

issues as well as local issues by, for example, supporting African-American congresswomen, as well as honoring civil rights pioneers, including Myrlie Evers-Williams, Dr. Betty Shabazz, and Coretta Scott King. The organization encouraged Black women to participate in the political process as voters, candidates, policymakers, fundraisers and role models. Today, the organization is known as the National Congress for Black Women. In 1992, Dr. Tucker succeeded Shirley Chisholm as the national chair of the National Congress of Black Women and served in that role until her death in 2005.

In 1991, Dr. Tucker founded the Be-thune-DuBois Institute to promote the cultural and educational development of African-American youth. During this time, Dr. Tucker began her public criticism of some kinds of rap music. She argued that record companies should halt the distribution of popular music that she believed contained derogatory lyrics about women and minorities and had a negative impact on young people. Objecting to the sale of such lyrics to minors, she asked the Federal Bureau of Investigation to launch an inquiry. Both the NAACP and the Congressional Black Caucus supported Dr. Tucker's initiative.

Dr. Tucker rose to national prominence in African-American civil rights circles through her tireless activism and political fundraising. She worked to end racism and make the United States a more equal, multicultural society. Her career in civil rights spanned more than 50 years. Her husband, Bill Tucker, told the Washington Post that DeLores "was one of the most fearless individuals I have ever known . . . She will take on anyone, anything, if that's what she thinks is right."

Dr. Tucker chaired the Black Caucus of her party's national committee for 11 years and spoke at five national conventions. As a member of the national committee, she was one of the original organizers of the Black Caucus and the Women's Caucus. She worked tirelessly to ensure that women, African-Americans and other minorities had fair representation within her party. She was the first African-American to serve as President of the National Federation of Democratic Women. Dr. Tucker also served as a member of the NAACP Board of Trustees and on the board of the Points of Light Foundation. She was also a member of Alpha Kappa Alpha Sorority.

During her career, Dr. Tucker received more than 400 awards and honors, including the NAACP Thurgood Marshall Award, the Martin Luther King, Jr. Distinguished Service Award and the Philadelphia Urban League Whitney Young Award.

C. DeLores Tucker passed away on October 12, 2005. Her legacy lives on through the work of her husband, Bill Tucker, her many nieces and nephews, and the hundreds of people she helped and mentored during her life.

DeLores Tucker was a daughter of Philadelphia, a city that has produced many notable leaders, in fields as diverse as the fine arts, politics, science, athletics, business, literature and entertainment. In December of 1939, Marcia Davenport wrote an article in Collier's magazine about the great internationally known contralto, Philadelphia's Marian Anderson. Davenport's article described Anderson as a young girl in south Philadelphia—whose father, John Anderson, died when she was ten—playing on an imaginary piano and singing despite the poverty her family lived in.

But in the heart of Anna Anderson, as she watched her child throbbing with music, there was a steadfast belief that for any worthy end, a way will come.

For DeLores Tucker, through hard work, a passion for advocacy, a strong faith and a loving family, a way did come. A way to stand up for the powerless; a way to overcome racism, prejudice, and hatred; a way to shine the bright warm light of justice and compassion in the dark corners of America. Yes, a way did come for DeLores Tucker to use her voice to sing her own hymn of equal rights and opportunity for all, especially women and African-Americans.

#### AMENDMENTS SUBMITTED AND PROPOSED

SA 3315. Mr. SESSIONS (for himself and Mrs. McCASKILL) submitted an amendment intended to be proposed to amendment SA 3310 proposed by Mr. REID to the bill H.R. 2847, making appropriations for the Departments of Commerce and Justice, and Science, and Related Agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table.

SA 3316. Ms. LANDRIEU submitted an amendment intended to be proposed to amendment SA 3310 proposed by Mr. REID to the bill H.R. 2847, supra; which was ordered to lie on the table.

SA 3317. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill H.R. 2847, supra; which was ordered to lie on the table.

SA 3318. Mr. VITTER (for himself, Mr. BARRASSO, Mr. BOND, Mr. BUNNING, Mr. COBURN, Mr. COCHRAN, Mr. CORNYN, Mr. DEMINT, Mr. ENSIGN, Mr. ENZI, Mrs. HUTCHISON, Mr. INHOFE, Mr. RISCH, Mr. SESSIONS, Mr. CRAPO, Mr. BROWNBACK, Mr. WICKER, and Mr. THUNE) submitted an amendment intended to be proposed by him to the bill H.R. 2847, supra; which was ordered to lie on the table.

SA 3319. Mr. THUNE submitted an amendment intended to be proposed to amendment SA 3310 proposed by Mr. REID to the bill H.R. 2847, supra; which was ordered to lie on the table.

SA 3320. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 3310 proposed by Mr. REID to the bill H.R. 2847, supra; which was ordered to lie on the table.

SA 3321. Mr. BROWN, of Ohio (for Mrs. BOXER (for herself and Mr. FEINGOLD)) proposed an amendment to the resolution S. Res. 345, deploring the rape and assault of women in Guinea and the killing of political protesters.

SA 3322. Mr. BROWN, of Ohio (for Mrs. BOXER (for herself and Mr. FEINGOLD)) pro-

posed an amendment to the resolution S. Res. 345, supra.

SA 3323. Mr. BROWN, of Ohio (for Mrs. BOXER (for herself and Mr. FEINGOLD)) proposed an amendment to the resolution S. Res. 345, supra.

#### TEXT OF AMENDMENTS

**SA 3315.** Mr. SESSIONS (for himself and Mrs. MCCASKILL) submitted an amendment intended to be proposed to amendment SA 3310 proposed by Mr. REID to the bill H.R. 2847, making appropriations for the Departments of Commerce and Justice, and Science, and Related Agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

##### SEC. 01. DISCRETIONARY SPENDING LIMITS.

(a) IN GENERAL.—Title III of the Congressional Budget Act of 1974 is amended by inserting at the end the following:

##### "DISCRETIONARY SPENDING LIMITS

"SEC. 316. (a) DISCRETIONARY SPENDING LIMITS.—It shall not be in order in the House of Representatives or the Senate to consider any bill, joint resolution, amendment, or conference report that includes any provision that would cause the discretionary spending limits as set forth in this section to be exceeded.

"(b) LIMITS.—In this section, the term 'discretionary spending limits' has the following meaning subject to adjustments in subsection (c):

"(1) For fiscal year 2011—

"(A) for the defense category (budget function 050), \$564,293,000,000 in budget authority; and

"(B) for the nondefense category, \$529,662,000,000 in budget authority.

"(2) For fiscal year 2012—

"(A) for the defense category (budget function 050), \$573,612,000,000 in budget authority; and

"(B) for the nondefense category, \$533,232,000,000 in budget authority.

"(3) For fiscal year 2013—

"(A) for the defense category (budget function 050), \$584,421,000,000 in budget authority; and

"(B) for the nondefense category, \$540,834,000,000 in budget authority.

"(4) For fiscal year 2014—

"(A) for the defense category (budget function 050), \$598,249,000,000 in budget authority; and

"(B) for the nondefense category, \$550,509,000,000 in budget authority.

"(5) With respect to fiscal years following 2014, the President shall recommend and the Congress shall consider legislation setting limits for those fiscal years.

"(c) ADJUSTMENTS.—

"(1) IN GENERAL.—After the reporting of a bill or joint resolution relating to any matter described in paragraph (2), or the offering of an amendment thereto or the submission of a conference report thereon—

"(A) the Chairman of the Senate Committee on the Budget may adjust the discretionary spending limits, the budgetary aggregates in the concurrent resolution on the budget most recently adopted by the Senate and the House of Representatives, and allocations pursuant to section 302(a) of the Congressional Budget Act of 1974, by the amount of new budget authority in that measure for that purpose and the outlays flowing there from; and

“(B) following any adjustment under subparagraph (A), the Senate Committee on Appropriations may report appropriately revised suballocations pursuant to section 302(b) of the Congressional Budget Act of 1974 to carry out this subsection.

“(2) MATTERS DESCRIBED.—Matters referred to in paragraph (1) are as follows:

“(A) OVERSEAS DEPLOYMENTS AND OTHER ACTIVITIES.—If a bill or joint resolution is reported making appropriations for fiscal year 2011, 2012, 2013, or 2014, that provides funding for overseas deployments and other activities, the adjustment for purposes paragraph (1) shall be the amount of budget authority in that measure for that purpose but not to exceed—

“(i) with respect to fiscal year 2011, \$50,000,000,000 in new budget authority;

“(ii) with respect to fiscal year 2012, \$50,000,000,000 in new budget authority;

“(iii) with respect to fiscal year 2013, \$50,000,000,000 in new budget authority; and

“(iv) with respect to fiscal year 2014, \$50,000,000,000 in new budget authority.

“(B) EMERGENCY SPENDING.—For fiscal year 2011, 2012, 2013, or 2014 for appropriations for discretionary accounts designated as emergency requirements, the adjustment for purposes of paragraph (1) shall be the total of such appropriations in discretionary accounts designated as emergency requirements, but not to exceed \$10,454,000,000 for 2011, \$10,558,000,000 for 2012, \$10,664,000,000 for 2013, and \$10,877,000,000 for 2014. Appropriations designated as emergencies in excess of these limitations shall be treated as new budget authority.

“(C) INTERNAL REVENUE SERVICE TAX ENFORCEMENT.—

“(i) IN GENERAL.—If a bill or joint resolution is reported making appropriations for fiscal year 2011, 2012, 2013, or 2014 that includes the amount described in clause (ii)(I), plus an additional amount for enhanced tax enforcement to address the Federal tax gap (taxes owed but not paid) described in clause (ii)(II), the adjustment for purposes of paragraph (1) shall be the amount of budget authority in that measure for that initiative not exceeding the amount specified in clause (ii)(II) for that fiscal year.

“(ii) AMOUNTS.—The amounts referred to in clause (i) are as follows:

“(I) For fiscal year 2011, \$7,171,000,000, for fiscal year 2012, \$7,243,000,000, for fiscal year 2013, \$7,315,000,000, and for fiscal year 2014, \$7,461,000,000.

“(II) For fiscal year 2011, \$899,000,000, for fiscal year 2012, \$908,000,000, for fiscal year 2013, \$917,000,000, and for fiscal year 2014, \$935,000,000.

“(D) CONTINUING DISABILITY REVIEWS AND SSI REDETERMINATIONS.—

“(i) IN GENERAL.—If a bill or joint resolution is reported making appropriations for fiscal year 2011, 2012, 2013, or 2014 that includes the amount described in clause (ii)(I), plus an additional amount for Continuing Disability Reviews and Supplemental Security Income Redeterminations for the Social Security Administration described in clause (ii)(II), the adjustment for purposes of paragraph (1) shall be the amount of budget authority in that measure for that initiative not exceeding the amount specified in clause (ii)(II) for that fiscal year.

“(ii) AMOUNTS.—The amounts referred to in clause (i) are as follows:

“(I) For fiscal year 2011, \$276,000,000; for fiscal year 2012, \$278,000,000; for fiscal year 2013, \$281,000,000; for fiscal year 2014, \$287,000,000.

“(II) For fiscal year 2011, \$490,000,000; for fiscal year 2012, \$495,000,000; for fiscal year 2013, \$500,000,000; for fiscal year 2014, \$510,000,000.

“(iii) ASSET VERIFICATION.—

“(I) IN GENERAL.—The additional appropriation permitted under clause (ii)(II) may also provide that a portion of that amount, not to exceed the amount specified in subclause (II) for that fiscal year instead may be used for asset verification for Supplemental Security Income recipients, but only if, and to the extent that the Office of the Chief Actuary estimates that the initiative would be at least as cost effective as the redeterminations of eligibility described in this subparagraph.

“(II) AMOUNTS.—For fiscal year 2011, \$34,340,000, for fiscal year 2012, \$34,683,000, for fiscal year 2013, \$35,030,000 and for fiscal year 2014, \$35,731,000.

“(E) HEALTH CARE FRAUD AND ABUSE.—

“(i) IN GENERAL.—If a bill or joint resolution is reported making appropriations for fiscal year 2011, 2012, 2013, or 2014 that includes the amount described in clause (ii) for the Health Care Fraud and Abuse Control program at the Department of Health & Human Services for that fiscal year, the adjustment for purposes of paragraph (1) shall be the amount of budget authority in that measure for that initiative but not to exceed the amount described in clause (ii).

“(ii) AMOUNT.—The amount referred to in clause (i) is for fiscal year 2011, \$314,000,000, for fiscal year 2012, \$317,000,000, for fiscal year 2013, \$320,000,000, and for fiscal year 2014, \$327,000,000.

“(F) UNEMPLOYMENT INSURANCE IMPROPER PAYMENT REVIEWS.—If a bill or joint resolution is reported making appropriations for fiscal year 2011, 2012, 2013, or 2014 that includes \$10,000,000, plus an additional amount for in-person reemployment and eligibility assessments and unemployment improper payment reviews for the Department of Labor, the adjustment for purposes paragraph (1) shall be the amount of budget authority in that measure for that initiative but not to exceed—

“(i) with respect to fiscal year 2011, \$51,000,000 in new budget authority; and

“(ii) with respect to fiscal year 2012, \$51,000,000 in new budget authority.

“(iii) with respect to fiscal year 2013, \$52,000,000 in new budget authority; and

“(iv) with respect to fiscal year 2014, \$53,000,000 in new budget authority.

“(G) LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM (LIHEAP).—If a bill or joint resolution is reported making appropriations for fiscal year 2011, 2012, 2013, or 2014 that includes \$3,200,000,000 in funding for the Low-Income Home Energy Assistance Program and provides an additional amount up to \$1,900,000,000 for that program, the adjustment for purposes of paragraph (1) shall be the amount of budget authority in that measure for that initiative but not to exceed \$1,900,000,000.

“(d) EMERGENCY SPENDING.—

“(1) AUTHORITY TO DESIGNATE.—In the Senate, with respect to a provision of direct spending or receipts legislation or appropriations for discretionary accounts that Congress designates as an emergency requirement in such measure, the amounts of new budget authority, outlays, and receipts in all fiscal years resulting from that provision shall be treated as an emergency requirement for the purpose of this subsection.

“(2) EXEMPTION OF EMERGENCY PROVISIONS.—Subject to the limitations provided in subsection (c)(2)(B), any new budget authority, outlays, and receipts resulting from any provision designated as an emergency requirement, pursuant to this subsection, in any bill, joint resolution, amendment, or conference report shall not count for purposes of sections 302 and 311 of the Congressional Budget Act of 1974, section 201 of S. Con. Res. 21 (110th Congress) (relating to pay-as-you-go), and section 311 of S. Con.

Res. 70 (110th Congress) (relating to long-term deficits).

“(3) DESIGNATIONS.—If a provision of legislation is designated as an emergency requirement under this subsection, the committee report and any statement of managers accompanying that legislation shall include an explanation of the manner in which the provision meets the criteria in paragraph (6).

“(4) DEFINITIONS.—In this subsection, the terms ‘direct spending’, ‘receipts’, and ‘appropriations for discretionary accounts’ mean any provision of a bill, joint resolution, amendment, motion, or conference report that affects direct spending, receipts, or appropriations as those terms have been defined and interpreted for purposes of the Balanced Budget and Emergency Deficit Control Act of 1985.

“(5) POINT OF ORDER.—

“(A) IN GENERAL.—When the Senate is considering a bill, resolution, amendment, motion, or conference report, if a point of order is made by a Senator against an emergency designation in that measure, that provision making such a designation shall be stricken from the measure and may not be offered as an amendment from the floor.

“(B) SUPERMAJORITY WAIVER AND APPEALS.—

“(i) WAIVER.—Subparagraph (A) may be waived or suspended in the Senate only by an affirmative vote of three-fifths of the Members, duly chosen and sworn.

“(ii) APPEALS.—Appeals in the Senate from the decisions of the Chair relating to any provision of this paragraph shall be limited to 1 hour, to be equally divided between, and controlled by, the appellant and the manager of the bill or joint resolution, as the case may be. An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under this paragraph.

“(C) DEFINITION OF AN EMERGENCY DESIGNATION.—For purposes of subparagraph (A), a provision shall be considered an emergency designation if it designates any item as an emergency requirement pursuant to this paragraph.

“(D) FORM OF THE POINT OF ORDER.—A point of order under subparagraph (A) may be raised by a Senator as provided in section 313(e) of the Congressional Budget Act of 1974.

“(E) CONFERENCE REPORTS.—When the Senate is considering a conference report on, or an amendment between the Houses in relation to, a bill, upon a point of order being made by any Senator pursuant to this paragraph, and such point of order being sustained, such material contained in such conference report shall be deemed stricken, and the Senate shall proceed to consider the question of whether the Senate shall recede from its amendment and concur with a further amendment, or concur in the House amendment with a further amendment, as the case may be, which further amendment shall consist of only that portion of the conference report or House amendment, as the case may be, not so stricken. Any such motion in the Senate shall be debatable. In any case in which such point of order is sustained against a conference report (or Senate amendment derived from such conference report by operation of this subsection), no further amendment shall be in order.

“(6) CRITERIA.—

“(A) IN GENERAL.—For purposes of this subsection, any provision is an emergency requirement if the situation addressed by such provision is—

“(i) necessary, essential, or vital (not merely useful or beneficial);

“(ii) sudden, quickly coming into being, and not building up over time;

“(iii) an urgent, pressing, and compelling need requiring immediate action;

“(iv) subject to clause (ii), unforeseen, unpredictable, and unanticipated; and

“(v) not permanent, temporary in nature.

“(7) UNFORESEEN.—An emergency that is part of an aggregate level of anticipated emergencies, particularly when normally estimated in advance, is not unforeseen.

“(e) LIMITATIONS ON CHANGES TO EXEMPTIONS.—It shall not be in order in the Senate or the House of Representatives to consider any bill, resolution, amendment, or conference report that would exempt any new budget authority, outlays, and receipts from being counted for purposes of this section.

“(f) POINT OF ORDER IN THE SENATE.—

“(1) WAIVER.—The provisions of this section shall be waived or suspended in the Senate only—

“(A) by the affirmative vote of two-thirds of the Members, duly chosen and sworn; or

“(B) in the case of the defense budget authority, if Congress declares war or authorizes the use of force.

“(2) APPEAL.—Appeals in the Senate from the decisions of the Chair relating to any provision of this section shall be limited to 1 hour, to be equally divided between, and controlled by, the appellant and the manager of the measure. An affirmative vote of two-thirds of the Members of the Senate, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under this section.

“(3) LIMITATIONS ON CHANGES TO THIS SUBSECTION.—It shall not be in order in the Senate or the House of Representatives to consider any bill, resolution, amendment, or conference report that would repeal or otherwise change this subsection.”

(b) TABLE OF CONTENTS.—The table of contents set forth in section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended by inserting after the item relating to section 315 the following new item:

“Sec. 316. Discretionary spending limits.”

**SA 3316.** Ms. LANDRIEU submitted an amendment intended to be proposed to amendment SA 3310 proposed by Mr. REID to the bill H.R. 2847, making appropriations for the Departments of Commerce and Justice, and Science, and Related Agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

At the end, add the following:

#### **TITLE —SMALL BUSINESS LOANS**

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

This title may be cited as the “Small Business Job Creation and Access to Capital Act of 2010”.

#### **Subtitle A—Next Steps for Main Street Credit Availability**

##### **SEC. 21. SECTION 7(a) BUSINESS LOANS.**

(a) AMENDMENT.—Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended—

(1) in paragraph (2)(A)—

(A) in clause (i), by striking “75 percent” and inserting “90 percent”; and

(B) in clause (ii), by striking “85 percent” and inserting “90 percent”; and

(2) in paragraph (3)(A), by striking “\$1,500,000 (or if the gross loan amount would exceed \$2,000,000) and inserting “\$4,500,000 (or if the gross loan amount would exceed \$5,000,000”.

(b) PROSPECTIVE REPEAL.—Effective January 1, 2011, section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended—

(1) in paragraph (2)(A)—

(A) in clause (i), by striking “90 percent” and inserting “75 percent”; and

(B) in clause (ii), by striking “90 percent” and inserting “85 percent”; and

(2) in paragraph (3)(A), by striking “\$4,500,000” and inserting “\$3,750,000”.

##### **SEC. 22. MAXIMUM LOAN AMOUNTS UNDER 504 PROGRAM.**

Section 502(2)(A) of the Small Business Investment Act of 1958 (15 U.S.C. 696(2)(A)) is amended—

(1) in clause (i), by striking “\$1,500,000” and inserting “\$5,000,000”; and

(2) in clause (ii), by striking “\$2,000,000” and inserting “\$5,000,000”; and

(3) in clause (iii), by striking “\$4,000,000” and inserting “\$5,500,000”; and

(4) in clause (iv), by striking “\$4,000,000” and inserting “\$5,500,000”; and

(5) in clause (v), by striking “\$4,000,000” and inserting “\$5,500,000”.

##### **SEC. 23. MAXIMUM LOAN LIMITS UNDER MICROLOAN PROGRAM.**

Section 7(m) of the Small Business Act (15 U.S.C. 636(m)) is amended—

(1) in paragraph (1)(B)(iii), by striking “\$35,000” and inserting “\$50,000”; and

(2) in paragraph (3)—

(A) in subparagraph (C), by striking “\$3,500,000” and inserting “\$5,000,000”; and

(B) in subparagraph (E), by striking “\$35,000” each place that term appears and inserting “\$50,000”; and

(3) in paragraph (11)(B), by striking “\$35,000” and inserting “\$50,000”.

##### **SEC. 24. TEMPORARY FEE REDUCTIONS.**

Section 501 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 that term appears and inserting “December 31, 2010”.

##### **SEC. 25. NEW MARKETS VENTURE CAPITAL COMPANY INVESTMENT LIMITATIONS.**

Section 355 of the Small Business Investment Act of 1958 (15 U.S.C. 689d) is amended by adding at the end the following:

“(e) INVESTMENT LIMITATIONS.—

“(1) DEFINITION.—In this subsection, the term ‘covered New Markets Venture Capital company’ means a New Markets Venture Capital company—

“(A) granted final approval by the Administrator under section 354(e) on or after March 1, 2002; and

“(B) that has obtained a financing from the Administrator.

“(2) LIMITATION.—Except to the extent approved by the Administrator, a covered New Markets Venture Capital company may not acquire or issue commitments for securities under this title for any single enterprise in an aggregate amount equal to more than 10 percent of the sum of—

“(A) the regulatory capital of the covered New Markets Venture Capital company; and

“(B) the total amount of leverage projected in the participation agreement of the covered New Markets Venture Capital.”

##### **SEC. 26. ALTERNATIVE SIZE STANDARDS.**

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

“(5) ALTERNATIVE SIZE STANDARD.—

“(A) IN GENERAL.—The Administrator shall establish an alternative size standard for applicants for business loans under section 7(a) and applicants for development company loans under title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.), that uses maximum tangible net worth and average net income as an alternative to the use of industry standards.

“(B) INTERIM RULE.—Until the date on which the alternative size standard established under subparagraph (A) is in effect, an applicant for a business loan under section

7(a) or an applicant for a development company loan under title V of the Small Business Investment Act of 1958 may be eligible for such a loan if—

“(i) the maximum tangible net worth of the applicant is not more than \$15,000,000; and

“(ii) the average net income after Federal income taxes (excluding any carry-over losses) of the applicant for the 2 full fiscal years before the date of the application is not more than \$5,000,000.”

##### **SEC. 27. SALE OF 7(a) LOANS IN SECONDARY MARKET.**

Section 5(g) of the Small Business Act (15 U.S.C. 634(g)) is amended by adding at the end the following:

“(6) If the amount of the guaranteed portion of any loan under section 7(a) is more than \$500,000, the Administrator shall, upon request of a pool assembler, divide the loan guarantee into increments of \$500,000 and 1 increment of any remaining amount less than \$500,000, in order to permit the maximum amount of any loan in a pool to be not more than \$500,000. Only 1 increment of any loan guarantee divided under this paragraph may be included in the same pool. Increments of loan guarantees to different borrowers that are divided under this paragraph may be included in the same pool.”

##### **SEC. 28. ONLINE LENDING PLATFORM.**

It is the sense of Congress that the Administrator of the Small Business Administration should establish a website that—

(1) lists each lender that makes loans guaranteed by the Small Business Administration and provides information about the loan rates of each such lender; and

(2) allows prospective borrowers to compare rates on loans guaranteed by the Small Business Administration.

#### **Subtitle B—Small Business Access to Capital**

##### **SEC. 42. LOW-INTEREST REFINANCING UNDER THE LOCAL DEVELOPMENT BUSINESS LOAN PROGRAM.**

(a) REFINANCING.—Section 502(7) of the Small Business Investment Act of 1958 (15 U.S.C. 696(7)) is amended by adding at the end the following:

“(C) REFINANCING NOT INVOLVING EXPANSIONS.—

“(i) DEFINITIONS.—In this subparagraph—

“(I) the term ‘borrower’ means a small business concern that submits an application to a development company for financing under this subparagraph; and

“(II) the term ‘eligible fixed asset’ means tangible property relating to which the Administrator may provide financing under this section; and

“(III) the term ‘qualified debt’ means indebtedness—

“(aa) that—

“(AA) was incurred not less than 2 years before the date of the application for assistance under this subparagraph; and

“(BB) is a commercial loan; and

“(CC) is not subject to a guarantee by a Federal agency; and

“(DD) the proceeds of which were used to acquire an eligible fixed asset; and

“(EE) was incurred for the benefit of the small business concern; and

“(FF) is collateralized by eligible fixed assets; and

“(bb) for which the borrower has been current on all payments for not less than 1 year before the date of the application.

“(ii) AUTHORITY.—A project that does not involve the expansion of a small business concern may include the refinancing of qualified debt if—

“(I) the amount of the financing is not more than 80 percent of the value of the collateral for the financing, except that, if the appraised value of the eligible fixed assets

serving as collateral for the financing is less than the amount equal to 125 percent of the amount of the financing, the borrower may provide additional cash or other collateral to eliminate any deficiency;

“(II) the borrower has been in operation for all of the 2-year period ending on the date of the loan; and

“(III) for a financing for which the Administrator determines there will be an additional cost attributable to the refinancing of the qualified debt, the borrower agrees to pay a fee in an amount equal to the anticipated additional cost.

“(iii) FINANCING FOR BUSINESS EXPENSES.—

“(I) FINANCING FOR BUSINESS EXPENSES.—The Administrator may provide financing to a borrower that receives financing that includes a refinancing of qualified debt under clause (ii), in addition to the refinancing under clause (ii), to be used solely for the payment of business expenses.

“(II) APPLICATION FOR FINANCING.—An application for financing under subclause (I) shall include—

“(aa) a specific description of the expenses for which the additional financing is requested; and

“(bb) an itemization of the amount of each expense.

“(III) CONDITION ON ADDITIONAL FINANCING.—A borrower may not use any part of the financing under this clause for non-business purposes.

“(iv) LOANS BASED ON JOBS.—

“(I) JOB CREATION AND RETENTION GOALS.—

“(aa) IN GENERAL.—The Administrator may provide financing under this subparagraph for a borrower that meets the job creation goals under subsection (d) or (e) of section 501.

“(bb) ALTERNATE JOB RETENTION GOAL.—The Administrator may provide financing under this subparagraph to a borrower that does not meet the goals described in item (aa) in an amount that is not more than the product obtained by multiplying the number of employees of the borrower by \$65,000.

“(II) NUMBER OF EMPLOYEES.—For purposes of subclause (I), the number of employees of a borrower is equal to the sum of—

“(aa) the number of full-time employees of the borrower on the date on which the borrower applies for a loan under this subparagraph; and

“(bb) the product obtained by multiplying—

“(AA) the number of part-time employees of the borrower on the date on which the borrower applies for a loan under this subparagraph; by

“(BB) the quotient obtained by dividing the average number of hours each part time employee of the borrower works each week by 40.

“(v) NONDELEGATION.—Notwithstanding section 508(e), the Administrator may not permit a premier certified lender to approve or disapprove an application for assistance under this subparagraph.

“(vi) TOTAL AMOUNT OF LOANS.—The Administrator may provide not more than a total of \$4,000,000,000 of financing under this subparagraph for each fiscal year.”.

(b) PROSPECTIVE REPEAL.—Effective 2 years after the date of enactment of this Act, section 502(7) of the Small Business Investment Act of 1958 (15 U.S.C. 696(7)) is amended by striking subparagraph (C).

(c) TECHNICAL CORRECTION.—Section 502(2)(A)(i) of the Small Business Investment Act of 1958 (15 U.S.C. 696(2)(A)(i)) is amended by striking “subparagraph (B) or (C)” and inserting “clause (ii), (iii), (iv), or (v)”.

**SA 3317.** Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill H.R. 2847, making ap-

propriations for the Departments of Commerce and Justice, and Science, and Related Agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. \_\_\_\_ SMALL BUSINESS TECHNICAL ASSISTANCE.**

(a) SMALL BUSINESS ACT.—Section 4 of the Small Business Act (15 U.S.C. 633) is amended by adding at the end the following:

“(g) WAIVER OF NON-FEDERAL SHARE FOR TECHNICAL ASSISTANCE AND COUNSELING PROGRAMS.—Upon request, the Administrator may waive, in whole or in part, the requirement to obtain non-Federal funds under a technical assistance or counseling program under this Act (including the microloan program under section 7(m), the small business development center program under section 21, and the women’s business center program under section 29) if the Administrator determines—

“(1) the requestor is suffering extreme economic hardship; and

“(2) waiving the requirement to obtain non-Federal funds will not undermine the credibility of the program.”.

(b) SMALL BUSINESS INVESTMENT ACT OF 1958.—Title I of the Small Business Investment Act of 1958 (15 U.S.C. 661 et seq.) is amended by adding at the end the following:

**“SEC. 104. WAIVER OF NON-FEDERAL SHARE FOR TECHNICAL ASSISTANCE AND COUNSELING PROGRAMS.**

“Upon request, the Administrator may waive, in whole or in part, the requirement to obtain non-Federal funds under a technical assistance or counseling program under this Act if the Administrator determines—

“(1) the requestor is suffering extreme economic hardship; and

“(2) waiving the requirement to obtain non-Federal funds will not undermine the credibility of the program.”.

