

111TH CONGRESS
1ST SESSION

H. R. 1

AN ACT

Making supplemental appropriations for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and State and local fiscal stabilization, for the fiscal year ending September 30, 2009, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

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

4 **SEC. 2. TABLE OF CONTENTS.**

5 The table of contents for this Act is as follows:

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 TITLE VII—HOMELAND SECURITY
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 TITLE V—MEDICAID PROVISIONS
 TITLE VI—BROADBAND COMMUNICATIONS
 TITLE VII—ENERGY

6 **SEC. 3. PURPOSES AND PRINCIPLES.**

7 (a) STATEMENT OF PURPOSES.—The purposes of
8 this Act include the following:

9 (1) To preserve and create jobs and promote
10 economic recovery.

11 (2) To assist those most impacted by the reces-
12 sion.

1 (3) To provide investments needed to increase
2 economic efficiency by spurring technological ad-
3 vances in science and health.

4 (4) To invest in transportation, environmental
5 protection, and other infrastructure that will provide
6 long-term economic benefits.

7 (5) To stabilize State and local government
8 budgets, in order to minimize and avoid reductions
9 in essential services and counterproductive state and
10 local tax increases.

11 (b) GENERAL PRINCIPLES CONCERNING USE OF
12 FUNDS.—The President and the heads of Federal depart-
13 ments and agencies shall manage and expend the funds
14 made available in this Act so as to achieve the purposes
15 specified in subsection (a), including commencing expendi-
16 tures and activities as quickly as possible consistent with
17 prudent management.

18 **SEC. 4. REFERENCES.**

19 Except as expressly provided otherwise, any reference
20 to “this Act” contained in any division of this Act shall
21 be treated as referring only to the provisions of that divi-
22 sion.

23 **SEC. 5. EMERGENCY DESIGNATIONS.**

24 (a) IN GENERAL.—Each amount in this Act is des-
25 ignated as an emergency requirement and necessary to

1 meet emergency needs pursuant to section 204(a) of S.
2 Con. Res. 21 (110th Congress) and section 301(b)(2) of
3 S. Con. Res. 70 (110th Congress), the concurrent resolu-
4 tions on the budget for fiscal years 2008 and 2009.

5 (b) PAY-AS-YOU-GO.—All applicable provisions in
6 this Act are designated as an emergency for purposes of
7 pay-as-you-go principles.

8 **DIVISION A—APPROPRIATION** 9 **PROVISIONS**

10 **SEC. 1001. STATEMENT OF APPROPRIATIONS.**

11 The following sums in this Act are appropriated, out
12 of any money in the Treasury not otherwise appropriated,
13 for the fiscal year ending September 30, 2009, and for
14 other purposes.

15 **TITLE I—GENERAL PROVISIONS**

16 **Subtitle A—Use of Funds**

17 **SEC. 1101. RELATIONSHIP TO OTHER APPROPRIATIONS.**

18 Each amount appropriated or made available in this
19 Act is in addition to amounts otherwise appropriated for
20 the fiscal year involved. Enactment of this Act shall have
21 no effect on the availability of amounts under the Con-
22 tinuing Appropriations Resolution, 2009 (division A of
23 Public Law 110–329).

1 **SEC. 1102. PREFERENCE FOR QUICK-START ACTIVITIES.**

2 In using funds made available in this Act for infra-
3 structure investment, recipients shall give preference to
4 activities that can be started and completed expeditiously,
5 including a goal of using at least 50 percent of the funds
6 for activities that can be initiated not later than 120 days
7 after the date of the enactment of this Act. Recipients
8 shall also use grant funds in a manner that maximizes
9 job creation and economic benefit.

10 **SEC. 1103. REQUIREMENT OF TIMELY AWARD OF GRANTS.**

11 (a) **FORMULA GRANTS.**—Formula grants using funds
12 made available in this Act shall be awarded not later than
13 30 days after the date of the enactment of this Act (or,
14 in the case of appropriations not available upon enact-
15 ment, not later than 30 days after the appropriation be-
16 comes available for obligation), unless expressly provided
17 otherwise in this Act.

