (or, if later, the first plan year beginning after December 31, 2009).

“(iii) ELECTIONS FOR MULTIPLE PLANS.—If a plan sponsor makes elections under paragraph (2)(D) with respect to 2 or more plans, the Secretary of the Treasury shall provide rules for the application of this paragraph to such plans, including rules for the ratable allocation of any installment acceleration amount among such plans on the basis of each plan's relative reduction in the plan's shortfall amortization installment for the first plan year in the amortization period described in subparagraph (A) (determined without regard to this paragraph).

“(iv) MERGERS AND ACQUISITIONS.—The Secretary of the Treasury shall prescribe rules for the application of paragraph (2)(D) and this paragraph in any case where there is a merger or acquisition involving a plan sponsor making the election under paragraph (2)(D).”.

(3) CONFORMING AMENDMENTS.—Section 303 of such Act (29 U.S.C. 1083) is amended—

(A) in subsection (c)(1), by striking “the shortfall amortization bases for such plan year and each of the 6 preceding plan years” and inserting “any shortfall amortization base which has not been fully amortized under this subsection”, and

(B) in subsection (j)(3), by adding at the end the following:

“(F) QUARTERLY CONTRIBUTIONS NOT TO INCLUDE CERTAIN INCREASED CONTRIBUTIONS.—Subparagraph (D) shall be applied without regard to any increase under subsection (c)(7).”.

(b) AMENDMENTS TO INTERNAL REVENUE CODE OF 1986.—

(1) IN GENERAL.—Paragraph (2) of section 430(c) is amended by adding at the end the following subparagraph:

“(D) SPECIAL ELECTION FOR ELIGIBLE PLAN YEARS.—

“(i) IN GENERAL.—If a plan sponsor elects to apply this subparagraph with respect to the shortfall amortization base of a plan for any eligible plan year (in this subparagraph and paragraph (7) referred to as an ‘election year’), then, notwithstanding subparagraphs (A) and (B)—

“(I) the shortfall amortization installments with respect to such base shall be determined under clause (ii) or (iii), whichever is specified in the election, and

“(II) the shortfall amortization installment for any plan year in the 9-plan-year period described in clause (ii) or the 15-plan-year period described in clause (iii), respectively, with respect to such shortfall amortization base is the annual installment determined under the applicable clause for that year for that base.

“(ii) 2 PLUS 7 AMORTIZATION SCHEDULE.—The shortfall amortization installments determined under this clause are—

“(I) in the case of the first 2 plan years in the 9-plan-year period beginning with the election year, interest on the shortfall amortization base of the plan for the election year (determined using the effective interest rate for the plan for the election year), and

“(II) in the case of the last 7 plan years in such 9-plan-year period, the amounts necessary to amortize the remaining balance of the shortfall amortization base of the plan for the election year in level annual installments over such last 7 plan years (using the segment rates under subparagraph (C) for the election year).

“(iii) 15-YEAR AMORTIZATION.—The shortfall amortization installments determined under this subparagraph are the amounts necessary to amortize the shortfall amortization base of the plan for the election year in level annual installments over the 15-plan-year period beginning with the election year (using the segment rates under subparagraph (C) for the election year).

“(iv) ELECTION.—

“(I) IN GENERAL.—The plan sponsor of a plan may elect to have this subparagraph apply to not more than 2 eligible plan years with respect to the plan, except that in the case of a plan described in section 106 of the Pension Protection Act of 2006, the plan sponsor may only elect to have this subparagraph apply to a plan year beginning in 2011.

“(II) AMORTIZATION SCHEDULE.—Such election shall specify whether the amortization schedule under clause (ii) or (iii) shall apply to an election year, except that if a plan sponsor elects to have this subparagraph apply to 2 eligible plan years, the plan sponsor must elect the same schedule for both years.

“(III) OTHER RULES.—Such election shall be made at such time, and in such form and manner, as shall be prescribed by the Secretary, and may be revoked only with the consent of the Secretary. The Secretary shall, before granting a revocation request, provide the Pension Benefit Guaranty Corporation an opportunity to comment on the conditions applicable to the treatment of any portion of the election year shortfall amortization base that remains unamortized as of the revocation date.

“(v) ELIGIBLE PLAN YEAR.—For purposes of this subparagraph, the term ‘eligible plan year’ means any plan year beginning in 2008, 2009, 2010, or 2011, except that a plan year shall only be treated as an eligible plan year if the due date under subsection (j)(1) for the payment of the minimum required contribution for such plan year occurs on or after the date of the enactment of this subparagraph.

“(vi) REPORTING.—A plan sponsor of a plan who makes an election under clause (i) shall—

“(I) give notice of the election to participants and beneficiaries of the plan, and

“(II) inform the Pension Benefit Guaranty Corporation of such election in such form and manner as the Director of the Pension Benefit Guaranty Corporation may prescribe.

“(vii) INCREASES IN REQUIRED INSTALLMENTS IN CERTAIN CASES.—For increases in required contributions in cases of excess compensation or extraordinary dividends or stock redemptions, see paragraph (7).”.

(2) INCREASES IN REQUIRED CONTRIBUTIONS IF EXCESS COMPENSATION PAID.—Section 430(c) is amended by adding at the end the following paragraph:

“(7) INCREASES IN ALTERNATE REQUIRED INSTALLMENTS IN CASES OF EXCESS COMPENSATION OR EXTRAORDINARY DIVIDENDS OR STOCK REDEMPTIONS.—

“(A) IN GENERAL.—If there is an installment acceleration amount with respect to a plan for any plan year in the restriction period with respect to an election year under paragraph (2)(D), then the shortfall amortization installment otherwise determined and payable under such paragraph for such plan year shall, subject to the limitation under subparagraph (B), be increased by such amount.

“(B) TOTAL INSTALLMENTS LIMITED TO SHORTFALL BASE.—Subject to rules prescribed by the Secretary, if a shortfall amortization installment with respect to any shortfall amortization base for an election year is required to be increased for any plan year under subparagraph (A)—

“(i) such increase shall not result in the amount of such installment exceeding the present value of such installment and all succeeding installments with respect to such base (determined without regard to such increase but after application of clause (ii)), and

“(ii) subsequent shortfall amortization installments with respect to such base shall, in reverse order of the otherwise required installments, be reduced to the extent necessary to limit the present value of such subsequent shortfall amortization installments (after application of this paragraph) to the present value of the remaining unamortized shortfall amortization base.

“(C) INSTALLMENT ACCELERATION AMOUNT.—For purposes of this paragraph—

“(i) IN GENERAL.—The term ‘installment acceleration amount’ means, with respect to any plan year in a restriction period with respect to an election year, the sum of—

“(I) the aggregate amount of excess employee compensation determined under subparagraph (D) with respect to all employees for the plan year, plus

“(II) the aggregate amount of extraordinary dividends and redemptions determined under subparagraph (E) for the plan year.

“(ii) ANNUAL LIMITATION.—The installment acceleration amount for any plan year shall not exceed the excess (if any) of—

“(I) the sum of the shortfall amortization installments for the plan year and all preceding plan years in the amortization period elected under paragraph (2)(D) with respect to the shortfall amortization base with respect to an election year, determined without regard to paragraph (2)(D) and this paragraph, over

“(II) the sum of the shortfall amortization installments for such plan year and all such preceding plan years, determined after application of paragraph (2)(D) (and in the case of any preceding plan year, after application of this paragraph).

“(iii) CARRYOVER OF EXCESS INSTALLMENT ACCELERATION AMOUNTS.—

“(I) IN GENERAL.—If the installment acceleration amount for any plan year (determined without regard to clause (ii)) exceeds the limitation under clause (ii), then, subject to subclause (II), such excess shall be treated as an installment acceleration amount with respect to the succeeding plan year.

“(II) CAP TO APPLY.—If any amount treated as an installment acceleration amount under subclause (I) or this subclause with respect to any succeeding plan year, when added to other installment acceleration amounts (determined without regard to clause (ii)) with respect to the plan year, exceeds the limitation under clause (ii), the portion of such amount representing such excess shall be treated as an installment acceleration amount with respect to the next succeeding plan year.

“(III) LIMITATION ON YEARS TO WHICH AMOUNTS CARRIED FOR.—No amount shall be carried under subclause (I) or (II) to a plan year which begins after the first plan year following the last plan year in the restriction period (or after the second plan year following such last plan year in the case of an election year with respect to which 15-year amortization was elected under paragraph (2)(D)).

“(IV) ORDERING RULES.—For purposes of applying subclause (II), installment acceleration amounts for the plan year (determined without regard to any carryover under this clause) shall be applied first against the limitation under clause (ii) and then carryovers to such plan year shall be applied against such limitation on a first-in, first-out basis.

“(D) EXCESS EMPLOYEE COMPENSATION.—For purposes of this paragraph—

“(i) IN GENERAL.—The term ‘excess employee compensation’ means, with respect to any employee for any plan year, the excess (if any) of—

“(I) the aggregate amount includible in income under this chapter for remuneration during the calendar year in which such plan year begins for services performed by the employee for the plan sponsor (whether or not performed during such calendar year), over

“(II) \$1,000,000.

“(ii) AMOUNTS SET ASIDE FOR NONQUALIFIED DEFERRED COMPENSATION.—If during any calendar year assets are set aside or reserved (directly or indirectly) in a trust (or other arrangement as determined by the Secretary), or transferred to such a trust or other arrangement, by a plan sponsor for purposes of paying deferred compensation of an employee under a nonqualified deferred compensation plan (as defined in section 409A) of the plan sponsor, then, for purposes of clause (i), the amount of such assets shall be treated as remuneration of the employee includible in income for the calendar year unless such amount is otherwise includible in income for such year. An amount to which the preceding sentence applies shall not be taken into account under this paragraph for any subsequent calendar year.

“(iii) ONLY REMUNERATION FOR CERTAIN POST-2009 SERVICES COUNTED.—Remuneration shall be taken into account under clause (i) only to the extent attributable to services performed by the employee for the plan sponsor after February 28, 2010.

“(iv) EXCEPTION FOR CERTAIN EQUITY PAYMENTS.—

“(I) IN GENERAL.—There shall not be taken into account under clause (i)(I) any amount includible in income with respect to the granting after February 28, 2010, of service recipient stock (within the meaning of section 409A) that, upon such grant, is subject to a substantial risk of forfeiture (as defined

under section 83(c)(1)) for at least 5 years from the date of such grant.

“(II) SECRETARIAL AUTHORITY.—The Secretary may by regulation provide for the application of this clause in the case of a person other than a corporation.

“(v) OTHER EXCEPTIONS.—The following amounts includible in income shall not be taken into account under clause (i)(I):

“(I) COMMISSIONS.—Any remuneration payable on a commission basis solely on account of income directly generated by the individual performance of the individual to whom such remuneration is payable.

“(II) CERTAIN PAYMENTS UNDER EXISTING CONTRACTS.—Any remuneration consisting of nonqualified deferred compensation, restricted stock, stock options, or stock appreciation rights payable or granted under a written binding contract that was in effect on March 1, 2010, and which was not modified in any material respect before such remuneration is paid.

“(vi) SELF-EMPLOYED INDIVIDUAL TREATED AS EMPLOYEE.—The term ‘employee’ includes, with respect to a calendar year, a self-employed individual who is treated as an employee under section 401(c) for the taxable year ending during such calendar year, and the term ‘compensation’ shall include earned income of such individual with respect to such self-employment.

“(vii) INDEXING OF AMOUNT.—In the case of any calendar year beginning after 2010, the dollar amount under clause (i)(II) shall be increased by an amount equal to—

“(I) such dollar amount, multiplied by

“(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year, determined by substituting ‘calendar year 2009’ for ‘calendar year 1992’ in subparagraph (B) thereof.

If the amount of any increase under clause (i) is not a multiple of \$1,000, such increase shall be rounded to the next lowest multiple of \$1,000.

“(E) EXTRAORDINARY DIVIDENDS AND REDEMPTIONS.—

“(i) IN GENERAL.—The amount determined under this subparagraph for any plan year is the excess (if any) of the sum of the dividends declared during the plan year by the plan sponsor plus the aggregate amount paid for the redemption of stock of the plan sponsor redeemed during the plan year over the greater of—

“(I) the adjusted net income (within the meaning of section 4043 of the Employee Retirement Income Security Act of 1974) of the plan sponsor for the preceding plan year, determined without regard to any reduction by reason of interest, taxes, depreciation, or amortization, or

“(II) in the case of a plan sponsor that determined and declared dividends in the same manner for at least 5 consecutive years immediately preceding such plan year, the aggregate amount of dividends determined and declared for such plan year using such manner.

“(ii) ONLY CERTAIN POST-2009 DIVIDENDS AND REDEMPTIONS COUNTED.—For purposes of clause (i), there shall only be taken into account dividends declared, and redemptions occurring, after February 28, 2010.

“(iii) EXCEPTION FOR INTRA-GROUP DIVIDENDS.—Dividends paid by one member of a controlled group (as defined in section 412(d)(3)) to another member of such group shall not be taken into account under clause (i).

“(iv) EXCEPTION FOR CERTAIN REDEMPTIONS.—Redemptions that are made pursuant to a plan maintained with respect to employees, or that are made on account of the death, disability, or termination of employment of an employee or shareholder, shall not be taken into account under clause (i).

“(v) EXCEPTION FOR CERTAIN PREFERRED STOCK.—

“(I) IN GENERAL.—Dividends and redemptions with respect to applicable preferred stock shall not be taken into account under clause (i) to the extent that dividends accrue with respect to such stock at a specified rate in all events and without regard to the plan sponsor’s income, and interest accrues on any unpaid dividends with respect to such stock.

“(II) APPLICABLE PREFERRED STOCK.—For purposes of subclause (I), the term ‘applicable preferred stock’ means preferred stock which was issued before March 1, 2010 (or which was issued after such date and is held by an employee benefit plan subject to the provisions of title I of Employee Retirement Income Security Act of 1974).

“(F) OTHER DEFINITIONS AND RULES.—For purposes of this paragraph—

“(i) PLAN SPONSOR.—The term ‘plan sponsor’ includes any member of the plan sponsor’s controlled group (as defined in section 412(d)(3)).

“(ii) RESTRICTION PERIOD.—The term ‘restriction period’ means, with respect to any election year—

“(I) except as provided in subclause (II), the 3-year period beginning with the election year (or, if later, the first plan year beginning after December 31, 2009), and

“(II) if the plan sponsor elects 15-year amortization for the shortfall amortization base for the election year, the 5-year period beginning with the election year (or, if later, the first plan year beginning after December 31, 2009).

“(iii) ELECTIONS FOR MULTIPLE PLANS.—If a plan sponsor makes elections under paragraph (2)(D) with respect to 2 or more plans, the Secretary shall provide rules for the application of this paragraph to such plans, including rules for the ratable allocation of any installment acceleration amount among such plans on the basis of each plan’s relative reduction in the plan’s shortfall amortization installment for the first plan year in the amortization period described in subparagraph (A) (determined without regard to this paragraph).