**SA 3318.** Mr. VITTER (for himself, Mr. BARRASSO, Mr. BOND, Mr. BUNNING, Mr. COBURN, Mr. COCHRAN, Mr. CORNYN, Mr. DEMINT, Mr. ENSIGN, Mr. ENZI, Mrs. HUTCHINSON, Mr. INHOFE, Mr. RISCH, Mr. SESSIONS, Mr. CRAPO, Mr. BROWNBACK, Mr. WICKER, and Mr. THUNE) submitted an amendment intended to be proposed by him to the bill H.R. 2847, making appropriations for the Departments of Commerce and Justice, and Science, and Related Agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**TITLE \_\_\_\_—NO COST STIMULUS**

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

This title may be cited as the “No Cost Stimulus Act of 2010”.

**Subtitle A—Outer Continental Shelf Leasing**

**SEC. .11. LEASING PROGRAM CONSIDERED APPROVED.**

(a) IN GENERAL.—The Draft Proposed Outer Continental Shelf Oil and Gas Leasing Program 2010–2015 issued by the Secretary of the Interior (referred to in this section as the “Secretary”) under section 18 of the Outer Continental Shelf Lands Act (43 U.S.C. 1344) is considered to have been approved by the Secretary as a final oil and gas leasing program under that section.

(b) FINAL ENVIRONMENTAL IMPACT STATEMENT.—The Secretary is considered to have

issued a final environmental impact statement for the program described in subsection (a) in accordance with all requirements under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

**SEC. .12. LEASE SALES.**

(a) OUTER CONTINENTAL SHELF.—

(1) IN GENERAL.—Except as provided in paragraph (2), not later than 30 days after the date of enactment of this Act and every 270 days thereafter, the Secretary of the Interior (referred to in this section as the “Secretary”) shall conduct a lease sale in each outer Continental Shelf planning area for which the Secretary determines that there is a commercial interest in purchasing Federal oil and gas leases for production on the outer Continental Shelf.

(2) SUBSEQUENT DETERMINATIONS AND SALES.—If the Secretary determines that there is not a commercial interest in purchasing Federal oil and gas leases for production on the outer Continental Shelf in a planning area under this subsection, not later than 2 years after the date of enactment of the determination and every 2 years thereafter, the Secretary shall—

(A) determine whether there is a commercial interest in purchasing Federal oil and gas leases for production on the outer Continental Shelf in the planning area; and

(B) if the Secretary determines that there is a commercial interest described in subparagraph (A), conduct a lease sale in the planning area.

(b) RENEWABLE ENERGY AND MARICULTURE.—The Secretary may conduct commercial lease sales of resources owned by United States—

(1) to produce renewable energy (as defined in section 203(b) of the Energy Policy Act of 2005 (42 U.S.C. 15852(b))); or

(2) to cultivate marine organisms in the natural habitat of the organisms.

**SEC. .13. COASTAL IMPACT ASSISTANCE PROGRAM AMENDMENTS.**

Section 31 of the Outer Continental Shelf Lands Act (43 U.S.C. 1356a) is amended—

(1) in subsection (c), by adding at the end the following:

“(5) APPLICATION REQUIREMENTS; AVAILABILITY OF FUNDING.—On approval of a plan by the Secretary under this section, the producing State shall—

“(A) not be subject to any additional application or other requirements (other than notifying the Secretary of which projects are being carried out under the plan) to receive the payments; and

“(B) be immediately eligible to receive payments under this section.”; and

(2) by adding at the end the following:

“(e) FUNDING.—

“(1) STREAMLINING.—

“(A) REPORT.—Not later than 180 days after the date of enactment of this subsection, the Secretary of the Interior (acting through the Director of the Minerals Management Service) (referred to in this subsection as the ‘Secretary’) shall develop a plan that addresses streamlining the process by which payments are made under this section, including recommendations for—

“(i) decreasing the time required to approve plans submitted under subsection (c)(1);

“(ii) ensuring that allocations to producing States under subsection (b) are adequately funded; and

“(iii) any modifications to the authorized uses for payments under subsection (d).

“(B) CLEAN WATER.—Not later than 180 days after the date of enactment of this subsection, the Secretary and the Administrator of the Environmental Protection Agency shall jointly develop procedures for streamlining the permit process required under the

Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) and State laws for restoration projects that are included in an approved plan under subsection (c).

“(C) ENVIRONMENTAL REQUIREMENTS.—A project funded under this section that does not involve wetlands shall not be subject to environmental review requirements under Federal law.

“(2) COST-SHARING REQUIREMENTS.—Any amounts made available to producing States under this section may be used to meet the cost-sharing requirements of other Federal grant programs, including grant programs that support coastal wetland protection and restoration.

“(3) EXPEDITED FUNDING.—Not later than 180 days after the date of enactment of this subsection, the Secretary shall develop a procedure to provide expedited funding to projects under this section based on estimated revenues to ensure that the projects may—

“(A) secure additional funds from other sources; and

“(B) use the amounts made available under this section on receipt.”.

#### SEC. 14. SEAWARD BOUNDARIES OF STATES.

(a) SEAWARD BOUNDARIES.—Section 4 of the Submerged Lands Act (43 U.S.C. 1312) is amended by striking “three geographical miles” each place it appears and inserting “12 nautical miles”.

(b) CONFORMING AMENDMENTS.—Section 2 of the Submerged Lands Act (43 U.S.C. 1301) is amended—

(1) in subsection (a)(2), by striking “three geographical miles” and inserting “12 nautical miles”; and

(2) in subsection (b)—

(A) by striking “three geographical miles” and inserting “12 nautical miles”; and

(B) by striking “three marine leagues” and inserting “12 nautical miles”.

(c) EFFECT OF AMENDMENTS.—

(1) IN GENERAL.—Subject to paragraphs (2) through (4), the amendments made by this section shall not effect Federal oil and gas mineral rights.

(2) SUBMERGED LAND.—Submerged land within the seaward boundaries of States shall be—

(A) subject to Federal oil and gas mineral rights to the extent provided by law;

(B) considered to be part of the Federal outer Continental Shelf for purposes of the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.); and

(C) subject to leasing under the authority of that Act and to laws applicable to the leasing of the oil and gas resources of the Federal outer Continental Shelf.

(3) EXISTING LEASES.—The amendments made by this section shall not affect any Federal oil and gas lease in effect on the date of enactment of this Act.

(4) TAXATION.—

(A) IN GENERAL.—Subject to subparagraph (B), a State may exercise all of the sovereign powers of taxation of the State within the entire extent of the seaward boundaries of the State (as extended by the amendments made by this section).

(B) LIMITATION.—Nothing in this paragraph affects the authority of a State to tax any Federal oil and gas lease in effect on the date of enactment of this Act.

#### Subtitle B—Leasing Program for Land Within Coastal Plain

#### SEC. 21. DEFINITIONS.

In this subtitle:

(1) COASTAL PLAIN.—The term “Coastal Plain” means that area identified as the “1002 Coastal Plain Area” on the map.

(2) FEDERAL AGREEMENT.—The term “Federal Agreement” means the Federal Agreement and Grant Right-of-Way for the Trans-

Alaska Pipeline issued on January 23, 1974, in accordance with section 28 of the Mineral Leasing Act (30 U.S.C. 185) and the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.).

(3) FINAL STATEMENT.—The term “Final Statement” means the final legislative environmental impact statement on the Coastal Plain, dated April 1987, and prepared pursuant to section 1002 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3142) and section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

(4) MAP.—The term “map” means the map entitled “Arctic National Wildlife Refuge”, dated September 2005, and prepared by the United States Geological Survey.

(5) SECRETARY.—The term “Secretary” means the Secretary of the Interior (or the designee of the Secretary), acting through the Director of the Bureau of Land Management, in consultation with the Director of the United States Fish and Wildlife Service.

#### SEC. 22. LEASING PROGRAM FOR LAND WITHIN THE COASTAL PLAIN.

(a) IN GENERAL.—The Secretary shall take such actions as are necessary—

(1) to establish and implement, in accordance with this subtitle, a competitive oil and gas leasing program that will result in an environmentally sound program for the exploration, development, and production of the oil and gas resources of the Coastal Plain; and

(2) to administer this subtitle through regulations, lease terms, conditions, restrictions, prohibitions, stipulations, and other provisions that—

(A) ensure the oil and gas exploration, development, and production activities on the Coastal Plain will result in no significant adverse effect on fish and wildlife, their habitat, subsistence resources, and the environment; and

(B) require the application of the best commercially available technology for oil and gas exploration, development, and production to all exploration, development, and production operations under this subtitle in a manner that ensures the receipt of fair market value by the public for the mineral resources to be leased.

(b) REPEAL.—

(1) REPEAL.—Section 1003 of the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 3143) is repealed.

(2) CONFORMING AMENDMENT.—The table of contents contained in section 1 of that Act (16 U.S.C. 3101 note) is amended by striking the item relating to section 1003.

(3) COMPLIANCE WITH NEPA FOR OTHER ACTIONS.—

(A) IN GENERAL.—Before conducting the first lease sale under this subtitle, the Secretary shall prepare an environmental impact statement in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to the actions authorized by this subtitle that are not referred to in paragraph (2).

(B) IDENTIFICATION AND ANALYSIS.—Notwithstanding any other provision of law, in carrying out this paragraph, the Secretary shall not be required—

(i) to identify nonleasing alternative courses of action; or

(ii) to analyze the environmental effects of those courses of action.

(C) IDENTIFICATION OF PREFERRED ACTION.—Not later than 18 months after the date of enactment of this Act, the Secretary shall—

(i) identify only a preferred action and a single leasing alternative for the first lease sale authorized under this subtitle; and

(ii) analyze the environmental effects and potential mitigation measures for those 2 alternatives.

(D) PUBLIC COMMENTS.—In carrying out this paragraph, the Secretary shall consider only public comments that are filed not later than 20 days after the date of publication of a draft environmental impact statement.

(E) EFFECT OF COMPLIANCE.—Notwithstanding any other provision of law, compliance with this paragraph shall be considered to satisfy all requirements for the analysis and consideration of the environmental effects of proposed leasing under this subtitle.

(c) RELATIONSHIP TO STATE AND LOCAL AUTHORITY.—Nothing in this subtitle expands or limits any State or local regulatory authority.

(d) SPECIAL AREAS.—

(1) DESIGNATION.—

(A) IN GENERAL.—The Secretary, after consultation with the State of Alaska, the North Slope Borough, Alaska, and the City of Kaktovik, Alaska, may designate not more than 45,000 acres of the Coastal Plain as a special area if the Secretary determines that the special area would be of such unique character and interest as to require special management and regulatory protection.

(B) SADLEROCHIT SPRING AREA.—The Secretary shall designate as a special area in accordance with subparagraph (A) the Sadlerochit Spring area, comprising approximately 4,000 acres as depicted on the map.

(2) MANAGEMENT.—The Secretary shall manage each special area designated under this subsection in a manner that preserves the unique and diverse character of the area, including fish, wildlife, subsistence resources, and cultural values of the area.

(3) EXCLUSION FROM LEASING OR SURFACE OCCUPANCY.—

(A) IN GENERAL.—The Secretary may exclude any special area designated under this subsection from leasing.

(B) NO SURFACE OCCUPANCY.—If the Secretary leases all or a portion of a special area for the purposes of oil and gas exploration, development, production, and related activities, there shall be no surface occupancy of the land comprising the special area.

(4) DIRECTIONAL DRILLING.—Notwithstanding any other provision of this subsection, the Secretary may lease all or a portion of a special area under terms that permit the use of horizontal drilling technology from sites on leases located outside the special area.

(e) LIMITATION ON CLOSED AREAS.—The Secretary may not close land within the Coastal Plain to oil and gas leasing or to exploration, development, or production except in accordance with this subtitle.

(f) REGULATIONS.—

(1) IN GENERAL.—Not later than 15 months after the date of enactment of this Act, the Secretary shall promulgate such regulations as are necessary to carry out this subtitle, including rules and regulations relating to protection of the fish and wildlife, fish and wildlife habitat, subsistence resources, and environment of the Coastal Plain.

(2) REVISION OF REGULATIONS.—The Secretary shall periodically review and, as appropriate, revise the rules and regulations issued under paragraph (1) to reflect any significant biological, environmental, scientific or engineering data that come to the attention of the Secretary.

#### SEC. 23. LEASE SALES.

(a) IN GENERAL.—Land may be leased pursuant to this subtitle to any person qualified to obtain a lease for deposits of oil and gas under the Mineral Leasing Act (30 U.S.C. 181 et seq.).

(b) PROCEDURES.—The Secretary shall, by regulation, establish procedures for—

(1) receipt and consideration of sealed nominations for any area in the Coastal

Plain for inclusion in, or exclusion (as provided in subsection (c)) from, a lease sale;

(2) the holding of lease sales after that nomination process; and

(3) public notice of and comment on designation of areas to be included in, or excluded from, a lease sale.

(c) **LEASE SALE BIDS.**—Bidding for leases under this subtitle shall be by sealed competitive cash bonus bids.

(d) **ACREAGE MINIMUM IN FIRST SALE.**—For the first lease sale under this subtitle, the Secretary shall offer for lease those tracts the Secretary considers to have the greatest potential for the discovery of hydrocarbons, taking into consideration nominations received pursuant to subsection (b)(1), but in no case less than 200,000 acres.

(e) **TIMING OF LEASE SALES.**—The Secretary shall—

(1) not later than 22 months after the date of enactment of this Act, conduct the first lease sale under this subtitle;

(2) not later than 90 days after the date of the completion of the sale, evaluate the bids in the sale and issue leases resulting from the sale; and

(3) conduct additional sales at appropriate intervals if sufficient interest in exploration or development exists to warrant the conduct of the additional sales.

#### **SEC. 24. GRANT OF LEASES BY THE SECRETARY.**

(a) **IN GENERAL.**—On payment by a lessee of such bonus as may be accepted by the Secretary, the Secretary may grant to the highest responsible qualified bidder in a lease sale conducted pursuant to section 23 a lease for any land on the Coastal Plain.

(b) **SUBSEQUENT TRANSFERS.**—

(1) **IN GENERAL.**—No lease issued under this subtitle may be sold, exchanged, assigned, sublet, or otherwise transferred except with the approval of the Secretary.

(2) **CONDITION FOR APPROVAL.**—Before granting any approval described in paragraph (1), the Secretary shall consult with and give due consideration to the opinion of the Attorney General.

#### **SEC. 25. LEASE TERMS AND CONDITIONS.**

An oil or gas lease issued pursuant to this subtitle shall—

(1) provide for the payment of a royalty of not less than 12½ percent of the amount or value of the production removed or sold from the lease, as determined by the Secretary in accordance with regulations applicable to other Federal oil and gas leases;

(2) provide that the Secretary may close, on a seasonal basis, such portions of the Coastal Plain to exploratory drilling activities as are necessary to protect caribou calving areas and other species of fish and wildlife;

(3) require that each lessee of land within the Coastal Plain shall be fully responsible and liable for the reclamation of land within the Coastal Plain and any other Federal land that is adversely affected in connection with exploration, development, production, or transportation activities within the Coastal Plain conducted by the lessee or by any of the subcontractors or agents of the lessee;

(4) provide that the lessee may not delegate or convey, by contract or otherwise, that reclamation responsibility and liability to another person without the express written approval of the Secretary;

(5) provide that the standard of reclamation for land required to be reclaimed under this subtitle shall be, to the maximum extent practicable—

(A) a condition capable of supporting the uses that the land was capable of supporting prior to any exploration, development, or production activities; or

(B) on application by the lessee, to a higher or better standard, as approved by the Secretary;

(6) contain terms and conditions relating to protection of fish and wildlife, fish and wildlife habitat, subsistence resources, and the environment as required under section 22(a)(2);

(7) provide that each lessee, and each agent and contractor of a lessee, use their best efforts to provide a fair share of employment and contracting for Alaska Natives and Alaska Native Corporations from throughout the State of Alaska, as determined by the level of obligation previously agreed to in the Federal Agreement; and

(8) contain such other provisions as the Secretary determines to be necessary to ensure compliance with this subtitle and the regulations promulgated under this subtitle.

#### **SEC. 26. COASTAL PLAIN ENVIRONMENTAL PROTECTION.**

(a) **NO SIGNIFICANT ADVERSE EFFECT STANDARD TO GOVERN AUTHORIZED COASTAL PLAIN ACTIVITIES.**—In accordance with section 22, the Secretary shall administer this subtitle through regulations, lease terms, conditions, restrictions, prohibitions, stipulations, or other provisions that—

(1) ensure, to the maximum extent practicable, that oil and gas exploration, development, and production activities on the Coastal Plain will result in no significant adverse effect on fish and wildlife, fish and wildlife habitat, and the environment;

(2) require the application of the best commercially available technology for oil and gas exploration, development, and production on all new exploration, development, and production operations; and

(3) ensure that the maximum surface acreage covered in connection with the leasing program by production and support facilities, including airstrips and any areas covered by gravel berms or piers for support of pipelines, does not exceed 2,000 acres on the Coastal Plain.

(b) **SITE-SPECIFIC ASSESSMENT AND MITIGATION.**—The Secretary shall require, with respect to any proposed drilling and related activities on the Coastal Plain, that—

(1) a site-specific analysis be made of the probable effects, if any, that the drilling or related activities will have on fish and wildlife, fish and wildlife habitat, subsistence resources, subsistence uses, and the environment;

(2) a plan be implemented to avoid, minimize, and mitigate (in that order and to the maximum extent practicable) any significant adverse effect identified under paragraph (1); and

(3) the development of the plan shall occur after consultation with the 1 or more agencies having jurisdiction over matters mitigated by the plan.

(c) **REGULATIONS TO PROTECT COASTAL PLAIN FISH AND WILDLIFE RESOURCES, SUBSISTENCE USERS, AND THE ENVIRONMENT.**—Before implementing the leasing program authorized by this subtitle, the Secretary shall prepare and issue regulations, lease terms, conditions, restrictions, prohibitions, stipulations, or other measures designed to ensure, to the maximum extent practicable, that the activities carried out on the Coastal Plain under this subtitle are conducted in a manner consistent with the purposes and environmental requirements of this subtitle.

(d) **COMPLIANCE WITH FEDERAL AND STATE ENVIRONMENTAL LAWS AND OTHER REQUIREMENTS.**—The proposed regulations, lease terms, conditions, restrictions, prohibitions, and stipulations for the leasing program under this subtitle shall require—

(1) compliance with all applicable provisions of Federal and State environmental law (including regulations);

(2) implementation of and compliance with—

(A) standards that are at least as effective as the safety and environmental mitigation measures, as described in items 1 through 29 on pages 167 through 169 of the Final Statement, on the Coastal Plain;

(B) seasonal limitations on exploration, development, and related activities, as necessary, to avoid significant adverse effects during periods of concentrated fish and wildlife breeding, denning, nesting, spawning, and migration;

(C) design safety and construction standards for all pipelines and any access and service roads that minimize, to the maximum extent practicable, adverse effects on—

(i) the passage of migratory species (such as caribou); and

(ii) the flow of surface water by requiring the use of culverts, bridges, or other structural devices;

(D) prohibitions on general public access to, and use of, all pipeline access and service roads;

(E) stringent reclamation and rehabilitation requirements in accordance with this subtitle for the removal from the Coastal Plain of all oil and gas development and production facilities, structures, and equipment on completion of oil and gas production operations, except in a case in which the Secretary determines that those facilities, structures, or equipment—

(i) would assist in the management of the Arctic National Wildlife Refuge; and

(ii) are donated to the United States for that purpose;

(F) appropriate prohibitions or restrictions on—

(i) access by all modes of transportation;

(ii) sand and gravel extraction; and

(iii) use of explosives;

(G) reasonable stipulations for protection of cultural and archaeological resources;

(H) measures to protect groundwater and surface water, including—

(i) avoidance, to the maximum extent practicable, of springs, streams, and river systems;

(ii) the protection of natural surface drainage patterns and wetland and riparian habitats; and

(iii) the regulation of methods or techniques for developing or transporting adequate supplies of water for exploratory drilling; and

(I) research, monitoring, and reporting requirements.

(3) that exploration activities (except surface geological studies) be limited to the period between approximately November 1 and May 1 of each year and be supported, if necessary, by ice roads, winter trails with adequate snow cover, ice pads, ice airstrips, and air transport methods (except that those exploration activities may be permitted at other times if the Secretary determines that the exploration will have no significant adverse effect on fish and wildlife, fish and wildlife habitat, and the environment of the Coastal Plain);

(4) consolidation of facility siting;

(5) avoidance or reduction of air traffic-related disturbance to fish and wildlife;

(6) treatment and disposal of hazardous and toxic wastes, solid wastes, reserve pit fluids, drilling muds and cuttings, and domestic wastewater, including, in accordance with applicable Federal and State environmental laws (including regulations)—

(A) preparation of an annual waste management report;

(B) development and implementation of a hazardous materials tracking system; and

(C) prohibition on the use of chlorinated solvents;

(7) fuel storage and oil spill contingency planning;



(8) conduct of periodic field crew environmental briefings;

(9) avoidance of significant adverse effects on subsistence hunting, fishing, and trapping;

(10) compliance with applicable air and water quality standards;

(11) appropriate seasonal and safety zone designations around well sites, within which subsistence hunting and trapping shall be limited; and

(12) development and implementation of such other protective environmental requirements, restrictions, terms, or conditions as the Secretary determines to be necessary.

(e) **CONSIDERATIONS.**—In preparing and issuing regulations, lease terms, conditions, restrictions, prohibitions, or stipulations under this section, the Secretary shall take into consideration—

(1) the stipulations and conditions that govern the National Petroleum Reserve-Alaska leasing program, as set forth in the 1999 Northeast National Petroleum Reserve-Alaska Final Integrated Activity Plan/Environmental Impact Statement;

(2) the environmental protection standards that governed the initial Coastal Plain seismic exploration program under parts 37.31 through 37.33 of title 50, Code of Federal Regulations (or successor regulations); and

(3) the land use stipulations for exploratory drilling on the KIC-ASRC private land described in Appendix 2 of the agreement between Arctic Slope Regional Corporation and the United States dated August 9, 1983.

(f) **FACILITY CONSOLIDATION PLANNING.**—

(1) **IN GENERAL.**—After providing for public notice and comment, the Secretary shall prepare and periodically update a plan to govern, guide, and direct the siting and construction of facilities for the exploration, development, production, and transportation of oil and gas resources from the Coastal Plain.

(2) **OBJECTIVES.**—The objectives of the plan shall be—

(A) the avoidance of unnecessary duplication of facilities and activities;

(B) the encouragement of consolidation of common facilities and activities;

(C) the location or confinement of facilities and activities to areas that will minimize impact on fish and wildlife, fish and wildlife habitat, subsistence resources, and the environment;

(D) the use of existing facilities, to the maximum extent practicable; and

(E) the enhancement of compatibility between wildlife values and development activities.

(g) **ACCESS TO PUBLIC LAND.**—The Secretary shall—

(1) manage public land in the Coastal Plain in accordance with subsections (a) and (b) of section 811 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3121); and

(2) ensure that local residents shall have reasonable access to public land in the Coastal Plain for traditional uses.

## **SEC. 27. EXPEDITED JUDICIAL REVIEW.**

(a) **FILING OF COMPLAINTS.**—

(1) **DEADLINE.**—A complaint seeking judicial review of a provision of this subtitle or an action of the Secretary under this subtitle shall be filed—

(A) except as provided in subparagraph (B), during the 90-day period beginning on the date on which the action being challenged was carried out; or

(B) in the case of a complaint based solely on grounds arising after the 90-day period described in subparagraph (A), by not later than 90 days after the date on which the complainant knew or reasonably should have known about the grounds for the complaint.

(2) **VENUE.**—A complaint seeking judicial review of a provision of this subtitle or an

action of the Secretary under this subtitle shall be filed in the United States Court of Appeals for the District of Columbia Circuit.

(3) **SCOPE.**—

(A) **IN GENERAL.**—Judicial review of a decision of the Secretary relating to a lease sale under this subtitle (including an environmental analysis of such a lease sale) shall be—

(i) limited to a review of whether the decision is in accordance with this subtitle; and

(ii) based on the administrative record of the decision.

(B) **PRESUMPTIONS.**—Any identification by the Secretary of a preferred course of action relating to a lease sale, and any analysis by the Secretary of environmental effects, under this subtitle shall be presumed to be correct unless proven otherwise by clear and convincing evidence.

(b) **LIMITATION ON OTHER REVIEW.**—Any action of the Secretary that is subject to judicial review under this section shall not be subject to judicial review in any civil or criminal proceeding for enforcement.

## **SEC. 28. FEDERAL AND STATE DISTRIBUTION OF REVENUES.**

(a) **IN GENERAL.**—Notwithstanding any other provision of law, of the amount of adjusted bonus, rental, and royalty revenues from Federal oil and gas leasing and operations authorized under this subtitle for each fiscal year—

(1) 50 percent shall be paid to the State of Alaska; and

(2) except as provided in section 31(d), the balance shall be—

(A) used to offset the provisions of this title; and

(B) after making the offsets under subparagraph (A), transferred to the ANWR Alternative Energy Trust Fund established by section 32.

(b) **PAYMENTS TO ALASKA.**—Payments to the State of Alaska under this section shall be made semiannually.

## **SEC. 29. RIGHTS-OF-WAY ACROSS THE COASTAL PLAIN.**

(a) **IN GENERAL.**—The Secretary shall issue rights-of-way and easements across the Coastal Plain for the transportation of oil and gas—

(1) except as provided in paragraph (2), under section 28 of the Mineral Leasing Act (30 U.S.C. 185), without regard to title XI of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3161 et seq.); and

(2) under title XI of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3161 et seq.), for access authorized by sections 1110 and 1111 of that Act (16 U.S.C. 3170, 3171).

(b) **TERMS AND CONDITIONS.**—The Secretary shall include in any right-of-way or easement issued under subsection (a) such terms and conditions as may be necessary to ensure that transportation of oil and gas does not result in a significant adverse effect on the fish and wildlife, subsistence resources, their habitat, and the environment of the Coastal Plain, including requirements that facilities be sited or designed so as to avoid unnecessary duplication of roads and pipelines.

(c) **REGULATIONS.**—The Secretary shall include in regulations under section 22(f) provisions granting rights-of-way and easements described in subsection (a).

## **SEC. 30. CONVEYANCE.**

Notwithstanding section 1302(h)(2) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3192(h)(2)), to remove any cloud on title to land, and to clarify land ownership patterns in the Coastal Plain, the Secretary shall—

(1) to the extent necessary to fulfill the entitlement of the Kaktovik Inupiat Corpora-

tion under sections 12 and 14 of the Alaska Native Claims Settlement Act (43 U.S.C. 1611, 1613), as determined by the Secretary, convey to that Corporation the surface estate of the land described in paragraph (1) of Public Land Order 6959, in accordance with the terms and conditions of the agreement between the Secretary, the United States Fish and Wildlife Service, the Bureau of Land Management, and the Kaktovik Inupiat Corporation, dated January 22, 1993; and

(2) convey to the Arctic Slope Regional Corporation the remaining subsurface estate to which that Corporation is entitled under the agreement between that corporation and the United States, dated August 9, 1983.

## **SEC. 31. LOCAL GOVERNMENT IMPACT AID AND COMMUNITY SERVICE ASSISTANCE.**

(a) **FINANCIAL ASSISTANCE AUTHORIZED.**—

(1) **IN GENERAL.**—The Secretary may use amounts available from the Coastal Plain Local Government Impact Aid Assistance Fund established by subsection (d) to provide timely financial assistance to entities that are eligible under paragraph (2).

(2) **ELIGIBLE ENTITIES.**—The North Slope Borough, the City of Kaktovik, and any other borough, municipal subdivision, village, or other community in the State of Alaska that is directly impacted by exploration for, or the production of, oil or gas on the Coastal Plain under this subtitle, as determined by the Secretary, shall be eligible for financial assistance under this section.

(b) **USE OF ASSISTANCE.**—Financial assistance under this section may be used only—

(1) to plan for mitigation, implement a mitigation plan, or maintain a mitigation project to address the potential effects of oil and gas exploration and development on environmental, social, cultural, recreational, and subsistence resources of the community;

(2) to develop, carry out, and maintain—

(A) a project to provide new or expanded public facilities; or

(B) services to address the needs and problems associated with the effects described in paragraph (1), including firefighting, police, water and waste treatment, first responder, and other medical services; and

(3) to establish a local coordination office, to be managed by the Mayor of the North Slope Borough, in coordination with the City of Kaktovik, Alaska—

(A) to coordinate with and advise developers on local conditions and the history of areas affected by development; and

(B) to provide to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate annual reports on the status of the coordination between developers and communities affected by development.

(c) **APPLICATION.**—

(1) **IN GENERAL.**—Any community that is eligible for assistance under this section may submit an application for such assistance to the Secretary, in such form and under such procedures as the Secretary may prescribe by regulation.

(2) **NORTH SLOPE BOROUGH COMMUNITIES.**—A community located in the North Slope Borough may apply for assistance under this section either directly to the Secretary or through the North Slope Borough.

(3) **APPLICATION ASSISTANCE.**—The Secretary shall work closely with and assist the North Slope Borough and other communities eligible for assistance under this section in developing and submitting applications for assistance under this section.

(d) **ESTABLISHMENT OF FUND.**—

(1) **IN GENERAL.**—There is established in the Treasury the “Coastal Plain Local Government Impact Aid Assistance Fund” (referred to in this section as the “Fund”).

(2) **USE.**—Amounts in the Fund may be used only for providing financial assistance under this section.

(3) **DEPOSITS.**—Subject to paragraph (4), there shall be deposited into the Fund amounts received by the United States as revenues derived from rents, bonuses, and royalties from Federal leases and lease sales authorized under this subtitle.

(4) **LIMITATION ON DEPOSITS.**—The total amount in the Fund may not exceed \$11,000,000.

(5) **INVESTMENT OF BALANCES.**—The Secretary of the Treasury shall invest amounts in the Fund in interest bearing government securities.