18 (b) **COMPETITIVE GRANTS.**—Competitive grants
19 using funds made available in this Act shall be awarded
20 not later than 90 days after the date of the enactment
21 of this Act (or, in the case of appropriations not available
22 upon enactment, not later than 90 days after the appro-
23 priation becomes available for obligation), unless expressly
24 provided otherwise in this Act.

25 (c) **ADDITIONAL PERIOD FOR NEW PROGRAMS.**—The
26 time limits specified in subsections (a) and (b) may each

1 be extended by up to 30 days in the case of grants for
2 which funding was not provided in fiscal year 2008.

3 **SEC. 1104. USE IT OR LOSE IT REQUIREMENTS FOR GRANT-**
4 **EES.**

5 (a) **DEADLINE FOR BINDING COMMITMENTS.**—Each
6 recipient of a grant made using amounts made available
7 in this Act in any account listed in subsection (c) shall
8 enter into contracts or other binding commitments not
9 later than 1 year after the date of the enactment of this
10 Act (or not later than 9 months after the grant is award-
11 ed, if later) to make use of 50 percent of the funds award-
12 ed, and shall enter into contracts or other binding commit-
13 ments not later than 2 years after the date of the enact-
14 ment of this Act (or not later than 21 months after the
15 grant is awarded, if later) to make use of the remaining
16 funds. In the case of activities to be carried out directly
17 by a grant recipient (rather than by contracts, subgrants,
18 or other arrangements with third parties), a certification
19 by the recipient specifying the amounts, planned timing,
20 and purpose of such expenditures shall be deemed a bind-
21 ing commitment for purposes of this section.

22 (b) **REDISTRIBUTION OF UNCOMMITTED FUNDS.**—
23 The head of the Federal department or agency involved
24 shall recover or deobligate any grant funds not committed
25 in accordance with subsection (a), and redistribute such

1 funds to other recipients eligible under the grant program
2 and able to make use of such funds in a timely manner
3 (including binding commitments within 120 days after the
4 reallocation).

5 (c) APPROPRIATIONS TO WHICH THIS SECTION AP-
6 PLIES.—This section shall apply to grants made using
7 amounts appropriated in any of the following accounts
8 within this Act:

9 (1) “Environmental Protection Agency—State
10 and Tribal Assistance Grants”.

11 (2) “Department of Transportation—Federal
12 Aviation Administration—Grants-in-Aid for Air-
13 ports”.

14 (3) “Department of Transportation—Federal
15 Railroad Administration—Capital Assistance for
16 Intercity Passenger Rail Service”.

17 (4) “Department of Transportation—Federal
18 Transit Administration—Capital Investment
19 Grants”.

20 (5) “Department of Transportation—Federal
21 Transit Administration—Fixed Guideway Infra-
22 structure Investment”.

23 (6) “Department of Transportation—Federal
24 Transit Administration—Transit Capital Assist-
25 ance”.

1 (7) “Department of Housing and Urban Devel-
2 opment—Public and Indian Housing—Public Hous-
3 ing Capital Fund”.

4 (8) “Department of Housing and Urban Devel-
5 opment—Public and Indian Housing—Elderly, Dis-
6 abled, and Section 8 Assisted Housing Energy Ret-
7 rofit”.

8 (9) “Department of Housing and Urban Devel-
9 opment—Public and Indian Housing—Native Amer-
10 ican Housing Block Grants”.

11 (10) “Department of Housing and Urban De-
12 velopment—Community Planning and Develop-
13 ment—HOME Investment Partnerships Program”.

14 (11) “Department of Housing and Urban De-
15 velopment—Community Planning and Develop-
16 ment—Self-Help and Assisted Homeownership Op-
17 portunity Program”.

18 **SEC. 1105. PERIOD OF AVAILABILITY.**

19 (a) IN GENERAL.—All funds appropriated in this Act
20 shall remain available for obligation until September 30,
21 2010, unless expressly provided otherwise in this Act.