“(iv) MERGERS AND ACQUISITIONS.—The Secretary shall prescribe rules for the application of paragraph (2)(D) and this paragraph in any case where there is a merger or acquisition involving a plan sponsor making the election under paragraph (2)(D).”

(3) CONFORMING AMENDMENTS.—Section 430 is amended—

(A) in subsection (c)(1), by striking “the shortfall amortization bases for such plan year and each of the 6 preceding plan years” and inserting “any shortfall amortization base which has not been fully amortized under this subsection”, and

(B) in subsection (j)(3), by adding at the end the following:

“(F) QUARTERLY CONTRIBUTIONS NOT TO INCLUDE CERTAIN INCREASED CONTRIBUTIONS.—Subparagraph (D) shall be applied without regard to any increase under subsection (c)(7).”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2007.

#### SEC. 302. APPLICATION OF EXTENDED AMORTIZATION PERIOD TO PLANS SUBJECT TO PRIOR LAW FUNDING RULES.

(a) IN GENERAL.—Title I of the Pension Protection Act of 2006 is amended by redesignating section 107 as section 108 and by inserting the following after section 106:

#### “SEC. 107. APPLICATION OF EXTENDED AMORTIZATION PERIODS TO PLANS WITH DELAYED EFFECTIVE DATE.

“(a) IN GENERAL.—If the plan sponsor of a plan to which section 104, 105, or 106 of this Act applies elects to have this section apply

for any eligible plan year (in this section referred to as an 'election year'), section 302 of the Employee Retirement Income Security Act of 1974 and section 412 of the Internal Revenue Code of 1986 (as in effect before the amendments made by this subtitle and subtitle B) shall apply to such year in the manner described in subsection (b) or (c), whichever is specified in the election. All references in this section to 'such Act' or 'such Code' shall be to such Act or such Code as in effect before the amendments made by this subtitle and subtitle B.

“(b) APPLICATION OF 2 AND 7 RULE.—In the case of an election year to which this subsection applies—

“(1) 2-YEAR LOOKBACK FOR DETERMINING DEFICIT REDUCTION CONTRIBUTIONS FOR CERTAIN PLANS.—For purposes of applying section 302(d)(9) of such Act and section 412(l)(9) of such Code, the funded current liability percentage (as defined in subparagraph (C) thereof) for such plan for such plan year shall be such funded current liability percentage of such plan for the second plan year preceding the first election year of such plan.

“(2) CALCULATION OF DEFICIT REDUCTION CONTRIBUTION.—For purposes of applying section 302(d) of such Act and section 412(l) of such Code to a plan to which such sections apply (after taking into account paragraph (1))—

“(A) in the case of the increased unfunded new liability of the plan, the applicable percentage described in section 302(d)(4)(C) of such Act and section 412(l)(4)(C) of such Code shall be the third segment rate described in sections 104(b), 105(b), and 106(b) of this Act, and

“(B) in the case of the excess of the unfunded new liability over the increased unfunded new liability, such applicable percentage shall be determined without regard to this section.

“(c) APPLICATION OF 15-YEAR AMORTIZATION.—In the case of an election year to which this subsection applies, for purposes of applying section 302(d) of such Act and section 412(l) of such Code—

“(1) in the case of the increased unfunded new liability of the plan, the applicable percentage described in section 302(d)(4)(C) of such Act and section 412(l)(4)(C) of such Code for any pre-effective date plan year beginning with or after the first election year shall be the ratio of—

“(A) the annual installments payable in each year if the increased unfunded new liability for such plan year were amortized over 15 years, using an interest rate equal to the third segment rate described in sections 104(b), 105(b), and 106(b) of this Act, to

“(B) the increased unfunded new liability for such plan year, and

“(2) in the case of the excess of the unfunded new liability over the increased unfunded new liability, such applicable percentage shall be determined without regard to this section.

“(d) ELECTION.—

“(1) IN GENERAL.—The plan sponsor of a plan may elect to have this section apply to not more than 2 eligible plan years with respect to the plan, except that in the case of a plan to which section 106 of this Act applies, the plan sponsor may only elect to have this section apply to 1 eligible plan year.

“(2) AMORTIZATION SCHEDULE.—Such election shall specify whether the rules under subsection (b) or (c) shall apply to an election year, except that if a plan sponsor elects to have this section apply to 2 eligible plan years, the plan sponsor must elect the same rule for both years.

“(3) OTHER RULES.—Such election shall be made at such time, and in such form and

manner, as shall be prescribed by the Secretary of the Treasury, and may be revoked only with the consent of the Secretary of the Treasury.

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

“(1) ELIGIBLE PLAN YEAR.—For purposes of this subparagraph, the term ‘eligible plan year’ means any plan year beginning in 2008, 2009, 2010, or 2011, except that a plan year beginning in 2008 shall only be treated as an eligible plan year if the due date for the payment of the minimum required contribution for such plan year occurs on or after the date of the enactment of this clause.

“(2) PRE-EFFECTIVE DATE PLAN YEAR.—The term ‘pre-effective date plan year’ means, with respect to a plan, any plan year prior to the first year in which the amendments made by this subtitle and subtitle B apply to the plan.

“(3) INCREASED UNFUNDED NEW LIABILITY.—The term ‘increased unfunded new liability’ means, with respect to a year, the excess (if any) of the unfunded new liability over the amount of unfunded new liability determined as if the value of the plan's assets determined under subsection 302(c)(2) of such Act and section 412(c)(2) of such Code equaled the product of the current liability of the plan for the year multiplied by the funded current liability percentage (as defined in section 302(d)(8)(B) of such Act and 412(l)(8)(B) of such Code) of the plan for the second plan year preceding the first election year of such plan.

“(4) OTHER DEFINITIONS.—The terms ‘unfunded new liability’ and ‘current liability’ shall have the meanings set forth in section 302(d) of such Act and section 412(l) of such Code.”

(b) ELIGIBLE CHARITY PLANS.—Section 104 of the Pension Protection Act of 2006 is amended—

(1) by striking “eligible cooperative plan” wherever it appears in subsections (a) and (b) and inserting “eligible cooperative plan or an eligible charity plan”, and

(2) by adding at the end the following new subsection:

“(d) ELIGIBLE CHARITY PLAN DEFINED.—For purposes of this section, a plan shall be treated as an eligible charity plan for a plan year if the plan is maintained by more than one employer (determined without regard to section 414(c) of the Internal Revenue Code) and 100 percent of the employers are described in section 501(c)(3) of such Code.”

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall take effect as if included in the Pension Protection Act of 2006.

(2) ELIGIBLE CHARITY PLAN.—The amendments made by subsection (b) shall apply to plan years beginning after December 31, 2007, except that a plan sponsor may elect to apply such amendments to plan years beginning after December 31, 2008. Any such election shall be made at such time, and in such form and manner, as shall be prescribed by the Secretary of the Treasury, and may be revoked only with the consent of the Secretary of the Treasury.

#### SEC. 303. LOOKBACK FOR CERTAIN BENEFIT RESTRICTIONS.

(a) IN GENERAL.—

(1) AMENDMENT TO ERISA.—Section 206(g)(9) of the Employee Retirement Income Security Act of 1974 is amended by adding at the end the following:

“(D) SPECIAL RULE FOR CERTAIN YEARS.—Solely for purposes of any applicable provision—

“(i) IN GENERAL.—For plan years beginning on or after October 1, 2008, and before October 1, 2010, the adjusted funding target attainment percentage of a plan shall be the greater of—

“(I) such percentage, as determined without regard to this subparagraph, or

“(II) the adjusted funding target attainment percentage for such plan for the plan year beginning after October 1, 2007, and before October 1, 2008, as determined under rules prescribed by the Secretary of the Treasury.

“(ii) SPECIAL RULE.—In the case of a plan for which the valuation date is not the first day of the plan year—

“(I) clause (i) shall apply to plan years beginning after December 31, 2007, and before January 1, 2010, and

“(II) clause (i)(II) shall apply based on the last plan year beginning before November 1, 2007, as determined under rules prescribed by the Secretary of the Treasury.

“(iii) APPLICABLE PROVISION.—For purposes of this subparagraph, the term ‘applicable provision’ means—

“(I) paragraph (3), but only for purposes of applying such paragraph to a payment which, as determined under rules prescribed by the Secretary of the Treasury, is a payment under a social security leveling option which accelerates payments under the plan before, and reduces payments after, a participant starts receiving social security benefits in order to provide substantially similar aggregate payments both before and after such benefits are received, and

“(II) paragraph (4).”

(2) AMENDMENT TO INTERNAL REVENUE CODE OF 1986.—Section 436(j) of the Internal Revenue Code of 1986 is amended by adding at the end the following:

“(3) SPECIAL RULE FOR CERTAIN YEARS.—Solely for purposes of any applicable provision—

“(A) IN GENERAL.—For plan years beginning on or after October 1, 2008, and before October 1, 2010, the adjusted funding target attainment percentage of a plan shall be the greater of—

“(i) such percentage, as determined without regard to this paragraph, or

“(ii) the adjusted funding target attainment percentage for such plan for the plan year beginning after October 1, 2007, and before October 1, 2008, as determined under rules prescribed by the Secretary.

“(B) SPECIAL RULE.—In the case of a plan for which the valuation date is not the first day of the plan year—

“(i) subparagraph (A) shall apply to plan years beginning after December 31, 2007, and before January 1, 2010, and

“(ii) subparagraph (A)(ii) shall apply based on the last plan year beginning before November 1, 2007, as determined under rules prescribed by the Secretary.

“(C) APPLICABLE PROVISION.—For purposes of this paragraph, the term ‘applicable provision’ means—

“(i) subsection (d), but only for purposes of applying such paragraph to a payment which, as determined under rules prescribed by the Secretary, is a payment under a social security leveling option which accelerates payments under the plan before, and reduces payments after, a participant starts receiving social security benefits in order to provide substantially similar aggregate payments both before and after such benefits are received, and

“(ii) subsection (e).”

(b) INTERACTION WITH WRERA RULE.—Section 203 of the Worker, Retiree, and Employer Recovery Act of 2008 shall apply to a plan for any plan year in lieu of the amendments made by this section applying to sections 206(g)(4) of the Employee Retirement Income Security Act of 1974 and 436(e) of the Internal Revenue Code of 1986 only to the extent that such section produces a higher adjusted funding target attainment percentage for such plan for such year.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to plan years beginning on or after October 1, 2008.

(2) SPECIAL RULE.—In the case of a plan for which the valuation date is not the first day of the plan year, the amendments made by this section shall apply to plan years beginning after December 31, 2007.

**SEC. 304. LOOKBACK FOR CREDIT BALANCE RULE FOR PLANS MAINTAINED BY CHARITIES.**

(a) AMENDMENT TO ERISA.—Paragraph (3) of section 303(f) of the Employee Retirement Income Security Act of 1974 is amended by adding the following at the end thereof:

“(D) SPECIAL RULE FOR CERTAIN YEARS OF PLANS MAINTAINED BY CHARITIES.—

“(i) IN GENERAL.—For purposes of applying subparagraph (C) for plan years beginning after August 31, 2009, and before September 1, 2011, the ratio determined under such subparagraph for the preceding plan year shall be the greater of—

“(I) such ratio, as determined without regard to this subparagraph, or

“(II) the ratio for such plan for the plan year beginning after August 31, 2007, and before September 1, 2008, as determined under rules prescribed by the Secretary of the Treasury.

“(ii) SPECIAL RULE.—In the case of a plan for which the valuation date is not the first day of the plan year—

“(I) clause (i) shall apply to plan years beginning after December 31, 2008, and before January 1, 2011, and

“(II) clause (i)(II) shall apply based on the last plan year beginning before September 1, 2007, as determined under rules prescribed by the Secretary of the Treasury.

“(iii) LIMITATION TO CHARITIES.—This subparagraph shall not apply to any plan unless such plan is maintained exclusively by one or more organizations described in section 501(c)(3) of the Internal Revenue Code of 1986.”

(b) AMENDMENT TO INTERNAL REVENUE CODE OF 1986.—Paragraph (3) of section 430(f) of the Internal Revenue Code of 1986 is amended by adding the following at the end thereof:

“(D) SPECIAL RULE FOR CERTAIN YEARS OF PLANS MAINTAINED BY CHARITIES.—

“(i) IN GENERAL.—For purposes of applying subparagraph (C) for plan years beginning after August 31, 2009, and before September 1, 2011, the ratio determined under such subparagraph for the preceding plan year of a plan shall be the greater of—

“(I) such ratio, as determined without regard to this subsection, or

“(II) the ratio for such plan for the plan year beginning after August 31, 2007 and before September 1, 2008, as determined under rules prescribed by the Secretary.

“(ii) SPECIAL RULE.—In the case of a plan for which the valuation date is not the first day of the plan year—

“(I) clause (i) shall apply to plan years beginning after December 31, 2007, and before January 1, 2010, and

“(II) clause (i)(II) shall apply based on the last plan year beginning before September 1, 2007, as determined under rules prescribed by the Secretary.

“(iii) LIMITATION TO CHARITIES.—This subparagraph shall not apply to any plan unless such plan is maintained exclusively by one or more organizations described in section 501(c)(3).”

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to plan years beginning after August 31, 2009.

(2) SPECIAL RULE.—In the case of a plan for which the valuation date is not the first day

of the plan year, the amendments made by this section shall apply to plan years beginning after December 31, 2008.

**Subtitle B—Multiemployer Plans**

**SEC. 321. ADJUSTMENTS TO FUNDING STANDARD ACCOUNT RULES.**

(a) ADJUSTMENTS.—

(1) AMENDMENT TO ERISA.—Section 304(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1084(b)) is amended by adding at the end the following new paragraph:

“(8) SPECIAL RELIEF RULES.—Notwithstanding any other provision of this subsection—

“(A) AMORTIZATION OF NET INVESTMENT LOSSES.—

“(i) IN GENERAL.—A multiemployer plan with respect to which the solvency test under subparagraph (C) is met may treat the portion of any experience loss or gain attributable to net investment losses incurred in either or both of the first two plan years ending after August 31, 2008, as an item separate from other experience losses, to be amortized in equal annual installments (until fully amortized) over the period —

“(I) beginning with the plan year in which such portion is first recognized in the actuarial value of assets, and

“(II) ending with the last plan year in the 30-plan year period beginning with the plan year in which such net investment loss was incurred.

“(ii) COORDINATION WITH EXTENSIONS.—If this subparagraph applies for any plan year—

“(I) no extension of the amortization period under clause (i) shall be allowed under subsection (d), and

“(II) if an extension was granted under subsection (d) for any plan year before the election to have this subparagraph apply to the plan year, such extension shall not result in such amortization period exceeding 30 years.