(e) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to the Secretary from the Fund to provide financial assistance under this section \$5,000,000 for each fiscal year.

#### **SEC. 32. ANWR ALTERNATIVE ENERGY TRUST FUND.**

(a) **ESTABLISHMENT OF TRUST FUND.**—There is established in the Treasury of the United States a trust fund to be known as the “ANWR Alternative Energy Trust Fund”, consisting of such amounts as may be transferred to the ANWR Alternative Energy Trust Fund as provided in section 28(a)(2).

(b) **EXPENDITURES FROM ANWR ALTERNATIVE ENERGY TRUST FUND.**—

(1) **IN GENERAL.**—Amounts in the ANWR Alternative Energy Trust Fund shall be available without further appropriation to carry out specified provisions of the Energy Policy Act of 2005 (Public Law 109-58; referred to in this section as “EPAct2005”) and the Energy Independence and Security Act of 2007 (Public Law 110-140; referred to in this section as “EISAct2007”) as follows:

**The following percentage of annual receipts to the ANWR Alternative Energy Trust Fund, but not to exceed the limit on amount authorized, if any:**

#### **To carry out the provisions of:**

<b>EPAct2005:</b>	
Section 210 .....	1.5 percent
Section 242 .....	1.0 percent
Section 369 .....	2.0 percent
Section 401 .....	6.0 percent
Section 812 .....	6.0 percent
Section 931 .....	19.0 percent
Section 942 .....	1.5 percent
Section 962 .....	3.0 percent
Section 968 .....	1.5 percent
Section 1704 .....	6.0 percent
<b>EISAct2007:</b>	
Section 207 .....	15.0 percent
Section 607 .....	1.5 percent
Title VI, Subtitle B .....	3.0 percent
Title VI, Subtitle C .....	1.5 percent
Section 641 .....	9.0 percent
Title VII, Subtitle A .....	10.0 percent
Section 1112 .....	1.5 percent
Section 1304 .....	11.0 percent.

(2) **APPORTIONMENT OF EXCESS AMOUNT.**—Notwithstanding paragraph (1), any amounts allocated under paragraph (1) that are in excess of the amounts authorized in the applicable cited section or subtitle of EPAct2005 and EISAct2007 shall be reallocated to the remaining sections and subtitles cited in paragraph (1), up to the amounts otherwise authorized by law to carry out those sections and subtitles, in proportion to the amounts authorized by law to be appropriated for those other sections and subtitles.

#### **Subtitle C—Regulatory Streamlining**

#### **SEC. 41. COMMERCIAL LEASING PROGRAM FOR OIL SHALE RESOURCES ON PUBLIC LAND.**

Subsection (e) of the Oil Shale, Tar Sands, and Other Strategic Unconventional Fuels Act of 2005 (42 U.S.C. 15927(e)) is amended—

(1) in the first sentence, by striking “Not later” and inserting the following:

“(1) **IN GENERAL.**—Not later”;

(2) in the second sentence—

(A) by striking “If the Secretary” and inserting the following:

“(2) **LEASE SALES.**—

“(A) **IN GENERAL.**—If the Secretary”; and

(B) by striking “may” and inserting “shall”;

(3) in the last sentence, by striking “Evidence of interest” and inserting the following:

“(B) **EVIDENCE OF INTEREST.**—Evidence of interest”; and

(4) by adding at the end the following:

“(C) **SUBSEQUENT LEASE SALES.**—During any period for which the Secretary determines that there is sufficient support and interest in a State in the development of tar sands and oil shale resources, the Secretary shall—

“(i) at least annually, consult with the persons described in paragraph (1) to expedite the commercial leasing program for oil shale resources on public land in the State; and

“(ii) at least once every 270 days, conduct a lease sale in the State under the commercial leasing program regulations.”.

#### **SEC. 42. LICENSING OF NEW NUCLEAR POWER PLANTS.**

(a) **CONSTRUCTION PERMITS AND OPERATING LICENSES.**—Section 185 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2235(b)) is amended in the first sentence by striking “holding a public hearing” and inserting “any public hearing held”.

(b) **HEARINGS AND JUDICIAL REVIEW.**—Section 189 a.(1)(A) of the Atomic Energy Act of 1954 (42 U.S.C. 2239(a)(1)(A)) is amended—

(1) by striking the second sentence; and

(2) in the third sentence—

(A) by striking “In cases” and all that follows through “hearing, The” and inserting “The”; and

(B) by striking “an operating license” and inserting “a construction permit, an operating license,”.

#### **SEC. 43. JURISDICTION OVER COVERED ENERGY PROJECTS.**

(a) **DEFINITION OF COVERED ENERGY PROJECT.**—In this section, the term “covered energy project” means any action or decision by a Federal official regarding—

(1) the leasing of Federal land (including submerged land) for the exploration, development, production, processing, or transmission of oil, natural gas, or any other source or form of energy, including actions and decisions regarding the selection or offering of Federal land for such leasing; or

(2) any action under such a lease, except that this section and Act shall not apply to a dispute between the parties to a lease entered into a provision of law authorizing the lease regarding obligations under the lease or the alleged breach of the lease.

(b) **EXCLUSIVE JURISDICTION OVER CAUSES AND CLAIMS RELATING TO COVERED ENERGY PROJECTS.**—Notwithstanding any other provision of law, the United States District Court for the District of Columbia shall have exclusive jurisdiction to hear all causes and claims under this section or any other Act that arise from any covered energy project.

(c) **TIME FOR FILING COMPLAINT.**—

(1) **IN GENERAL.**—Each case or claim described in subsection (b) shall be filed not later than the end of the 60-day period beginning on the date of the action or decision by a Federal official that constitutes the covered energy project concerned.

(2) **PROHIBITION.**—Any cause or claim described in subsection (b) that is not filed within the time period described in paragraph (1) shall be barred.

(d) **DISTRICT COURT FOR THE DISTRICT OF COLUMBIA DEADLINE.**—

(1) **IN GENERAL.**—Each proceeding that is subject to subsection (b) shall—

(A) be resolved as expeditiously as practicable and in any event not more than 180 days after the cause or claim is filed; and

(B) take precedence over all other pending matters before the district court.

(2) **FAILURE TO COMPLY WITH DEADLINE.**—If an interlocutory or final judgment, decree, or order has not been issued by the district court by the deadline required under this section, the cause or claim shall be dismissed with prejudice and all rights relating to the cause or claim shall be terminated.

(e) **ABILITY TO SEEK APPELLATE REVIEW.**—An interlocutory or final judgment, decree, or order of the district court under this section may be reviewed by no other court except the Supreme Court.

(f) **DEADLINE FOR APPEAL TO THE SUPREME COURT.**—If a writ of certiorari has been granted by the Supreme Court pursuant to subsection (e), the interlocutory or final judgment, decree, or order of the district court shall be resolved as expeditiously as practicable and in any event not more than 180 days after the interlocutory or final judgment, decree, order of the district court is issued.

#### **SEC. 44. ENVIRONMENTAL IMPACT STATEMENTS.**

Title I of the National Environmental Policy Act of 1969 (42 U.S.C. 4331 et seq.) is amended by adding at the end the following: “**SEC. 106. COMPLETION AND REVIEW OF ENVIRONMENTAL IMPACT STATEMENTS.**

“(a) **COMPLETION.**—

“(1) **IN GENERAL.**—Notwithstanding any other provision of law, each review carried out under section 102(2)(C) with respect to any action taken under any provision of law, or for which funds are made available under any provision of law, shall be completed not later than the date that is 270 days after the commencement of the review.

“(2) **FAILURE TO COMPLETE REVIEW.**—If a review described in paragraph (1) has not been completed for an action subject to section 102(2)(C) by the date specified in paragraph (1)—

“(A) the action shall be considered to have no significant impact described in section 102(2)(C); and

“(B) that classification shall be considered to be a final agency action.

“(b) **LEAD AGENCY.**—The lead agency for a review of an action under this section shall be the Federal agency to which funds are made available for the action.

“(c) **REVIEW.**—

“(1) **ADMINISTRATIVE APPEALS.**—There shall be a single administrative appeal for each review carried out pursuant to section 102(2)(C).

“(2) **JUDICIAL REVIEW.**—

“(A) **IN GENERAL.**—On resolution of the administrative appeal, judicial review of the final agency decision after exhaustion of administrative remedies shall lie with the United States Court of Appeals for the District of Columbia Circuit.

“(B) **ADMINISTRATIVE RECORD.**—An appeal to the court described in subparagraph (A) shall be based only on the administrative record.

“(C) **PENDENCY OF JUDICIAL REVIEW.**—After an agency has made a final decision with respect to a review carried out under this subsection, the decision shall be effective during the course of any subsequent appeal to a court described in subparagraph (A).

“(3) **CIVIL ACTION.**—Each civil action covered by this section shall be considered to arise under the laws of the United States.”.

#### **SEC. 45. CLEAN AIR REGULATION.**

(a) **REGULATION OF GREENHOUSE GASES.**—Section 302(g) of the Clean Air Act (42 U.S.C. 7602(g)) is amended—

(1) by striking “(g) The term” and inserting the following:



“(g) AIR POLLUTANT.—

“(1) IN GENERAL.—The term”;

(2) by striking “Such term” and inserting the following:

“(2) INCLUSIONS.—The term ‘air pollutant’”; and

(3) by adding at the end the following:

“(3) EXCLUSIONS.—The term ‘air pollutant’ does not include carbon dioxide, methane from agriculture or livestock, or water vapor.”.

(b) EMISSION WAIVERS.—The Administrator of the Environmental Protection Agency shall not grant to any State any waiver of Federal preemption of motor vehicle standards under section 209(b) of the Clean Air Act (42 U.S.C. 7543(b)) for preemption under that Act for any regulation of the State to control greenhouse gas emissions from motor vehicles.

#### SEC. 46. ENDANGERED SPECIES.

(a) EMERGENCIES.—Section 10 of the Endangered Species Act of 1973 (16 U.S.C. 1539) is amended by adding at the end the following:

“(k) EMERGENCIES.—On the declaration of an emergency by the Governor of a State, the Secretary shall, for the duration of the emergency, temporarily exempt from the prohibition against taking, and the prohibition against the adverse modification of critical habitat, under this Act any action that is reasonably necessary to avoid or ameliorate the impact of the emergency, including the operation of any water supply or flood control project by a Federal agency.”.

(b) PROHIBITION OF CONSIDERATION OF IMPACT OF GREENHOUSE GAS.—

(1) IN GENERAL.—The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) is amended by adding at the end the following:

#### “SEC. 19. PROHIBITION OF CONSIDERATION OF IMPACT OF GREENHOUSE GAS.

“(a) DEFINITION OF GREENHOUSE.—In this section, the term ‘greenhouse gas’ means any of—

“(1) carbon dioxide;

“(2) methane;

“(3) nitrous oxide;

“(4) sulfur hexafluoride;

“(5) a hydrofluorocarbon;

“(6) a perfluorocarbon; or

“(7) any other anthropogenic gas designated by the Secretary for purposes of this section.

“(b) IMPACT OF GREENHOUSE GAS.—The impact of greenhouse gas on any species of fish or wildlife or plant shall not be considered for any purpose in the implementation of this Act.”.

(2) CONFORMING AMENDMENT.—The table of contents in the first section of the Endangered Species Act of 1973 (16 U.S.C. prec. 1531) is amended by adding at the end the following:

“Sec. 18. Annual cost analysis by the Fish and Wildlife Service.

“Sec. 19. Prohibition of consideration of impact of greenhouse gas.”.

**SA 3319.** Mr. THUNE submitted an amendment intended to be proposed to amendment SA 3310 proposed by Mr. REID to the bill H.R. 2847, making appropriations for the Departments of Commerce and Justice, and Science, and Related Agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

Strike subtitle B of title V and insert the following:

#### Subtitle B—Transfer of Stimulus Funds

#### SEC. 551. TRANSFER OF STIMULUS FUNDS.

Notwithstanding section 5 of the American Recovery and Reinvestment Act of 2009 (Pub.

Law 111-5), from the amounts appropriated or made available and remaining unobligated under such Act, the Director of the Office of Management and Budget shall transfer from time to time to the general fund of the Treasury an amount equal to the sum of the amount of any net reduction in revenues and the amount of any net increase in spending resulting from the enactment of this Act.

#### TITLE VI—BUSINESS RELIEF

##### Subtitle A—General Provisions

#### SEC. 601. PERMANENT INCREASE IN LIMITATIONS ON EXPENSING OF CERTAIN DEPRECIABLE BUSINESS ASSETS.

(a) NONAPPLICATION OF AMENDMENTS.—The amendments made by section 201 of this Act shall not apply.

(b) PERMANENT INCREASE.—Subsection (b) of section 179 is amended—

(1) by striking “\$25,000” and all that follows in paragraph (1) and inserting “\$500,000.”;

(2) by striking “\$200,000” and all that follows in paragraph (2) and inserting “\$2,000,000.”;

(3) by striking “after 2007 and before 2011, the \$120,000 and \$500,000” in paragraph (5)(A) and inserting “after 2009, the \$500,000 and the \$2,000,000.”;

(4) by striking “2006” in paragraph (5)(A)(ii) and inserting “2008”, and

(5) by striking paragraph (7).

(c) PERMANENT EXPENSING OF COMPUTER SOFTWARE.—Section 179(d)(1)(A)(ii) is amended by striking “and before 2011”.

(d) EFFECTIVE DATE.—The amendments made by subsections (b) and (c) shall apply to taxable years beginning after December 31, 2008.

#### SEC. 602. EXTENSION OF ADDITIONAL FIRST-YEAR DEPRECIATION FOR 50 PERCENT OF THE BASIS OF CERTAIN QUALIFIED PROPERTY.

(a) IN GENERAL.—Paragraph (2) of section 168(k), as amended by the American Recovery and Reinvestment Tax Act of 2009, is amended—

(1) by striking “January 1, 2011” in subparagraph (A)(iv) and inserting “January 1, 2012”, and

(2) by striking “January 1, 2010” each place it appears and inserting “January 1, 2011”.

(b) CONFORMING AMENDMENTS.—

(1) The heading for subsection (k) of section 168, as amended by the American Recovery and Reinvestment Tax Act of 2009, is amended by striking “JANUARY 1, 2010” and inserting “JANUARY 1, 2011”.

(2) The heading for clause (ii) of section 168(k)(2)(B), as so amended, is amended by striking “PRE-JANUARY 1, 2010” and inserting “PRE-JANUARY 1, 2011”.

(3) Subparagraph (D) of section 168(k)(4) is amended by striking “and” at the end of clause (ii), by striking the period at the end of clause (iii) and inserting a comma, and by adding at the end the following new clauses:

“(iv) ‘January 1, 2011’ shall be substituted for ‘January 1, 2012’ in subparagraph (A)(iv) thereof, and

“(v) ‘January 1, 2010’ shall be substituted for ‘January 1, 2011’ each place it appears in subparagraph (A) thereof.”.

(4) Subparagraph (B) of section 168(l)(5), as so amended, is amended by striking “January 1, 2010” and inserting “January 1, 2011”.

(5) Subparagraph (C) of section 168(n)(2), as so amended, is amended by striking “January 1, 2010” and inserting “January 1, 2011”.

(6) Subparagraph (D) of section 1400L(b)(2) is amended by striking “January 1, 2010” and inserting “January 1, 2011”.

(7) Subparagraph (B) of section 1400N(d)(3), as so amended, is amended by striking “January 1, 2010” and inserting “January 1, 2011”.

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

#### SEC. 603. INCREASED EXCLUSION AND OTHER MODIFICATIONS APPLICABLE TO QUALIFIED SMALL BUSINESS STOCK.

(a) INCREASED EXCLUSION.—

(1) IN GENERAL.—Subsection (a) of section 1202 is amended to read as follows:

“(a) EXCLUSION.—

“(1) IN GENERAL.—In the case of a taxpayer other than a corporation, gross income shall not include the applicable percentage of any gain from the sale or exchange of qualified small business stock held for more than 5 years.

“(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage is—

“(A) 50 percent, in the case of stock issued after August 10, 1993, and on or before February 18, 2009,

“(B) 75 percent, in the case of stock issued after February 18, 2009, and on or before the date of the enactment of the Hiring Incentives to Restore Employment Act, and

“(C) 100 percent, in the case of stock issued after the date of the enactment of the Hiring Incentives to Restore Employment Act.

“(3) EMPOWERMENT ZONE BUSINESSES.—

“(A) IN GENERAL.—In the case of qualified small business stock acquired after December 21, 2000, and on or before February 18, 2009, in a corporation which is a qualified business entity (as defined in section 1397C(b)) during substantially all of the taxpayer’s holding period for such stock, paragraph (2)(A) shall be applied by substituting ‘60 percent’ for ‘50 percent’.

“(B) CERTAIN RULES TO APPLY.—Rules similar to the rules of paragraphs (5) and (7) of section 1400B(b) shall apply for purposes of this paragraph.

“(C) GAIN AFTER 2014 NOT QUALIFIED.—Subparagraph (A) shall not apply to gain attributable to periods after December 31, 2014.

“(D) TREATMENT OF DC ZONE.—The District of Columbia Enterprise Zone shall not be treated as an empowerment zone for purposes of this paragraph.”.

(2) CONFORMING AMENDMENTS.—

(A) The heading for section 1202 is amended by striking “PARTIAL”.

(B) The item relating to section 1202 in the table of sections for part I of subchapter P of chapter 1 is amended by striking “Partial exclusion” and inserting “Exclusion”.

(C) Section 1223(13) is amended by striking “1202(a)(2).”.

(b) REPEAL OF MINIMUM TAX PREFERENCE.—Paragraph (7) of section 57(a) is amended by adding at the end the following: “The preceding sentence shall not apply to stock issued after the date of the enactment of the Hiring Incentives to Restore Employment Act.”.

(c) INCREASE IN LIMITATION.—

(1) IN GENERAL.—Subparagraph (A) of section 1202(b)(1) is amended by striking “\$10,000,000” and inserting “\$15,000,000”.

(2) MARRIED INDIVIDUALS.—Subparagraph (A) of section 1202(b)(3) is amended by striking “paragraph (1)(A) shall be applied by substituting ‘\$5,000,000’ for ‘\$10,000,000’” and inserting “the amount under paragraph (1)(A) shall be half of the amount otherwise in effect”.

(d) MODIFICATION OF DEFINITION OF QUALIFIED SMALL BUSINESS.—Section 1202(d)(1) is amended by striking “\$50,000,000” each place it appears and inserting “\$75,000,000”.

(e) INFLATION ADJUSTMENTS.—Section 1202 is amended by redesignating subsection (k) as subsection (l) and by inserting after subsection (j) the following new subsection:

“(k) INFLATION ADJUSTMENT.—

“(1) IN GENERAL.—In the case of any taxable year beginning after 2010, the \$15,000,000 amount in subsection (b)(1)(A), the \$75,000,000 amount in subsection (d)(1)(A), and the \$75,000,000 amount in subsection (d)(1)(B)

shall each be increased by an amount equal to—

“(A) such dollar amount, multiplied by  
“(B) the cost of living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ‘calendar year 2009’ for ‘calendar year 1992’ in subparagraph (B) thereof.

“(2) ROUNDING.—If any amount as adjusted under paragraph (1) is not a multiple of \$1,000,000 such amount shall be rounded to the next lowest multiple of \$1,000,000.”.

(f) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsections (a), (b), and (d) shall apply to stock acquired after the date of the enactment of this Act.

(2) LIMITATION; INFLATION ADJUSTMENT.—The amendments made by subsections (c) and (e) shall apply to taxable years ending after the date of the enactment of this Act.

#### SEC. 604. DEDUCTION FOR ELIGIBLE SMALL BUSINESS INCOME.

(a) IN GENERAL.—Paragraph (1) of section 199(a) is amended to read as follows:

“(1) IN GENERAL.—There shall be allowed as a deduction an amount equal to the sum of—

“(A) 9 percent of the lesser of—  
“(i) the qualified production activities income of the taxpayer for the taxable year, or  
“(ii) taxable income (determined without regard to this section) for the taxable year, and

“(B) in the case of an eligible small business for any taxable year beginning after 2009, 20 percent of the lesser of—

“(i) the eligible small business income of the taxpayer for the taxable year, or  
“(ii) taxable income (determined without regard to this section) for the taxable year.”.

(b) ELIGIBLE SMALL BUSINESS; ELIGIBLE SMALL BUSINESS INCOME.—Section 199 is amended by adding at the end the following new subsection:

“(e) ELIGIBLE SMALL BUSINESS; ELIGIBLE SMALL BUSINESS INCOME.—

“(1) ELIGIBLE SMALL BUSINESS.—For purposes of this section, the term ‘eligible small business’ means, with respect to any taxable year—

“(A) a corporation the stock of which is not publicly traded, or  
“(B) a partnership,

which meets the gross receipts test of section 448(c) (determined by substituting ‘\$50,000,000’ for ‘\$5,000,000’ each place it appears in such section) for the taxable year (or, in the case of a sole proprietorship, which would meet such test if such proprietorship were a corporation).

“(2) ELIGIBLE SMALL BUSINESS INCOME.—

“(A) IN GENERAL.—For purposes of this section, the term ‘eligible small business income’ means the excess of—

“(i) the income of the eligible small business which—

“(I) is attributable to the actual conduct of a trade or business,

“(II) is income from sources within the United States (within the meaning of section 861), and

“(III) is not passive income (as defined in section 904(d)(2)(B)), over

“(ii) the sum of—

“(I) the cost of goods sold that are allocable to such income, and

“(II) other expenses, losses, or deductions (other than the deduction allowed under this section), which are properly allocable to such income.

“(B) EXCEPTIONS.—The following shall not be treated as income of an eligible small business for purposes of subparagraph (A):

“(i) Any income which is attributable to any property described in section 1400N(p)(3).

“(ii) Any income which is attributable to the ownership or management of any professional sports team.

“(iii) Any income which is attributable to a trade or business described in subparagraph (B) of section 1202(e)(3).

“(iv) Any income which is attributable to any property with respect to which records are required to be maintained under section 2257 of title 18, United States Code.

“(C) ALLOCATION RULES, ETC.—Rules similar to the rules of paragraphs (2), (3), (4)(D), and (7) of subsection (c) shall apply for purposes of this paragraph.

“(3) SPECIAL RULES.—Except as otherwise provided by the Secretary, rules similar to the rules of subsection (d) shall apply for purposes of this subsection.”.

(c) CONFORMING AMENDMENT.—Section 199(a)(2) is amended by striking “paragraph (1)” and inserting “paragraph (1)(A)”.

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

#### SEC. 605. NONAPPLICATION OF CERTAIN LABOR STANDARDS.

Section 1601 of the American Recovery and Reinvestment Tax Act of 2009 shall not apply to any specified tax credit bond described in section 6431(f)(2)(A) of the Internal Revenue Code of 1986 (as added by section 301 of this Act).

#### SEC. 606. E-VERIFY PROGRAM PARTICIPATION REQUIREMENT FOR EMPLOYERS RECEIVING PAYROLL TAX FORGIVENESS.

(a) IN GENERAL.—Paragraph (2) of section 3111(d), as added by section 101, is amended by adding at the end the following new subparagraph:

“(C) E-VERIFY PROGRAM REQUIREMENT.—The term ‘qualified employer’ shall not include any employer that does not participate in the E-Verify Program carried out under subtitle A of title IV of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 as of the hiring date of any qualified individual.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply as if included in section 101 of this Act.

#### Subtitle B—Pension Funding Relief

##### PART I—SINGLE EMPLOYER PLANS

#### SEC. 611. 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 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 9-plan-year or 15-plan-year period, whichever is applicable, 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, 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) LIMITATION TO AGGREGATE REDUCED REQUIRED CONTRIBUTIONS.—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) 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 4, 2010.

“(iv) EXCEPTION FOR CERTAIN EQUITY PAYMENTS.—

“(I) IN GENERAL.—Any amount includible in income with respect to the granting on or after February 4, 2010, of an equity interest described in subclause (II) shall not be taken into account under clause (i)(I), but only if all portions of such interest remain subject to a substantial risk of forfeiture (other than in the case of death or disability) at all times before the date which is 5 years after the date on which such interest is granted.

“(II) EQUITY INTERESTS.—An equity interest is described in this subclause if it is a stock option which is granted at its fair market value on the date of the grant or a stock appreciation right which is granted at its fair market value on the date of the grant.

“(III) SUBSTANTIAL RISK OF FORFEITURE.—The term ‘substantial risk of forfeiture’ has the meaning given such term by section 83(c)(1) of the Internal Revenue Code of 1986.

“(IV) 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) PAYMENTS UNDER EXISTING CONTRACTS.—Any remuneration payable under a written binding contract that was in effect on February 4, 2010, and which was not modified in any material respect before such remuneration is repaid. This subclause shall not apply to bonus payments payable under such a contract during a calendar year to the extent that the aggregate amount of such bonus payments during such calendar year exceeds \$100,000.

“(vi) SELF-EMPLOYED INDIVIDUAL TREATED AS EMPLOYEE.—The term ‘employee’ in-

cludes, 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 sum of—

“(I) the aggregate amount of extraordinary dividends declared during the plan year by the plan sponsor and required to be reported under section 4043(c)(11), plus

“(II) if the plan sponsor redeems, in any 12-month period ending during the plan year, an aggregate of 10 percent or more of the total combined voting power of all classes of stock entitled to vote, or an aggregate of 10 percent or more of the total value of shares of all classes of stock, of the plan sponsor, the aggregate fair market value of the stock so redeemed.

“(ii) ONLY CERTAIN POST-2009 DIVIDENDS AND REDEMPTIONS COUNTED.—For purposes of clause (i)—

“(I) dividends shall be taken into account only if declared after February 4, 2010, and

“(II) if clause (i)(II) otherwise applies for any plan year (determined without regard to this subclause), only the fair market value of redemptions occurring after February 4, 2010, shall be taken into account in determining the amount under such clause for the plan year.

“(iii) EXCEPTION FOR INTRA-GROUP DIVIDENDS.—An extraordinary dividend 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)(I).

“(F) OTHER DEFINITIONS AND RULES.—For purposes of this paragraph—

“(i) BONUS PAYMENT.—The term ‘bonus payment’ means any payment which is a payment for services rendered and which is in addition to any amount payable to such individual for services performed by such individual at a regular hourly, daily, weekly, monthly, or similar periodic rate. Such term does not include payments to an employee as commissions, contributions to any qualified retirement plan (as defined in section 4974(c) of the Internal Revenue Code of 1986), welfare and fringe benefits, overtime pay, or expense reimbursements. The Secretary of the Treasury may recharacterize a payment that is a disguised bonus as a bonus payment for purposes of this paragraph.

“(ii) PLAN SPONSOR.—The term ‘plan sponsor’ includes any member of the plan sponsor’s controlled group (as defined in section 302(d)(3)).

“(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 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 9-plan-year or 15-plan-year period, whichever is applicable, 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, the sum of—

“(I) the aggregate amount of excess employee compensation determined under sub-

paragraph (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) LIMITATION TO AGGREGATE REDUCED REQUIRED CONTRIBUTIONS.—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) 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 4, 2010.

“(iv) EXCEPTION FOR CERTAIN EQUITY PAYMENTS.—

“(I) IN GENERAL.—Any amount includible in income with respect to the granting on or after February 4, 2010, of an equity interest described in subclause (II) shall not be taken into account under clause (i)(I), but only if all portions of such interest remain subject to a substantial risk of forfeiture (other than in the case of death or disability) at all times before the date which is 5 years after the date on which such interest is granted.

“(II) EQUITY INTERESTS.—An equity interest is described in this subclause if it is a stock option which is granted at its fair market value on the date of the grant or a stock appreciation right which is granted at its fair market value on the date of the grant.

“(III) SUBSTANTIAL RISK OF FORFEITURE.—The term ‘substantial risk of forfeiture’ has the meaning given such term by section 83(c)(1).

“(IV) 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) PAYMENTS UNDER EXISTING CONTRACTS.—Any remuneration payable under a written binding contract that was in effect on February 4, 2010, and which was not modified in any material respect before such remuneration is repaid. This subclause shall not apply to bonus payments payable under such a contract during a calendar year to the extent that the aggregate amount of such bonus payments during such calendar year exceeds \$100,000.

“(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 sum of—

“(I) the aggregate amount of extraordinary dividends declared during the plan year by the plan sponsor and required to be reported under section 4043(c)(11) of the Employee Retirement Income Security Act of 1974, plus

“(II) if the plan sponsor redeems, in any 12-month period ending during the plan year, an aggregate of 10 percent or more of the total combined voting power of all classes of stock entitled to vote, or an aggregate of 10 percent or more of the total value of shares

of all classes of stock, of the plan sponsor, the aggregate fair market value of the stock so redeemed.

“(ii) ONLY CERTAIN POST-2009 DIVIDENDS AND REDEMPTIONS COUNTED.—For purposes of clause (i)—

“(I) dividends shall be taken into account only if declared after February 4, 2010, and

“(II) if clause (i)(II) otherwise applies for any plan year (determined without regard to this subclause), only the fair market value of redemptions occurring after February 4, 2010, shall be taken into account in determining the amount under such clause for the plan year.

“(iii) EXCEPTION FOR INTRA-GROUP DIVIDENDS.—An extraordinary dividend 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)(I).

“(F) OTHER DEFINITIONS AND RULES.—For purposes of this paragraph—

“(i) BONUS PAYMENT.—The term ‘bonus payment’ means any payment which is a payment for services rendered and which is in addition to any amount payable to such individual for services performed by such individual at a regular hourly, daily, weekly, monthly, or similar periodic rate. Such term does not include payments to an employee as commissions, contributions to any qualified retirement plan (as defined in section 4974(c)), welfare and fringe benefits, overtime pay, or expense reimbursements. The Secretary may recharacterize a payment that is a disguised bonus as a bonus payment for purposes of this paragraph.

“(ii) PLAN SPONSOR.—The term ‘plan sponsor’ includes any member of the plan sponsor’s controlled group (as defined in section 412(d)(3)).

“(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. 612. 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 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. 613. 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.

#### PART II—MULTIEMPLOYER PLANS

##### SEC. 621. 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 its experience loss attributable to the net investment losses (if any) incurred in either or both of the first two plan years beginning after August 31, 2008, as an item separate from other experience losses, to be amortized in equal annual installments (until fully amortized) over a period of 30 plan years.

“(ii) NO EXTENSION ALLOWED.—If this subparagraph applies for any plan year, no extension of the amortization period under clause (i) shall be allowed under subsection (d).

“(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 beginning after August 31, 2008, over a period of not more than 10 years,

“(II) provides that for either or both of such 2 plan years 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 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 substantially the same 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 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 its experience loss attributable to the net investment losses (if any) incurred in either or both of the first two plan years beginning after August 31, 2008, as an item separate from other experience losses, to be amortized in equal annual installments (until fully amortized) over a period of 30 plan years.

“(ii) NO EXTENSION ALLOWED.—If this subparagraph applies for any plan year, no extension of the amortization period under clause (i) shall be allowed under subsection (d).

“(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 beginning after August 31, 2008, over a period of not more than 10 years,

“(II) provides that for either or both of such 2 plan years 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 substantially the same 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 or to comply with other applicable law.

“(E) REPORTING.—A plan sponsor of a plan to which this paragraph applies shall 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 beginning 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 VII—DETERMINATION OF BUDGETARY EFFECTS

### SEC. 701. DETERMINATION OF BUDGETARY EFFECTS.

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.

**SA 3320.** Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 3310 proposed by Mr. REID to the bill H.R. 2847, making appropriations for the Departments of Commerce and Justice, and Science, and Related Agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

Strike subtitle B of title V and insert the following:

#### Subtitle B—Black Liquor

### SEC. 551. EXCLUSION OF UNPROCESSED FUELS FROM THE CELLULOSIC BIOFUEL PRODUCER CREDIT.

(a) IN GENERAL.—Subparagraph (E) of section 40(b)(6) is amended by adding at the end the following new clause:

“(iii) EXCLUSION OF UNPROCESSED FUELS.—The term ‘cellulosic biofuel’ shall not include any fuel if—

“(I) more than 4 percent of such fuel (determined by weight) is any combination of water and sediment, or

“(II) the ash content of such fuel is more than 1 percent (determined by weight).”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to fuels sold or used after the date of the enactment of this Act.

### SEC. 552. PROHIBITION ON ALTERNATIVE FUEL CREDIT AND ALTERNATIVE FUEL MIXTURE CREDIT FOR BLACK LIQUOR.

(a) IN GENERAL.—The last sentence of section 6426(d)(2) is amended by striking “or biodiesel” and inserting “biodiesel, or any fuel (including lignin, wood residues, or spent pulping liquors) derived from the production of paper or pulp”.

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

#### Subtitle C—Homebuyer Credit

### SEC. 561. TECHNICAL MODIFICATIONS TO HOME-BUYER CREDIT.

(a) EXPANDED DOCUMENTATION REQUIREMENT.—Subsection (d) of section 36, as amended by the Worker, Homeownership, and Business Assistance Act of 2009, is amended—

(1) by striking “or” at the end of paragraph (3),

(2) by striking the period at the end of paragraph (4) and inserting a comma, and

(3) by adding at the end the following new paragraphs:

“(5) in the case of a taxpayer to whom such a credit would be allowed (but for this paragraph) by reason of subsection (c)(6), the taxpayer fails to attach to the return of tax for such taxable year a copy of such property tax bills or other documentation as are required by the Secretary to demonstrate compliance with the requirements of subsection (c)(6), or

“(6) in the case of a taxpayer to whom such a credit would be allowed (but for this paragraph) by reason of subsection (h)(2), the taxpayer fails to attach to the return of tax for such taxable year a copy of the binding contract which meets the requirements of subsection (h)(2).”.

(b) MODIFICATION OF EFFECTIVE DATE OF DOCUMENTATION REQUIREMENTS.—Paragraph (2) of section 12(e) of the Worker, Homeownership, and Business Assistance Act of 2009 is amended by striking “returns for taxable years ending after the date of the enactment of this Act” and inserting “returns filed after the date of the enactment of this Act”.

(c) EFFECTIVE DATES.—

(1) DOCUMENTATION REQUIREMENTS.—The amendments made by subsection (a) shall apply to purchases on or after the date of the enactment of this Act.

(2) EFFECTIVE DATE OF WORKER, HOMEOWNERSHIP, AND BUSINESS ASSISTANCE ACT.—The amendment made by subsection (b) shall apply to purchases of a principal residence on or after the date of the enactment of the Worker, Homeownership, and Business Assistance Act of 2009.

#### Subtitle D—Economic Substance

#### SEC. 571. CODIFICATION OF ECONOMIC SUBSTANCE DOCTRINE; PENALTIES.

(a) IN GENERAL.—Section 7701 is amended by redesignating subsection (o) as subsection (p) and by inserting after subsection (n) the following new subsection:

“(o) CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE.—

“(1) APPLICATION OF DOCTRINE.—In the case of any transaction to which the economic substance doctrine is relevant, such transaction shall be treated as having economic substance only if—

“(A) the transaction changes in a meaningful way (apart from Federal income tax effects) the taxpayer's economic position, and

“(B) the taxpayer has a substantial purpose (apart from Federal income tax effects) for entering into such transaction.

“(2) SPECIAL RULE WHERE TAXPAYER RELIES ON PROFIT POTENTIAL.—

“(A) IN GENERAL.—The potential for profit of a transaction shall be taken into account in determining whether the requirements of subparagraphs (A) and (B) of paragraph (1) are met with respect to the transaction only if the present value of the reasonably expected pre-tax profit from the transaction is substantial in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected.

“(B) TREATMENT OF FEES AND FOREIGN TAXES.—Fees and other transaction expenses shall be taken into account as expenses in determining pre-tax profit under subparagraph (A). The Secretary may issue regulations requiring foreign taxes to be treated as expenses in determining pre-tax profit in appropriate cases.

“(3) STATE AND LOCAL TAX BENEFITS.—For purposes of paragraph (1), any State or local income tax effect which is related to a Federal income tax effect shall be treated in the same manner as a Federal income tax effect.

“(4) FINANCIAL ACCOUNTING BENEFITS.—For purposes of paragraph (1)(B), achieving a financial accounting benefit shall not be taken into account as a purpose for entering into a transaction if the origin of such financial accounting benefit is a reduction of Federal income tax.

“(5) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

“(A) ECONOMIC SUBSTANCE DOCTRINE.—The term ‘economic substance doctrine’ means the common law doctrine under which tax benefits under subtitle A with respect to a transaction are not allowable if the transaction does not have economic substance or lacks a business purpose.

“(B) EXCEPTION FOR PERSONAL TRANSACTIONS OF INDIVIDUALS.—In the case of an individual, paragraph (1) shall apply only to transactions entered into in connection with a trade or business or an activity engaged in for the production of income.

“(C) OTHER COMMON LAW DOCTRINES NOT AFFECTED.—Except as specifically provided in this subsection, the provisions of this subsection shall not be construed as altering or supplanting any other rule of law, and the requirements of this subsection shall be construed as being in addition to any such other rule of law.

“(D) DETERMINATION OF APPLICATION OF DOCTRINE NOT AFFECTED.—The determination of whether the economic substance doctrine is relevant to a transaction shall be made in the same manner as if this subsection had never been enacted.

“(E) TRANSACTION.—The term ‘transaction’ includes a series of transactions.

“(6) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection.”.

(b) PENALTY FOR UNDERPAYMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE.—

(1) IN GENERAL.—Subsection (b) of section 6662 is amended by inserting after paragraph (5) the following new paragraph:

“(6) Any disallowance of claimed tax benefits by reason of a transaction lacking economic substance (within the meaning of section 7701(o)) or failing to meet the requirements of any similar rule of law.”.

(2) INCREASED PENALTY FOR NONDISCLOSED TRANSACTIONS.—Section 6662 is amended by adding at the end the following new subsection:

“(i) INCREASE IN PENALTY IN CASE OF NONDISCLOSED NONECONOMIC SUBSTANCE TRANSACTIONS.—

“(1) IN GENERAL.—In the case of any portion of an underpayment which is attributable to one or more nondisclosed noneconomic substance transactions, subsection (a) shall be applied with respect to such portion by substituting ‘40 percent’ for ‘20 percent’.

“(2) NONDISCLOSED NONECONOMIC SUBSTANCE TRANSACTIONS.—For purposes of this subsection, the term ‘nondisclosed noneconomic substance transaction’ means any portion of a transaction described in subsection (b)(6) with respect to which the relevant facts affecting the tax treatment are not adequately disclosed in the return nor in a statement attached to the return.

“(3) SPECIAL RULE FOR AMENDED RETURNS.—Except as provided in regulations, in no event shall any amendment or supplement to a return of tax be taken into account for purposes of this subsection if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted by the Secretary regarding the examination of the return or such other date as is specified by the Secretary.”.

(3) CONFORMING AMENDMENT.—Subparagraph (B) of section 6662A(e)(2) is amended—

(A) by striking “section 6662(h)” and inserting “subsections (h) or (i) of section 6662”; and

(B) by striking “GROSS VALUATION MISSTATEMENT PENALTY” in the heading and inserting “CERTAIN INCREASED UNDERPAYMENT PENALTIES”.

(c) REASONABLE CAUSE EXCEPTION NOT APPLICABLE TO NONECONOMIC SUBSTANCE TRANSACTIONS.—

(1) REASONABLE CAUSE EXCEPTION FOR UNDERPAYMENTS.—Subsection (c) of section 6664 is amended—

(A) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively;

(B) by striking “paragraph (2)” in paragraph (4)(A), as so redesignated, and inserting “paragraph (3)”; and

(C) by inserting after paragraph (1) the following new paragraph:

“(2) EXCEPTION.—Paragraph (1) shall not apply to any portion of an underpayment which is attributable to one or more transactions described in section 6662(b)(6).”.

(2) REASONABLE CAUSE EXCEPTION FOR REPORTABLE TRANSACTION UNDERSTATEMENTS.—Subsection (d) of section 6664 is amended—

(A) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively;

(B) by striking “paragraph (2)(C)” in paragraph (4), as so redesignated, and inserting “paragraph (3)(C)”; and

(C) by inserting after paragraph (1) the following new paragraph:

“(2) EXCEPTION.—Paragraph (1) shall not apply to any portion of a reportable transaction understatement which is attributable to one or more transactions described in section 6662(b)(6).”.

(d) APPLICATION OF PENALTY FOR ERRONEOUS CLAIM FOR REFUND OR CREDIT TO NONECONOMIC SUBSTANCE TRANSACTIONS.—Section 6676 is amended by redesignating subsection (c) as subsection (d) and inserting after subsection (b) the following new subsection:

“(c) NONECONOMIC SUBSTANCE TRANSACTIONS TREATED AS LACKING REASONABLE BASIS.—For purposes of this section, any excessive amount which is attributable to any transaction described in section 6662(b)(6) shall not be treated as having a reasonable basis.”.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

(2) UNDERPAYMENTS.—The amendments made by subsections (b) and (c)(1) shall apply to underpayments attributable to transactions entered into after the date of the enactment of this Act.

(3) UNDERSTATEMENTS.—The amendments made by subsection (c)(2) shall apply to understatements attributable to transactions entered into after the date of the enactment of this Act.

(4) REFUNDS AND CREDITS.—The amendment made by subsection (d) shall apply to refunds and credits attributable to transactions entered into after the date of the enactment of this Act.

#### Subtitle E—Additional Provisions

#### SEC. 581. REVISION TO THE MEDICARE IMPROVEMENT FUND.

Section 1898(b)(1)(A) of the Social Security Act (42 U.S.C. 1395iii(b)(1)(A)), as amended by section 1011(b) of the Department of Defense Appropriations Act, 2010 (Public Law 111-118), is amended by striking “\$20,740,000,000” and inserting “\$10,240,000,000”.

#### SEC. 582. TRANSFER OF STIMULUS FUNDS.

Notwithstanding section 5 of the American Recovery and Reinvestment Act of 2009 (Pub. Law 111-5), from the amounts appropriated or made available and remaining unobligated under such Act, the Director of the Office of Management and Budget shall transfer from time to time to the general fund of the Treasury an amount equal to the sum of the amount of any net reduction in revenues and the amount of any net increase in spending resulting from the enactment of this Act.

# **TITLE VI—EXTENSION OF EXPIRING PROVISIONS**

## **Subtitle A—Energy**

### **SEC. 601. 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. 602. 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. 603. 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. 604. 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. 605. 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.

### **SEC. 606. 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. 607. 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. 608. 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. 609. 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) EFFECTIVE DATE.—The amendment made by this section shall apply to transactions after December 31, 2009.

### **SEC. 610. 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.

## **Subtitle B—Individual Tax Relief**

## **PART I—MISCELLANEOUS PROVISIONS**

### **SEC. 611. 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. 612. 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. 613. 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. 614. 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. 615. 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. 616. 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. 617. 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. 621. ELECTION FOR REFUNDABLE 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), 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, multiplied by

“(B) 10.

“(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 “36A.”

## **Subtitle C—Business Tax Relief**

### **SEC. 631. 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. 632. 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. 633. 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. 634. 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. 635. 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) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2009.

**SEC. 636. 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. 637. 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. 638. 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. 639. 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. 640. 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. 641. 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. 642. 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. 643. 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. 644. 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. 645. 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. 646. 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. 647. 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. 648. 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. 649. 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. 650. 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 “in a taxable year beginning 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. 651. TREATMENT OF CERTAIN DIVIDENDS AND ASSETS 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. 652. 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. 653. 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. 654. 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. 655. TEMPORARY 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—

“(A) any portion of such taxable year after May 22, 2009, and before the date of the enactment of the Hiring Incentives to Restore Employment Act, and

“(B) 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 the date of the enactment of this Act.

**SEC. 656. 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. 657. 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.—Subparagraph (C) of section 1202(a)(2) is amended—

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

(2) by striking “2015” 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. 658. TAX INCENTIVES FOR INVESTMENT IN THE DISTRICT OF COLUMBIA.**

(a) IN GENERAL.—Subsection (f) of section 1400 is amended by striking “December 31, 2009” each place it appears and inserting “December 31, 2010”.

(b) TAX-EXEMPT DC EMPOWERMENT ZONE BONDS.—Subsection (b) of section 1400A is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(c) ZERO-PERCENT CAPITAL GAINS RATE.—

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

(2) LIMITATION ON PERIOD OF GAINS.—

(A) IN GENERAL.—Paragraph (2) of section 1400B(e) is amended—

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

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

(B) PARTNERSHIPS AND S-CORPS.—Paragraph (2) of section 1400B(g) is amended by striking “December 31, 2014” and inserting “December 31, 2015”.

(d) FIRST-TIME HOMEBUYER CREDIT.—Subsection (i) of section 1400C is amended by striking “January 1, 2010” and inserting “January 1, 2011”.

(e) 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) TAX-EXEMPT DC EMPOWERMENT ZONE BONDS.—The amendment made by subsection (b) shall apply to bonds issued after December 31, 2009.

(3) ACQUISITION DATES FOR ZERO-PERCENT CAPITAL GAINS RATE.—The amendments made by subsection (c) shall apply to property acquired or substantially improved after December 31, 2009.

(4) HOMEBUYER CREDIT.—The amendment made by subsection (d) shall apply to homes purchased after December 31, 2009.

**SEC. 659. 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. 660. 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. 661. AMERICAN SAMOA ECONOMIC DEVELOPMENT CREDIT.**

(a) IN GENERAL.—Subsection (d) of section 119 of division A of the Tax Relief and Health Care Act of 2006 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.

**Subtitle D—Temporary Disaster Relief Provisions****PART I—NATIONAL DISASTER RELIEF****SEC. 671. 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. 672. 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. 673. 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. 674. 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. 675. 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.

**PART II—REGIONAL PROVISIONS**

**Subpart A—New York Liberty Zone**

**SEC. 681. 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. 682. 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. 683. 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.

**SEC. 684. 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.

**Subpart C—Midwestern Disaster Areas**

**SEC. 685. 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. 686. 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 VII—UNEMPLOYMENT INSURANCE, HEALTH, AND OTHER PROVISIONS**  
**Subtitle A—Unemployment Insurance**

**SEC. 701. 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 “February 28, 2010” each place it appears and inserting “May 31, 2010”;

(B) in the heading for subsection (b)(2), by striking “FEBRUARY 28, 2010” and inserting “MAY 31, 2010”; and

(C) in subsection (b)(3), by striking “July 31, 2010” and inserting “November 1, 2010”.

(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 “February 28, 2010” and inserting “May 31, 2010”;

(B) in the heading for paragraph (2), by striking “FEBRUARY 28, 2010” and inserting “MAY 31, 2010”; and

(C) in paragraph (3), by striking “August 31, 2010” and inserting “November 30, 2010”.

(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 “February 28, 2010” each place it appears and inserting “May 31, 2010”; and

(B) in subsection (c), by striking “July 31, 2010” and inserting “November 1, 2010”.

(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 “July 31, 2010” and inserting “November 1, 2010”.

(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 (B), by striking “and” at the end;

(2) in subparagraph (C), by striking “1009” and inserting “1009(a)(1)”; and

(3) by inserting after subparagraph (C) the following new subparagraph:

“(D) the amendments made by section 601(a)(1) of the Hiring Incentives to Restore Employment Act; and”.

**Subtitle B—Health Provisions**

**SEC. 711. 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) is amended by striking “February 28, 2010” and inserting “May 31, 2010”.

(b) CLARIFICATIONS RELATING TO SECTION 3001 OF ARRA.—

(1) CLARIFICATION REGARDING COBRA CONTINUATION RESULTING FROM REDUCTIONS IN HOURS.—Subsection (a) of section 3001 of division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) is amended—

(A) in paragraph (3)(C), by inserting before the period at the end the following: “or consists of a reduction of hours followed by such an involuntary termination of employment during such period”;

(B) in paragraph (16)—

(i) by striking clause (ii) of subparagraph (A), and inserting the following:

“(ii) such individual pays, by the latest of 60 days after the date of the enactment of this paragraph, 30 days after the date of provision of the notification required under sub-

paragraph (D)(ii), or the period described in section 4980B(f)(2)(B)(iii) of the Internal Revenue Code of 1986, the amount of such premium, after the application of paragraph (1)(A).”; and

(ii) by striking subclause (I) of subparagraph (C)(i), and inserting the following:

“(I) such assistance eligible individual experienced an involuntary termination that was a qualifying event prior to the date of enactment of the Department of Defense Appropriations Act, 2010; and”;

(C) by adding at the end the following:

“(17) SPECIAL RULES IN CASE OF INDIVIDUALS LOSING COVERAGE BECAUSE OF A REDUCTION OF HOURS.—

“(A) NEW ELECTION PERIOD.—

“(i) IN GENERAL.—For purposes of the COBRA continuation provisions, in the case of an individual described in subparagraph (C) who did not make (or who made and discontinued) an election of COBRA continuation coverage on the basis of the reduction of hours of employment, the involuntary termination of employment of such individual after the date of the enactment of the Hiring Incentives to Restore Employment Act shall be treated as a qualifying event.

“(ii) COUNTING COBRA DURATION PERIOD FROM PREVIOUS QUALIFYING EVENT.—In any case of an individual referred to in clause (i), the period of such individual’s continuation coverage shall be determined as though the qualifying event were the reduction of hours of employment.

“(iii) CONSTRUCTION.—Nothing in this paragraph shall be construed as requiring an individual referred to in clause (i) to make a payment for COBRA continuation coverage between the reduction of hours and the involuntary termination of employment.

“(iv) PREEXISTING CONDITIONS.—With respect to an individual referred to in clause (i) who elects COBRA continuation coverage pursuant to such clause, rules similar to the rules in paragraph (4)(C) shall apply.

“(B) NOTICES.—In the case of an individual described in subparagraph (C), the administrator of the group health plan (or other entity) involved shall provide, during the 60-day period beginning on the date of such individual’s involuntary termination of employment, an additional notification described in paragraph (7)(A), including information on the provisions of this paragraph. Rules similar to the rules of paragraph (7) shall apply with respect to such notification.

“(C) INDIVIDUALS DESCRIBED.—Individuals described in this subparagraph are individuals who are assistance eligible individuals on the basis of a qualifying event consisting of a reduction of hours occurring during the period described in paragraph (3)(A) followed by an involuntary termination of employment insofar as such involuntary termination of employment occurred after the date of the enactment of the Hiring Incentives to Restore Employment Act.”.

(2) CLARIFICATION OF PERIOD OF ASSISTANCE.—Subsection (a)(2)(A)(ii)(I) of such section is amended by striking “of the first month”.

(3) ENFORCEMENT.—Subsection (a)(5) of such section is amended by adding at the end the following: “In addition to civil actions that may be brought to enforce applicable provisions of such Act or other laws, the appropriate Secretary or an affected individual may bring a civil action to enforce such determinations and for appropriate relief. In addition, such Secretary may assess a penalty against a plan sponsor or health insurance issuer of not more than \$110 per day for each failure to comply with such determination of such Secretary after 10 days after the date of the plan sponsor’s or issuer’s receipt of the determination.”.



(4) AMENDMENTS RELATING TO SECTION 3001 OF ARRA.—

(A) Subsection (g) of section 35 is amended by striking “section 3002(a) of the Health Insurance Assistance for the Unemployed Act of 2009” and inserting “section 3001(a) of title III of division B of the American Recovery and Reinvestment Act of 2009”.

(B) Section 139C is amended by striking “section 3002 of the Health Insurance Assistance for the Unemployed Act of 2009” and inserting “section 3001 of title III of division B of the American Recovery and Reinvestment Act of 2009”.

(C) Section 6432 is amended—

(i) in subsection (a), by striking “section 3002(a) of the Health Insurance Assistance for the Unemployed Act of 2009” and inserting “section 3001(a) of title III of division B of the American Recovery and Reinvestment Act of 2009”;

(ii) in subsection (c)(3), by striking “section 3002(a)(1)(A) of such Act” in subsection (c)(3) and inserting “section 3001(a)(1)(A) of title III of division B of the American Recovery and Reinvestment Act of 2009”; and

(iii) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively, and inserting after subsection (d) the following new subsection:..

“(e) EMPLOYER DETERMINATION OF QUALIFYING EVENT AS INVOLUNTARY TERMINATION.—For purposes of this section, in any case in which—

“(1) based on a reasonable interpretation of section 3001(a)(3)(C) of division B of the American Recovery and Reinvestment Act of 2009 and administrative guidance thereunder, an employer determines that the qualifying event with respect to COBRA continuation coverage for an individual was involuntary termination of a covered employee’s employment, and

“(2) the employer maintains supporting documentation of the determination, including an attestation by the employer of involuntary termination with respect to the covered employee, the qualifying event for the individual shall be deemed to be involuntary termination of the covered employee’s employment.”.

(D) Subsection (a) of section 6720C is amended by striking “section 3002(a)(2)(C) of the Health Insurance Assistance for the Unemployed Act of 2009” and inserting “section 3001(a)(2)(C) of title III of division B of the American Recovery and Reinvestment Act of 2009”.

(c) EFFECTIVE DATE.—The amendments 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 to which they relate, except that—

(1) the amendments made by subsections (b)(1) shall apply to periods of coverage beginning after the date of the enactment of this Act; and

(2) the amendments made by paragraphs (2) and (3) of subsection (b) shall take effect on the date of the enactment of this Act.

#### SEC. 712. EXTENSION OF THERAPY CAPS EXCEPTIONS PROCESS.

Section 1833(g)(5) of the Social Security Act (42 U.S.C. 1395l(g)(5)) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

#### SEC. 713. TREATMENT OF PHARMACIES UNDER DURABLE MEDICAL EQUIPMENT ACCREDITATION REQUIREMENTS.

(a) IN GENERAL.—Section 1834(a)(20) of the Social Security Act (42 U.S.C. 1395m(a)(20)) is amended—

(1) in subparagraph (F)—

(A) in clause (i)—

(i) by striking “clause (ii)” and inserting “clauses (ii) and (iii)”;

(ii) by striking “January 1, 2010” and inserting “January 1, 2011”; and

(iii) by striking “and” at the end;

(B) in clause (ii)(II), by striking the period at the end and inserting “; and”;

(C) by inserting after clause (ii)(II) the following new clause:

“(iii)(I) subject to subclause (II), with respect to items and services furnished on or after January 1, 2011, the accreditation requirement of clause (i) shall not apply to a pharmacy described in subparagraph (G); and

“(II) effective with respect to items and services furnished on or after the date of the enactment of this subparagraph, the Secretary may apply to pharmacies quality standards and an accreditation requirement established by the Secretary that are an alternative to the quality standards and accreditation requirement otherwise applicable under this paragraph if the Secretary determines such alternative quality standards and accreditation requirement are appropriate for pharmacies.”; and

(D) by adding at the end the following flush sentence:

“If determined appropriate by the Secretary, any alternative quality standards and accreditation requirement established under clause (iii)(II) may differ for categories of pharmacies established by the Secretary (such as pharmacies described in subparagraph (G)).”; and

(2) by adding at the end the following new subparagraph:

“(G) PHARMACY DESCRIBED.—A pharmacy described in this subparagraph is a pharmacy that meets each of the following criteria:

“(i) The total billings by the pharmacy for such items and services under this title are less than 5 percent of total pharmacy sales for a previous period (of not less than 24 months) specified by the Secretary.

“(ii) The pharmacy has been enrolled under section 1866(j) as a supplier of durable medical equipment, prosthetics, orthotics, and supplies, has been issued (which may include the renewal of) a provider number for at least 2 years, and for which a final adverse action (as defined in section 424.57(a) of title 42, Code of Federal Regulations) has not been imposed in the past 2 years.

“(iii) The pharmacy submits to the Secretary an attestation, in a form and manner, and at a time, specified by the Secretary, that the pharmacy meets the criteria described in clauses (i) and (ii).

“(iv) The pharmacy agrees to submit materials as requested by the Secretary, or during the course of an audit conducted on a random sample of pharmacies selected annually, to verify that the pharmacy meets the criteria described in clauses (i) and (ii). Materials submitted under the preceding sentence shall include a certification by an independent accountant on behalf of the pharmacy or the submission of tax returns filed by the pharmacy during the relevant periods, as requested by the Secretary.”.

(b) CONFORMING AMENDMENTS.—Section 1834(a)(20)(E) of the Social Security Act (42 U.S.C. 1395m(a)(20)(E)) is amended—

(1) in the first sentence, by striking “The” and inserting “Except as provided in the third sentence, the”; and

(2) by adding at the end the following new sentences: “Notwithstanding the preceding sentences, any alternative quality standards and accreditation requirement established under subparagraph (F)(iii)(II) shall be established through notice and comment rulemaking. The Secretary may implement by program instruction or otherwise subparagraph (G) after consultation with representatives of relevant parties. The specifications developed by the Secretary in order to implement subparagraph (G) shall be posted on the Internet website of the Centers for Medicare & Medicaid Services.”.

(c) ADMINISTRATION.—Chapter 35 of title 44, United States Code, shall not apply to this section.

(d) RULE OF CONSTRUCTION.—Nothing in the provisions of, or amendments made by, this section shall be construed as affecting the application of an accreditation requirement for pharmacies to qualify for bidding in a competitive acquisition area under section 1847 of the Social Security Act (42 U.S.C. 1395w-3).

(e) WAIVER OF 1-YEAR REENROLLMENT BAR.—In the case of a pharmacy described in subparagraph (G) of section 1834(a)(20) of the Social Security Act, as added by subsection (a), whose billing privileges were revoked prior to January 1, 2011, by reason of non-compliance with subparagraph (F)(i) of such section, the Secretary of Health and Human Services shall waive any reenrollment bar imposed pursuant to section 424.535(d) of title 42, Code of Federal Regulations (as in effect on the date of the enactment of this Act) for such pharmacy to reapply for such privileges.

#### SEC. 714. ENHANCED PAYMENT FOR MENTAL HEALTH SERVICES.

Section 138(a)(1) of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110-275) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

#### SEC. 715. EXTENSION OF AMBULANCE ADD-ONS.

(a) IN GENERAL.—Section 1834(l)(13) of the Social Security Act (42 U.S.C. 1395m(l)(13)) is amended—

(1) in subparagraph (A)—

(A) in the matter preceding clause (i), by striking “before January 1, 2010” and inserting “before January 1, 2011”; and

(B) in each of clauses (i) and (ii), by striking “before January 1, 2010” and inserting “before January 1, 2011”.

(b) AIR AMBULANCE IMPROVEMENTS.—Section 146(b)(1) of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110-275) is amended by striking “ending on December 31, 2009” and inserting “ending on December 31, 2010”.

(c) SUPER RURAL AMBULANCE.—Section 1834(l)(12)(A) of the Social Security Act (42 U.S.C. 1395m(l)(12)(A)) is amended—

(1) in the first sentence, by striking “2010” and inserting “2011”; and

(2) by adding at the end the following new sentence: “For purposes of applying this subparagraph for ground ambulance services furnished on or after January 1, 2010, and before January 1, 2011, the Secretary shall use the percent increase that was applicable under this subparagraph to ground ambulance services furnished during 2009.”.

#### SEC. 716. EXTENSION OF GEOGRAPHIC FLOOR FOR WORK.

Section 1848(e)(1)(E) of the Social Security Act (42 U.S.C. 1395w-4(e)(1)(E)) is amended by striking “before January 1, 2010” and inserting “before January 1, 2011”.

#### SEC. 717. 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), and section 136 of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110-275), is amended by striking “and 2009” and inserting “2009, and 2010”.

**SEC. 718. 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)) is amended—

- (1) in subclause (II)—
- (A) in the first sentence, by striking “2010” and inserting “2011”; and
- (B) in the second sentence, by striking “or 2009” and inserting “, 2009, or 2010”; and
- (2) in subclause (III), by striking “January 1, 2010” and inserting “January 1, 2011”.