“(iii) NET INVESTMENT LOSSES.—For purposes of this subparagraph—

“(I) IN GENERAL.—Net investment losses shall be determined in the manner prescribed by the Secretary of the Treasury on the basis of the difference between actual and expected returns (including any difference attributable to any criminally fraudulent investment arrangement).

“(II) CRIMINALLY FRAUDULENT INVESTMENT ARRANGEMENTS.—The determination as to whether an arrangement is a criminally fraudulent investment arrangement shall be made under rules substantially similar to the rules prescribed by the Secretary of the Treasury for purposes of section 165 of the Internal Revenue Code of 1986.

“(B) EXPANDED SMOOTHING PERIOD.—

“(i) IN GENERAL.—A multiemployer plan with respect to which the solvency test under subparagraph (C) is met may change its asset valuation method in a manner which—

“(I) spreads the difference between expected and actual returns for either or both of the first 2 plan years ending after August 31, 2008, over a period of not more than 10 years,

“(II) provides that for either or both of the first 2 plan years beginning after August 31, 2008, the value of plan assets at any time shall not be less than 80 percent or greater than 130 percent of the fair market value of such assets at such time, or

“(III) makes both changes described in subsections (I) and (II) to such method.

“(ii) ASSET VALUATION METHODS.—If this subparagraph applies for any plan year—

“(I) the Secretary of the Treasury shall not treat the asset valuation method of the plan as unreasonable solely because of the changes in such method described in clause (i), and

“(II) such changes shall be deemed approved by such Secretary under section 302(d)(1) and section 412(d)(1) of such Code.

“(iii) AMORTIZATION OF REDUCTION IN UNFUNDED ACCRUED LIABILITY.—If this subparagraph and subparagraph (A) both apply for any plan year, the plan shall treat any reduction in unfunded accrued liability resulting from the application of this subparagraph as a separate experience amortization base, to be amortized in equal annual installments (until fully amortized) over a period of 30 plan years rather than the period such liability would otherwise be amortized over.

“(C) SOLVENCY TEST.—The solvency test under this paragraph is met only if the plan actuary certifies that the plan is projected to have sufficient assets to timely pay expected benefits and anticipated expenditures over the amortization period, taking into account the changes in the funding standard account under this paragraph.

“(D) RESTRICTION ON BENEFIT INCREASES.—If subparagraph (A) or (B) apply to a multiemployer plan for any plan year, then, in addition to any other applicable restrictions on benefit increases, a plan amendment increasing benefits may not go into effect during either of the 2 plan years immediately following such plan year unless—

“(i) the plan actuary certifies that—

“(I) any such increase is paid for out of additional contributions not allocated to the plan immediately before the application of this paragraph to the plan, and

“(II) the plan's funded percentage and projected credit balances for such 2 plan years are reasonably expected to be at least as high as such percentage and balances would have been if the benefit increase had not been adopted, or

“(ii) the amendment is required as a condition of qualification under part I of subchapter D of chapter 1 of the Internal Revenue Code of 1986 or to comply with other applicable law.

“(E) REPORTING.—A plan sponsor of a plan to which this paragraph applies shall—

“(i) give notice of such application to participants and beneficiaries of the plan, and

“(ii) inform the Pension Benefit Guaranty Corporation of such application in such form and manner as the Director of the Pension Benefit Guaranty Corporation may prescribe.”

(2) AMENDMENT TO INTERNAL REVENUE CODE OF 1986.—Section 431(b) is amended by adding at the end the following new paragraph:

“(8) SPECIAL RELIEF RULES.—Notwithstanding any other provision of this subsection—

“(A) AMORTIZATION OF NET INVESTMENT LOSSES.—

“(i) IN GENERAL.—A multiemployer plan with respect to which the solvency test under subparagraph (C) is met may treat the portion of any experience loss or gain attributable to net investment losses incurred in either or both of the first two plan years ending after August 31, 2008, as an item separate from other experience losses, to be amortized in equal annual installments (until fully amortized) over the period —

“(I) beginning with the plan year in which such portion is first recognized in the actuarial value of assets, and

“(II) ending with the last plan year in the 30-plan year period beginning with the plan year in which such net investment loss was incurred.

“(ii) COORDINATION WITH EXTENSIONS.—If this subparagraph applies for any plan year—

“(I) no extension of the amortization period under clause (i) shall be allowed under subsection (d), and

“(II) if an extension was granted under subsection (d) for any plan year before the election to have this subparagraph apply to

the plan year, such extension shall not result in such amortization period exceeding 30 years.

“(iii) NET INVESTMENT LOSSES.—For purposes of this subparagraph—

“(I) IN GENERAL.—Net investment losses shall be determined in the manner prescribed by the Secretary on the basis of the difference between actual and expected returns (including any difference attributable to any criminally fraudulent investment arrangement).

“(II) CRIMINALLY FRAUDULENT INVESTMENT ARRANGEMENTS.—The determination as to whether an arrangement is a criminally fraudulent investment arrangement shall be made under rules substantially similar to the rules prescribed by the Secretary for purposes of section 165.

“(B) EXPANDED SMOOTHING PERIOD.—

“(i) IN GENERAL.—A multiemployer plan with respect to which the solvency test under subparagraph (C) is met may change its asset valuation method in a manner which—

“(I) spreads the difference between expected and actual returns for either or both of the first 2 plan years ending after August 31, 2008, over a period of not more than 10 years,

“(II) provides that for either or both of the first 2 plan years beginning after August 31, 2008, the value of plan assets at any time shall not be less than 80 percent or greater than 130 percent of the fair market value of such assets at such time, or

“(III) makes both changes described in subclauses (I) and (II) to such method.

“(ii) ASSET VALUATION METHODS.—If this subparagraph applies for any plan year—

“(I) the Secretary shall not treat the asset valuation method of the plan as unreasonable solely because of the changes in such method described in clause (i), and

“(II) such changes shall be deemed approved by the Secretary under section 302(d)(1) of the Employee Retirement Income Security Act of 1974 and section 412(d)(1).

“(iii) AMORTIZATION OF REDUCTION IN UNFUNDED ACCRUED LIABILITY.—If this subparagraph and subparagraph (A) both apply for any plan year, the plan shall treat any reduction in unfunded accrued liability resulting from the application of this subparagraph as a separate experience amortization base, to be amortized in equal annual installments (until fully amortized) over a period of 30 plan years rather than the period such liability would otherwise be amortized over.

“(C) SOLVENCY TEST.—The solvency test under this paragraph is met only if the plan actuary certifies that the plan is projected to have sufficient assets to timely pay expected benefits and anticipated expenditures over the amortization period, taking into account the changes in the funding standard account under this paragraph.

“(D) RESTRICTION ON BENEFIT INCREASES.—If subparagraph (A) or (B) apply to a multiemployer plan for any plan year, then, in addition to any other applicable restrictions on benefit increases, a plan amendment increasing benefits may not go into effect during either of the 2 plan years immediately following such plan year unless—

“(i) the plan actuary certifies that—

“(I) any such increase is paid for out of additional contributions not allocated to the plan immediately before the application of this paragraph to the plan, and

“(II) the plan's funded percentage and projected credit balances for such 2 plan years are reasonably expected to be at least as high as such percentage and balances would have been if the benefit increase had not been adopted, or

“(ii) the amendment is required as a condition of qualification under part I of sub-

chapter D or to comply with other applicable law.

“(E) REPORTING.—A plan sponsor of a plan to which this paragraph applies shall—

“(i) give notice of such application to participants and beneficiaries of the plan, and

“(ii) inform the Pension Benefit Guaranty Corporation of such application in such form and manner as the Director of the Pension Benefit Guaranty Corporation may prescribe.”

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall take effect as of the first day of the first plan year ending after August 31, 2008, except that any election a plan makes pursuant to this section that affects the plan's funding standard account for the first plan year beginning after August 31, 2008, shall be disregarded for purposes of applying the provisions of section 305 of the Employee Retirement Income Security Act of 1974 and section 432 of the Internal Revenue Code of 1986 to such plan year.

(2) RESTRICTIONS ON BENEFIT INCREASES.—Notwithstanding paragraph (1), the restrictions on plan amendments increasing benefits in sections 304(b)(8)(D) of such Act and 431(b)(8)(D) of such Code, as added by this section, shall take effect on the date of enactment of this Act.

#### TITLE IV—REVENUE OFFSETS

##### SEC. 401. ROLLOVERS FROM ELECTIVE DEFERRAL PLANS TO ROTH DESIGNATED ACCOUNTS.

(a) IN GENERAL.—Section 402A(c) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

“(4) TAXABLE ROLLOVERS TO DESIGNATED ROTH ACCOUNTS.—

“(A) IN GENERAL.—Notwithstanding sections 402(c), 403(b)(8), and 457(e)(16), in the case of any distribution to which this paragraph applies—

“(i) there shall be included in gross income any amount which would be includible were it not part of a qualified rollover contribution,

“(ii) section 72(t) shall not apply, and

“(iii) unless the taxpayer elects not to have this clause apply, any amount required to be included in gross income for any taxable year beginning in 2010 by reason of this paragraph shall be so included ratably over the 2-taxable-year period beginning with the first taxable year beginning in 2011.

Any election under clause (iii) for any distributions during a taxable year may not be changed after the due date for such taxable year.

“(B) DISTRIBUTIONS TO WHICH PARAGRAPH APPLIES.—In the case of an applicable retirement plan which includes a qualified Roth contribution program, this paragraph shall apply to a distribution from such plan other than from a designated Roth account which is contributed in a qualified rollover contribution to the designated Roth account maintained under such plan for the benefit of the individual to whom the distribution is made.

“(C) OTHER RULES.—The rules of subparagraphs (D), (E), and (F) of section 408A(d)(3) (as in effect for taxable years beginning after 2009) shall apply for purposes of this paragraph.”

##### SEC. 402. PARTICIPANTS IN GOVERNMENT SECTION 457 PLANS ALLOWED TO TREAT ELECTIVE DEFERRALS AS ROTH CONTRIBUTIONS.

(a) IN GENERAL.—Section 402A(e)(1) (defining applicable retirement plan) is amended by striking “and” at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting “, and”, and by adding at the end the following:

“(C) an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A).”

(b) ELECTIVE DEFERRALS.—Section 402A(e)(2) (defining elective deferral) is amended to read as follows:

“(2) ELECTIVE DEFERRAL.—The term ‘elective deferral’ means—

“(A) any elective deferral described in subparagraph (A) or (C) of section 402(g)(3), and

“(B) any elective deferral of compensation by an individual under an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A).”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2010.

##### SEC. 403. TEMPORARY ONE-YEAR FREEZE ON RAISES, BONUSES, AND OTHER SALARY INCREASES FOR FEDERAL EMPLOYEES.

Notwithstanding any other provision of law, civilian employees of the Federal Government in fiscal year 2011 shall not receive a cost of living adjustment or other salary increase, including a bonus. The salaries of members of the armed forces are exempt from the provisions of this section.

##### SEC. 404. CAPPING THE TOTAL NUMBER OF FEDERAL EMPLOYEES.

(a) IN GENERAL.—Not later than 3 months after the date of enactment of this Act, the head of each relevant Federal department or agency shall collaborate with the Director of the Office of Management and Budget to determine how many full-time employees the department or agency employs. For each new full-time employee added to any Federal department or agency for any purpose, the head of such department or agency shall ensure that the addition of such new employee is offset by a reduction of one existing full-time employee at such department or agency.

(b) INFORMATION ON TOTAL EMPLOYEES.—The Director of the Office of Management and Budget shall publicly disclose the total number of Federal employees, as well as a breakdown of Federal employees by agency and the annual salary by title of each Federal employee at an agency and update such information not less than once a year.

##### SEC. 405. COLLECTION OF UNPAID TAXES FROM EMPLOYEES OF THE FEDERAL GOVERNMENT.

(a) IN GENERAL.—Chapter 73 of title 5, United States Code, is amended by adding at the end the following:

“SUBCHAPTER VIII—COLLECTION OF UNPAID TAXES FROM EMPLOYEES OF THE FEDERAL GOVERNMENT

##### “§ 7381. Collection of unpaid taxes from employees of the Federal Government

“(a) DEFINITION.—For purposes of this section—

“(1) the term ‘seriously delinquent tax debt’ means an outstanding debt under the Internal Revenue Code of 1986 for which a notice of lien has been filed in public records pursuant to section 6323 of such Code, except that such term does not include—

“(A) a debt that is being paid in a timely manner pursuant to an agreement under section 6159 or section 7122 of such Code; and

“(B) a debt with respect to which a collection due process hearing under section 6330 of such Code, or relief under subsection (a), (b), or (f) of section 6015 of such Code, is requested or pending; and

“(2) the term ‘Federal employee’ means—

“(A) an employee, as defined by section 2105; and

“(B) an employee of the United States Congress, including Members of the House of Representatives and Senators.

“(b) COLLECTION OF UNPAID TAXES.—The Internal Revenue Service shall coordinate

with the Department of Treasury and the hiring agency of a Federal employee who has a seriously delinquent tax debt to collect such taxes by withholding a portion of the employee's salary over a period set by the hiring agency to ensure prompt payment."

(b) **CLERICAL AMENDMENT.**—The analysis for chapter 73 of title 5, United States Code, is amended by adding at the end the following:

"SUBCHAPTER VIII—COLLECTION OF UNPAID TAXES FROM EMPLOYEES OF THE FEDERAL GOVERNMENT

"Sec. 7381. Collection of unpaid taxes from employees of the Federal Government."

**SEC. 406. REDUCING PRINTING AND PUBLISHING COSTS OF GOVERNMENT DOCUMENTS.**

Within 90 days after the date of enactment of this Act, the Director of the Office of Management and Budget shall coordinate with the heads of Federal departments and independent agencies to determine which Government publications could be available on Government websites and no longer printed and to devise a strategy to reduce overall Government printing costs by no less than a total of \$4,600,000 over the 10-year period beginning with fiscal year 2010. The Director shall ensure that essential printed documents prepared for Social Security recipients, Medicare beneficiaries, and other populations in areas with limited internet access or use continue to remain available.

**SEC. 407. REDUCING EXCESSIVE DUPLICATION, OVERHEAD AND SPENDING WITHIN THE FEDERAL GOVERNMENT.**

(a) **REDUCING DUPLICATION.**—The Director of the Office of Management Budget and the Secretary of each department (or head of each independent agency) shall work with the Chairman and ranking member of the relevant congressional appropriations subcommittees and the congressional authorizing committees and the Director of the Office of Management Budget to consolidate programs with duplicative goals, missions, and initiatives.

(b) **CONTROLLING BUREAUCRATIC OVERHEAD COSTS.**—Each Federal department and agency shall reduce annual administrative expenses by at least five percent in fiscal year 2011.

(c) **RESCISSIONS OF EXCESSIVE SPENDING.**—There is hereby rescinded an amount equal to 5 percent of—

(1) the budget authority provided (or obligation limit imposed) for fiscal year 2010 for any discretionary account in any other fiscal year 2010 appropriation Act;

(2) the budget authority provided in any advance appropriation for fiscal year 2010 for any discretionary account in any prior fiscal year appropriation Act; and

(3) the contract authority provided in fiscal year 2010 for any program subject to limitation contained in any fiscal year 2010 appropriation Act.

(d) **PROPORTIONATE APPLICATION.**—Any rescission made by subsection (a) shall be applied proportionately—

(1) to each discretionary account and each item of budget authority described in such subsection; and

(2) within each such account and item, to each program, project, and activity (with programs, projects, and activities as delineated in the appropriation Act or accompanying reports for the relevant fiscal year covering such account or item, or for accounts and items not included in appropriation Acts, as delineated in the most recently submitted President's budget)

(e) **EXCEPTIONS.**—This section shall not apply to discretionary authority appropriated or otherwise made available to the

Department of Veterans Affairs and the Department of Defense.

(f) **OMB REPORT.**—Within 30 days after the date of enactment of this section, the Director of the Office of Management and Budget shall submit to the Committees on Appropriations of the House of Representatives and the Senate a report specifying the account and amount of each rescission made pursuant to this section and the report shall be posted on the public website of the Office of Management and Budget.

**SEC. 408. ELIMINATING NONESSENTIAL GOVERNMENT TRAVEL.**

Within 60 days after the date of enactment of this Act, the Director of the Office of Management and Budget, in consultation with the heads of the Federal departments and agencies, shall establish a definition of "non-essential travel" and criteria to determine if travel-related expenses and requests by Federal employees meet the definition of "non-essential travel". No travel expenses paid for, in whole or in part, with Federal funds shall be paid by the Federal Government unless a request is made prior to the travel and the requested travel meets the criteria established by this section. Any travel request that does not meet the definition and criteria shall be disallowed, including reimbursement for air flights, automobile rentals, train tickets, lodging, per diem, and other travel-related costs. The definition established by the Director of the Office of Management and Budget may include exemptions in the definition, including travel related to national defense, homeland security, border security, national disasters, and other emergencies. The Director of the Office of Management and Budget shall ensure that all travel costs paid for in part or whole by the Federal Government not related to national defense, homeland security, border security, national disasters, and other emergencies do not exceed \$5,000,000,000 annually.

**SEC. 409. ELIMINATING BONUSES FOR POOR PERFORMANCE BY GOVERNMENT CONTRACTORS.**

(a) **GUIDANCE ON LINKING OF AWARD AND INCENTIVE FEES TO OUTCOMES.**—Not later than 180 days after the date of enactment of this Act, each Federal department or agency shall issue guidance, with detailed implementation instructions (including definitions), on the appropriate use of award and incentive fees in department or agency programs.

(b) **ELEMENTS.**—The guidance under subsection (a) shall—

(1) ensure that all new contracts using award fees link such fees to outcomes (which shall be defined in terms of program cost, schedule, and performance);

(2) establish standards for identifying the appropriate level of officials authorized to approve the use of award and incentive fees in new contracts;

(3) provide guidance on the circumstances in which contractor performance may be judged to be excellent or superior and the percentage of the available award fee which contractors should be paid for such performance;

(4) establish standards for determining the percentage of the available award fee, if any, which contractors should be paid for performance that is judged to be acceptable, average, expected, good, or satisfactory;

(5) ensure that no award fee may be paid for contractor performance that is judged to be below satisfactory performance or performance that does not meet the basic requirements of the contract;

(6) provide specific direction on the circumstances, if any, in which it may be appropriate to roll over award fees that are not earned in one award fee period to a subsequent award fee period or periods;

(7) ensure that the Department or agency—

(A) collects relevant data on award and incentive fees paid to contractors; and

(B) has mechanisms in place to evaluate such data on a regular basis; and

(8) include performance measures to evaluate the effectiveness of award and incentive fees as a tool for improving contractor performance and achieving desired program outcomes.

(c) **RETURN OF UNEARNED BONUSES.**—Any funds intended to be awarded as incentive fees that are not paid due to contractors inability to meet the criteria established by this section shall be returned to the Treasury.

**SEC. 410. \$1,000,000,000 LIMITATION ON VOLUNTARY PAYMENTS TO THE UNITED NATIONS.**

Notwithstanding any other provision of law, the Secretary of State shall ensure no more than \$1,000,000,000 is provided to the United Nations each year in excess of the United States' annual assessed contributions.

**SEC. 411. RESCINDING A STATE DEPARTMENT TRAINING FACILITY UNWANTED BY RESIDENTS OF THE COMMUNITY IN WHICH IT IS PLANNED TO BE CONSTRUCTED.**

Notwithstanding any other provision of law, no Federal funds may be spent to construct a State Department training facility in Ruthsberg, Maryland, and any funding obligated for the facility by Public Law 111-5 are rescinded, *Provided That*, this section does not prohibit funds otherwise appropriated to be spent by the State Department for training facilities in other jurisdictions in accordance with law.

**SEC. 412. REDUCING BUDGETS OF MEMBERS OF CONGRESS.**

(a) **IN GENERAL.**—Of the funds made available under Public Law 111-68 for the legislative branch, \$100,000,000 in unobligated balances are permanently rescinded on a pro rata basis: *Provided*, That the rescissions made by the section shall not apply to funds made available to the Capitol Police.

(b) **REPORTING.**—The Director of the Office of Management and Budget shall report to Congress the amounts rescinded under subsection (a).

**SEC. 413. DISPOSING OF UNNEEDED AND UNUSED GOVERNMENT PROPERTY.**

(a) **IN GENERAL.**—Chapter 5 of subtitle I of title 40, United States Code, is amended by adding at the end the following:

"SUBCHAPTER VII—EXPEDITED DISPOSAL OF REAL PROPERTY

**"§ 621. Definitions**

"In this subchapter:

"(1) **DIRECTOR.**—The term 'Director' means the Director of the Office of Management and Budget.

"(2) **EXPEDITED DISPOSAL OF A REAL PROPERTY.**—The term 'expedited disposal of a real property' means a demolition of real property or a sale of real property for cash that is conducted under the requirements of section 545.

"(3) **LANDHOLDING AGENCY.**—The term 'landholding agency' means a landholding agency as defined under section 501(i)(3) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411(i)(3)).

"(4) **REAL PROPERTY.**—

"(A) **IN GENERAL.**—The term 'real property' means—

"(i) a parcel of real property under the administrative jurisdiction of the Federal Government that is—

"(I) excess;

"(II) surplus;

"(III) underperforming; or

"(IV) otherwise not meeting the needs of the Federal Government, as determined by the Director; and

“(ii) a building or other structure located on real property described under clause (i).

“(B) EXCLUSION.—The term ‘real property’ excludes any parcel of real property or building or other structure located on such real property that is to be closed or realigned under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

#### “§ 622. Disposal program

“(a) The Director of the Office of Management and Budget shall dispose of by sale or auction not less than \$15,000,000,000 worth of real property that is not meeting Federal Government from fiscal year 2010 to fiscal year 2015.

“(b) Agencies shall recommend candidate disposition real properties to the Director for participation in the pilot program established under section 622.

“(c) The Director, with the concurrence of the head of the executive agency concerned and consistent with the criteria established in this subchapter, may then select such candidate real properties for participation in the program and notify the recommending agency accordingly.

“(d) The Director shall ensure that all real properties selected for disposition under this section are listed on a website that shall—

“(1) be updated routinely; and

“(2) include the functionality to allow members of the public, at their option, to receive such updates through electronic mail.

“(e) The Director may transfer real property identified in the enactment of this section to the Department of Housing and Urban Development if the Secretary of Housing and Urban Development has determined such properties are suitable for use to assist the homeless.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 5 of subtitle I of title 40, United States Code, is amended by inserting after the item relating to section 611 the following:

“SUBCHAPTER VII—EXPEDITED DISPOSAL OF REAL PROPERTY

“Sec. 621. Definitions .

“Sec. 622. Disposal program.”.

#### SEC. 414. AUCTIONING AND SELLING OF UNUSED AND UNNEEDED EQUIPMENT.

(a) Notwithstanding section 1033 of the National Defense Authorization Act of 1997 or any other provision of law, the Secretary of Defense shall auction or sell unused, unnecessary, or surplus supplies and equipment without providing preference to State or local governments.

(b) The Secretary may make exceptions to the sale or auction of such equipment for transfers of excess military property to state and local law enforcement agencies related to counter-drug efforts, counter-terrorism activities, or other efforts determined to be related to national defense or homeland security. The Secretary of Defense may sell such equipment to State and local agencies at fair market value.

#### SEC. 415. RESCINDING UNSPENT FEDERAL FUNDS.

(a) IN GENERAL.—Notwithstanding any other provision of law, of all available unobligated Federal funds, \$80,000,000,000 in appropriated discretionary unexpired funds are rescinded.

(b) IMPLEMENTATION.—Not later than 60 days after the date of enactment of this Act, the Director of the Office of Management and Budget shall—

(1) identify the accounts and amounts rescinded to implement subsection (a); and

(2) submit a report to the Secretary of the Treasury and Congress of the accounts and amounts identified under paragraph (1) for rescission.

(c) EXCEPTION.—This section shall not apply to the unobligated Federal funds of the Department of Defense or the Department of Veterans Affairs.

#### SEC. 416. USE OF STIMULUS FUNDS TO OFFSET SPENDING.

The unobligated balance of each amount appropriated or made available under the American Recovery and Reinvestment Act of 2009 (Public Law 111–5) (other than under title X of division A of such Act) is rescinded such that the aggregate amount of such rescissions equal \$37,500,000,000 in order to offset the net increase in spending resulting from the provisions of, and amendments made by, this Act. The Director of the Office of Management and Budget shall report to each congressional committee the amounts so rescinded within the jurisdiction of such committee.

#### SEC. 417. DEFICIT REDUCTION TRUST FUND.

(a) IN GENERAL.—Subchapter I of chapter 31 of title 31, United States Code, is amended by adding at the end the following new section:

##### “§3114. Certain rescinded stimulus funds to reduce public debt

“(a) There is established in the Treasury of the United States a trust fund to be known as the ‘Deficit Reduction Trust Fund’ (in this section referred to as the ‘Trust Fund’).

“(b) There is appropriated to the Trust Fund the following amounts:

“(1) Amounts equivalent to the reductions in Federal spending, as estimated by the Secretary from time to time, as a result of the provisions of sections 403, 404, 406, 407 (other than subsection (c) thereof), 408, 409, 410, and 414 of the American Jobs and Closing Tax Loopholes Act of 2010.

“(2) Amounts equivalent to the amounts rescinded under sections 407(c), 411, 412, 415, and 416 of the American Jobs and Closing Tax Loopholes Act of 2010.

“(3) Amounts equivalent to the amounts received under the program established under section 622 of title 5, United States Code.

“(4) The amount of taxes received in the Treasury attributable to section 7384 of the Internal Revenue Code of 1986 and the amendments made by sections 401 and 402 of the American Jobs and Closing Tax Loopholes Act of 2010, as estimated by the Secretary.

“(c) The Secretary of the Treasury shall use the moneys in the Trust Fund solely to pay at maturity, or to redeem or buy before maturity, an obligation of the Government included in the public debt.

“(d) Any obligation of the Government which is paid, redeemed, or bought with money from the Trust Fund shall be canceled and retired and may not be reissued.”.

(b) CONFORMING AMENDMENT.—The table of sections for subchapter I of chapter 31 of title 31, United States Code, is amended by adding at the end the following new item:

“3114. Certain rescinded stimulus funds to reduce public debt.”.

#### TITLE V—UNEMPLOYMENT, HEALTH, AND OTHER ASSISTANCE

##### Subtitle A—Unemployment Insurance and Other Assistance

#### SEC. 501. EXTENSION OF UNEMPLOYMENT INSURANCE PROVISIONS.

(a) IN GENERAL.—(1) Section 4007 of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 26 U.S.C. 3304 note) is amended—

(A) by striking “June 2, 2010” each place it appears and inserting “November 30, 2010”; and

(B) in the heading for subsection (b)(2), by striking “JUNE 2, 2010” and inserting “NOVEMBER 30, 2010”; and

(C) in subsection (b)(3), by striking “November 6, 2010” and inserting “April 30, 2011”.

(2) Section 2002(e) of the Assistance for Unemployed Workers and Struggling Families Act, as contained in Public Law 111–5 (26 U.S.C. 3304 note; 123 Stat. 438), is amended—

(A) in paragraph (1)(B), by striking “June 2, 2010” and inserting “November 30, 2010”; and

(B) in the heading for paragraph (2), by striking “JUNE 2, 2010” and inserting “NOVEMBER 30, 2010”; and

(C) in paragraph (3), by striking “December 7, 2010” and inserting “May 31, 2011”.

(3) Section 2005 of the Assistance for Unemployed Workers and Struggling Families Act, as contained in Public Law 111–5 (26 U.S.C. 3304 note; 123 Stat. 444), is amended—

(A) by striking “June 2, 2010” each place it appears and inserting “December 1, 2010”; and

(B) in subsection (c), by striking “November 6, 2010” and inserting “May 1, 2011”.

(4) Section 5 of the Unemployment Compensation Extension Act of 2008 (Public Law 110–449; 26 U.S.C. 3304 note) is amended by striking “November 6, 2010” and inserting “April 30, 2011”.

(b) FUNDING.—Section 4004(e)(1) of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 26 U.S.C. 3304 note) is amended—

(1) in subparagraph (D), by striking “and” at the end; and

(2) by inserting after subparagraph (E) the following:

“(F) the amendments made by section 501(a)(1) of the American Jobs and Closing Tax Loopholes Act of 2010; and”.

(c) CONDITIONS FOR RECEIVING EMERGENCY UNEMPLOYMENT COMPENSATION.—Section 4001(d)(2) of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 26 U.S.C. 3304 note) is amended, in the matter preceding subparagraph (A), by inserting before “shall apply” the following: “(including terms and conditions relating to availability for work, active search for work, and refusal to accept work)”.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of the Continuing Extension Act of 2010 (Public Law 111–157).

#### SEC. 502. COORDINATION OF EMERGENCY UNEMPLOYMENT COMPENSATION WITH REGULAR COMPENSATION.

(a) CERTAIN INDIVIDUALS NOT INELIGIBLE BY REASON OF NEW ENTITLEMENT TO REGULAR BENEFITS.—Section 4002 of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 26 U.S.C. 3304 note) is amended by adding at the end the following:

“(g) COORDINATION OF EMERGENCY UNEMPLOYMENT COMPENSATION WITH REGULAR COMPENSATION.—

“(1) If—

“(A) an individual has been determined to be entitled to emergency unemployment compensation with respect to a benefit year,

“(B) that benefit year has expired,

“(C) that individual has remaining entitlement to emergency unemployment compensation with respect to that benefit year, and

“(D) that individual would qualify for a new benefit year in which the weekly benefit amount of regular compensation is at least either \$100 or 25 percent less than the individual’s weekly benefit amount in the benefit year referred to in subparagraph (A), then the State shall determine eligibility for compensation as provided in paragraph (2).