**SEC. 719. EHR CLARIFICATION.**

(a) QUALIFICATION FOR CLINIC-BASED PHYSICIANS.—

(1) MEDICARE.—Section 1848(o)(1)(C)(ii) of the Social Security Act (42 U.S.C. 1395w-4(o)(1)(C)(ii)) is amended by striking “setting (whether inpatient or outpatient)” and inserting “inpatient or emergency room setting”.

(2) MEDICAID.—Section 1903(t)(3)(D) of the Social Security Act (42 U.S.C. 1396b(t)(3)(D)) is amended by striking “setting (whether inpatient or outpatient)” and inserting “inpatient or emergency room setting”.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall be effective as if included in the enactment of the HITECH Act (included in the American Recovery and Reinvestment Act of 2009 (Public Law 111-5)).

(c) IMPLEMENTATION.—Notwithstanding any other provision of law, the Secretary may implement the amendments made by this section by program instruction or otherwise.

**SEC. 720. EXTENSION OF REIMBURSEMENT FOR ALL MEDICARE PART B SERVICES FURNISHED BY CERTAIN INDIAN HOSPITALS AND CLINICS.**

Section 1880(e)(1)(A) of the Social Security Act (42 U.S.C. 1395qq(e)(1)(A)) is amended by striking “5-year period” and inserting “6-year period”.

**SEC. 721. EXTENSION OF CERTAIN PAYMENT RULES FOR LONG-TERM CARE HOSPITAL SERVICES AND OF MORATORIUM ON THE ESTABLISHMENT OF CERTAIN HOSPITALS AND FACILITIES.**

(a) EXTENSION OF CERTAIN PAYMENT RULES.—Section 114(c) of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (42 U.S.C. 1395ww note), as amended by section 4302(a) of the American Recovery and Reinvestment Act (Public Law 111-5), is amended by striking “3-year period” each place it appears and inserting “4-year period”.

(b) EXTENSION OF MORATORIUM.—Section 114(d)(1) of such Act (42 U.S.C. 1395ww note), as amended by section 4302(b) of the American Recovery and Reinvestment Act (Public Law 111-5), in the matter preceding subparagraph (A), is amended by striking “3-year period” and inserting “4-year period”.

**SEC. 722. EXTENSION OF THE MEDICARE RURAL HOSPITAL FLEXIBILITY PROGRAM.**

Section 1820(j) of the Social Security Act (42 U.S.C. 1395i-4(j)) is amended—

- (1) by striking “2010, and for” and inserting “2010, for”; and
- (2) by inserting “and for making grants to all States under subsection (g), such sums as may be necessary in fiscal year 2011, to remain available until expended” before the period at the end.

**SEC. 723. EXTENSION OF SECTION 508 HOSPITAL RECLASSIFICATIONS.**

(a) IN GENERAL.—Subsection (a) of section 106 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) and section 124 of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110-275), is amended by striking “September 30, 2009” and inserting “September 30, 2010”.

(b) SPECIAL RULE FOR FISCAL YEAR 2010.—For purposes of implementation of the amendment made by subsection (a), including (notwithstanding paragraph (3) of section 117(a) of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110-173), as amended by section 124(b) of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110-275)) for purposes of the implementation of paragraph (2) of such section 117(a), during fiscal year 2010, the Secretary of Health and Human Services (in this subsection referred to as the “Secretary”) shall use the hospital wage index that was promulgated by the Secretary in the Federal Register on August 27, 2009 (74 Fed. Reg. 43754), and any subsequent corrections.

**SEC. 724. TECHNICAL CORRECTION RELATED TO CRITICAL ACCESS HOSPITAL SERVICES.**

(a) IN GENERAL.—Subsections (g)(2)(A) and (1)(8) of section 1834 of the Social Security Act (42 U.S.C. 1395m) are each amended by inserting “101 percent of” before “the reasonable costs”.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect as if included in the enactment of section 405(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108-173; 117 Stat. 2266).

**SEC. 725. EXTENSION FOR SPECIALIZED MA PLANS FOR SPECIAL NEEDS INDIVIDUALS.**

(a) IN GENERAL.—Section 1859(f)(1) of the Social Security Act (42 U.S.C. 1395w-28(f)(1)) is amended by striking “2011” and inserting “2012”.

(b) TEMPORARY EXTENSION OF AUTHORITY TO OPERATE BUT NO SERVICE AREA EXPANSION FOR DUAL SPECIAL NEEDS PLANS THAT DO NOT MEET CERTAIN REQUIREMENTS.—Section 164(c)(2) of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110-275) is amended by striking “December 31, 2010” and inserting “December 31, 2011”.

**SEC. 726. EXTENSION OF REASONABLE COST CONTRACTS.**

Section 1876(h)(5)(C)(ii) of the Social Security Act (42 U.S.C. 1395mm(h)(5)(C)(ii)) is amended, in the matter preceding subclause (I), by striking “January 1, 2010” and inserting “January 1, 2011”.

**SEC. 727. EXTENSION OF PARTICULAR WAIVER POLICY FOR EMPLOYER GROUP PLANS.**

For plan year 2011 and subsequent plan years, to the extent that the Secretary of Health and Human Services is applying the 2008 service area extension waiver policy (as modified in the April 11, 2008, Centers for Medicare & Medicaid Services’ memorandum with the subject “2009 Employer Group Waiver-Modification of the 2008 Service Area Extension Waiver Granted to Certain MA Local Coordinated Care Plans”) to Medicare Advantage coordinated care plans, the Secretary shall extend the application of such waiver policy to employers who contract directly with the Secretary as a Medicare Advantage private fee-for-service plan under section 1857(i)(2) of the Social Security Act (42 U.S.C. 1395w-27(i)(2)) and that had enrollment as of January 1, 2010.

**SEC. 728. EXTENSION OF CONTINUING CARE RETIREMENT COMMUNITY PROGRAM.**

Notwithstanding any other provision of law, the Secretary of Health and Human Services shall continue to conduct the Erickson Advantage Continuing Care Retirement Community (CCRC) program under part C of title XVIII of the Social Security Act through December 31, 2011.

**SEC. 729. FUNDING OUTREACH AND ASSISTANCE FOR LOW-INCOME PROGRAMS.**

(a) ADDITIONAL FUNDING FOR STATE HEALTH INSURANCE PROGRAMS.—Subsection (a)(1)(B)

of section 119 of the Medicare Improvements for Patients and Providers Act of 2008 (42 U.S.C. 1395b-3 note) is amended by striking “(42 U.S.C. 1395w-23(f))” and all that follows through the period at the end and inserting “(42 U.S.C. 1395w-23(f)), to the Centers for Medicare & Medicaid Services Program Management Account—

- “(i) for fiscal year 2009, of \$7,500,000; and
- “(ii) for fiscal year 2010, of \$6,000,000.

Amounts appropriated under this subparagraph shall remain available until expended.”.

(b) ADDITIONAL FUNDING FOR AREA AGENCIES ON AGING.—Subsection (b)(1)(B) of such section 119 is amended by striking “(42 U.S.C. 1395w-23(f))” and all that follows through the period at the end and inserting “(42 U.S.C. 1395w-23(f)), to the Administration on Aging—

- “(i) for fiscal year 2009, of \$7,500,000; and
- “(ii) for fiscal year 2010, of \$6,000,000.

Amounts appropriated under this subparagraph shall remain available until expended.”.

(c) ADDITIONAL FUNDING FOR AGING AND DISABILITY RESOURCE CENTERS.—Subsection (c)(1)(B) of such section 119 is amended by striking “(42 U.S.C. 1395w-23(f))” and all that follows through the period at the end and inserting “(42 U.S.C. 1395w-23(f)), to the Administration on Aging—

- “(i) for fiscal year 2009, of \$5,000,000; and
- “(ii) for fiscal year 2010, of \$6,000,000.

Amounts appropriated under this subparagraph shall remain available until expended.”.

(d) ADDITIONAL FUNDING FOR CONTRACT WITH THE NATIONAL CENTER FOR BENEFITS AND OUTREACH ENROLLMENT.—Subsection (d)(2) of such section 119 is amended by striking “(42 U.S.C. 1395w-23(f))” and all that follows through the period at the end and inserting “(42 U.S.C. 1395w-23(f)), to the Administration on Aging—

- “(i) for fiscal year 2009, of \$5,000,000; and
- “(ii) for fiscal year 2010, of \$2,000,000.

Amounts appropriated under this subparagraph shall remain available until expended.”.

**SEC. 730. FAMILY-TO-FAMILY HEALTH INFORMATION CENTERS.**

Section 501(c)(1)(A)(iii) of the Social Security Act (42 U.S.C. 701(c)(1)(A)(iii)) is amended by striking “fiscal year 2009” and inserting “each of fiscal years 2009 through 2011”.

**SEC. 731. IMPLEMENTATION FUNDING.**

For purposes of carrying out the provisions of, and amendments made by, this title that relate to titles XVIII and XIX of the Social Security Act, 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, \$100,000,000. Amounts appropriated under the preceding sentence shall remain available until expended.

**Subtitle C—Other Provisions****SEC. 741. EXTENSION OF USE OF 2009 POVERTY GUIDELINES.**

Section 1012 of the Department of Defense Appropriations Act, 2010 (Public Law 111-118) is amended—

- (1) by striking “before March 1, 2010”; and
- (2) by inserting “for 2011” after “until updated poverty guidelines”.

**SEC. 742. REFUNDS DISREGARDED IN THE ADMINISTRATION OF FEDERAL PROGRAMS AND FEDERALLY ASSISTED PROGRAMS.**

(a) IN GENERAL.—Subchapter A of chapter 65 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. 743. STATE COURT IMPROVEMENT PROGRAM.**

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”.

**SEC. 744. EXTENSION OF NATIONAL FLOOD INSURANCE PROGRAM.**

Section 129 of the Continuing Appropriations Resolution, 2010 (Public Law 111-68), as amended by section 1005 of Public Law 111-118, is further amended by striking “by substituting” and all that follows through the period at the end, and inserting “by substituting May 31, 2010, for the date specified in each such section.”

**SEC. 745. EXTENSION OF INTELLIGENCE AUTHORITY SUNSETS.**

(a) USA PATRIOT IMPROVEMENT AND REAUTHORIZATION ACT OF 2005.—Section 102(b)(1) of the USA PATRIOT Improvement and Reauthorization Act of 2005 (Public Law 109-177; 50 U.S.C. 1805 note, 50 U.S.C. 1861 note, and 50 U.S.C. 1862 note) is amended by striking “February 28, 2010” and inserting “February 28, 2011”.

(b) INTELLIGENCE REFORM AND TERRORISM PREVENTION ACT OF 2004.—Section 6001(b)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458; 118 Stat. 3742; 50 U.S.C. 1801 note) is amended by striking “February 28, 2010” and inserting “February 28, 2011”.

**SEC. 746. 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”, \$354,000,000, 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, for loans guaranteed under section 7(a) of the Small Business Act (15 U.S.C. 636(a)), title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.), or 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; 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, *Provided*, That 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 “February 28, 2010” and inserting “December 31, 2010”.

**TITLE VIII—PENSION FUNDING RELIEF**

**Subtitle A—Single Employer Plans**

**SEC. 801. 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 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 9-plan-year or 15-plan-year period, whichever is applicable, 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, 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) LIMITATION TO AGGREGATE REDUCED REQUIRED CONTRIBUTIONS.—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) 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 non-qualified 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 4, 2010.

“(iv) EXCEPTION FOR CERTAIN EQUITY PAYMENTS.—

“(I) IN GENERAL.—Any amount includible in income with respect to the granting on or after February 4, 2010, of an equity interest described in subclause (II) shall not be taken into account under clause (i)(I), but only if all portions of such interest remain subject to a substantial risk of forfeiture (other than in the case of death or disability) at all times before the date which is 5 years after the date on which such interest is granted.

“(II) EQUITY INTERESTS.—An equity interest is described in this subclause if it is a stock option which is granted at its fair market value on the date of the grant or a stock appreciation right which is granted at its fair market value on the date of the grant.

“(III) SUBSTANTIAL RISK OF FORFEITURE.—The term ‘substantial risk of forfeiture’ has the meaning given such term by section 83(c)(1) of the Internal Revenue Code of 1986.

“(IV) 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) PAYMENTS UNDER EXISTING CONTRACTS.—Any remuneration payable under a written binding contract that was in effect on February 4, 2010, and which was not modified in any material respect before such remuneration is repaid. This subclause shall not apply to bonus payments payable under such a contract during a calendar year to the extent that the aggregate amount of such bonus payments during such calendar year exceeds \$100,000.

“(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 sum of—

“(I) the aggregate amount of extraordinary dividends declared during the plan year by the plan sponsor and required to be reported under section 4043(c)(11), plus

“(II) if the plan sponsor redeems, in any 12-month period ending during the plan year,

an aggregate of 10 percent or more of the total combined voting power of all classes of stock entitled to vote, or an aggregate of 10 percent or more of the total value of shares of all classes of stock, of the plan sponsor, the aggregate fair market value of the stock so redeemed.

“(ii) ONLY CERTAIN POST-2009 DIVIDENDS AND REDEMPTIONS COUNTED.—For purposes of clause (i)—

“(I) dividends shall be taken into account only if declared after February 4, 2010, and

“(II) if clause (i)(II) otherwise applies for any plan year (determined without regard to this subclause), only the fair market value of redemptions occurring after February 4, 2010, shall be taken into account in determining the amount under such clause for the plan year.

“(iii) EXCEPTION FOR INTRA-GROUP DIVIDENDS.—An extraordinary dividend 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)(I).

“(F) OTHER DEFINITIONS AND RULES.—For purposes of this paragraph—

“(i) BONUS PAYMENT.—The term ‘bonus payment’ means any payment which is a payment for services rendered and which is in addition to any amount payable to such individual for services performed by such individual at a regular hourly, daily, weekly, monthly, or similar periodic rate. Such term does not include payments to an employee as commissions, contributions to any qualified retirement plan (as defined in section 4974(c) of the Internal Revenue Code of 1986), welfare and fringe benefits, overtime pay, or expense reimbursements. The Secretary of the Treasury may recharacterize a payment that is a disguised bonus as a bonus payment for purposes of this paragraph.

“(ii) PLAN SPONSOR.—The term ‘plan sponsor’ includes any member of the plan sponsor’s controlled group (as defined in section 302(d)(3)).

“(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 inform the Pension Benefit Guaranty Cor-

poration 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 9-plan-year or 15-plan-year period, whichever is applicable, 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, 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) LIMITATION TO AGGREGATE REDUCED REQUIRED CONTRIBUTIONS.—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) 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 4, 2010.

“(iv) EXCEPTION FOR CERTAIN EQUITY PAYMENTS.—

“(I) IN GENERAL.—Any amount includible in income with respect to the granting on or after February 4, 2010, of an equity interest described in subclause (II) shall not be taken into account under clause (i)(I), but only if all portions of such interest remain subject to a substantial risk of forfeiture (other than in the case of death or disability) at all times before the date which is 5 years after the date on which such interest is granted.

“(II) EQUITY INTERESTS.—An equity interest is described in this subclause if it is a stock option which is granted at its fair market value on the date of the grant or a stock appreciation right which is granted at its fair market value on the date of the grant.

“(III) SUBSTANTIAL RISK OF FORFEITURE.—The term ‘substantial risk of forfeiture’ has the meaning given such term by section 83(c)(1).

“(IV) 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) PAYMENTS UNDER EXISTING CONTRACTS.—Any remuneration payable under a written binding contract that was in effect on February 4, 2010, and which was not modified in any material respect before such remuneration is repaid. This subclause shall not apply to bonus payments payable under such a contract during a calendar year to the extent that the aggregate amount of such bonus payments during such calendar year exceeds \$100,000.

“(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 sum of—

“(I) the aggregate amount of extraordinary dividends declared during the plan year by the plan sponsor and required to be reported under section 4043(c)(11) of the Employee Retirement Income Security Act of 1974, plus

“(II) if the plan sponsor redeems, in any 12-month period ending during the plan year, an aggregate of 10 percent or more of the total combined voting power of all classes of stock entitled to vote, or an aggregate of 10 percent or more of the total value of shares of all classes of stock, of the plan sponsor, the aggregate fair market value of the stock so redeemed.

“(ii) ONLY CERTAIN POST-2009 DIVIDENDS AND REDEMPTIONS COUNTED.—For purposes of clause (i)—

“(I) dividends shall be taken into account only if declared after February 4, 2010, and

“(II) if clause (i)(II) otherwise applies for any plan year (determined without regard to this subclause), only the fair market value of redemptions occurring after February 4, 2010, shall be taken into account in determining the amount under such clause for the plan year.

“(iii) EXCEPTION FOR INTRA-GROUP DIVIDENDS.—An extraordinary dividend 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)(I).

“(F) OTHER DEFINITIONS AND RULES.—For purposes of this paragraph—

“(i) BONUS PAYMENT.—The term ‘bonus payment’ means any payment which is a payment for services rendered and which is in addition to any amount payable to such individual for services performed by such individual at a regular hourly, daily, weekly,

monthly, or similar periodic rate. Such term does not include payments to an employee as commissions, contributions to any qualified retirement plan (as defined in section 4974(c)), welfare and fringe benefits, overtime pay, or expense reimbursements. The Secretary may recharacterize a payment that is a disguised bonus as a bonus payment for purposes of this paragraph.

“(ii) PLAN SPONSOR.—The term ‘plan sponsor’ includes any member of the plan sponsor’s controlled group (as defined in section 412(d)(3)).

“(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. 802. 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 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. 803. 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.

#### Subtitle B—Multiemployer Plans

#### SEC. 811. 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 its experience loss attributable to the net investment losses (if any) incurred in either or both of the first two plan years beginning after August 31, 2008, as an item separate from other experience losses, to be amortized in equal annual installments (until fully amortized) over a period of 30 plan years.

“(ii) NO EXTENSION ALLOWED.—If this subparagraph applies for any plan year, no extension of the amortization period under clause (i) shall be allowed under subsection (d).

“(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 beginning after August 31, 2008, over a period of not more than 10 years,

“(II) provides that for either or both of such 2 plan years 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 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 substantially the same 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 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 its experience loss attributable to the net investment losses (if any) incurred in either or both of the first two plan years beginning after August 31, 2008, as an item separate from other experience losses, to be amortized in equal annual installments (until fully amortized) over a period of 30 plan years.

“(ii) NO EXTENSION ALLOWED.—If this subparagraph applies for any plan year, no extension of the amortization period under clause (i) shall be allowed under subsection (d).

“(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 beginning after August 31, 2008, over a period of not more than 10 years,

“(II) provides that for either or both of such 2 plan years 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 substantially the same 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 or to comply with other applicable law.

“(E) REPORTING.—A plan sponsor of a plan to which this paragraph applies shall 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 beginning 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 IX—SATELLITE TELEVISION EXTENSION

### SEC. 901. SHORT TITLE.

This title may be cited as the “Satellite Television Extension and Localism Act of 2010”.

#### Subtitle A—Statutory Licenses

### SEC. 901. REFERENCE.

Except as otherwise provided, whenever in this subtitle an amendment is made to a section or other provision, the reference shall be considered to be made to such section or provision of title 17, United States Code.

### SEC. 902. MODIFICATIONS TO STATUTORY LICENSE FOR SATELLITE CARRIERS.

(a) HEADING RENAMED.—

(1) IN GENERAL.—The heading of section 119 is amended by striking “superstations and network stations for private home viewing” and inserting “distant television programming by satellite”.

(2) TABLE OF CONTENTS.—The table of contents for chapter 1 is amended by striking the item relating to section 119 and inserting the following:

“119. Limitations on exclusive rights: Secondary transmissions of distant television programming by satellite.”.

(b) UNSERVED HOUSEHOLD DEFINED.—

(1) IN GENERAL.—Section 119(d)(10) is amended—

(A) by striking subparagraph (A) and inserting the following:

“(A) cannot receive, through the use of an antenna, an over-the-air signal containing the primary stream, or, on or after the qualifying date, the multicast stream, originating in that household’s local market and affiliated with that network or—

“(i) if the signal originates as an analog signal, Grade B intensity as defined by the Federal Communications Commission in section 73.683(a) of title 47, Code of Federal Regulations, as in effect on January 1, 1999; or

“(ii) if the signal originates as a digital signal, intensity defined in the values for the digital television noise-limited service contour, as defined in regulations issued by the Federal Communications Commission (section 73.622(e) of title 47, Code of Federal Regulations), as such regulations may be amended from time to time;”.

(B) in subparagraph (B)—

(i) by striking “subsection (a)(14)” and inserting “subsection (a)(13).”; and

(ii) by striking “Satellite Home Viewer Extension and Reauthorization Act of 2004” and inserting “Satellite Television Extension and Localism Act of 2010”; and

(C) in subparagraph (D), by striking “(a)(12)” and inserting “(a)(11)”.

(2) QUALIFYING DATE DEFINED.—Section 119(d) is amended by adding at the end the following:

“(14) QUALIFYING DATE.—The term ‘qualifying date’, for purposes of paragraph (10)(A), means—

“(A) July 1, 2010, for multicast streams that exist on December 31, 2009; and

“(B) January 1, 2011, for all other multicast streams.”.

(c) FILING FEE.—Section 119(b)(1) is amended—

(1) in subparagraph (A), by striking “and” after the semicolon at the end;

(2) in subparagraph (B), by striking the period and inserting “; and”; and

(3) by adding at the end the following:

“(C) a filing fee, as determined by the Register of Copyrights pursuant to section 708(a).”.

(d) DEPOSIT OF STATEMENTS AND FEES; VERIFICATION PROCEDURES.—Section 119(b) is amended—

(1) by amending the subsection heading to read as follows: “(b) DEPOSIT OF STATEMENTS AND FEES; VERIFICATION PROCEDURES.—”; and

(2) in paragraph (1), by striking subparagraph (B) and inserting the following:

“(B) a royalty fee payable to copyright owners pursuant to paragraph (4) for that 6-month period, computed by multiplying the total number of subscribers receiving each secondary transmission of a primary stream or multicast stream of each non-network station or network station during each calendar year month by the appropriate rate in effect under this subsection; and”; and

(3) by redesignating paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5), respectively;

(4) by inserting after paragraph (1) the following:

“(2) VERIFICATION OF ACCOUNTS AND FEE PAYMENTS.—The Register of Copyrights shall issue regulations to permit interested parties to verify and audit the statements of account and royalty fees submitted by satellite carriers under this subsection.”;

(5) in paragraph (3), as redesignated, in the first sentence—

(A) by inserting “(including the filing fee specified in paragraph (1)(C))” after “shall receive all fees”; and

(B) by striking “paragraph (4)” and inserting “paragraph (5)”;

(6) in paragraph (4), as redesignated—

(A) by striking “paragraph (2)” and inserting “paragraph (3)”;

(B) by striking “paragraph (4)” each place it appears and inserting “paragraph (5)”;

(7) in paragraph (5), as redesignated, by striking “paragraph (2)” and inserting “paragraph (3)”.

(e) ADJUSTMENT OF ROYALTY FEES.—Section 119(c) is amended as follows:

(1) Paragraph (1) is amended—

(A) in the heading for such paragraph, by striking “ANALOG”;

(B) in subparagraph (A)—

(i) by striking “primary analog transmissions” and inserting “primary transmissions”;

(ii) by striking “July 1, 2004” and inserting “July 1, 2009”;

(C) in subparagraph (B)—

(i) by striking “January 2, 2005, the Librarian of Congress” and inserting “March 1, 2010, the Copyright Royalty Judges”;

(ii) by striking “primary analog transmission” and inserting “primary transmissions”;

(D) in subparagraph (C), by striking “Librarian of Congress” and inserting “Copyright Royalty Judges”;

(E) in subparagraph (D)—

(i) in clause (i)—

(I) by striking “(i) Voluntary agreements” and inserting the following:

“(i) VOLUNTARY AGREEMENTS; FILING.—Voluntary agreements”;

(II) by striking “that a parties” and inserting “that are parties”;

(ii) in clause (ii)—

(I) by striking “(ii)(I) Within” and inserting the following:

“(ii) PROCEDURE FOR ADOPTION OF FEES.—(I) PUBLICATION OF NOTICE.—Within”;

(II) in subclause (I), by striking “an arbitration proceeding pursuant to subparagraph (E)” and inserting “a proceeding under subparagraph (F)”;

(III) in subclause (II), by striking “(II) Upon receiving a request under subclause (I), the Librarian of Congress” and inserting the following:

“(II) PUBLIC NOTICE OF FEES.—Upon receiving a request under subclause (I), the Copyright Royalty Judges”;

(IV) in subclause (III)—

(aa) by striking “(III) The Librarian” and inserting the following:

“(III) ADOPTION OF FEES.—The Copyright Royalty Judges”;

(bb) by striking “an arbitration proceeding” and inserting “the proceeding under subparagraph (F)”;

(cc) by striking “the arbitration proceeding” and inserting “that proceeding”;

(F) in subparagraph (E)—

(i) by striking “Copyright Office” and inserting “Copyright Royalty Judges”;

(ii) by striking “February 28, 2010” and inserting “December 31, 2014”;

(G) in subparagraph (F)—

(i) in the heading, by striking “COMPULSORY ARBITRATION” and inserting “COPYRIGHT ROYALTY JUDGES PROCEEDING”;

(ii) in clause (i)—

(I) in the heading, by striking “PROCEEDINGS” and inserting “THE PROCEEDING”;

(II) in the matter preceding subclause (I)—

(aa) by striking “May 1, 2005, the Librarian of Congress” and inserting “May 3, 2010, the Copyright Royalty Judges”;

(bb) by striking “arbitration proceedings” and inserting “a proceeding”;

(cc) by striking “fee to be paid” and inserting “fees to be paid”;

(dd) by striking “primary analog transmission” and inserting “the primary transmissions”;

(ee) by striking “distributors” and inserting “distributors—”;

(III) in subclause (II)—

(aa) by striking “Librarian of Congress” and inserting “Copyright Royalty Judges”;

(bb) by striking “arbitration”;

(IV) by amending the last sentence to read as follows: “Such proceeding shall be conducted under chapter 8.”;

(iii) in clause (ii), by amending the matter preceding subclause (I) to read as follows:

“(ii) ESTABLISHMENT OF ROYALTY FEES.—In determining royalty fees under this subparagraph, the Copyright Royalty Judges shall establish fees for the secondary transmissions of the primary transmissions of network stations and non-network stations that most clearly represent the fair market value of secondary transmissions, except that the Copyright Royalty Judges shall adjust royalty fees to account for the obligations of the parties under any applicable voluntary agreement filed with the Copyright Royalty Judges in accordance with subparagraph (D). In determining the fair market value, the Judges shall base their decision on economic, competitive, and programming information presented by the parties, including—”;

(iv) by amending clause (iii) to read as follows:

“(iii) EFFECTIVE DATE FOR DECISION OF COPYRIGHT ROYALTY JUDGES.—The obligation to pay the royalty fees established under a determination that is made by the Copyright Royalty Judges in a proceeding under this paragraph shall be effective as of January 1, 2010.”;

(v) in clause (iv)—

(I) in the heading, by striking “FEE” and inserting “FEES”;

(II) by striking “fee referred to in (iii)” and inserting “fees referred to in clause (iii)”.

(2) Paragraph (2) is amended to read as follows:

“(2) ANNUAL ROYALTY FEE ADJUSTMENT.—Effective January 1 of each year, the royalty fee payable under subsection (b)(1)(B) for the secondary transmission of the primary transmissions of network stations and non-network stations shall be adjusted by the Copyright Royalty Judges to reflect any changes occurring in the cost of living as determined by the most recent Consumer Price Index (for all consumers and for all items) published by the Secretary of Labor before December 1 of the preceding year. Notification of the adjusted fees shall be published in the Federal Register at least 25 days before January 1.”.

(f) DEFINITIONS.—

(1) SUBSCRIBER.—Section 119(d)(8) is amended to read as follows:

“(8) SUBSCRIBER; SUBSCRIBE.—

“(A) SUBSCRIBER.—The term ‘subscriber’ means a person or entity that receives a secondary transmission service from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor.

“(B) SUBSCRIBE.—The term ‘subscribe’ means to elect to become a subscriber.”.

(2) LOCAL MARKET.—Section 119(d)(11) is amended to read as follows:

“(11) LOCAL MARKET.—The term ‘local market’ has the meaning given such term under section 122(j).”.

(3) LOW POWER TELEVISION STATION.—Section 119(d) is amended by striking paragraph (12) and redesignating paragraphs (13) and (14) as paragraphs (12) and (13), respectively.

(4) MULTICAST STREAM.—Section 119(d), as amended by paragraph (3), is further amended by adding at the end the following new paragraph:

“(14) MULTICAST STREAM.—The term ‘multicast stream’ means a digital stream containing programming and program-related material affiliated with a television network, other than the primary stream.”.

(5) PRIMARY STREAM.—Section 119(d), as amended by paragraph (3), is further amended by adding at the end the following new paragraph:

“(15) PRIMARY STREAM.—The term ‘primary stream’ means—

“(A) the single digital stream of programming as to which a television broadcast station has the right to mandatory carriage with a satellite carrier under the rules of the Federal Communications Commission in effect on July 1, 2009; or

“(B) if there is no stream described in subparagraph (A), then either—

“(i) the single digital stream of programming associated with the network last transmitted by the station as an analog signal; or

“(ii) if there is no stream described in clause (i), then the single digital stream of programming affiliated with the network that, as of July 1, 2009, had been offered by the television broadcast station for the longest period of time.”.

(6) CLERICAL AMENDMENT.—Section 119(d) is amended in paragraphs (1), (2), and (5) by striking “which” each place it appears and inserting “that”.

(g) SUPERSTATION REDESIGNATED AS NON-NETWORK STATION.—Section 119 is amended—

(1) by striking “superstation” each place it appears in a heading and each place it appears in text and inserting “non-network station”;

(2) by striking “superstations” each place it appears in a heading and each place it appears in text and inserting “non-network stations”.

(h) REMOVAL OF CERTAIN PROVISIONS.—

(1) REMOVAL OF PROVISIONS.—Section 119(a) is amended—

(A) in paragraph (2), by striking subparagraph (C) and redesignating subparagraph (D) as subparagraph (C);

(B) by striking paragraph (3) and redesignating paragraphs (4) through (14) as paragraphs (3) through (13), respectively; and

(C) by striking paragraph (15) and redesignating paragraph (16) as paragraph (14).

(2) CONFORMING AMENDMENTS.—Section 119 is amended—

(A) in subsection (a)—

(i) in paragraph (1), by striking “(5), (6), and (8)” and inserting “(4), (5), and (7)”;

(ii) in paragraph (2)—

(I) in subparagraph (A), by striking “subparagraphs (B) and (C) of this paragraph and paragraphs (5), (6), (7), and (8)” and inserting “subparagraph (B) of this paragraph and paragraphs (4), (5), (6), and (7)”;

(II) in subparagraph (B)(i), by striking the second sentence; and

(III) in subparagraph (C) (as redesignated), by striking clauses (i) and (ii) and inserting the following:

“(i) INITIAL LISTS.—A satellite carrier that makes secondary transmissions of a primary transmission made by a network station pursuant to subparagraph (A) shall, not later than 90 days after commencing such secondary transmissions, submit to the network that owns or is affiliated with the network

“(11) LOCAL MARKET.—The term ‘local market’ has the meaning given such term under section 122(j).”.

(3) LOW POWER TELEVISION STATION.—Section 119(d) is amended by striking paragraph (12) and redesignating paragraphs (13) and (14) as paragraphs (12) and (13), respectively.

(4) MULTICAST STREAM.—Section 119(d), as amended by paragraph (3), is further amended by adding at the end the following new paragraph:

“(14) MULTICAST STREAM.—The term ‘multicast stream’ means a digital stream containing programming and program-related material affiliated with a television network, other than the primary stream.”.

(5) PRIMARY STREAM.—Section 119(d), as amended by paragraph (3), is further amended by adding at the end the following new paragraph:

“(15) PRIMARY STREAM.—The term ‘primary stream’ means—

“(A) the single digital stream of programming as to which a television broadcast station has the right to mandatory carriage with a satellite carrier under the rules of the Federal Communications Commission in effect on July 1, 2009; or

“(B) if there is no stream described in subparagraph (A), then either—

“(i) the single digital stream of programming associated with the network last transmitted by the station as an analog signal; or

“(ii) if there is no stream described in clause (i), then the single digital stream of programming affiliated with the network that, as of July 1, 2009, had been offered by the television broadcast station for the longest period of time.”.

(6) CLERICAL AMENDMENT.—Section 119(d) is amended in paragraphs (1), (2), and (5) by striking “which” each place it appears and inserting “that”.

(g) SUPERSTATION REDESIGNATED AS NON-NETWORK STATION.—Section 119 is amended—

(1) by striking “superstation” each place it appears in a heading and each place it appears in text and inserting “non-network station”;

(2) by striking “superstations” each place it appears in a heading and each place it appears in text and inserting “non-network stations”.

(h) REMOVAL OF CERTAIN PROVISIONS.—

(1) REMOVAL OF PROVISIONS.—Section 119(a) is amended—

(A) in paragraph (2), by striking subparagraph (C) and redesignating subparagraph (D) as subparagraph (C);

(B) by striking paragraph (3) and redesignating paragraphs (4) through (14) as paragraphs (3) through (13), respectively; and

(C) by striking paragraph (15) and redesignating paragraph (16) as paragraph (14).

(2) CONFORMING AMENDMENTS.—Section 119 is amended—

(A) in subsection (a)—

(i) in paragraph (1), by striking “(5), (6), and (8)” and inserting “(4), (5), and (7)”;

(ii) in paragraph (2)—

(I) in subparagraph (A), by striking “subparagraphs (B) and (C) of this paragraph and paragraphs (5), (6), (7), and (8)” and inserting “subparagraph (B) of this paragraph and paragraphs (4), (5), (6), and (7)”;

(II) in subparagraph (B)(i), by striking the second sentence; and

(III) in subparagraph (C) (as redesignated), by striking clauses (i) and (ii) and inserting the following:

“(i) INITIAL LISTS.—A satellite carrier that makes secondary transmissions of a primary transmission made by a network station pursuant to subparagraph (A) shall, not later than 90 days after commencing such secondary transmissions, submit to the network that owns or is affiliated with the network

“(11) LOCAL MARKET.—The term ‘local market’ has the meaning given such term under section 122(j).”.

(3) LOW POWER TELEVISION STATION.—Section 119(d) is amended by striking paragraph (12) and redesignating paragraphs (13) and (14) as paragraphs (12) and (13), respectively.

(4) MULTICAST STREAM.—Section 119(d), as amended by paragraph (3), is further amended by adding at the end the following new paragraph:

“(14) MULTICAST STREAM.—The term ‘multicast stream’ means a digital stream containing programming and program-related material affiliated with a television network, other than the primary stream.”.

(5) PRIMARY STREAM.—Section 119(d), as amended by paragraph (3), is further amended by adding at the end the following new paragraph:

“(15) PRIMARY STREAM.—The term ‘primary stream’ means—

“(A) the single digital stream of programming as to which a television broadcast station has the right to mandatory carriage with a satellite carrier under the rules of the Federal Communications Commission in effect on July 1, 2009; or

“(B) if there is no stream described in subparagraph (A), then either—

“(i) the single digital stream of programming associated with the network last transmitted by the station as an analog signal; or

“(ii) if there is no stream described in clause (i), then the single digital stream of programming affiliated with the network that, as of July 1, 2009, had been offered by the television broadcast station for the longest period of time.”.

(6) CLERICAL AMENDMENT.—Section 119(d) is amended in paragraphs (1), (2), and (5) by striking “which” each place it appears and inserting “that”.

(g) SUPERSTATION REDESIGNATED AS NON-NETWORK STATION.—Section 119 is amended—

(1) by striking “superstation” each place it appears in a heading and each place it appears in text and inserting “non-network station”;

(2) by striking “superstations” each place it appears in a heading and each place it appears in text and inserting “non-network stations”.

(h) REMOVAL OF CERTAIN PROVISIONS.—

(1) REMOVAL OF PROVISIONS.—Section 119(a) is amended—

(A) in paragraph (2), by striking subparagraph (C) and redesignating subparagraph (D) as subparagraph (C);

(B) by striking paragraph (3) and redesignating paragraphs (4) through (14) as paragraphs (3) through (13), respectively; and

(C) by striking paragraph (15) and redesignating paragraph (16) as paragraph (14).

(2) CONFORMING AMENDMENTS.—Section 119 is amended—

(A) in subsection (a)—

(i) in paragraph (1), by striking “(5), (6), and (8)” and inserting “(4), (5), and (7)”;

(ii) in paragraph (2)—

(I) in subparagraph (A), by striking “subparagraphs (B) and (C) of this paragraph and paragraphs (5), (6), (7), and (8)” and inserting “subparagraph (B) of this paragraph and paragraphs (4), (5), (6), and (7)”;

(II) in subparagraph (B)(i), by striking the second sentence; and

(III) in subparagraph (C) (as redesignated), by striking clauses (i) and (ii) and inserting the following:

“(i) INITIAL LISTS.—A satellite carrier that makes secondary transmissions of a primary transmission made by a network station pursuant to subparagraph (A) shall, not later than 90 days after commencing such secondary transmissions, submit to the network that owns or is affiliated with the network

station a list identifying (by name and address, including street or rural route number, city, State, and 9-digit zip code) all subscribers to which the satellite carrier makes secondary transmissions of that primary transmission to subscribers in unserved households.

“(ii) MONTHLY LISTS.—After the submission of the initial lists under clause (i), the satellite carrier shall, not later than the 15th of each month, submit to the network a list, aggregated by designated market area, identifying (by name and address, including street or rural route number, city, State, and 9-digit zip code) any persons who have been added or dropped as subscribers under clause (i) since the last submission under this subparagraph.”; and

(iii) in subparagraph (E) of paragraph (3) (as redesignated)—

(I) by striking “under paragraph (3) or”; and

(II) by striking “paragraph (12)” and inserting “paragraph (11)”; and

(B) in subsection (b)(1), by striking the final sentence.

(i) MODIFICATIONS TO PROVISIONS FOR SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS.—

(1) PREDICTIVE MODEL.—Section 119(a)(2)(B)(ii) is amended by adding at the end the following:

“(III) ACCURATE PREDICTIVE MODEL WITH RESPECT TO DIGITAL SIGNALS.—Notwithstanding subclause (I), in determining presumptively whether a person resides in an unserved household under subsection (d)(10)(A) with respect to digital signals, a court shall rely on a predictive model set forth by the Federal Communications Commission pursuant to a rulemaking as provided in section 339(c)(3) of the Communications Act of 1934 (47 U.S.C. 339(c)(3)), as that model may be amended by the Commission over time under such section to increase the accuracy of that model. Until such time as the Commission sets forth such model, a court shall rely on the predictive model as recommended by the Commission with respect to digital signals in its Report to Congress in ET Docket No. 05-182, FCC 05-199 (released December 9, 2005).”.

(2) MODIFICATIONS TO STATUTORY LICENSE WHERE RETRANSMISSIONS INTO LOCAL MARKET AVAILABLE.—Section 119(a)(3) (as redesignated) is amended—

(A) by striking “analog” each place it appears in a heading and text;

(B) by striking subparagraphs (B), (C), and (D), and inserting the following:

“(B) RULES FOR LAWFUL SUBSCRIBERS AS OF DATE OF ENACTMENT OF 2009 ACT.—In the case of a subscriber of a satellite carrier who, on the day before the date of the enactment of the Satellite Television Extension and Localism Act of 2010, was lawfully receiving the secondary transmission of the primary transmission of a network station under the statutory license under paragraph (2) (in this subparagraph referred to as the ‘distant signal’), other than subscribers to whom subparagraph (A) applies, the statutory license under paragraph (2) shall apply to secondary transmissions by that satellite carrier to that subscriber of the distant signal of a station affiliated with the same television network, and the subscriber’s household shall continue to be considered to be an unserved household with respect to such network, until such time as the subscriber elects to terminate such secondary transmissions, whether or not the subscriber elects to subscribe to receive the secondary transmission of the primary transmission of a local network station affiliated with the same network pursuant to the statutory license under section 122.

“(C) FUTURE APPLICABILITY.—

“(i) WHEN LOCAL SIGNAL AVAILABLE AT TIME OF SUBSCRIPTION.—The statutory license under paragraph (2) shall not apply to the secondary transmission by a satellite carrier of the primary transmission of a network station to a person who is not a subscriber lawfully receiving such secondary transmission as of the date of the enactment of the Satellite Television Extension and Localism Act of 2010 and, at the time such person seeks to subscribe to receive such secondary transmission, resides in a local market where the satellite carrier makes available to that person the secondary transmission of the primary transmission of a local network station affiliated with the same network pursuant to the statutory license under section 122.

“(ii) WHEN LOCAL SIGNAL AVAILABLE AFTER SUBSCRIPTION.—In the case of a subscriber who lawfully subscribes to and receives the secondary transmission by a satellite carrier of the primary transmission of a network station under the statutory license under paragraph (2) (in this clause referred to as the ‘distant signal’) on or after the date of the enactment of the Satellite Television Extension and Localism Act of 2010, the statutory license under paragraph (2) shall apply to secondary transmissions by that satellite carrier to that subscriber of the distant signal of a station affiliated with the same television network, and the subscriber’s household shall continue to be considered to be an unserved household with respect to such network, until such time as the subscriber elects to terminate such secondary transmissions, but only if such subscriber subscribes to the secondary transmission of the primary transmission of a local network station affiliated with the same network within 60 days after the satellite carrier makes available to the subscriber such secondary transmission of the primary transmission of such local network station.”;

(C) by redesignating subparagraphs (E), (F), and (G) as subparagraphs (D), (E), and (F), respectively;

(D) in subparagraph (E) (as redesignated), by striking “(C) or (D)” and inserting “(B) or (C)”; and

(E) in subparagraph (F) (as redesignated), by inserting “9-digit” before “zip code”.

(3) STATUTORY DAMAGES FOR TERRITORIAL RESTRICTIONS.—Section 119(a)(6) (as redesignated) is amended—

(A) in subparagraph (A)(ii), by striking “\$5” and inserting “\$250”;

(B) in subparagraph (B)—

(i) in clause (i), by striking “\$250,000 for each 6-month period” and inserting “\$2,500,000 for each 3-month period”; and

(ii) in clause (ii), by striking “\$250,000” and inserting “\$2,500,000”; and

(C) by adding at the end the following flush sentences:

“The court shall direct one half of any statutory damages ordered under clause (i) to be deposited with the Register of Copyrights for distribution to copyright owners pursuant to subsection (b). The Copyright Royalty Judges shall issue regulations establishing procedures for distributing such funds, on a proportional basis, to copyright owners whose works were included in the secondary transmissions that were the subject of the statutory damages.”.

(4) TECHNICAL AMENDMENT.—Section 119(a)(4) (as redesignated) is amended by striking “and 509”.

(5) CLERICAL AMENDMENT.—Section 119(a)(2)(B)(iii)(II) is amended by striking “In this clause” and inserting “In this clause.”.

(j) MORATORIUM EXTENSION.—Section 119(e) is amended by striking “February 28, 2010” and inserting “December 31, 2014”.

(k) CLERICAL AMENDMENTS.—Section 119 is amended—

(1) by striking “of the Code of Federal Regulations” each place it appears and inserting “, Code of Federal Regulations”; and

(2) in subsection (d)(6), by striking “or the Direct” and inserting “, or the Direct”.

#### SEC. 903. MODIFICATIONS TO STATUTORY LICENSE FOR SATELLITE CARRIERS IN LOCAL MARKETS.

(a) HEADING RENAMED.—

(1) IN GENERAL.—The heading of section 122 is amended by striking “by satellite carriers within local markets” and inserting “of local television programming by satellite”.

(2) TABLE OF CONTENTS.—The table of contents for chapter 1 is amended by striking the item relating to section 122 and inserting the following:

“122. Limitations on exclusive rights: Secondary transmissions of local television programming by satellite.”.

(b) STATUTORY LICENSE.—Section 122(a) is amended to read as follows:

“(a) SECONDARY TRANSMISSIONS INTO LOCAL MARKETS.—

“(1) SECONDARY TRANSMISSIONS OF TELEVISION BROADCAST STATIONS WITHIN A LOCAL MARKET.—A secondary transmission of a performance or display of a work embodied in a primary transmission of a television broadcast station into the station’s local market shall be subject to statutory licensing under this section if—

“(A) the secondary transmission is made by a satellite carrier to the public;

“(B) with regard to secondary transmissions, the satellite carrier is in compliance with the rules, regulations, or authorizations of the Federal Communications Commission governing the carriage of television broadcast station signals; and

“(C) the satellite carrier makes a direct or indirect charge for the secondary transmission to—

“(i) each subscriber receiving the secondary transmission; or

“(ii) a distributor that has contracted with the satellite carrier for direct or indirect delivery of the secondary transmission to the public.

“(2) SIGNIFICANTLY VIEWED STATIONS.—

“(A) IN GENERAL.—A secondary transmission of a performance or display of a work embodied in a primary transmission of a television broadcast station to subscribers who receive secondary transmissions of primary transmissions under paragraph (1) shall be subject to statutory licensing under this paragraph if the secondary transmission is of the primary transmission of a network station or a non-network station to a subscriber who resides outside the station’s local market but within a community in which the signal has been determined by the Federal Communications Commission to be significantly viewed in such community, pursuant to the rules, regulations, and authorizations of the Federal Communications Commission in effect on April 15, 1976, applicable to determining with respect to a cable system whether signals are significantly viewed in a community.

“(B) WAIVER.—A subscriber who is denied the secondary transmission of the primary transmission of a network station or a non-network station under subparagraph (A) may request a waiver from such denial by submitting a request, through the subscriber’s satellite carrier, to the network station or non-network station in the local market affiliated with the same network or non-network where the subscriber is located. The network station or non-network station shall accept or reject the subscriber’s request for a waiver within 30 days after receipt of the request. If the network station or non-network station fails to accept or reject the subscriber’s

request for a waiver within that 30-day period, that network station or non-network station shall be deemed to agree to the waiver request.

“(3) SECONDARY TRANSMISSION OF LOW POWER PROGRAMMING.—

“(A) IN GENERAL.—Subject to subparagraphs (B) and (C), a secondary transmission of a performance or display of a work embodied in a primary transmission of a television broadcast station to subscribers who receive secondary transmissions of primary transmissions under paragraph (1) shall be subject to statutory licensing under this paragraph if the secondary transmission is of the primary transmission of a television broadcast station that is licensed as a low power television station, to a subscriber who resides within the same designated market area as the station that originates the transmission.

“(B) NO APPLICABILITY TO REPEATERS AND TRANSLATORS.—Secondary transmissions provided for in subparagraph (A) shall not apply to any low power television station that retransmits the programs and signals of another television station for more than 2 hours each day.

“(C) NO IMPACT ON OTHER SECONDARY TRANSMISSIONS OBLIGATIONS.—A satellite carrier that makes secondary transmissions of a primary transmission of a low power television station under a statutory license provided under this section is not required, by reason of such secondary transmissions, to make any other secondary transmissions.

“(4) SPECIAL EXCEPTIONS.—A secondary transmission of a performance or display of a work embodied in a primary transmission of a television broadcast station to subscribers who receive secondary transmissions of primary transmissions under paragraph (1) shall, if the secondary transmission is made by a satellite carrier that complies with the requirements of paragraph (1), be subject to statutory licensing under this paragraph as follows:

“(A) STATES WITH SINGLE FULL-POWER NETWORK STATION.—In a State in which there is licensed by the Federal Communications Commission a single full-power station that was a network station on January 1, 1995, the statutory license provided for in this paragraph shall apply to the secondary transmission by a satellite carrier of the primary transmission of that station to any subscriber in a community that is located within that State and that is not within the first 50 television markets as listed in the regulations of the Commission as in effect on such date (47 C.F.R. 76.51).

“(B) STATES WITH ALL NETWORK STATIONS AND NON-NETWORK STATIONS IN SAME LOCAL MARKET.—In a State in which all network stations and non-network stations licensed by the Federal Communications Commission within that State as of January 1, 1995, are assigned to the same local market and that local market does not encompass all counties of that State, the statutory license provided under this paragraph shall apply to the secondary transmission by a satellite carrier of the primary transmissions of such station to all subscribers in the State who reside in a local market that is within the first 50 major television markets as listed in the regulations of the Commission as in effect on such date (section 76.51 of title 47, Code of Federal Regulations).

“(C) ADDITIONAL STATIONS.—In the case of that State in which are located 4 counties that—

“(i) on January 1, 2004, were in local markets principally comprised of counties in another State, and

“(ii) had a combined total of 41,340 television households, according to the U.S. Tel-

evision Household Estimates by Nielsen Media Research for 2004,

the statutory license provided under this paragraph shall apply to secondary transmissions by a satellite carrier to subscribers in any such county of the primary transmissions of any network station located in that State, if the satellite carrier was making such secondary transmissions to any subscribers in that county on January 1, 2004.

“(D) CERTAIN ADDITIONAL STATIONS.—If 2 adjacent counties in a single State are in a local market comprised principally of counties located in another State, the statutory license provided for in this paragraph shall apply to the secondary transmission by a satellite carrier to subscribers in those 2 counties of the primary transmissions of any network station located in the capital of the State in which such 2 counties are located, if—

“(i) the 2 counties are located in a local market that is in the top 100 markets for the year 2003 according to Nielsen Media Research; and

“(ii) the total number of television households in the 2 counties combined did not exceed 10,000 for the year 2003 according to Nielsen Media Research.

“(E) NETWORKS OF NONCOMMERCIAL EDUCATIONAL BROADCAST STATIONS.—In the case of a system of three or more noncommercial educational broadcast stations licensed to a single State, public agency, or political, educational, or special purpose subdivision of a State, the statutory license provided for in this paragraph shall apply to the secondary transmission of the primary transmission of such system to any subscriber in any county or county equivalent within such State, if such subscriber is located in a designated market area that is not otherwise eligible to receive the secondary transmission of the primary transmission of a noncommercial educational broadcast station located within the State pursuant to paragraph (1).

“(5) APPLICABILITY OF ROYALTY RATES AND PROCEDURES.—The royalty rates and procedures under section 119(b) shall apply to the secondary transmissions to which the statutory license under paragraph (4) applies.”

(c) REPORTING REQUIREMENTS.—Section 122(b) is amended—

(1) in paragraph (1), by striking “station a list” and all that follows through the end and inserting the following: “station—

“(A) a list identifying (by name in alphabetical order and street address, including county and 9-digit zip code) all subscribers to which the satellite carrier makes secondary transmissions of that primary transmission under subsection (a); and

“(B) a separate list, aggregated by designated market area (by name and address, including street or rural route number, city, State, and 9-digit zip code), which shall indicate those subscribers being served pursuant to paragraph (2) of subsection (a).”; and

(2) in paragraph (2), by striking “network a list” and all that follows through the end and inserting the following: “network—

“(A) a list identifying (by name in alphabetical order and street address, including county and 9-digit zip code) any subscribers who have been added or dropped as subscribers since the last submission under this subsection; and

“(B) a separate list, aggregated by designated market area (by name and street address, including street or rural route number, city, State, and 9-digit zip code), identifying those subscribers whose service pursuant to paragraph (2) of subsection (a) has been added or dropped since the last submission under this subsection.”

(d) NO ROYALTY FEE FOR CERTAIN SECONDARY TRANSMISSIONS.—Section 122(c) is amended—

(1) in the heading, by inserting “FOR CERTAIN SECONDARY TRANSMISSIONS” after “REQUIRED”; and

(2) by striking “subsection (a)” and inserting “paragraphs (1), (2), and (3) of subsection (a)”.

(e) VIOLATIONS FOR TERRITORIAL RESTRICTIONS.—

(1) MODIFICATION TO STATUTORY DAMAGES.—Section 122(f) is amended—

(A) in paragraph (1)(B), by striking “\$5” and inserting “\$250”; and

(B) in paragraph (2), by striking “\$250,000” each place it appears and inserting “\$2,500,000”.

(2) CONFORMING AMENDMENTS FOR ADDITIONAL STATIONS.—Section 122 is amended—

(A) in subsection (f), by striking “section 119 or” each place it appears and inserting the following: “section 119, subject to statutory licensing by reason of paragraph (2)(A), (3), or (4) of subsection (a), or subject to”; and

(B) in subsection (g), by striking “section 119 or” and inserting the following: “section 119, paragraph (2)(A), (3), or (4) of subsection (a), or”.

(f) DEFINITIONS.—Section 122(j) is amended—

(1) in paragraph (1), by striking “which contracts” and inserting “that contracts”;

(2) by redesignating paragraphs (4) and (5) as paragraphs (6) and (7), respectively;

(3) in paragraph (3)—

(A) by redesignating such paragraph as paragraph (4);

(B) in the heading of such paragraph, by inserting “NON-NETWORK STATION;” after “NETWORK STATION;”; and

(C) by inserting “‘non-network station,’” after “‘network station,’”;

(4) by inserting after paragraph (2) the following:

“(3) LOW POWER TELEVISION STATION.—The term ‘low power television station’ means a low power TV station as defined in section 74.701(f) of title 47, Code of Federal Regulations, as in effect on June 1, 2004. For purposes of this paragraph, the term ‘low power television station’ includes a low power television station that has been accorded primary status as a Class A television licensee under section 73.6001(a) of title 47, Code of Federal Regulations.”;

(5) by inserting after paragraph (4) (as redesignated) the following:

“(5) NONCOMMERCIAL EDUCATIONAL BROADCAST STATION.—The term ‘noncommercial educational broadcast station’ means a television broadcast station that is a noncommercial educational broadcast station as defined in section 397 of the Communications Act of 1934, as in effect on the date of the enactment of the Satellite Television Extension and Localism Act of 2010.”; and

(6) by amending paragraph (6) (as redesignated) to read as follows:

“(6) SUBSCRIBER.—The term ‘subscriber’ means a person or entity that receives a secondary transmission service from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor.”

#### SEC. 904. MODIFICATIONS TO CABLE SYSTEM SECONDARY TRANSMISSION RIGHTS UNDER SECTION 111.

(a) HEADING RENAMED.—

(1) IN GENERAL.—The heading of section 111 is amended by inserting at the end the following: “of broadcast programming by cable”.

(2) TABLE OF CONTENTS.—The table of contents for chapter 1 is amended by striking the item relating to section 111 and inserting the following:

“111. Limitations on exclusive rights: Secondary transmissions of broadcast programming by cable.”.

(b) TECHNICAL AMENDMENT.—Section 111(a)(4) is amended by striking “; or” and inserting “or section 122;”.

(c) STATUTORY LICENSE FOR SECONDARY TRANSMISSIONS BY CABLE SYSTEMS.—Section 111(d) is amended—

(1) in paragraph (1)—

(A) in the matter preceding subparagraph (A)—

(i) by striking “A cable system whose secondary” and inserting the following: “STATEMENT OF ACCOUNT AND ROYALTY FEES.—Subject to paragraph (5), a cable system whose secondary”; and

(ii) by striking “by regulation—” and inserting “by regulation the following;”;

(B) in subparagraph (A)—

(i) by striking “a statement of account” and inserting “A statement of account”; and

(ii) by striking “; and” and inserting a period; and

(C) by striking subparagraphs (B), (C), and (D) and inserting the following:

“(B) Except in the case of a cable system whose royalty fee is specified in subparagraph (E) or (F), a total royalty fee payable to copyright owners pursuant to paragraph (3) for the period covered by the statement, computed on the basis of specified percentages of the gross receipts from subscribers to the cable service during such period for the basic service of providing secondary transmissions of primary broadcast transmitters, as follows:

“(i) 1.064 percent of such gross receipts for the privilege of further transmitting, beyond the local service area of such primary transmitter, any non-network programming of a primary transmitter in whole or in part, such amount to be applied against the fee, if any, payable pursuant to clauses (ii) through (iv);

“(ii) 1.064 percent of such gross receipts for the first distant signal equivalent;

“(iii) 0.701 percent of such gross receipts for each of the second, third, and fourth distant signal equivalents; and

“(iv) 0.330 percent of such gross receipts for the fifth distant signal equivalent and each distant signal equivalent thereafter.

“(C) In computing amounts under clauses (ii) through (iv) of subparagraph (B)—

“(i) any fraction of a distant signal equivalent shall be computed at its fractional value;

“(ii) in the case of any cable system located partly within and partly outside of the local service area of a primary transmitter, gross receipts shall be limited to those gross receipts derived from subscribers located outside of the local service area of such primary transmitter; and

“(iii) if a cable system provides a secondary transmission of a primary transmitter to some but not all communities served by that cable system—

“(I) the gross receipts and the distant signal equivalent values for such secondary transmission shall be derived solely on the basis of the subscribers in those communities where the cable system provides such secondary transmission; and

“(II) the total royalty fee for the period paid by such system shall not be less than the royalty fee calculated under subparagraph (B)(i) multiplied by the gross receipts from all subscribers to the system.

“(D) A cable system that, on a statement submitted before the date of the enactment of the Satellite Television Extension and Localism Act of 2010, computed its royalty fee consistent with the methodology under subparagraph (C)(iii), or that amends a statement filed before such date of enactment to compute the royalty fee due using such methodology, shall not be subject to an action for infringement, or eligible for any roy-

alty refund or offset, arising out of its use of such methodology on such statement.

“(E) If the actual gross receipts paid by subscribers to a cable system for the period covered by the statement for the basic service of providing secondary transmissions of primary broadcast transmitters are \$263,800 or less—

“(i) gross receipts of the cable system for the purpose of this paragraph shall be computed by subtracting from such actual gross receipts the amount by which \$263,800 exceeds such actual gross receipts, except that in no case shall a cable system’s gross receipts be reduced to less than \$10,400; and

“(ii) the royalty fee payable under this paragraph to copyright owners pursuant to paragraph (3) shall be 0.5 percent, regardless of the number of distant signal equivalents, if any.

“(F) If the actual gross receipts paid by subscribers to a cable system for the period covered by the statement for the basic service of providing secondary transmissions of primary broadcast transmitters are more than \$263,800 but less than \$527,600, the royalty fee payable under this paragraph to copyright owners pursuant to paragraph (3) shall be—

“(i) 0.5 percent of any gross receipts up to \$263,800, regardless of the number of distant signal equivalents, if any; and

“(ii) 1 percent of any gross receipts in excess of \$263,800, but less than \$527,600, regardless of the number of distant signal equivalents, if any.

“(G) A filing fee, as determined by the Register of Copyrights pursuant to section 708(a);”

(2) in paragraph (2), in the first sentence—

(A) by striking “The Register of Copyrights” and inserting the following “HANDLING OF FEES.—The Register of Copyrights”; and

(B) by inserting “(including the filing fee specified in paragraph (1)(G))” after “shall receive all fees”; and

(3) in paragraph (3)—

(A) by striking “The royalty fees” and inserting the following: “DISTRIBUTION OF ROYALTY FEES TO COPYRIGHT OWNERS.—The royalty fees”; and

(B) in subparagraph (A)—

(i) by striking “any such” and inserting “Any such”; and

(ii) by striking “; and” and inserting a period;

(C) in subparagraph (B)—

(i) by striking “any such” and inserting “Any such”; and

(ii) by striking the semicolon and inserting a period; and

(D) in subparagraph (C), by striking “any such” and inserting “Any such”; and

(4) in paragraph (4), by striking “The royalty fees” and inserting the following: “PROCEDURES FOR ROYALTY FEE DISTRIBUTION.—The royalty fees”; and

(5) by adding at the end the following new paragraphs:

“(5) 3.75 PERCENT RATE AND SYNDICATED EXCLUSIVITY SURCHARGE NOT APPLICABLE TO MULTICAST STREAMS.—The royalty rates specified in sections 256.2(c) and 256.2(d) of title 37, Code of Federal Regulations (commonly referred to as the ‘3.75 percent rate’ and the ‘syndicated exclusivity surcharge’, respectively), as in effect on the date of the enactment of the Satellite Television Extension and Localism Act of 2010, as such rates may be adjusted, or such sections redesignated, thereafter by the Copyright Royalty Judges, shall not apply to the secondary transmission of a multicast stream.