“(2) For individuals described in paragraph (1), the State shall determine whether the individual is to be paid emergency unemployment compensation or regular compensation for a week of unemployment using one of the following methods:

“(A) The State shall, if permitted by State law, establish a new benefit year, but defer the payment of regular compensation with

respect to that new benefit year until exhaustion of all emergency unemployment compensation payable with respect to the benefit year referred to in paragraph (1)(A);

“(B) The State shall, if permitted by State law, defer the establishment of a new benefit year (which uses all the wages and employment which would have been used to establish a benefit year but for the application of this paragraph), until exhaustion of all emergency unemployment compensation payable with respect to the benefit year referred to in paragraph (1)(A);

“(C) The State shall pay, if permitted by State law—

“(i) regular compensation equal to the weekly benefit amount established under the new benefit year, and

“(ii) emergency unemployment compensation equal to the difference between that weekly benefit amount and the weekly benefit amount for the expired benefit year; or

“(D) The State shall determine rights to emergency unemployment compensation without regard to any rights to regular compensation if the individual elects to not file a claim for regular compensation under the new benefit year.”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to individuals whose benefit years, as described in section 4002(g)(1)(B) the Supplemental Appropriations Act, 2008 (Public Law 110-252; 26 U.S.C. 3304 note), as amended by this section, expire after the date of enactment of this Act.

#### **Subtitle B—Physician Payment Update and Other Provisions**

##### **PART I—PHYSICIAN PAYMENT UPDATE**

###### **SEC. 511. PHYSICIAN PAYMENT UPDATE.**

Section 1848 of the Social Security Act (42 U.S.C. 1395w-4) is amended—

(1) in subsection (d)—

(A) in paragraph (10), in the heading, by striking “PORTION” and inserting “THE FIRST 5 MONTHS”; and

(B) by adding at the end the following new paragraph:

“(11) UPDATE FOR THE LAST 7 MONTHS OF 2010 AND FOR 2011 AND 2012.—

“(A) IN GENERAL.—Subject to paragraphs (7)(B), (8)(B), (9)(B), and (10)(B), in lieu of the update to the single conversion factor established in paragraph (1)(C) that would otherwise apply—

“(i) for 2010 for the period beginning on June 1, 2010, and ending on December 31, 2010, the update to the single conversion factor shall be 2.0 percent; and

“(ii) for each of 2011 and 2012, the update to the single conversion factor shall be 2.0 percent.

“(B) NO EFFECT ON COMPUTATION OF CONVERSION FACTOR FOR 2013 AND SUBSEQUENT YEARS.—The conversion factor under this subsection shall be computed under paragraph (1)(A) for 2013 and subsequent years as if subparagraph (A) had never applied.”; and

(2) in subsection (f), by adding at the end the following new paragraph:

“(5) TEMPORARY ADJUSTMENT.—In determining the growth rate under paragraph (2) for 2014, the Secretary's estimate of the percentage change otherwise determined under paragraph (2)(D) shall be reduced by 4.0 percentage points.”.

##### **PART II—EXTENSION OF EXPIRING PROVISIONS**

###### **SEC. 521. EXTENSION OF MMA SECTION 508 RECLASSIFICATIONS.**

Section 106(a) of division B of the Tax Relief and Health Care Act of 2006 (42 U.S.C. 1395 note), as amended by section 117 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110-173), section 124 of the Medicare Improvements for Patients

and Providers Act of 2008 (Public Law 110-275), and sections 3137(a) and 10317 of the Patient Protection and Affordable Care Act (Public Law 111-148), is amended by striking “September 30, 2010” and inserting “September 30, 2011”.

###### **SEC. 522. EXTENSION OF MEDICARE WORK GEOGRAPHIC ADJUSTMENT FLOOR.**

Section 1848(e)(1)(E) of the Social Security Act (42 U.S.C. 1395w-4(e)(1)(E)), as amended by section 3102 of the Patient Protection and Affordable Care Act (Public Law 111-148), is amended by striking “before January 1, 2011” and inserting “before January 1, 2012”.

###### **SEC. 523. EXTENSION OF EXCEPTIONS PROCESS FOR MEDICARE THERAPY CAPS.**

Section 1833(g)(5) of the Social Security Act (42 U.S.C. 1395l(g)(5)) is amended by striking “and ending on” and all that follows through “2010” and inserting “and ending on December 31, 2011”.

###### **SEC. 524. EXTENSION OF PAYMENT FOR TECHNICAL COMPONENT OF CERTAIN PHYSICIAN PATHOLOGY SERVICES.**

Section 542(c) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (as enacted into law by section 1(a)(6) of Public Law 106-554), as amended by section 732 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (42 U.S.C. 1395w-4 note), section 104 of division B of the Tax Relief and Health Care Act of 2006 (42 U.S.C. 1395w-4 note), section 104 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110-173), section 136 of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110-275), and section 3104 of the Patient Protection and Affordable Care Act (Public Law 111-148) is amended by striking “and 2010” and inserting “2010, and 2011”.

###### **SEC. 525. EXTENSION OF AMBULANCE ADD-ONS.**

(a) **GROUND AMBULANCE.**—Section 1834(1)(13)(A) of the Social Security Act (42 U.S.C. 1395m(1)(13)(A)), as amended by sections 3105(a) and 10311(a) of the Patient Protection and Affordable Care Act (Public Law 111-148), is amended—

(1) in the matter preceding clause (i), by striking “2011” and inserting “2012”; and

(2) in each of clauses (i) and (ii), by striking “January 1, 2011” and inserting “January 1, 2012” each place it appears.

(b) **AIR AMBULANCE.**—Section 146(b)(1) of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110-275), as amended by sections 3105(b) and 10311(b) of the Patient Protection and Affordable Care Act (Public Law 111-148), is amended by striking “December 31, 2010” and inserting “December 31, 2011”.

(c) **SUPER RURAL AMBULANCE.**—Section 1834(1)(12)(A) of the Social Security Act (42 U.S.C. 1395m(1)(12)(A)), as amended by sections 3105(c) and 10311(c) of the Patient Protection and Affordable Care Act (Public Law 111-148), is amended by striking “2011” and inserting “2012”.

###### **SEC. 526. EXTENSION OF PHYSICIAN FEE SCHEDULE MENTAL HEALTH ADD-ON PAYMENT.**

Section 138(a)(1) of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110-275), as amended by section 3107 of the Patient Protection and Affordable Care Act (Public Law 111-148), is amended by striking “December 31, 2010” and inserting “December 31, 2011”.

###### **SEC. 527. EXTENSION OF OUTPATIENT HOLD HARMLESS PROVISION.**

Section 1833(t)(7)(D)(i) of the Social Security Act (42 U.S.C. 1395l(t)(7)(D)(i)), as amended by section 3121(a) of the Patient Protection and Affordable Care Act (Public Law 111-148), is amended—

(1) in subclause (II)—

(A) in the first sentence, by striking “2011” and inserting “2012”; and

(B) in the second sentence, by striking “or 2010” and inserting “2010, or 2011”; and

(2) in subclause (III), by striking “January 1, 2011” and inserting “January 1, 2012”.

###### **SEC. 528. EXTENSION OF MEDICARE REASONABLE COSTS PAYMENTS FOR CERTAIN CLINICAL DIAGNOSTIC LABORATORY TESTS FURNISHED TO HOSPITAL PATIENTS IN CERTAIN RURAL AREAS.**

Section 416(b) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (42 U.S.C. 1395l-4), as amended by section 105 of division B of the Tax Relief and Health Care Act of 2006 (42 U.S.C. 1395l note), section 107 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (42 U.S.C. 1395l note), and section 3122 of the Patient Protection and Affordable Care Act (Public Law 111-148), is amended by striking “the 1-year period beginning on July 1, 2010” and inserting “the 2-year period beginning on July 1, 2010”.

###### **SEC. 529. EXTENSION OF THE QUALIFYING INDIVIDUAL (QI) PROGRAM.**

(a) **EXTENSION.**—Section 1902(a)(10)(E)(iv) of the Social Security Act (42 U.S.C. 1396a(a)(10)(E)(iv)) is amended by striking “December 2010” and inserting “December 2011”.

(b) **EXTENDING TOTAL AMOUNT AVAILABLE FOR ALLOCATION.**—Section 1933(g) of such Act (42 U.S.C. 1396u-3(g)) is amended—

(1) in paragraph (2)—

(A) by striking “and” at the end of subparagraph (M);

(B) in subparagraph (N), by striking the period at the end and inserting a semicolon; and

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

“(O) for the period that begins on January 1, 2011, and ends on September 30, 2011, the total allocation amount is \$720,000,000; and

“(P) for the period that begins on October 1, 2011, and ends on December 31, 2011, the total allocation amount is \$280,000,000.”; and

(2) in paragraph (3), in the matter preceding subparagraph (A), by striking “or (N)” and inserting “(N), or (P)”.

###### **SEC. 530. EXTENSION OF TRANSITIONAL MEDICAL ASSISTANCE (TMA).**

Sections 1902(e)(1)(B) and 1925(f) of the Social Security Act (42 U.S.C. 1396a(e)(1)(B), 1396r-6(f)) are each amended by striking “December 31, 2010” and inserting “December 31, 2011”.

###### **SEC. 531. EXTENSION OF DRA COURT IMPROVEMENT GRANTS.**

Section 438 of the Social Security Act (42 U.S.C. 629h) is amended—

(1) in subsection (c)(2)(A), by striking “2010” and inserting “2011”; and

(2) in subsection (e), by striking “2010” and inserting “2011”.

##### **PART III—CHANGES TO THE PATIENT PROTECTION AND AFFORDABLE CARE ACT AND ADDITIONAL PROVISIONS**

###### **Subpart A—Changes to the Patient Protection and Affordable Care Act and Additional Provisions**

###### **SEC. 541. EXPANSION OF AFFORDABILITY EXCEPTION TO INDIVIDUAL MANDATE.**

Section 5000A(e)(1)(A) of the Internal Revenue Code of 1986, as added by section 1501(b) of the Patient Protection and Affordable Care Act (Public Law 111-148), is amended by striking “8 percent” and inserting “5 percent”.

###### **SEC. 542. REPLACEMENT OF MEDICAID PRIMARY CARE PAYMENT CLIFF.**

(a) **PAYMENTS TO PRIMARY CARE PROVIDERS.**—

(1) **GRANTS TO STATES TO INCREASE PAYMENTS.**—From the amounts appropriated

under paragraph (2), the Secretary of Health and Human Services shall award grants to States with an approved State plan amendment under the Medicaid program under title XIX of the Social Security Act to permanently increase payment rates to primary care providers under the State Medicaid program above the rates applicable under the State Medicaid program on the date of enactment of this Act. Funds paid to a State from such a grant shall only be used for expenditures attributable to the additional amounts paid to such providers as a result of the increase in such rates.

(2) APPROPRIATION.—Out of any funds in the Treasury not otherwise appropriated, there is appropriated to the Secretary of Health and Human Services on January 1, 2013, \$8,000,000,000, to remain available until expended.

(b) REPEAL OF MEDICAID PRIMARY CARE PAYMENT CLIFF.—Section 1202 of the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152) (and the amendments made by such section) is repealed.

**SEC. 543. ESTABLISH A CMS-IRS DATA MATCH TO IDENTIFY FRAUDULENT PROVIDERS.**

(a) AUTHORITY TO DISCLOSE RETURN INFORMATION CONCERNING OUTSTANDING TAX DEBTS FOR PURPOSES OF ENHANCING MEDICARE PROGRAM INTEGRITY.—

(1) IN GENERAL.—Section 6103(l) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

“(22) DISCLOSURE OF RETURN INFORMATION TO DEPARTMENT OF HEALTH AND HUMAN SERVICES FOR PURPOSES OF ENHANCING MEDICARE PROGRAM INTEGRITY.—

“(A) IN GENERAL.—The Secretary shall, upon written request from the Secretary of Health and Human Services, disclose to officers and employees of the Department of Health and Human Services return information with respect to a taxpayer who has applied to enroll, or reenroll, as a provider of services or supplier under the Medicare program under title XVIII of the Social Security Act. Such return information shall be limited to—

“(i) the taxpayer identity information with respect to such taxpayer;

“(ii) the amount of the delinquent tax debt owed by that taxpayer; and

“(iii) the taxable year to which the delinquent tax debt pertains.

“(B) RESTRICTION ON DISCLOSURE.—Return information disclosed under subparagraph (A) may be used by officers and employees of the Department of Health and Human Services for the purposes of, and to the extent necessary in, establishing the taxpayer's eligibility for enrollment or reenrollment in the Medicare program, or in any administrative or judicial proceeding relating to, or arising from, a denial of such enrollment or reenrollment, or in determining the level of enhanced oversight to be applied with respect to such taxpayer pursuant to section 1866(j)(3) of the Social Security Act.

“(C) DELINQUENT TAX DEBT.—For purposes of this paragraph, the term ‘delinquent tax debt’ means an outstanding debt under this title for which a notice of lien has been filed pursuant to section 6323, but the term does not include a debt that is being paid in a timely manner pursuant to an agreement under section 6159 or 7122, or a debt with respect to which a collection due process hearing under section 6330 is requested, pending, or completed and no payment is required.”.

(2) CONFORMING AMENDMENTS.—Section 6103(p)(4) of such Code, as amended by sections 1414 and 3308 of Public Law 111-148, in the matter preceding subparagraph (A) and in subparagraph (F)(ii), is amended by striking “(or (17))” and inserting “(17), or (22))” each place it appears.

(b) SECRETARY'S AUTHORITY TO USE INFORMATION FROM THE DEPARTMENT OF TREASURY IN MEDICARE ENROLLMENTS AND REENROLLMENTS.—Section 1866(j)(2) of the Social Security Act (42 U.S.C. 1395cc(j)), as inserted by section 6401(a) of Public Law 111-148, is further amended—

(1) by redesignating subparagraph (E) as subparagraph (F); and

(2) by inserting after subparagraph (D) the following new subparagraph:

“(E) USE OF INFORMATION FROM THE DEPARTMENT OF TREASURY CONCERNING TAX DEBTS.—In reviewing the application of a provider of services or supplier to enroll or reenroll under the program under this title, the Secretary shall take into account the information supplied by the Secretary of the Treasury pursuant to section 6103(l)(22) of the Internal Revenue Code of 1986, in determining whether to deny such application or to apply enhanced oversight to such provider of services or supplier pursuant to paragraph (3) if the Secretary determines such provider of services or supplier owes such a debt.”.