“(6) VERIFICATION OF ACCOUNTS AND FEE PAYMENTS.—The Register of Copyrights shall issue regulations to provide for the confidential verification by copyright owners whose

works were embodied in the secondary transmissions of primary transmissions pursuant to this section of the information reported on the semiannual statements of account filed under this subsection on or after January 1, 2010, in order that the auditor designated under subparagraph (A) is able to confirm the correctness of the calculations and royalty payments reported therein. The regulations shall—

“(A) establish procedures for the designation of a qualified independent auditor—

“(i) with exclusive authority to request verification of such a statement of account on behalf of all copyright owners whose works were the subject of secondary transmissions of primary transmissions by the cable system (that deposited the statement) during the accounting period covered by the statement; and

“(ii) who is not an officer, employee, or agent of any such copyright owner for any purpose other than such audit;

“(B) establish procedures for safeguarding all non-public financial and business information provided under this paragraph;

“(C)(i) require a consultation period for the independent auditor to review its conclusions with a designee of the cable system;

“(ii) establish a mechanism for the cable system to remedy any errors identified in the auditor’s report and to cure any underpayment identified; and

“(iii) provide an opportunity to remedy any disputed facts or conclusions;

“(D) limit the frequency of requests for verification for a particular cable system and the number of audits that a multiple system operator can be required to undergo in a single year; and

“(E) permit requests for verification of a statement of account to be made only within 3 years after the last day of the year in which the statement of account is filed.

“(7) ACCEPTANCE OF ADDITIONAL DEPOSITS.—Any royalty fee payments received by the Copyright Office from cable systems for the secondary transmission of primary transmissions that are in addition to the payments calculated and deposited in accordance with this subsection shall be deemed to have been deposited for the particular accounting period for which they are received and shall be distributed as specified under this subsection.”.

(d) EFFECTIVE DATE OF NEW ROYALTY FEE RATES.—The royalty fee rates established in section 111(d)(1)(B) of title 17, United States Code, as amended by subsection (c)(1)(C) of this section, shall take effect commencing with the first accounting period occurring in 2010.

(e) DEFINITIONS.—Section 111(f) is amended—

(1) by striking the first undesignated paragraph and inserting the following:

“(1) PRIMARY TRANSMISSION.—A ‘primary transmission’ is a transmission made to the public by a transmitting facility whose signals are being received and further transmitted by a secondary transmission service, regardless of where or when the performance or display was first transmitted. In the case of a television broadcast station, the primary stream and any multicast streams transmitted by the station constitute primary transmissions.”;

(2) in the second undesignated paragraph—

(A) by striking “A ‘secondary transmission’” and inserting the following:

“(2) SECONDARY TRANSMISSION.—A ‘secondary transmission’”; and

(B) by striking “‘cable system’” and inserting “‘cable system’”;

(3) in the third undesignated paragraph—

(A) by striking “A ‘cable system’” and inserting the following:



“(3) CABLE SYSTEM.—A ‘cable system’; and

(B) by striking “Territory, Trust Territory, or Possession” and inserting “territory, trust territory, or possession of the United States”;

(4) in the fourth undesignated paragraph, in the first sentence—

(A) by striking “The ‘local service area of a primary transmitter’, in the case of a television broadcast station, comprises the area in which such station is entitled to insist” and inserting the following:

“(4) LOCAL SERVICE AREA OF A PRIMARY TRANSMITTER.—The ‘local service area of a primary transmitter’, in the case of both the primary stream and any multicast streams transmitted by a primary transmitter that is a television broadcast station, comprises the area where such primary transmitter could have insisted”;

(B) by striking “76.59 of title 47 of the Code of Federal Regulations” and inserting the following: “76.59 of title 47, Code of Federal Regulations, or within the noise-limited contour as defined in 73.622(e)(1) of title 47, Code of Federal Regulations”;

(C) by striking “as defined by the rules and regulations of the Federal Communications Commission,”;

(5) by amending the fifth undesignated paragraph to read as follows:

“(5) DISTANT SIGNAL EQUIVALENT.—

“(A) IN GENERAL.—Except as provided under subparagraph (B), a ‘distant signal equivalent’—

“(i) is the value assigned to the secondary transmission of any non-network television programming carried by a cable system in whole or in part beyond the local service area of the primary transmitter of such programming; and

“(ii) is computed by assigning a value of one to each primary stream and to each multicast stream (other than a simulcast) that is an independent station, and by assigning a value of one-quarter to each primary stream and to each multicast stream (other than a simulcast) that is a network station or a noncommercial educational station.

“(B) EXCEPTIONS.—The values for independent, network, and noncommercial educational stations specified in subparagraph (A) are subject to the following:

“(i) Where the rules and regulations of the Federal Communications Commission require a cable system to omit the further transmission of a particular program and such rules and regulations also permit the substitution of another program embodying a performance or display of a work in place of the omitted transmission, or where such rules and regulations in effect on the date of the enactment of the Copyright Act of 1976 permit a cable system, at its election, to effect such omission and substitution of a nonlive program or to carry additional programs not transmitted by primary transmitters within whose local service area the cable system is located, no value shall be assigned for the substituted or additional program.

“(ii) Where the rules, regulations, or authorizations of the Federal Communications Commission in effect on the date of the enactment of the Copyright Act of 1976 permit a cable system, at its election, to omit the further transmission of a particular program and such rules, regulations, or authorizations also permit the substitution of another program embodying a performance or display of a work in place of the omitted transmission, the value assigned for the substituted or additional program shall be, in the case of a live program, the value of one full distant signal equivalent multiplied by a fraction that has as its numerator the num-

ber of days in the year in which such substitution occurs and as its denominator the number of days in the year.

“(iii) In the case of the secondary transmission of a primary transmitter that is a television broadcast station pursuant to the late-night or specialty programming rules of the Federal Communications Commission, or the secondary transmission of a primary transmitter that is a television broadcast station on a part-time basis where full-time carriage is not possible because the cable system lacks the activated channel capacity to retransmit on a full-time basis all signals that it is authorized to carry, the values for independent, network, and noncommercial educational stations set forth in subparagraph (A), as the case may be, shall be multiplied by a fraction that is equal to the ratio of the broadcast hours of such primary transmitter retransmitted by the cable system to the total broadcast hours of the primary transmitter.

“(iv) No value shall be assigned for the secondary transmission of the primary stream or any multicast streams of a primary transmitter that is a television broadcast station in any community that is within the local service area of the primary transmitter.”;

(6) by striking the sixth undesignated paragraph and inserting the following:

“(6) NETWORK STATION.—

“(A) TREATMENT OF PRIMARY STREAM.—The term ‘network station’ shall be applied to a primary stream of a television broadcast station that is owned or operated by, or affiliated with, one or more of the television networks in the United States providing nationwide transmissions, and that transmits a substantial part of the programming supplied by such networks for a substantial part of the primary stream’s typical broadcast day.

“(B) TREATMENT OF MULTICAST STREAMS.—The term ‘network station’ shall be applied to a multicast stream on which a television broadcast station transmits all or substantially all of the programming of an interconnected program service that—

“(i) is owned or operated by, or affiliated with, one or more of the television networks described in subparagraph (A); and

“(ii) offers programming on a regular basis for 15 or more hours per week to at least 25 of the affiliated television licensees of the interconnected program service in 10 or more States.”;

(7) by striking the seventh undesignated paragraph and inserting the following:

“(7) INDEPENDENT STATION.—The term ‘independent station’ shall be applied to the primary stream or a multicast stream of a television broadcast station that is not a network station or a noncommercial educational station.”;

(8) by striking the eighth undesignated paragraph and inserting the following:

“(8) NONCOMMERCIAL EDUCATIONAL STATION.—The term ‘noncommercial educational station’ shall be applied to the primary stream or a multicast stream of a television broadcast station that is a noncommercial educational broadcast station as defined in section 397 of the Communications Act of 1934, as in effect on the date of the enactment of the Satellite Television Extension and Localism Act of 2010.”; and

(9) by adding at the end the following:

“(9) PRIMARY STREAM.—A ‘primary stream’ is—

“(A) the single digital stream of programming that, before June 12, 2009, was substantially duplicating the programming transmitted by the television broadcast station as an analog signal; or

“(B) if there is no stream described in subparagraph (A), then the single digital stream of programming transmitted by the tele-

vision broadcast station for the longest period of time.

“(10) PRIMARY TRANSMITTER.—A ‘primary transmitter’ is a television or radio broadcast station licensed by the Federal Communications Commission, or by an appropriate governmental authority of Canada or Mexico, that makes primary transmissions to the public.

“(11) MULTICAST STREAM.—A ‘multicast stream’ is a digital stream of programming that is transmitted by a television broadcast station and is not the station’s primary stream.

“(12) SIMULCAST.—A ‘simulcast’ is a multicast stream of a television broadcast station that duplicates the programming transmitted by the primary stream or another multicast stream of such station.

“(13) SUBSCRIBER; SUBSCRIBE.—

“(A) SUBSCRIBER.—The term ‘subscriber’ means a person or entity that receives a secondary transmission service from a cable system and pays a fee for the service, directly or indirectly, to the cable system.

“(B) SUBSCRIBE.—The term ‘subscribe’ means to elect to become a subscriber.”.

(f) TIMING OF SECTION 111 PROCEEDINGS.—Section 804(b)(1) is amended by striking “2005” each place it appears and inserting “2015”.

(g) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) CORRECTIONS TO FIX LEVEL DESIGNATIONS.—Section 111 is amended—

(A) in subsections (a), (c), and (e), by striking “clause” each place it appears and inserting “paragraph”;

(B) in subsection (c)(1), by striking “clauses” and inserting “paragraphs”; and

(C) in subsection (e)(1)(F), by striking “subclause” and inserting “subparagraph”.

(2) CONFORMING AMENDMENT TO HYPHENATE NONNETWORK.—Section 111 is amended by striking “nonnetwork” each place it appears and inserting “non-network”.

(3) PREVIOUSLY UNDESIGNATED PARAGRAPH.—Section 111(e)(1) is amended by striking “second paragraph of subsection (f)” and inserting “subsection (f)(2)”.

(4) REMOVAL OF SUPERFLUOUS ANDS.—Section 111(e) is amended—

(A) in paragraph (1)(A), by striking “and” at the end;

(B) in paragraph (1)(B), by striking “and” at the end;

(C) in paragraph (1)(C), by striking “and” at the end;

(D) in paragraph (1)(D), by striking “and” at the end; and

(E) in paragraph (2)(A), by striking “and” at the end.

(5) REMOVAL OF VARIANT FORMS REFERENCES.—Section 111 is amended—

(A) in subsection (e)(4), by striking “, and each of its variant forms,”; and

(B) in subsection (f), by striking “and their variant forms”.

(6) CORRECTION TO TERRITORY REFERENCE.—Section 111(e)(2) is amended in the matter preceding subparagraph (A) by striking “three territories” and inserting “five entities”.

(h) EFFECTIVE DATE WITH RESPECT TO MULTICAST STREAMS.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), the amendments made by this section, to the extent such amendments assign a distant signal equivalent value to the secondary transmission of the multicast stream of a primary transmitter, shall take effect on the date of the enactment of this Act.

(2) DELAYED APPLICABILITY.—

(A) SECONDARY TRANSMISSIONS OF A MULTICAST STREAM BEYOND THE LOCAL SERVICE AREA OF ITS PRIMARY TRANSMITTER BEFORE 2009 ACT.—In any case in which a cable system was making secondary transmissions

of a multicast stream beyond the local service area of its primary transmitter before the date of the enactment of this Act, a distant signal equivalent value (referred to in paragraph (1)) shall not be assigned to secondary transmissions of such multicast stream that are made on or before June 30, 2010.

(B) **MULTICAST STREAMS SUBJECT TO PRE-EXISTING WRITTEN AGREEMENTS FOR THE SECONDARY TRANSMISSION OF SUCH STREAMS.**—In any case in which the secondary transmission of a multicast stream of a primary transmitter is the subject of a written agreement entered into on or before June 30, 2009, between a cable system or an association representing the cable system and a primary transmitter or an association representing the primary transmitter, a distant signal equivalent value (referred to in paragraph (1)) shall not be assigned to secondary transmissions of such multicast stream beyond the local service area of its primary transmitter that are made on or before the date on which such written agreement expires.

(C) **NO REFUNDS OR OFFSETS FOR PRIOR STATEMENTS OF ACCOUNT.**—A cable system that has reported secondary transmissions of a multicast stream beyond the local service area of its primary transmitter on a statement of account deposited under section 111 of title 17, United States Code, before the date of the enactment of this Act shall not be entitled to any refund, or offset, of royalty fees paid on account of such secondary transmissions of such multicast stream.

(3) **DEFINITIONS.**—In this subsection, the terms “cable system”, “secondary transmission”, “multicast stream”, and “local service area of a primary transmitter” have the meanings given those terms in section 111(f) of title 17, United States Code, as amended by this section.

**SEC. 905. CERTAIN WAIVERS GRANTED TO PROVIDERS OF LOCAL-INTO-LOCAL SERVICE FOR ALL DMAS.**

Section 119 is amended by adding at the end the following new subsection:

“(g) **CERTAIN WAIVERS GRANTED TO PROVIDERS OF LOCAL-INTO-LOCAL SERVICE TO ALL DMAS.**—

“(1) **INJUNCTION WAIVER.**—A court that issued an injunction pursuant to subsection (a)(7)(B) before the date of the enactment of this subsection shall waive such injunction if the court recognizes the entity against which the injunction was issued as a qualified carrier.

“(2) **LIMITED TEMPORARY WAIVER.**—

“(A) **IN GENERAL.**—Upon a request made by a satellite carrier, a court that issued an injunction against such carrier under subsection (a)(7)(B) before the date of the enactment of this subsection shall waive such injunction with respect to the statutory license provided under subsection (a)(2) to the extent necessary to allow such carrier to make secondary transmissions of primary transmissions made by a network station to unserved households located in short markets in which such carrier was not providing local service pursuant to the license under section 122 as of December 31, 2009.

“(B) **EXPIRATION OF TEMPORARY WAIVER.**—A temporary waiver of an injunction under subparagraph (A) shall expire after the end of the 120-day period beginning on the date such temporary waiver is issued unless extended for good cause by the court making the temporary waiver.

“(C) **FAILURE TO PROVIDE LOCAL-INTO-LOCAL SERVICE TO ALL DMAS.**—

“(1) **FAILURE TO ACT REASONABLY AND IN GOOD FAITH.**—If the court issuing a temporary waiver under subparagraph (A) determines that the satellite carrier that made the request for such waiver has failed to act reasonably or has failed to make a good faith

effort to provide local-into-local service to all DMAs, such failure—

“(I) is actionable as an act of infringement under section 501 and the court may in its discretion impose the remedies provided for in sections 502 through 506 and subsection (a)(6)(B) of this section; and

“(II) shall result in the termination of the waiver issued under subparagraph (A).

“(ii) **FAILURE TO PROVIDE LOCAL-INTO-LOCAL SERVICE.**—If the court issuing a temporary waiver under subparagraph (A) determines that the satellite carrier that made the request for such waiver has failed to provide local-into-local service to all DMAs, but determines that the carrier acted reasonably and in good faith, the court may in its discretion impose financial penalties that reflect—

“(I) the degree of control the carrier had over the circumstances that resulted in the failure; and

“(II) the quality of the carrier's efforts to remedy the failure; and

“(III) the severity and duration of any service interruption.

“(D) **SINGLE TEMPORARY WAIVER AVAILABLE.**—An entity may only receive one temporary waiver under this paragraph.

“(E) **SHORT MARKET DEFINED.**—For purposes of this paragraph, the term ‘short market’ means a local market in which programming of one or more of the four most widely viewed television networks nationwide as measured on the date of the enactment of this subsection is not offered on the primary stream transmitted by any local television broadcast station.

“(3) **ESTABLISHMENT OF QUALIFIED CARRIER RECOGNITION.**—

“(A) **STATEMENT OF ELIGIBILITY.**—An entity seeking to be recognized as a qualified carrier under this subsection shall file a statement of eligibility with the court that imposed the injunction. A statement of eligibility must include—

“(i) an affidavit that the entity is providing local-into-local service to all DMAs;

“(ii) a request for a waiver of the injunction; and

“(iii) a certification issued pursuant to section 342(a) of Communications Act of 1934.

“(B) **GRANT OF RECOGNITION AS A QUALIFIED CARRIER.**—Upon receipt of a statement of eligibility, the court shall recognize the entity as a qualified carrier and issue the waiver under paragraph (1).

“(C) **VOLUNTARY TERMINATION.**—At any time, an entity recognized as a qualified carrier may file a statement of voluntary termination with the court certifying that it no longer wishes to be recognized as a qualified carrier. Upon receipt of such statement, the court shall reinstate the injunction waived under paragraph (1).

“(D) **LOSS OF RECOGNITION PREVENTS FUTURE RECOGNITION.**—No entity may be recognized as a qualified carrier if such entity had previously been recognized as a qualified carrier and subsequently lost such recognition or voluntarily terminated such recognition under subparagraph (C).

“(4) **QUALIFIED CARRIER OBLIGATIONS AND COMPLIANCE.**—

“(A) **CONTINUING OBLIGATIONS.**—

“(i) **IN GENERAL.**—An entity recognized as a qualified carrier shall continue to provide local-into-local service to all DMAs.

“(ii) **COOPERATION WITH GAO EXAMINATION.**—An entity recognized as a qualified carrier shall fully cooperate with the Comptroller General in the examination required by subparagraph (B).

“(B) **QUALIFIED CARRIER COMPLIANCE EXAMINATION.**—

“(i) **EXAMINATION AND REPORT.**—The Comptroller General shall conduct an examination and publish a report concerning the qualified

carrier's compliance with the royalty payment and household eligibility requirements of the license under this section. The report shall address the qualified carrier's conduct during the period beginning on the date on which the qualified carrier is recognized as such under paragraph (3)(B) and ending on December 31, 2011.

“(ii) **RECORDS OF QUALIFIED CARRIER.**—Beginning on the date that is one year after the date on which the qualified carrier is recognized as such under paragraph (3)(B), but not later than October 1, 2011, the qualified carrier shall provide the Comptroller General with all records that the Comptroller General, in consultation with the Register of Copyrights, considers to be directly pertinent to the following requirements under this section:

“(I) Proper calculation and payment of royalties under the statutory license under this section.

“(II) Provision of service under this license to eligible subscribers only.

“(iii) **SUBMISSION OF REPORT.**—The Comptroller General shall file the report required by clause (i) not later than March 1, 2012, with the court referred to in paragraph (1) that issued the injunction, the Register of Copyrights, the Committees on the Judiciary and on Energy and Commerce of the House of Representatives, and the Committees on the Judiciary and on Commerce, Science, and Transportation of the Senate.

“(iv) **EVIDENCE OF INFRINGEMENT.**—The Comptroller General shall include in the report a statement of whether the examination by the Comptroller General indicated that there is substantial evidence that a copyright holder could bring a successful action under this section against the qualified carrier for infringement. The Comptroller General shall consult with the Register of Copyrights in preparing such statement.

“(v) **SUBSEQUENT EXAMINATION.**—If the report includes the Comptroller General's statement that there is substantial evidence that a copyright holder could bring a successful action under this section against the qualified carrier for infringement, the Comptroller General shall, not later than 6 months after the report under clause (i) is published, initiate another examination of the qualified carrier's compliance with the royalty payment and household eligibility requirements of the license under this section since the last report was filed under clause (iii). The Comptroller General shall file a report on such examination with the court referred to in paragraph (1) that issued the injunction, the Register of Copyrights, the Committees on the Judiciary and on Energy and Commerce of the House of Representatives, and the Committees on the Judiciary and on Commerce, Science, and Transportation of the Senate. The report shall include a statement described in clause (iv), prepared in consultation with the Register of Copyrights.

“(vi) **COMPLIANCE.**—Upon motion filed by an aggrieved copyright owner, the court recognizing an entity as a qualified carrier shall terminate such designation upon finding that the entity has failed to cooperate with the examinations required by this subparagraph.

“(C) **AFFIRMATION.**—A qualified carrier shall file an affidavit with the district court and the Register of Copyrights 30 months after such status was granted stating that, to the best of the affiant's knowledge, it is in compliance with the requirements for a qualified carrier.

“(D) **COMPLIANCE DETERMINATION.**—Upon the motion of an aggrieved television broadcast station, the court recognizing an entity

as a qualified carrier may make a determination of whether the entity is providing local-into-local service to all DMAs.

“(E) PLEADING REQUIREMENT.—In any motion brought under subparagraph (D), the party making such motion shall specify one or more designated market areas (as such term is defined in section 122(j)(2)(C)) for which the failure to provide service is being alleged, and, for each such designated market area, shall plead with particularity the circumstances of the alleged failure.

“(F) BURDEN OF PROOF.—In any proceeding to make a determination under subparagraph (D), and with respect to a designated market area for which failure to provide service is alleged, the entity recognized as a qualified carrier shall have the burden of proving that the entity provided local-into-local service with a good quality satellite signal to at least 90 percent of the households in such designated market area (based on the most recent census data released by the United States Census Bureau) at the time and place alleged.

“(5) FAILURE TO PROVIDE SERVICE.—

“(A) PENALTIES.—If the court recognizing an entity as a qualified carrier finds that such entity has willfully failed to provide local-into-local service to all DMAs, such finding shall result in the loss of recognition of the entity as a qualified carrier and the termination of the waiver provided under paragraph (I), and the court may, in its discretion—

“(i) treat such failure as an act of infringement under section 501, and subject such infringement to the remedies provided for in sections 502 through 506 and subsection (a)(6)(B) of this section; and

“(ii) impose a fine of not less than \$250,000 and not more than \$5,000,000.

“(B) EXCEPTION FOR NONWILLFUL VIOLATION.—If the court determines that the failure to provide local-into-local service to all DMAs is nonwillful, the court may in its discretion impose financial penalties for non-compliance that reflect—

“(i) the degree of control the entity had over the circumstances that resulted in the failure;

“(ii) the quality of the entity's efforts to remedy the failure and restore service; and

“(iii) the severity and duration of any service interruption.

“(6) PENALTIES FOR VIOLATIONS OF LICENSE.—A court that finds, under subsection (a)(6)(A), that an entity recognized as a qualified carrier has willfully made a secondary transmission of a primary transmission made by a network station and embodying a performance or display of a work to a subscriber who is not eligible to receive the transmission under this section shall reinstate the injunction waived under paragraph (1), and the court may order statutory damages of not more than \$2,500,000.

“(7) LOCAL-INTO-LOCAL SERVICE TO ALL DMAS DEFINED.—For purposes of this subsection:

“(A) IN GENERAL.—An entity provides ‘local-into-local service to all DMAs’ if the entity provides local service in all designated market areas (as such term is defined in section 122(j)(2)(C)) pursuant to the license under section 122.

“(B) HOUSEHOLD COVERAGE.—For purposes of subparagraph (A), an entity that makes available local-into-local service with a good quality satellite signal to at least 90 percent of the households in a designated market area based on the most recent census data released by the United States Census Bureau shall be considered to be providing local service to such designated market area.

“(C) GOOD QUALITY SATELLITE SIGNAL DEFINED.—The term ‘good quality signal’ has

the meaning given such term under section 342(e)(2) of Communications Act of 1934.”.

#### SEC. 906. COPYRIGHT OFFICE FEES.

Section 708(a) is amended—

(1) in paragraph (8), by striking “and” after the semicolon;

(2) in paragraph (9), by striking the period and inserting a semicolon;

(3) by inserting after paragraph (9) the following:

“(10) on filing a statement of account based on secondary transmissions of primary transmissions pursuant to section 119 or 122; and

“(11) on filing a statement of account based on secondary transmissions of primary transmissions pursuant to section 111.”; and

(4) by adding at the end the following new sentence: “Fees established under paragraphs (10) and (11) shall be reasonable and may not exceed one-half of the cost necessary to cover reasonable expenses incurred by the Copyright Office for the collection and administration of the statements of account and any royalty fees deposited with such statements.”.

#### SEC. 907. TERMINATION OF LICENSE.

Section 1003(a)(2)(A) of Public Law 111-118 is amended by striking “February 28, 2010” and inserting “December 31, 2014”.

#### SEC. 908. CONSTRUCTION.

Nothing in section 111, 119, or 122 of title 17, United States Code, including the amendments made to such sections by this subtitle, shall be construed to affect the meaning of any terms under the Communications Act of 1934, except to the extent that such sections are specifically cross-referenced in such Act or the regulations issued thereunder.

#### Subtitle B—Communications Provisions

#### SEC. 921. REFERENCE.

Except as otherwise provided, whenever in this subtitle an amendment is made to a section or other provision, the reference shall be considered to be made to such section or provision of the Communications Act of 1934 (47 U.S.C. 151 et seq.).

#### SEC. 922. EXTENSION OF AUTHORITY.

Section 325(b) is amended—

(1) in paragraph (2)(C), by striking “February 28, 2010” and inserting “December 31, 2014”; and

(2) in paragraph (3)(C), by striking “March 1, 2010” each place it appears in clauses (ii) and (iii) and inserting “January 1, 2015”.

#### SEC. 923. SIGNIFICANTLY VIEWED STATIONS.

(a) IN GENERAL.—Paragraphs (1) and (2) of section 340(b) are amended to read as follows:

“(1) SERVICE LIMITED TO SUBSCRIBERS TAKING LOCAL-INTO-LOCAL SERVICE.—This section shall apply only to retransmissions to subscribers of a satellite carrier who receive retransmissions of a signal from that satellite carrier pursuant to section 338.

“(2) SERVICE LIMITATIONS.—A satellite carrier may retransmit to a subscriber in high definition format the signal of a station determined by the Commission to be significantly viewed under subsection (a) only if such carrier also retransmits in high definition format the signal of a station located in the local market of such subscriber and affiliated with the same network whenever such format is available from such station.”.

(b) RULEMAKING REQUIRED.—Within 180 days after the date of the enactment of this Act, the Federal Communications Commission shall take all actions necessary to promulgate a rule to implement the amendments made by subsection (a).

#### SEC. 924. DIGITAL TELEVISION TRANSITION CONFORMING AMENDMENTS.

(a) SECTION 338.—Section 338 is amended—

(1) in subsection (a), by striking “(3) EFFECTIVE DATE.—No satellite” and all that follows through “until January 1, 2002.”; and

(2) by amending subsection (g) to read as follows:

“(g) CARRIAGE OF LOCAL STATIONS ON A SINGLE RECEPTION ANTENNA.—

“(1) SINGLE RECEPTION ANTENNA.—Each satellite carrier that retransmits the signals of local television broadcast stations in a local market shall retransmit such stations in such market so that a subscriber may receive such stations by means of a single reception antenna and associated equipment.

“(2) ADDITIONAL RECEPTION ANTENNA.—If the carrier retransmits the signals of local television broadcast stations in a local market in high definition format, the carrier shall retransmit such signals in such market so that a subscriber may receive such signals by means of a single reception antenna and associated equipment, but such antenna and associated equipment may be separate from the single reception antenna and associated equipment used to comply with paragraph (1).”.

(b) SECTION 339.—Section 339 is amended—

(1) in subsection (a)—

(A) in paragraph (1)(B), by striking “Such two network stations” and all that follows through “more than two network stations.”; and

(B) in paragraph (2)—

(i) in the heading for subparagraph (A), by striking “TO ANALOG SIGNALS”; and

(ii) in subparagraph (A)—

(I) in the heading for clause (i), by striking “ANALOG”; and

(II) in clause (i)—

(aa) by striking “analog” each place it appears; and

(bb) by striking “October 1, 2004” and inserting “October 1, 2009”; and

(III) in the heading for clause (ii), by striking “ANALOG”; and

(IV) in clause (ii)—

(aa) by striking “analog” each place it appears; and

(bb) by striking “2004” and inserting “2009”; and

(iii) by amending subparagraph (B) to read as follows:

“(B) RULES FOR OTHER SUBSCRIBERS.—

“(i) IN GENERAL.—In the case of a subscriber of a satellite carrier who is eligible to receive the signal of a network station under this section (in this subparagraph referred to as a ‘distant signal’), other than subscribers to whom subparagraph (A) applies, the following shall apply:

“(I) In a case in which the satellite carrier makes available to that subscriber, on January 1, 2005, the signal of a local network station affiliated with the same television network pursuant to section 338, the carrier may only provide the secondary transmissions of the distant signal of a station affiliated with the same network to that subscriber if the subscriber's satellite carrier, not later than March 1, 2005, submits to that television network the list and statement required by subparagraph (F)(i).

“(II) In a case in which the satellite carrier does not make available to that subscriber, on January 1, 2005, the signal of a local network station pursuant to section 338, the carrier may only provide the secondary transmissions of the distant signal of a station affiliated with the same network to that subscriber if—

“(aa) that subscriber seeks to subscribe to such distant signal before the date on which such carrier commences to carry pursuant to section 338 the signals of stations from the local market of such local network station; and

“(bb) the satellite carrier, within 60 days after such date, submits to each television network the list and statement required by subparagraph (F)(ii).

“(ii) SPECIAL CIRCUMSTANCES.—A subscriber of a satellite carrier who was lawfully receiving the distant signal of a network station on the day before the date of enactment of the Satellite Television Extension and Localism Act of 2010 may receive both such distant signal and the local signal of a network station affiliated with the same network until such subscriber chooses to no longer receive such distant signal from such carrier, whether or not such subscriber elects to subscribe to such local signal.”;

(iv) in subparagraph (C)—

(I) by striking “analog”;

(II) in clause (i), by striking “the Satellite Home Viewer Extension and Reauthorization Act of 2004; and” and inserting the following:

“the Satellite Television Extension and Localism Act of 2010 and, at the time such person seeks to subscribe to receive such secondary transmission, resides in a local market where the satellite carrier makes available to that person the signal of a local network station affiliated with the same television network pursuant to section 338 (and the retransmission of such signal by such carrier can reach such subscriber); or”;

(III) by amending clause (ii) to read as follows:

“(i) lawfully subscribes to and receives a distant signal on or after the date of enactment of the Satellite Television Extension and Localism Act of 2010, and, subsequent to such subscription, the satellite carrier makes available to that subscriber the signal of a local network station affiliated with the same network as the distant signal (and the retransmission of such signal by such carrier can reach such subscriber), unless such person subscribes to the signal of the local network station within 60 days after such signal is made available.”;

(v) in subparagraph (D)—

(I) in the heading, by striking “DIGITAL”;

(II) by striking clauses (i), (iii) through (v), (vii) through (ix), and (xi);

(III) by redesignating clause (vi) as clause (i) and transferring such clause to appear before clause (ii);

(IV) by amending such clause (i) (as so redesignated) to read as follows:

“(i) ELIGIBILITY AND SIGNAL TESTING.—A subscriber of a satellite carrier shall be eligible to receive a distant signal of a network station affiliated with the same network under this section if, with respect to a local network station, such subscriber—

“(I) is a subscriber whose household is not predicted by the model specified in subsection (c)(3) to receive the signal intensity required under section 73.622(e)(1) or, in the case of a low-power station or translator station transmitting an analog signal, section 73.683(a) of title 47, Code of Federal Regulations, or a successor regulation;

“(II) is determined, based on a test conducted in accordance with section 73.686(d) of title 47, Code of Federal Regulations, or any successor regulation, not to be able to receive a signal that exceeds the signal intensity standard in section 73.622(e)(1) or, in the case of a low-power station or translator station transmitting an analog signal, section 73.683(a) of such title, or a successor regulation; or

“(III) is in an unserved household, as determined under section 119(d)(10)(A) of title 17, United States Code.”;

(V) in clause (ii)—

(aa) by striking “DIGITAL” in the heading;

(bb) by striking “digital” the first two places such term appears;

(cc) by striking “Satellite Home Viewer Extension and Reauthorization Act of 2004” and inserting “Satellite Television Extension and Localism Act of 2010”;

(dd) by striking “, whether or not such subscriber elects to subscribe to local digital signals”;

(VI) by inserting after clause (ii) the following new clause:

“(iii) TIME-SHIFTING PROHIBITED.—In a case in which the satellite carrier makes available to an eligible subscriber under this subparagraph the signal of a local network station pursuant to section 338, the carrier may only provide the distant signal of a station affiliated with the same network to that subscriber if, in the case of any local market in the 48 contiguous States of the United States, the distant signal is the secondary transmission of a station whose prime time network programming is generally broadcast simultaneously with, or later than, the prime time network programming of the affiliate of the same network in the local market.”;

(VII) by redesignating clause (x) as clause (iv); and

(vi) in subparagraph (E), by striking “distant analog signal or” and all that follows through “(B), or (D))” and inserting “distant signal”;

(2) in subsection (c)—

(A) by amending paragraph (3) to read as follows:

“(3) ESTABLISHMENT OF IMPROVED PREDICTIVE MODEL AND ON-LOCATION TESTING REQUIRED.—

“(A) PREDICTIVE MODEL.—Within 180 days after the date of the enactment of the Satellite Television Extension and Localism Act of 2010, the Commission shall develop and prescribe by rule a point-to-point predictive model for reliably and presumptively determining the ability of individual locations, through the use of an antenna, to receive signals in accordance with the signal intensity standard in section 73.622(e)(1) of title 47, Code of Federal Regulations, or a successor regulation, including to account for the continuing operation of translator stations and low power television stations. In prescribing such model, the Commission shall rely on the Individual Location Longley-Rice model set forth by the Commission in CS Docket No. 98-201, as previously revised with respect to analog signals, and as recommended by the Commission with respect to digital signals in its Report to Congress in ET Docket No. 05-182, FCC 05-199 (released December 9, 2005). The Commission shall establish procedures for the continued refinement in the application of the model by the use of additional data as it becomes available.

“(B) ON-LOCATION TESTING.—The Commission shall issue an order completing its rulemaking proceeding in ET Docket No. 06-94 within 180 days after the date of enactment of the Satellite Television Extension and Localism Act of 2010. In conducting such rulemaking, the Commission shall seek ways to minimize consumer burdens associated with on-location testing.”;

(B) by amending paragraph (4)(A) to read as follows:

“(A) IN GENERAL.—If a subscriber’s request for a waiver under paragraph (2) is rejected and the subscriber submits to the subscriber’s satellite carrier a request for a test verifying the subscriber’s inability to receive a signal of the signal intensity referenced in clause (i) of subsection (a)(2)(D), the satellite carrier and the network station or stations asserting that the retransmission is prohibited with respect to that subscriber shall select a qualified and independent person to conduct the test referenced in such clause. Such test shall be conducted within 30 days after the date the subscriber submits a request for the test. If the written findings and conclusions of a test conducted in accordance with such clause demonstrate that the

subscriber does not receive a signal that meets or exceeds the requisite signal intensity standard in such clause, the subscriber shall not be denied the retransmission of a signal of a network station under section 119(d)(10)(A) of title 17, United States Code.”;

(C) in paragraph (4)(B), by striking “the signal intensity” and all that follows through “United States Code” and inserting “such requisite signal intensity standard”;

and

(D) in paragraph (4)(E), by striking “Grade B intensity”.

(c) SECTION 340.—Section 340(i) is amended by striking paragraph (4).

#### SEC. 925. APPLICATION PENDING COMPLETION OF RULEMAKINGS.

(a) IN GENERAL.—During the period beginning on the date of the enactment of this Act and ending on the date on which the Federal Communications Commission adopts rules pursuant to the amendments to the Communications Act of 1934 made by section 923 and section 924 of this title, the Federal Communications Commission shall follow its rules and regulations promulgated pursuant to sections 338, 339, and 340 of the Communications Act of 1934 as in effect on the day before the date of the enactment of this Act.

(b) TRANSLATOR STATIONS AND LOW POWER TELEVISION STATIONS.—Notwithstanding subsection (a), for purposes of determining whether a subscriber within the local market served by a translator station or a low power television station affiliated with a television network is eligible to receive distant signals under section 339 of the Communications Act of 1934, the rules and regulations of the Federal Communications Commission for determining such subscriber’s eligibility as in effect on the day before the date of the enactment of this Act shall apply until the date on which the translator station or low power television station is licensed to broadcast a digital signal.

(c) DEFINITIONS.—As used in this subtitle:

(1) LOCAL MARKET; LOW POWER TELEVISION STATION; SATELLITE CARRIER; SUBSCRIBER; TELEVISION BROADCAST STATION.—The terms “local market”, “low power television station”, “satellite carrier”, “subscriber”, and “television broadcast station” have the meanings given such terms in section 338(k) of the Communications Act of 1934.

(2) NETWORK STATION; TELEVISION NETWORK.—The terms “network station” and “television network” have the meanings given such terms in section 339(d) of such Act.

#### SEC. 926. PROCESS FOR ISSUING QUALIFIED CARRIER CERTIFICATION.

Part I of title III is amended by adding at the end the following new section:

##### “SEC. 342. PROCESS FOR ISSUING QUALIFIED CARRIER CERTIFICATION.

“(a) CERTIFICATION.—The Commission shall issue a certification for the purposes of section 119(g)(3)(A)(iii) of title 17, United States Code, if the Commission determines that—

“(1) a satellite carrier is providing local service pursuant to the statutory license under section 122 of such title in each designated market area; and

“(2) with respect to each designated market area in which such satellite carrier was not providing such local service as of the date of enactment of the Satellite Television Extension and Localism Act of 2010—

“(A) the satellite carrier’s satellite beams are designed, and predicted by the satellite manufacturer’s pre-launch test data, to provide a good quality satellite signal to at least 90 percent of the households in each such designated market area based on the most recent census data released by the United States Census Bureau; and

“(B) there is no material evidence that there has been a satellite or sub-system failure subsequent to the satellite’s launch that

precludes the ability of the satellite carrier to satisfy the requirements of subparagraph (A).

“(b) INFORMATION REQUIRED.—Any entity seeking the certification provided for in subsection (a) shall submit to the Commission the following information:

“(1) An affidavit stating that, to the best of the affiant’s knowledge, the satellite carrier provides local service in all designated market areas pursuant to the statutory license provided for in section 122 of title 17, United States Code, and listing those designated market areas in which local service was provided as of the date of enactment of the Satellite Television Extension and Localism Act of 2010.

“(2) For each designated market area not listed in paragraph (1):

“(A) Identification of each such designated market area and the location of its local receive facility.

“(B) Data showing the number of households, and maps showing the geographic distribution thereof, in each such designated market area based on the most recent census data released by the United States Census Bureau.

“(C) Maps, with superimposed effective isotropically radiated power predictions obtained in the satellite manufacturer’s pre-launch tests, showing that the contours of the carrier’s satellite beams as designed and the geographic area that the carrier’s satellite beams are designed to cover are predicted to provide a good quality satellite signal to at least 90 percent of the households in such designated market area based on the most recent census data released by the United States Census Bureau.

“(D) For any satellite relied upon for certification under this section, an affidavit stating that, to the best of the affiant’s knowledge, there have been no satellite or sub-system failures subsequent to the satellite’s launch that would degrade the design performance to such a degree that a satellite transponder used to provide local service to any such designated market area is precluded from delivering a good quality satellite signal to at least 90 percent of the households in such designated market area based on the most recent census data released by the United States Census Bureau.

“(E) Any additional engineering, designated market area, or other information the Commission considers necessary to determine whether the Commission shall grant a certification under this section.

“(c) CERTIFICATION ISSUANCE.—

“(1) PUBLIC COMMENT.—The Commission shall provide 30 days for public comment on a request for certification under this section.

“(2) DEADLINE FOR DECISION.—The Commission shall grant or deny a request for certification within 90 days after the date on which such request is filed.

“(d) SUBSEQUENT AFFIRMATION.—An entity granted qualified carrier status pursuant to section 119(g) of title 17, United States Code, shall file an affidavit with the Commission 30 months after such status was granted stating that, to the best of the affiant’s knowledge, it is in compliance with the requirements for a qualified carrier.

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

“(1) DESIGNATED MARKET AREA.—The term ‘designated market area’ has the meaning given such term in section 122(j)(2)(C) of title 17, United States Code.

“(2) GOOD QUALITY SATELLITE SIGNAL.—

“(A) IN GENERAL.—The term ‘good quality satellite signal’ means—

“(i) a satellite signal whose power level as designed shall achieve reception and demodulation of the signal at an availability level of at least 99.7 percent using—

“(I) models of satellite antennas normally used by the satellite carrier’s subscribers; and

“(II) the same calculation methodology used by the satellite carrier to determine predicted signal availability in the top 100 designated market areas; and

“(ii) taking into account whether a signal is in standard definition format or high definition format, compression methodology, modulation, error correction, power level, and utilization of advances in technology that do not circumvent the intent of this section to provide for non-discriminatory treatment with respect to any comparable television broadcast station signal, a video signal transmitted by a satellite carrier such that—

“(I) the satellite carrier treats all television broadcast stations’ signals the same with respect to statistical multiplexer prioritization; and

“(II) the number of video signals in the relevant satellite transponder is not more than the then current greatest number of video signals carried on any equivalent transponder serving the top 100 designated market areas.

“(B) DETERMINATION.—For the purposes of subparagraph (A), the top 100 designated market areas shall be as determined by Nielsen Media Research and published in the Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates or any successor publication as of the date of a satellite carrier’s application for certification under this section.”.

#### **SEC. 927. NONDISCRIMINATION IN CARRIAGE OF HIGH DEFINITION DIGITAL SIGNALS OF NONCOMMERCIAL EDUCATIONAL TELEVISION STATIONS.**

(a) IN GENERAL.—Section 338(a) is amended by adding at the end the following new paragraph:

“(5) NONDISCRIMINATION IN CARRIAGE OF HIGH DEFINITION SIGNALS OF NONCOMMERCIAL EDUCATIONAL TELEVISION STATIONS.—

“(A) EXISTING CARRIAGE OF HIGH DEFINITION SIGNALS.—If, before the date of enactment of the Satellite Television Extension and Localism Act of 2010, an eligible satellite carrier is providing, under section 122 of title 17, United States Code, any secondary transmissions in high definition format to subscribers located within the local market of a television broadcast station of a primary transmission made by that station, then such satellite carrier shall carry the signals in high-definition format of qualified noncommercial educational television stations located within that local market in accordance with the following schedule:

“(i) By December 31, 2010, in at least 50 percent of the markets in which such satellite carrier provides such secondary transmissions in high definition format.

“(ii) By December 31, 2011, in every market in which such satellite carrier provides such secondary transmissions in high definition format.

“(B) NEW INITIATION OF SERVICE.—If, on or after the date of enactment of the Satellite Television Extension and Localism Act of 2010, an eligible satellite carrier initiates the provision, under section 122 of title 17, United States Code, of any secondary transmissions in high definition format to subscribers located within the local market of a television broadcast station of a primary transmission made by that station, then such satellite carrier shall carry the signals in high-definition format of all qualified noncommercial educational television stations located within that local market.”.

(b) DEFINITIONS.—Section 338(k) is amended—

(1) by redesignating paragraphs (2) through (8) as paragraphs (3) through (9), respectively;

(2) by inserting after paragraph (1) the following new paragraph:

“(2) ELIGIBLE SATELLITE CARRIER.—The term ‘eligible satellite carrier’ means any satellite carrier that is not a party to a carriage contract that—

“(A) governs carriage of at least 30 qualified noncommercial educational television stations; and

“(B) is in force and effect within 60 days after the date of enactment of the Satellite Television Extension and Localism Act of 2010.”;

(3) by redesignating paragraphs (6) through (9) (as previously redesignated) as paragraphs (7) through (10), respectively; and

(4) by inserting after paragraph (5) (as so redesignated) the following new paragraph:

“(6) QUALIFIED NONCOMMERCIAL EDUCATIONAL TELEVISION STATION.—The term ‘qualified noncommercial educational television station’ means any full-power television broadcast station that—

“(A) under the rules and regulations of the Commission in effect on March 29, 1990, is licensed by the Commission as a noncommercial educational broadcast station and is owned and operated by a public agency, nonprofit foundation, nonprofit corporation, or nonprofit association; and

“(B) has as its licensee an entity that is eligible to receive a community service grant, or any successor grant thereto, from the Corporation for Public Broadcasting, or any successor organization thereto, on the basis of the formula set forth in section 396(k)(6)(B) of this title.”.

#### **SEC. 928. SAVINGS CLAUSE REGARDING DEFINITIONS.**

Nothing in this subtitle or the amendments made by this subtitle shall be construed to affect—

(1) the meaning of the terms “program related” and “primary video” under the Communications Act of 1934; or

(2) the meaning of the term “multicast” in any regulations issued by the Federal Communications Commission.

#### **SEC. 929. STATE PUBLIC AFFAIRS BROADCASTS.**

Section 335(b) is amended—

(1) by inserting “**STATE PUBLIC AFFAIRS,**” after “**EDUCATIONAL,**” in the heading;

(2) by striking paragraph (1) and inserting the following:

“(1) CHANNEL CAPACITY REQUIRED.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the Commission shall require, as a condition of any provision, initial authorization, or authorization renewal for a provider of direct broadcast satellite service providing video programming, that the provider of such service reserve a portion of its channel capacity, equal to not less than 4 percent nor more than 7 percent, exclusively for noncommercial programming of an educational or informational nature.

“(B) REQUIREMENT FOR QUALIFIED SATELLITE PROVIDER.—The Commission shall require, as a condition of any provision, initial authorization, or authorization renewal for a qualified satellite provider of direct broadcast satellite service providing video programming, that such provider reserve a portion of its channel capacity, equal to not less than 3.5 percent nor more than 7 percent, exclusively for noncommercial programming of an educational or informational nature.”;

(3) in paragraph (5), by striking “For purposes of the subsection—” and inserting “For purposes of this subsection.”; and

(4) by adding at the end of paragraph (5) the following:

“(C) The term ‘qualified satellite provider’ means any provider of direct broadcast satellite service that—

“(i) provides the retransmission of the State public affairs networks of at least 15 different States;

“(ii) offers the programming of State public affairs networks upon reasonable prices, terms, and conditions as determined by the Commission under paragraph (4); and

“(iii) does not delete any noncommercial programming of an educational or informational nature in connection with the carriage of a State public affairs network.

“(D) The term ‘State public affairs network’ means a non-commercial non-broadcast network or a noncommercial educational television station—

“(i) whose programming consists of information about State government deliberations and public policy events; and

“(ii) that is operated by—

“(I) a State government or subdivision thereof;

“(II) an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 that is exempt from taxation under section 501(a) of such Code and that is governed by an independent board of directors; or

“(III) a cable system.”

#### **Subtitle C—Reports and Savings Provision**

##### **SEC. 931. DEFINITION.**

In this subtitle, the term “appropriate Congressional committees” means the Committees on the Judiciary and on Commerce, Science, and Transportation of the Senate and the Committees on the Judiciary and on Energy and Commerce of the House of Representatives.

##### **SEC. 932. REPORT ON MARKET BASED ALTERNATIVES TO STATUTORY LICENSING.**

Not later than 1 year after the date of the enactment of this Act, and after consultation with the Federal Communications Commission, the Register of Copyrights shall submit to the appropriate Congressional committees a report containing—

(1) proposed mechanisms, methods, and recommendations on how to implement a phase-out of the statutory licensing requirements set forth in sections 111, 119, and 122 of title 17, United States Code, by making such sections inapplicable to the secondary transmission of a performance or display of a work embodied in a primary transmission of a broadcast station that is authorized to license the same secondary transmission directly with respect to all of the performances and displays embodied in such primary transmission;

(2) any recommendations for alternative means to implement a timely and effective phase-out of the statutory licensing requirements set forth in sections 111, 119, and 122 of title 17, United States Code; and

(3) any recommendations for legislative or administrative actions as may be appropriate to achieve such a phase-out.

##### **SEC. 933. REPORT ON COMMUNICATIONS IMPLICATIONS OF STATUTORY LICENSING MODIFICATIONS.**

(a) **STUDY.**—The Comptroller General shall conduct a study that analyzes and evaluates the changes to the carriage requirements currently imposed on multichannel video programming distributors under the Communications Act of 1934 (47 U.S.C. 151 et seq.) and the regulations promulgated by the Federal Communications Commission that would be required or beneficial to consumers, and such other matters as the Comptroller General deems appropriate, if Congress implemented a phase-out of the current statutory licensing requirements set forth under sections 111, 119, and 122 of title 17, United States Code. Among other things, the study shall consider the impact such a

phase-out and related changes to carriage requirements would have on consumer prices and access to programming.

(b) **REPORT.**—Not later than 1 year after the date of the enactment of this Act, the Comptroller General shall report to the appropriate Congressional committees the results of the study, including any recommendations for legislative or administrative actions.

##### **SEC. 934. REPORT ON IN-STATE BROADCAST PROGRAMMING.**

Not later than 1 year after the date of the enactment of this Act, the Federal Communications Commission shall submit to the appropriate Congressional committees a report containing an analysis of—

(1) the number of households in a State that receive the signals of local broadcast stations assigned to a community of license that is located in a different State;

(2) the extent to which consumers in each local market have access to in-state broadcast programming over the air or from a multichannel video programming distributor; and

(3) whether there are alternatives to the use of designated market areas, as defined in section 122 of title 17, United States Code, to define local markets that would provide more consumers with in-state broadcast programming.

##### **SEC. 935. LOCAL NETWORK CHANNEL BROADCAST REPORTS.**

(a) **REQUIREMENT.**—

(1) **IN GENERAL.**—On the 180th day after the date of the enactment of this Act, and on each succeeding anniversary of such 180th day, each satellite carrier shall submit an annual report to the Federal Communications Commission setting forth—

(A) each local market in which it—

(i) retransmits signals of 1 or more television broadcast stations with a community of license in that market;

(ii) has commenced providing such signals in the preceding 1-year period; and

(iii) has ceased to provide such signals in the preceding 1-year period; and

(B) detailed information regarding the use and potential use of satellite capacity for the retransmission of local signals in each local market.

(2) **TERMINATION.**—The requirement under paragraph (1) shall cease after each satellite carrier has submitted 5 reports under such paragraph.

(b) **FCC STUDY; REPORT.**—

(1) **STUDY.**—If no satellite carrier files a request for a certification under section 342 of the Communications Act of 1934 (as added by section 926 of this title) within 180 days after the date of the enactment of this Act, the Federal Communications Commission shall initiate a study of—

(A) incentives that would induce a satellite carrier to provide the signals of 1 or more television broadcast stations licensed to provide signals in local markets in which the satellite carrier does not provide such signals; and

(B) the economic and satellite capacity conditions affecting delivery of local signals by satellite carriers to these markets.

(2) **REPORT.**—Within 1 year after the date of the initiation of the study under paragraph (1), the Federal Communications Commission shall submit a report to the appropriate Congressional committees containing its findings, conclusions, and recommendations.

(c) **DEFINITIONS.**—In this section—

(1) the terms “local market” and “satellite carrier” have the meaning given such terms in section 339(d) of the Communications Act of 1934 (47 U.S.C. 339(d)); and

(2) the term “television broadcast station” has the meaning given such term in section 325(b)(7) of such Act (47 U.S.C. 325(b)(7)).

##### **SEC. 936. SAVINGS PROVISION REGARDING USE OF NEGOTIATED LICENSES.**

(a) **IN GENERAL.**—Nothing in this title, title 17, United States Code, the Communications Act of 1934, regulations promulgated by the Register of Copyrights under this title or title 17, United States Code, or regulations promulgated by the Federal Communications Commission under this title or the Communications Act of 1934 shall be construed to prevent a multichannel video programming distributor from retransmitting a performance or display of a work pursuant to an authorization granted by the copyright owner or, if within the scope of its authorization, its licensee.

(b) **LIMITATION.**—Nothing in subsection (a) shall be construed to affect any obligation of a multichannel video programming distributor under section 325(b) of the Communications Act of 1934 to obtain the authority of a television broadcast station before retransmitting that station's signal.

#### **Subtitle D—Severability**

##### **SEC. 941. 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 such provision or amendment to any person or circumstance shall not be affected thereby.

#### **TITLE X—ADDITIONAL PROVISIONS**

##### **SEC. 1001. INCREASE IN THE MEDICARE PHYSICIAN PAYMENT UPDATE FOR THE LAST 10 MONTHS OF 2010.**

Paragraph (10) of section 1848(d) of the Social Security Act, as added by section 1011(a) of the Department of Defense Appropriations Act, 2010 (Public Law 111-118), is amended to read as follows:

“(10) **UPDATE FOR 2010.**—

“(A) **IN GENERAL.**—Subject to paragraphs (7)(B), (8)(B), and (9)(B), in lieu of the update to the single conversion factor established in paragraph (1)(C) that would otherwise apply for 2010, the update to the single conversion factor shall be 0 percent for 2010.

“(B) **NO EFFECT ON COMPUTATION OF CONVERSION FACTOR FOR 2011 AND SUBSEQUENT YEARS.**—The conversion factor under this subsection shall be computed under paragraph (1)(A) for 2011 and subsequent years as if subparagraph (A) had never applied.”

##### **SEC. 1002. NONAPPLICATION OF CERTAIN LABOR STANDARDS.**

Section 1601 of the American Recovery and Reinvestment Tax Act of 2009 shall not apply to any specified tax credit bond described in section 6431(f)(2)(A) of the Internal Revenue Code of 1986 (as added by section 301 of this Act).

##### **SEC. 1003. E-VERIFY PROGRAM PARTICIPATION REQUIREMENT FOR EMPLOYERS RECEIVING PAYROLL TAX FORGIVENESS.**

(a) **IN GENERAL.**—Paragraph (2) of section 3111(d), as added by section 101, is amended by adding at the end the following new subparagraph:

“(C) **E-VERIFY PROGRAM REQUIREMENT.**—The term ‘qualified employer’ shall not include any employer that does not participate in the E-Verify Program carried out under subtitle A of title IV of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 as of the hiring date of any qualified individual.”

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply as if included in the amendments made by section 101 of this Act.



# TITLE XI—DETERMINATION OF BUDGETARY EFFECTS

## SEC. 1101. 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 all of the provisions in titles VI and VII, one-half of the amounts of the budgetary effects are designated as an emergency requirement pursuant to section 4(g) of the Statutory Pay-As-You-Go Act of 2010, and 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.

**SA 3321.** Mr. BROWN of Ohio (for Mrs. BOXER (for herself and Mr. FEINGOLD)) proposed an amendment to the resolution S. Res. 345, deploring the rape and assault of women in Guinea and the killing of political protesters; as follows:

In paragraph (1) of the resolving clause, strike “Guinea, and calls for an immediate cessation of violence, including gender-based violence and targeted killings by security forces” and insert “Guinea”.

Strike paragraphs (2) through (5) of the resolving clause and insert the following:

(2) urges the prosecution, by the appropriate authorities, of those responsible for orchestrating or carrying out the violence in Guinea;

(3) urges the President, in coordination with leaders from the European Union and the African Union, to continue to consider punitive measures that could be taken against senior officials in Guinea found to be complicit in the violence, and in particular, the atrocities perpetrated against women and other gross human rights violations;

(4) encourages the President to remain actively engaged in the political situation in Guinea, and to continue to convey that the blatant abuse of women will not be tolerated;

(5) calls on President Blaise Compaoré of Burkina Faso to ensure that Captain Camara does not return to Guinea in order to allow a peaceful transition to civilian rule;

(6) notes that the first steps set forth in the Joint Declaration of Ouagadougou have been initiated with the naming of a prime minister and urges all parties to continue to adhere to the agreement to see the process through free, fair, and timely elections; and

(7) recognizes the importance of the multi-lateral observer mission to help ensure peace and security in Guinea during the period of transition.

**SA 3322.** Mr. BROWN of Ohio (for Mrs. BOXER (for herself and Mr. FEINGOLD)) proposed an amendment to the resolution S. Res. 345, deploring the rape and assault of women in Guinea and the killing of political protesters; as follows:

Strike the 2nd whereas clause of the preamble and insert the following:

Whereas, on September 28, 2009, authorities of the Government of Guinea opened fire on a crowd of thousands of unarmed opposition protesters who were gathered in and around an outdoor stadium to protest statements

made by Captain Camara that he may run for president, after he said that he would not;

Strike the 3rd whereas clause of the preamble and insert the following:

Whereas, on September 29, 2009, the United States Department of State condemned the brazen and inappropriate use of force by the military against civilians in Guinea, and demanded the immediate release of opposition leaders and a return to civilian rule as soon as possible;

Whereas, according to the United Nations Security Council Report of the International Commission of Inquiry Mandated to Establish the Facts and Circumstances of the Events of 28 September 2009 in Guinea, 156 people were killed or disappeared and at least 109 women and girls “were subjected to rape and other sexual violence, including sexual mutilation and sexual slavery”;

Strike the 5th whereas clause of the preamble.

Strike the 6th whereas clause of the preamble.

Insert between the 7th and 8th whereas clauses of the preamble, the following:

Whereas, according to the humanitarian organization CARE, “What happened in Guinea is an outrage—and a stark reminder of a larger epidemic of violence against women and girls around the world.”;

In the 8th whereas clause of the preamble, strike the “and” at the end.

Strike the 9th whereas clause of the preamble, and insert the following:

Whereas the International Commission of Inquiry of the United Nations concluded that “the crimes perpetrated on 28 September 2009 and in the immediate aftermath can be described as crimes against humanity” and that there is sufficient evidence that Captain Camara “incurred individual criminal liability and command responsibility for the events that occurred during the attack and related events in their immediate aftermath”;

Whereas, on January 15, 2010, General Sékouba Konate and Captain Camara of the Republic of Guinea and President Blaise Compaoré of Burkina Faso signed the Joint Declaration of Ouagadougou pledging to form a transitional government of national unity in Guinea, to hold elections within six months without the participation of candidates from the military junta, and to permit the entry of an international observer mission from the Economic Community of West African States; and

Whereas, in accordance with the Joint Declaration of Ouagadougou, a prime minister from the coalition of opposition forces, Forces Vives, has been named to the transitional government: Now, therefore, be it

**SA 3323.** Mr. BROWN of Ohio (for Mrs. BOXER (for herself and Mr. FEINGOLD)) proposed an amendment to the resolution S. Res. 345, deploring the rape and assault of women in Guinea and the killing of political protesters; as follows:

Amend the title so as to read: “A resolution deploring the rape and assault of women in Guinea and the killing of political protesters on September 28, 2009.”.

## NOTICES OF HEARINGS

### 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 the hearing scheduled before the

Committee on Energy and Natural Resources, previously announced for February 10th, has been rescheduled and will now be held on Wednesday, March 3, 2010, at 10 a.m., in room SD-366 of the Dirksen Senate Office Building.

The purpose of this hearing is to consider the President's Proposed Budget for Fiscal Year 2011 for the Department of the Interior.

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, 304 Dirksen Senate Office Building, Washington, DC 20510-6150, or by email to [allison\\_seyferth@energy.senate.gov](mailto:allison_seyferth@energy.senate.gov).

For further information, please contact David Brooks at (202) 224-9863 or Allison Seyferth at (202) 224-4905.

### 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 Senate Committee on Energy and Natural Resources.

The hearing will be held on Wednesday, February 24, 2010, at 10 a.m., in room SD-366 of the Dirksen Senate Office Building.

The purpose of this hearing is to consider the President's Proposed Budget for Fiscal Year 2011 for the Forest Service.

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, 304 Dirksen Senate Office Building, Washington, DC 20510-6150, or by email to [allison\\_seyferth@energy.senate.gov](mailto:allison_seyferth@energy.senate.gov).

For further information, please contact Scott Miller at (202) 224-5488 or Allison Seyferth at (202) 224-4905.

### SUBCOMMITTEE ON WATER AND POWER

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 Water and Power of the Committee on Energy and Natural Resources. The hearing will be held on Thursday, February 25, 2010; at 10:30 a.m., in room SD-366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of this oversight hearing is to examine the science and policy behind the Federal framework and non-Federal efforts to prevent introduction of the aquatic invasive Asian carp into the Great Lakes.

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 email