(c) AUTHORITY TO ADJUST PAYMENTS OF PROVIDERS OF SERVICES AND SUPPLIERS WITH THE SAME TAX IDENTIFICATION NUMBER FOR MEDICARE OBLIGATIONS.—Section 1866(j)(6) of the Social Security Act (42 U.S.C. 1395cc(j)(6)), as inserted by section 6401(a) of Public Law 111-148, is amended—

(1) in the paragraph heading, by striking “PAST-DUE” and inserting “MEDICARE”;

(2) in subparagraph (A), by striking “past-due obligations described in subparagraph (B)(ii) of an” and inserting “amount described in subparagraph (B)(ii) due from such”; and

(3) in subparagraph (B)(ii), by striking “a past-due obligation” and inserting “an amount that is more than the amount required to be paid”.

**SEC. 544. FUNDING FOR CLAIMS REPROCESSING.**

For purposes of carrying out the provisions of, and amendments made by, this Act that relate to title XVIII of the Social Security Act, and other provisions of such title that involve reprocessing of claims, there are appropriated to the Secretary of Health and Human Services for the Centers for Medicare & Medicaid Services Program Management Account, from amounts in the general fund of the Treasury not otherwise appropriated, \$175,000,000. Amounts appropriated under the preceding sentence shall remain available until expended.

**Subpart B—Medical Liability Reform**

**SEC. 551. SHORT TITLE.**

This subpart may be cited as the “Medical Care Access Protection Act of 2010” or the “MCAP Act”.

**SEC. 552. FINDINGS AND PURPOSE.**

(a) FINDINGS.—

(1) EFFECT ON HEALTH CARE ACCESS AND COSTS.—Congress finds that our current civil justice system is adversely affecting patient access to health care services, better patient care, and cost-efficient health care, in that the health care liability system is a costly and ineffective mechanism for resolving claims of health care liability and compensating injured patients, and is a deterrent to the sharing of information among health care professionals which impedes efforts to improve patient safety and quality of care.

(2) EFFECT ON INTERSTATE COMMERCE.—Congress finds that the health care and insurance industries are industries affecting interstate commerce and the health care liability litigation systems existing throughout the United States are activities that affect interstate commerce by contributing to the high costs of health care and premiums for health care liability insurance purchased by health care system providers.

(3) EFFECT ON FEDERAL SPENDING.—Congress finds that the health care liability li-

gation systems existing throughout the United States have a significant effect on the amount, distribution, and use of Federal funds because of—

(A) the large number of individuals who receive health care benefits under programs operated or financed by the Federal Government;

(B) the large number of individuals who benefit because of the exclusion from Federal taxes of the amounts spent to provide them with health insurance benefits; and

(C) the large number of health care providers who provide items or services for which the Federal Government makes payments.

(b) PURPOSE.—It is the purpose of this subpart to implement reasonable, comprehensive, and effective health care liability reforms designed to—

(1) improve the availability of health care services in cases in which health care liability actions have been shown to be a factor in the decreased availability of services;

(2) reduce the incidence of “defensive medicine” and lower the cost of health care liability insurance, all of which contribute to the escalation of health care costs;

(3) ensure that persons with meritorious health care injury claims receive fair and adequate compensation, including reasonable noneconomic damages;

(4) improve the fairness and cost-effectiveness of our current health care liability system to resolve disputes over, and provide compensation for, health care liability by reducing uncertainty in the amount of compensation provided to injured individuals; and

(5) provide an increased sharing of information in the health care system which will reduce unintended injury and improve patient care.

**SEC. 553. DEFINITIONS.**

In this subpart:

(1) ALTERNATIVE DISPUTE RESOLUTION SYSTEM; ADR.—The term “alternative dispute resolution system” or “ADR” means a system that provides for the resolution of health care lawsuits in a manner other than through a civil action brought in a State or Federal court.

(2) CLAIMANT.—The term “claimant” means any person who brings a health care lawsuit, including a person who asserts or claims a right to legal or equitable contribution, indemnity or subrogation, arising out of a health care liability claim or action, and any person on whose behalf such a claim is asserted or such an action is brought, whether deceased, incompetent, or a minor.

(3) COLLATERAL SOURCE BENEFITS.—The term “collateral source benefits” means any amount paid or reasonably likely to be paid in the future to or on behalf of the claimant, or any service, product or other benefit provided or reasonably likely to be provided in the future to or on behalf of the claimant, as a result of the injury or wrongful death, pursuant to—

(A) any State or Federal health, sickness, income-disability, accident, or workers' compensation law;

(B) any health, sickness, income-disability, or accident insurance that provides health benefits or income-disability coverage;

(C) any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of medical, hospital, dental, or income disability benefits; and

(D) any other publicly or privately funded program.

(4) COMPENSATORY DAMAGES.—The term “compensatory damages” means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment

for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities, damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature. Such term includes economic damages and noneconomic damages, as such terms are defined in this section.

(5) **CONTINGENT FEE.**—The term “contingent fee” includes all compensation to any person or persons which is payable only if a recovery is effected on behalf of one or more claimants.

(6) **ECONOMIC DAMAGES.**—The term “economic damages” means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities.

(7) **HEALTH CARE GOODS OR SERVICES.**—The term “health care goods or services” means any goods or services provided by a health care institution, provider, or by any individual working under the supervision of a health care provider, that relates to the diagnosis, prevention, care, or treatment of any human disease or impairment, or the assessment of the health of human beings.

(8) **HEALTH CARE INSTITUTION.**—The term “health care institution” means any entity licensed under Federal or State law to provide health care services (including but not limited to ambulatory surgical centers, assisted living facilities, emergency medical services providers, hospices, hospitals and hospital systems, nursing homes, or other entities licensed to provide such services).

(9) **HEALTH CARE LAWSUIT.**—The term “health care lawsuit” means any health care liability claim concerning the provision of health care goods or services affecting interstate commerce, or any health care liability action concerning the provision of (or the failure to provide) health care goods or services affecting interstate commerce, brought in a State or Federal court or pursuant to an alternative dispute resolution system, against a health care provider or a health care institution regardless of the theory of liability on which the claim is based, or the number of claimants, plaintiffs, defendants, or other parties, or the number of claims or causes of action, in which the claimant alleges a health care liability claim.

(10) **HEALTH CARE LIABILITY ACTION.**—The term “health care liability action” means a civil action brought in a State or Federal Court or pursuant to an alternative dispute resolution system, against a health care provider or a health care institution regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action, in which the claimant alleges a health care liability claim.

(11) **HEALTH CARE LIABILITY CLAIM.**—The term “health care liability claim” means a demand by any person, whether or not pursuant to ADR, against a health care provider or health care institution, including third-party claims, cross-claims, counter-claims, or contribution claims, which are based upon the provision of, use of, or payment for (or the failure to provide, use, or pay for) health

care services, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action.

(12) **HEALTH CARE PROVIDER.**—

(A) **IN GENERAL.**—The term “health care provider” means any person (including but not limited to a physician (as defined by section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)), registered nurse, dentist, podiatrist, pharmacist, chiropractor, or optometrist) required by State or Federal law to be licensed, registered, or certified to provide health care services, and being either so licensed, registered, or certified, or exempted from such requirement by other statute or regulation.

(B) **TREATMENT OF CERTAIN PROFESSIONAL ASSOCIATIONS.**—For purposes of this subpart, a professional association that is organized under State law by an individual physician or group of physicians, a partnership or limited liability partnership formed by a group of physicians, a nonprofit health corporation certified under State law, or a company formed by a group of physicians under State law shall be treated as a health care provider under subparagraph (A).

(13) **MALICIOUS INTENT TO INJURE.**—The term “malicious intent to injure” means intentionally causing or attempting to cause physical injury other than providing health care goods or services.

(14) **NONECONOMIC DAMAGES.**—The term “noneconomic damages” means damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature.

(15) **PUNITIVE DAMAGES.**—The term “punitive damages” means damages awarded, for the purpose of punishment or deterrence, and not solely for compensatory purposes, against a health care provider or health care institution. Punitive damages are neither economic nor noneconomic damages.

(16) **RECOVERY.**—The term “recovery” means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim, including all costs paid or advanced by any person. Costs of health care incurred by the plaintiff and the attorneys’ office overhead costs or charges for legal services are not deductible disbursements or costs for such purpose.

(17) **STATE.**—The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States, or any political subdivision thereof.

#### **SEC. 554. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.**

(a) **IN GENERAL.**—Except as otherwise provided for in this section, the time for the commencement of a health care lawsuit shall be 3 years after the date of manifestation of injury or 1 year after the claimant discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first.

(b) **GENERAL EXCEPTION.**—The time for the commencement of a health care lawsuit shall not exceed 3 years after the date of manifestation of injury unless the tolling of time was delayed as a result of—

(1) fraud;

(2) intentional concealment; or

(3) the presence of a foreign body, which has no therapeutic or diagnostic purpose or effect, in the person of the injured person.

(c) **MINORS.**—An action by a minor shall be commenced within 3 years from the date of the alleged manifestation of injury except that if such minor is under the full age of 6 years, such action shall be commenced within 3 years of the manifestation of injury, or prior to the eighth birthday of the minor, whichever provides a longer period. Such time limitation shall be tolled for minors for any period during which a parent or guardian and a health care provider or health care institution have committed fraud or collusion in the failure to bring an action on behalf of the injured minor.

(d) **RULE 11 SANCTIONS.**—Whenever a Federal or State court determines (whether by motion of the parties or whether on the motion of the court) that there has been a violation of Rule 11 of the Federal Rules of Civil Procedure (or a similar violation of applicable State court rules) in a health care liability action to which this subpart applies, the court shall impose upon the attorneys, law firms, or pro se litigants that have violated Rule 11 or are responsible for the violation, an appropriate sanction, which shall include an order to pay the other party or parties for the reasonable expenses incurred as a direct result of the filing of the pleading, motion, or other paper that is the subject of the violation, including a reasonable attorneys’ fee. Such sanction shall be sufficient to deter repetition of such conduct or comparable conduct by others similarly situated, and to compensate the party or parties injured by such conduct.

#### **SEC. 555. COMPENSATING PATIENT INJURY.**

(a) **UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.**—In any health care lawsuit, nothing in this subpart shall limit the recovery by a claimant of the full amount of the available economic damages, notwithstanding the limitation contained in subsection (b).

(b) **ADDITIONAL NONECONOMIC DAMAGES.**—

(1) **HEALTH CARE PROVIDERS.**—In any health care lawsuit where final judgment is rendered against a health care provider, the amount of noneconomic damages recovered from the provider, if otherwise available under applicable Federal or State law, may be as much as \$250,000, regardless of the number of parties other than a health care institution against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(2) **HEALTH CARE INSTITUTIONS.**—

(A) **SINGLE INSTITUTION.**—In any health care lawsuit where final judgment is rendered against a single health care institution, the amount of noneconomic damages recovered from the institution, if otherwise available under applicable Federal or State law, may be as much as \$250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(B) **MULTIPLE INSTITUTIONS.**—In any health care lawsuit where final judgment is rendered against more than one health care institution, the amount of noneconomic damages recovered from each institution, if otherwise available under applicable Federal or State law, may be as much as \$250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence, except that the total amount recovered from all such institutions in such lawsuit shall not exceed \$500,000.

(c) **NO DISCOUNT OF AWARD FOR NONECONOMIC DAMAGES.**—In any health care lawsuit—

(1) an award for future noneconomic damages shall not be discounted to present value;

(2) the jury shall not be informed about the maximum award for noneconomic damages under subsection (b);

(3) an award for noneconomic damages in excess of the limitations provided for in subsection (b) shall be reduced either before the entry of judgment, or by amendment of the judgment after entry of judgment, and such reduction shall be made before accounting for any other reduction in damages required by law; and

(4) if separate awards are rendered for past and future noneconomic damages and the combined awards exceed the limitations described in subsection (b), the future noneconomic damages shall be reduced first.

(d) **FAIR SHARE RULE.**—In any health care lawsuit, each party shall be liable for that party's several share of any damages only and not for the share of any other person. Each party shall be liable only for the amount of damages allocated to such party in direct proportion to such party's percentage of responsibility. A separate judgment shall be rendered against each such party for the amount allocated to such party. For purposes of this section, the trier of fact shall determine the proportion of responsibility of each party for the claimant's harm.

#### **SEC. 556. MAXIMIZING PATIENT RECOVERY.**

(a) **COURT SUPERVISION OF SHARE OF DAMAGES ACTUALLY PAID TO CLAIMANTS.**—

(1) **IN GENERAL.**—In any health care lawsuit, the court shall supervise the arrangements for payment of damages to protect against conflicts of interest that may have the effect of reducing the amount of damages awarded that are actually paid to claimants.

(2) **CONTINGENCY FEES.**—

(A) **IN GENERAL.**—In any health care lawsuit in which the attorney for a party claims a financial stake in the outcome by virtue of a contingent fee, the court shall have the power to restrict the payment of a claimant's damage recovery to such attorney, and to redirect such damages to the claimant based upon the interests of justice and principles of equity.

(B) **LIMITATION.**—The total of all contingent fees for representing all claimants in a health care lawsuit shall not exceed the following limits:

(i) 40 percent of the first \$50,000 recovered by the claimant(s).

(ii) 33⅓ percent of the next \$50,000 recovered by the claimant(s).

(iii) 25 percent of the next \$500,000 recovered by the claimant(s).

(iv) 15 percent of any amount by which the recovery by the claimant(s) is in excess of \$600,000.

(b) **APPLICABILITY.**—

(1) **IN GENERAL.**—The limitations in subsection (a) shall apply whether the recovery is by judgment, settlement, mediation, arbitration, or any other form of alternative dispute resolution.

(2) **MINORS.**—In a health care lawsuit involving a minor or incompetent person, a court retains the authority to authorize or approve a fee that is less than the maximum permitted under this section.

(c) **EXPERT WITNESSES.**—

(1) **REQUIREMENT.**—No individual shall be qualified to testify as an expert witness concerning issues of negligence in any health care lawsuit against a defendant unless such individual—

(A) except as required under paragraph (2), is a health care professional who—

(i) is appropriately credentialed or licensed in 1 or more States to deliver health care services; and

(ii) typically treats the diagnosis or condition or provides the type of treatment under review; and

(B) can demonstrate by competent evidence that, as a result of training, education,

knowledge, and experience in the evaluation, diagnosis, and treatment of the disease or injury which is the subject matter of the lawsuit against the defendant, the individual was substantially familiar with applicable standards of care and practice as they relate to the act or omission which is the subject of the lawsuit on the date of the incident.

(2) **PHYSICIAN REVIEW.**—In a health care lawsuit, if the claim of the plaintiff involved treatment that is recommended or provided by a physician (allopathic or osteopathic), an individual shall not be qualified to be an expert witness under this subsection with respect to issues of negligence concerning such treatment unless such individual is a physician.

(3) **SPECIALTIES AND SUBSPECIALTIES.**—With respect to a lawsuit described in paragraph (1), a court shall not permit an expert in one medical specialty or subspecialty to testify against a defendant in another medical specialty or subspecialty unless, in addition to a showing of substantial familiarity in accordance with paragraph (1)(B), there is a showing that the standards of care and practice in the two specialty or subspecialty fields are similar.

(4) **LIMITATION.**—The limitations in this subsection shall not apply to expert witnesses testifying as to the degree or permanency of medical or physical impairment.

#### **SEC. 557. ADDITIONAL HEALTH BENEFITS.**

(a) **IN GENERAL.**—The amount of any damages received by a claimant in any health care lawsuit shall be reduced by the court by the amount of any collateral source benefits to which the claimant is entitled, less any insurance premiums or other payments made by the claimant (or by the spouse, parent, child, or legal guardian of the claimant) to obtain or secure such benefits.

(b) **PRESERVATION OF CURRENT LAW.**—Where a payor of collateral source benefits has a right of recovery by reimbursement or subrogation and such right is permitted under Federal or State law, subsection (a) shall not apply.

(c) **APPLICATION OF PROVISION.**—This section shall apply to any health care lawsuit that is settled or resolved by a fact finder.

#### **SEC. 558. PUNITIVE DAMAGES.**

(a) **PUNITIVE DAMAGES PERMITTED.**—

(1) **IN GENERAL.**—Punitive damages may, if otherwise available under applicable State or Federal law, be awarded against any person in a health care lawsuit only if it is proven by clear and convincing evidence that such person acted with malicious intent to injure the claimant, or that such person deliberately failed to avoid unnecessary injury that such person knew the claimant was substantially certain to suffer.

(2) **FILING OF LAWSUIT.**—No demand for punitive damages shall be included in a health care lawsuit as initially filed. A court may allow a claimant to file an amended pleading for punitive damages only upon a motion by the claimant and after a finding by the court, upon review of supporting and opposing affidavits or after a hearing, after weighing the evidence, that the claimant has established by a substantial probability that the claimant will prevail on the claim for punitive damages.

(3) **SEPARATE PROCEEDING.**—At the request of any party in a health care lawsuit, the trier of fact shall consider in a separate proceeding—

(A) whether punitive damages are to be awarded and the amount of such award; and

(B) the amount of punitive damages following a determination of punitive liability. If a separate proceeding is requested, evidence relevant only to the claim for punitive damages, as determined by applicable State law, shall be inadmissible in any proceeding

to determine whether compensatory damages are to be awarded.

(4) **LIMITATION WHERE NO COMPENSATORY DAMAGES ARE AWARDED.**—In any health care lawsuit where no judgment for compensatory damages is rendered against a person, no punitive damages may be awarded with respect to the claim in such lawsuit against such person.

(b) **DETERMINING AMOUNT OF PUNITIVE DAMAGES.**—

(1) **FACTORS CONSIDERED.**—In determining the amount of punitive damages under this section, the trier of fact shall consider only the following:

(A) the severity of the harm caused by the conduct of such party;

(B) the duration of the conduct or any concealment of it by such party;

(C) the profitability of the conduct to such party;

(D) the number of products sold or medical procedures rendered for compensation, as the case may be, by such party, of the kind causing the harm complained of by the claimant;

(E) any criminal penalties imposed on such party, as a result of the conduct complained of by the claimant; and

(F) the amount of any civil fines assessed against such party as a result of the conduct complained of by the claimant.

(2) **MAXIMUM AWARD.**—The amount of punitive damages awarded in a health care lawsuit may not exceed an amount equal to two times the amount of economic damages awarded in the lawsuit or \$250,000, whichever is greater. The jury shall not be informed of the limitation under the preceding sentence.

(c) **LIABILITY OF HEALTH CARE PROVIDERS.**—

(1) **IN GENERAL.**—A health care provider who prescribes, or who dispenses pursuant to a prescription, a drug, biological product, or medical device approved by the Food and Drug Administration, for an approved indication of the drug, biological product, or medical device, shall not be named as a party to a product liability lawsuit invoking such drug, biological product, or medical device and shall not be liable to a claimant in a class action lawsuit against the manufacturer, distributor, or product seller of such drug, biological product, or medical device.

(2) **MEDICAL PRODUCT.**—The term "medical product" means a drug or device intended for humans. The terms "drug" and "device" have the meanings given such terms in sections 201(g)(1) and 201(h) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321), respectively, including any component or raw material used therein, but excluding health care services.

#### **SEC. 559. AUTHORIZATION OF PAYMENT OF FUTURE DAMAGES TO CLAIMANTS IN HEALTH CARE LAWSUITS.**

(a) **IN GENERAL.**—In any health care lawsuit, if an award of future damages, without reduction to present value, equaling or exceeding \$50,000 is made against a party with sufficient insurance or other assets to fund a periodic payment of such a judgment, the court shall, at the request of any party, enter a judgment ordering that the future damages be paid by periodic payments in accordance with the Uniform Periodic Payment of Judgments Act promulgated by the National Conference of Commissioners on Uniform State Laws.

(b) **APPLICABILITY.**—This section applies to all actions which have not been first set for trial or retrial before the effective date of this subpart.

#### **SEC. 560. EFFECT ON OTHER LAWS.**

(a) **GENERAL VACCINE INJURY.**—

(1) **IN GENERAL.**—To the extent that title XXI of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a vaccine-related injury or death—

(A) this subpart shall not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this subpart in conflict with a rule of law of such title XXI shall not apply to such action.

(2) EXCEPTION.—If there is an aspect of a civil action brought for a vaccine-related injury or death to which a Federal rule of law under title XXI of the Public Health Service Act does not apply, then this subpart or otherwise applicable law (as determined under this subpart) will apply to such aspect of such action.

(b) SMALLPOX VACCINE INJURY.—

(1) IN GENERAL.—To the extent that part C of title II of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a smallpox vaccine-related injury or death—

(A) this subpart shall not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this subpart in conflict with a rule of law of such part C shall not apply to such action.

(2) EXCEPTION.—If there is an aspect of a civil action brought for a smallpox vaccine-related injury or death to which a Federal rule of law under part C of title II of the Public Health Service Act does not apply, then this subpart or otherwise applicable law (as determined under this subpart) will apply to such aspect of such action.

(c) OTHER FEDERAL LAW.—Except as provided in this section, nothing in this subpart shall be deemed to affect any defense available, or any limitation on liability that applies to, a defendant in a health care lawsuit or action under any other provision of Federal law.

#### SEC. 561. STATE FLEXIBILITY AND PROTECTION OF STATES' RIGHTS.

(a) HEALTH CARE LAWSUITS.—The provisions governing health care lawsuits set forth in this subpart shall preempt, subject to subsections (b) and (c), State law to the extent that State law prevents the application of any provisions of law established by or under this subpart. The provisions governing health care lawsuits set forth in this subpart supersede chapter 171 of title 28, United States Code, to the extent that such chapter—

(1) provides for a greater amount of damages or contingent fees, a longer period in which a health care lawsuit may be commenced, or a reduced applicability or scope of periodic payment of future damages, than provided in this subpart; or

(2) prohibits the introduction of evidence regarding collateral source benefits.

(b) PREEMPTION OF CERTAIN STATE LAWS.—No provision of this subpart shall be construed to preempt any State law (whether effective before, on, or after the date of the enactment of this subpart) that specifies a particular monetary amount of compensatory or punitive damages (or the total amount of damages) that may be awarded in a health care lawsuit, regardless of whether such monetary amount is greater or lesser than is provided for under this subpart, notwithstanding section 555(a).

(c) PROTECTION OF STATE'S RIGHTS AND OTHER LAWS.—

(1) IN GENERAL.—Any issue that is not governed by a provision of law established by or under this subpart (including the State standards of negligence) shall be governed by otherwise applicable Federal or State law.

(2) RULE OF CONSTRUCTION.—Nothing in this subpart shall be construed to—

(A) preempt or supersede any Federal or State law that imposes greater procedural or substantive protections (such as a shorter statute of limitations) for a health care provider or health care institution from liability,

loss, or damages than those provided by this subpart;

(B) preempt or supercede any State law that permits and provides for the enforcement of any arbitration agreement related to a health care liability claim whether enacted prior to or after the date of enactment of this subpart;

(C) create a cause of action that is not otherwise available under Federal or State law; or

(D) affect the scope of preemption of any other Federal law.

#### SEC. 562. APPLICABILITY; EFFECTIVE DATE.

This subpart shall apply to any health care lawsuit brought in a Federal or State court, or subject to an alternative dispute resolution system, that is initiated on or after the date of the enactment of this subpart, except that any health care lawsuit arising from an injury occurring prior to the date of enactment of this subpart shall be governed by the applicable statute of limitations provisions in effect at the time the injury occurred.

#### TITLE VI—OTHER PROVISIONS

#### SEC. 601. EXTENSION OF NATIONAL FLOOD INSURANCE PROGRAM.

(a) EXTENSION.—Section 129 of the Continuing Appropriations Resolution, 2010 (Public Law 111-68), as amended by section 7(a) of Public Law 111-157, is amended by striking “by substituting” and all that follows through the period at the end, and inserting “by substituting December 31, 2010, for the date specified in each such section.”.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall be considered to have taken effect on May 31, 2010.

#### SEC. 602. SMALL BUSINESS LOAN GUARANTEE ENHANCEMENT EXTENSIONS.

(a) APPROPRIATION.—There is appropriated, out of any funds in the Treasury not otherwise appropriated, for an additional amount for “Small Business Administration—Business Loans Program Account”, \$505,000,000, to remain available through December 31, 2010, for the cost of—

(1) fee reductions and eliminations under section 501 of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5; 123 Stat. 151), as amended by this section; and

(2) loan guarantees under section 502 of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5; 123 Stat. 152), as amended by this section.

Such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974.

(b) EXTENSION OF PROGRAMS.—

(1) FEES.—Section 501 of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5; 123 Stat. 151) is amended by striking “September 30, 2010” each place it appears and inserting “December 31, 2010”.

(2) LOAN GUARANTEES.—Section 502(f) of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5; 123 Stat. 153) is amended by striking “May 31, 2010” and inserting “December 31, 2010”.

(c) APPROPRIATION.—There is appropriated for an additional amount, out of any funds in the Treasury not otherwise appropriated, for administrative expenses to carry out sections 501 and 502 of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), \$5,000,000, to remain available until expended, which may be transferred and merged with the appropriation for “Small Business Administration—Salaries and Expenses”.

#### SEC. 603. SUMMER EMPLOYMENT FOR YOUTH.

There is appropriated, out of any funds in the Treasury not otherwise appropriated, for an additional amount for “Department of

Labor—Employment and Training Administration—Training and Employment Services” for activities under the Workforce Investment Act of 1998 (“WIA”), \$1,000,000,000 shall be available for obligation on the date of enactment of this Act for grants to States for youth activities, including summer employment for youth: *Provided*, That no portion of such funds shall be reserved to carry out section 127(b)(1)(A) of the WIA: *Provided further*, That for purposes of section 127(b)(1)(C)(iv) of the WIA, funds available for youth activities shall be allotted as if the total amount available for youth activities in the fiscal year does not exceed \$1,000,000,000: *Provided further*, That with respect to the youth activities provided with such funds, section 101(13)(A) of the WIA shall be applied by substituting “age 24” for “age 21”: *Provided further*, That the work readiness performance indicator described in section 136(b)(2)(A)(ii)(I) of the WIA shall be the only measure of performance used to assess the effectiveness of summer employment for youth provided with such funds: *Provided further*, That an amount that is not more than 1 percent of such amount may be used for the administration, management, and oversight of the programs, activities, and grants carried out with such funds, including the evaluation of the use of such funds: *Provided further*, That funds available under the preceding proviso, together with funds described in section 801(a) of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), and funds provided in such Act under the heading “Department of Labor—Departmental Management—Salaries and Expenses”, shall remain available for obligation through September 30, 2011.

#### SEC. 604. EXPANSION OF ELIGIBILITY FOR CONCURRENT RECEIPT OF MILITARY RETIRED PAY AND VETERANS' DISABILITY COMPENSATION TO INCLUDE ALL CHAPTER 61 DISABILITY RETIREES REGARDLESS OF DISABILITY RATING PERCENTAGE OR YEARS OF SERVICE.

(a) PHASED EXPANSION CONCURRENT RECEIPT.—Subsection (a) of section 1414 of title 10, United States Code, is amended to read as follows:

“(a) PAYMENT OF BOTH RETIRED PAY AND DISABILITY COMPENSATION.—

“(1) PAYMENT OF BOTH REQUIRED.—

“(A) IN GENERAL.—Subject to subsection (b), a member or former member of the uniformed services who is entitled for any month to retired pay and who is also entitled for that month to veterans' disability compensation for a qualifying service-connected disability (in this section referred to as a ‘qualified retiree’) is entitled to be paid both for that month without regard to sections 5304 and 5305 of title 38.

“(B) APPLICABILITY OF FULL CONCURRENT RECEIPT PHASE-IN REQUIREMENT.—During the period beginning on January 1, 2004, and ending on December 31, 2013, payment of retired pay to a qualified retiree is subject to subsection (c).

“(C) PHASE-IN EXCEPTION FOR 100 PERCENT DISABLED RETIREES.—The payment of retired pay is subject to subsection (c) only during the period beginning on January 1, 2004, and ending on December 31, 2004, in the case of the following qualified retirees:

“(i) A qualified retiree receiving veterans' disability compensation for a disability rated as 100 percent.

“(ii) A qualified retiree receiving veterans' disability compensation at the rate payable for a 100 percent disability by reason of a determination of individual unemployability.

“(D) TEMPORARY PHASE-IN EXCEPTION FOR CERTAIN CHAPTER 61 DISABILITY RETIREES; TERMINATION.—Subject to subsection (b), during the period beginning on January 1, 2011,

and ending on September 30, 2012, subsection (c) shall not apply to a qualified retiree described in subparagraph (B) or (C) of paragraph (2).

“(2) QUALIFYING SERVICE-CONNECTED DISABILITY DEFINED.—In this section:

“(A) 50 PERCENT RATING THRESHOLD.—In the case of a member or former member receiving retired pay under any provision of law other than chapter 61 of this title, or under chapter 61 with 20 years or more of service otherwise creditable under section 1405 or computed under section 12732 of this title, the term ‘qualifying service-connected disability’ means a service-connected disability or combination of service-connected disabilities that is rated as not less than 50 percent disabling by the Secretary of Veterans Affairs. However, during the period specified in paragraph (1)(D), members or former members receiving retired pay under chapter 61 with 20 years or more of creditable service computed under section 12732 of this title, but not otherwise entitled to retired pay under any other provision of this title, shall qualify in accordance with subparagraphs (B) and (C).

“(B) INCLUSION OF MEMBERS NOT OTHERWISE ENTITLED TO RETIRED PAY.—In the case of a member or former member receiving retired pay under chapter 61 of this title, but who is not otherwise entitled to retired pay under any other provision of this title, the term ‘qualifying service-connected disability’ means a service-connected disability or combination of service-connected disabilities that is rated by the Secretary of Veterans Affairs at the disabling level specified in one of the following clauses (which, subject to paragraph (3), is effective on or after the date specified in the applicable clause):

“(i) January 1, 2011, rated 100 percent, or a rate payable at 100 percent by reason of individual unemployability or rated 90 percent.

“(ii) January 1, 2012, rated 80 percent or 70 percent.

“(iii) January 1, 2013, rated 60 percent or 50 percent.

“(C) ELIMINATION OF RATING THRESHOLD.—In the case of a member or former member receiving retired pay under chapter 61 regardless of being otherwise eligible for retirement, the term ‘qualifying service-connected disability’ means a service-connected disability or combination of service-connected disabilities that is rated by the Secretary of Veterans Affairs at the disabling level specified in one of the following clauses (which, subject to paragraph (3), is effective on or after the date specified in the applicable clause):

“(i) January 1, 2014, rated 40 percent or 30 percent.

“(ii) January 1, 2015, any rating.

“(3) LIMITED DURATION.—Notwithstanding the effective date specified in each clause of subparagraphs (B) and (C) of paragraph (2), the clause—

“(A) shall apply only if the termination date specified in paragraph (1)(D) would occur during or after the calendar year specified in the clause; and

“(B) shall not apply beyond the termination date specified in paragraph (1)(D).”

(b) CONFORMING AMENDMENT TO SPECIAL RULES FOR CHAPTER 61 DISABILITY RETIREES.—Subsection (b) of such section is amended to read as follows:

“(b) SPECIAL RULES FOR CHAPTER 61 DISABILITY RETIREES WHEN ELIGIBILITY HAS BEEN ESTABLISHED FOR SUCH RETIREES.—

“(1) GENERAL REDUCTION RULE.—The retired pay of a member retired under chapter 61 of this title is subject to reduction under sections 5304 and 5305 of title 38, but only to the extent that the amount of the members retired pay under chapter 61 of this title exceeds the amount of retired pay to which the

member would have been entitled under any other provision of law based upon the member's service in the uniformed services if the member had not been retired under chapter 61 of this title.

“(2) CHAPTER 61 RETIREES NOT OTHERWISE ENTITLED TO RETIRED PAY.—

“(A) BEFORE TERMINATION DATE.—If a member with a qualifying service-connected disability (as defined in subsection (a)(2)) is retired under chapter 61 of this title, but is not otherwise entitled to retired pay under any other provision of this title, and the termination date specified in subsection (a)(1)(D) has not occurred, the retired pay of the member is subject to reduction under sections 5304 and 5305 of title 38, but only to the extent that the amount of the member's retired pay under chapter 61 of this title exceeds the amount equal to 2½ percent of the member's years of creditable service multiplied by the member's retired pay base under section 1406(b)(1) or 1407 of this title, whichever is applicable to the member.

“(B) AFTER TERMINATION DATE.—Subsection (a) does not apply to a member described in subparagraph (A) if the termination date specified in subsection (a)(1)(D) has occurred.”

(c) CONFORMING AMENDMENT TO FULL CURRENT RECEIPT PHASE-IN.—Subsection (c) of such section is amended by striking “the second sentence of”.

(d) CLERICAL AMENDMENTS.—

(1) SECTION HEADING.—The heading of such section is amended to read as follows:

“§ 1414. Concurrent receipt of retired pay and veterans' disability compensation”.

(2) TABLE OF SECTIONS.—The table of sections at the beginning of chapter 71 of such title is amended by striking the item related to section 1414 and inserting the following new item:

“1414. Concurrent receipt of retired pay and veterans' disability compensation.”

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2011.

#### SEC. 605. EXTENSION OF USE OF 2009 POVERTY GUIDELINES.

Section 1012 of the Department of Defense Appropriations Act, 2010 (Public Law 111-118), as amended by section 6 of the Continuing Extension Act of 2010 (Public Law 111-157), is amended—

(1) by striking “before May 31, 2010”; and

(2) by inserting “for 2011” after “until updated poverty guidelines”.

#### SEC. 606. REFUNDS DISREGARDED IN THE ADMINISTRATION OF FEDERAL PROGRAMS AND FEDERALLY ASSISTED PROGRAMS.

(a) IN GENERAL.—Subchapter A of chapter 65 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

“SEC. 6409. REFUNDS DISREGARDED IN THE ADMINISTRATION OF FEDERAL PROGRAMS AND FEDERALLY ASSISTED PROGRAMS.

“(a) IN GENERAL.—Notwithstanding any other provision of law, any refund (or advance payment with respect to a refundable credit) made to any individual under this title shall not be taken into account as income, and shall not be taken into account as resources for a period of 12 months from receipt, for purposes of determining the eligibility of such individual (or any other individual) for benefits or assistance (or the amount or extent of benefits or assistance) under any Federal program or under any State or local program financed in whole or in part with Federal funds.

“(b) TERMINATION.—Subsection (a) shall not apply to any amount received after December 31, 2010.”

(b) CLERICAL AMENDMENT.—The table of sections for such subchapter is amended by adding at the end the following new item:

“Sec. 6409. Refunds disregarded in the administration of Federal programs and federally assisted programs.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts received after December 31, 2009.

#### SEC. 607. ARRA PLANNING AND REPORTING.

Section 1512 of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5; 123 Stat. 287) is amended—

(1) in subsection (d)—

(A) in the subsection heading, by inserting “PLANS AND” after “AGENCY”; and

(B) by striking “Not later than” and inserting the following:

“(1) DEFINITION.—In this subsection, the term ‘covered program’ means a program for which funds are appropriated under this division—

“(A) in an amount that is—

“(i) more than \$2,000,000,000; and

“(ii) more than 150 percent of the funds appropriated for the program for fiscal year 2008; or

“(B) that did not exist before the date of enactment of this Act.

“(2) PLANS.—Not later than July 1, 2010, the head of each agency that distributes recovery funds shall submit to Congress and make available on the website of the agency a plan for each covered program, which shall, at a minimum, contain—

“(A) a description of the goals for the covered program using recovery funds;

“(B) a discussion of how the goals described in subparagraph (A) relate to the goals for ongoing activities of the covered program, if applicable;

“(C) a description of the activities that the agency will undertake to achieve the goals described in subparagraph (A);

“(D) a description of the total recovery funding for the covered program and the recovery funding for each activity under the covered program, including identifying whether the activity will be carried out using grants, contracts, or other types of funding mechanisms;

“(E) a schedule of milestones for major phases of the activities under the covered program, with planned delivery dates;

“(F) performance measures the agency will use to track the progress of each of the activities under the covered program in meeting the goals described in subparagraph (A), including performance targets, the frequency of measurement, and a description of the methodology for each measure;

“(G) a description of the process of the agency for the periodic review of the progress of the covered program towards meeting the goals described in subparagraph (A); and

“(H) a description of how the agency will hold program managers accountable for achieving the goals described in subparagraph (A).

“(3) REPORTS.—

“(A) IN GENERAL.—Not later than”;

(C) by adding at the end the following:

“(B) REPORTS ON PLANS.—Not later than 30 days after the end of the calendar quarter ending September 30, 2010, and every calendar quarter thereafter during which the agency obligates or expends recovery funds, the head of each agency that developed a plan for a covered program under paragraph (2) shall submit to Congress and make available on a website of the agency a report for each covered program that—

“(i) discusses the progress of the agency in implementing the plan;

“(ii) describes the progress towards achieving the goals described in paragraph (2)(A) for the covered program;

“(iii) discusses the status of each activity carried out under the covered program, including whether the activity is completed;

“(iv) details the unobligated and unexpired balances and total obligations and outlays under the covered program;

“(v) discusses—

“(I) whether the covered program has met the milestones for the covered program described in paragraph (2)(E);

“(II) if the covered program has failed to meet the milestones, the reasons why; and

“(III) any changes in the milestones for the covered program, including the reasons for the change;

“(vi) discusses the performance of the covered program, including—

“(I) whether the covered program has met the performance measures for the covered program described in paragraph (2)(F);

“(II) if the covered program has failed to meet the performance measures, the reasons why; and

“(III) any trends in information relating to the performance of the covered program; and

“(vii) evaluates the ability of the covered program to meet the goals of the covered program given the performance of the covered program.”;

(2) in subsection (f)—

(A) by striking “Within 180 days” and inserting the following:

“(1) IN GENERAL.—Within 180 days”; and

(B) by adding at the end the following:

“(2) PENALTIES.—

“(A) IN GENERAL.—Subject to subparagraphs (B), (C), and (D), the Attorney General may bring a civil action in an appropriate United States district court against a recipient of recovery funds from an agency that does not provide the information required under subsection (c) or knowingly provides information under subsection (c) that contains a material omission or misstatement. In a civil action under this paragraph, the court may impose a civil penalty on a recipient of recovery funds in an amount not more than \$250,000. Any amounts received from a civil penalty under this paragraph shall be deposited in the general fund of the Treasury.

“(B) NOTIFICATION.—

“(i) IN GENERAL.—The head of an agency shall provide a written notification to a recipient of recovery funds from the agency that fails to provide the information required under subsection (c). A notification under this subparagraph shall provide the recipient with information on how to comply with the necessary reporting requirements and notice of the penalties for failing to do so.

“(ii) LIMITATION.—A court may not impose a civil penalty under subparagraph (A) relating to the failure to provide information required under subsection (c) if, not later than 31 days after the date of the notification under clause (i), the recipient of the recovery funds provides the information.

“(C) CONSIDERATIONS.—In determining the amount of a penalty under this paragraph for a recipient of recovery funds, a court shall consider—

“(i) the number of times the recipient has failed to provide the information required under subsection (c);

“(ii) the amount of recovery funds provided to the recipient;

“(iii) whether the recipient is a government, nonprofit entity, or educational institution; and

“(iv) whether the recipient is a small business concern (as defined under section 3 of the Small Business Act (15 U.S.C. 632)), with

particular consideration given to businesses with not more than 50 employees.

“(D) APPLICABILITY.—This paragraph shall apply to any report required to be submitted on or after the date of enactment of this paragraph.

“(E) NONEXCLUSIVITY.—The imposition of a civil penalty under this subsection shall not preclude any other criminal, civil, or administrative remedy available to the United States or any other person under Federal or State law.

“(3) TECHNICAL ASSISTANCE.—Each agency distributing recovery funds shall provide technical assistance, as necessary, to assist recipients of recovery funds in complying with the requirements to provide information under subsection (c), which shall include providing recipients with a reminder regarding each reporting requirement.

“(4) PUBLIC LISTING.—

“(A) IN GENERAL.—Not later than 45 days after the end of each calendar quarter, and subject to the notification requirements under paragraph (2)(B), the Board shall make available on the website established under section 1526 a list of all recipients of recovery funds that did not provide the information required under subsection (c) for the calendar quarter.

“(B) CONTENTS.—A list made available under subparagraph (A) shall, for each recipient of recovery funds on the list, include the name and address of the recipient, the identification number for the award, the amount of recovery funds awarded to the recipient, a description of the activity for which the recovery funds were provided, and, to the extent known by the Board, the reason for non-compliance.

“(5) REGULATIONS AND REPORTING.—

“(A) REGULATIONS.—Not later than 90 days after the date of enactment of this paragraph, the Attorney General, in consultation with the Director of the Office of Management and Budget and the Chairperson, shall promulgate regulations regarding implementation of this section.

“(B) REPORTING.—

“(i) IN GENERAL.—Not later than July 1, 2010, and every 3 months thereafter, the Director of the Office of Management and Budget, in consultation with the Chairperson, shall submit to Congress a report on the extent of noncompliance by recipients of recovery funds with the reporting requirements under this section.

“(ii) CONTENTS.—Each report submitted under clause (i) shall include—

“(I) information, for the quarter and in total, regarding the number and amount of civil penalties imposed and collected under this subsection, sorted by agency and program;

“(II) information on the steps taken by the Federal Government to reduce the level of noncompliance; and

“(III) any other information determined appropriate by the Director.”; and

(3) by adding at the end the following:

“(i) TERMINATION.—The reporting requirements under this section shall terminate on September 30, 2013.”.

## TITLE VII—BUDGETARY PROVISIONS

### SEC. 701. DETERMINATION OF BUDGETARY EFFECTS.

(a) IN GENERAL.—The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

(b) EMERGENCY DESIGNATION FOR CONGRESSIONAL ENFORCEMENT.—In the House of Rep-

resentatives, this Act, with the exception of section 511, is designated as an emergency for purposes of pay-as-you-go principles. In the Senate, this Act is designated as an emergency requirement pursuant to section 403(a) of S. Con. Res. 13 (111th Congress), the concurrent resolution on the budget for fiscal year 2010.

(c) EMERGENCY DESIGNATION FOR STATUTORY PAYGO.—This Act, with the exception of section 511, is designated as an emergency requirement pursuant to section 4(g) of the Statutory Pay-As-You-Go Act of 2010 (Public Law 111-139; 2 U.S.C. 933(g)).

## NOTICE OF HEARING

### COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Subcommittee on Energy. The hearing will be held on Tuesday, June 15, 2010, at 2:30 p.m., in room SD-366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of the hearing is to receive testimony on the following bills:

S. 3460, a bill to require the Secretary of Energy to provide funds to states for rebates, loans, and other incentives to eligible individuals or entities for the purchase and installation of solar energy systems for properties located in the United States, and for other purposes.

S. 3396, a bill to amend the Energy Policy and Conservation Act to establish within the Department of Energy a Supply Star program to identify and promote practices, companies, and products that use highly efficient supply chains in a manner that conserves energy, water, and other resources.

S. 3251, a bill to improve energy efficiency and the use of renewable energy by Federal agencies, and for other purposes.

S. 679, a bill to establish a research, development, demonstration, and commercial application program to promote research of appropriate technologies for heavy duty plug-in hybrid vehicles, and for other purposes.

S. 3233, a bill to amend the Atomic Energy Act of 1954 to authorize the Secretary of Energy to barter, transfer, or sell surplus uranium from the inventory of the Department of Energy, and for other purposes.

S. 2900, a bill to establish a research, development, and technology demonstration program to improve the efficiency of gas turbines used in combined cycle and simple cycle power generation systems.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send it to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510-6150, or by e-mail to [Abigail\\_Campbell@energy.senate.gov](mailto:Abigail_Campbell@energy.senate.gov).

For further information, please contact Alicia Jackson or Abigail Campbell.