22 (b) REOBLIGATION.—Amounts that are not needed
23 or cannot be used under title X of this Act for the activity
24 for which originally obligated may be deobligated and, not-
25 withstanding the limitation on availability specified in sub-

1 section (a), reobligated for other activities that have re-
2 ceived funding from the same account or appropriation in
3 such title.

4 **SEC. 1106. SET-ASIDE FOR MANAGEMENT AND OVERSIGHT.**

5 Unless other provision is made in this Act (or in other
6 applicable law) for such expenses, up to 0.5 percent of
7 each amount appropriated in this Act may be used for the
8 expenses of management and oversight of the programs,
9 grants, and activities funded by such appropriation, and
10 may be transferred by the head of the Federal department
11 or agency involved to any other appropriate account within
12 the department or agency for that purpose. Funds set
13 aside under this section shall remain available for obliga-
14 tion until September 30, 2012.

15 **SEC. 1107. APPROPRIATIONS FOR INSPECTORS GENERAL.**

16 In addition to funds otherwise made available in this
17 Act, there are hereby appropriated the following sums to
18 the specified Offices of Inspector General, to remain avail-
19 able until September 30, 2013, for oversight and audit of
20 programs, grants, and projects funded under this Act:

21 (1) “Department of Agriculture—Office of In-
22 spector General”, \$22,500,000.

23 (2) “Department of Commerce—Office of In-
24 spector General”, \$10,000,000.

1 (3) “Department of Defense—Office of the In-
2 spector General”, \$15,000,000.

3 (4) “Department of Education—Departmental
4 Management—Office of the Inspector General”,
5 \$14,000,000.

6 (5) “Department of Energy—Office of Inspec-
7 tor General”, \$15,000,000.

8 (6) “Department of Health and Human Serv-
9 ices—Office of the Secretary—Office of Inspector
10 General”, \$19,000,000.

11 (7) “Department of Homeland Security—Office
12 of Inspector General”, \$2,000,000.

13 (8) “Department of Housing and Urban Devel-
14 opment—Management and Administration—Office
15 of Inspector General”, \$15,000,000.

16 (9) “Department of the Interior—Office of In-
17 spector General”, \$15,000,000.

18 (10) “Department of Justice—Office of Inspec-
19 tor General”, \$2,000,000.

20 (11) “Department of Labor—Departmental
21 Management—Office of Inspector General”,
22 \$6,000,000.

23 (12) “Department of Transportation—Office of
24 Inspector General”, \$20,000,000.

1 (13) “Department of Veterans Affairs—Office
2 of Inspector General”, \$1,000,000.

3 (14) “Environmental Protection Agency—Office
4 of Inspector General”, \$20,000,000.

5 (15) “General Services Administration—Gen-
6 eral Activities—Office of Inspector General”,
7 \$15,000,000.

8 (16) “National Aeronautics and Space Adminis-
9 tration—Office of Inspector General”, \$2,000,000.

10 (17) “National Science Foundation—Office of
11 Inspector General”, \$2,000,000.

12 (18) “Small Business Administration—Office of
13 Inspector General”, \$10,000,000.

14 (19) “Social Security Administration—Office of
15 Inspector General”, \$2,000,000.

16 (20) “Corporation for National and Community
17 Service—Office of Inspector General”, \$1,000,000.

18 **SEC. 1108. APPROPRIATION FOR GOVERNMENT ACCOUNT-**

19 **ABILITY OFFICE.**

20 There is hereby appropriated as an additional amount
21 for “Government Accountability Office—Salaries and Ex-
22 penses” \$25,000,000, for oversight activities relating to
23 this Act.

1 **SEC. 1109. PROHIBITED USES.**

2 None of the funds appropriated or otherwise made
3 available in this Act may be used for any casino or other
4 gambling establishment, aquarium, zoo, golf course, or
5 swimming pool.

6 **SEC. 1110. USE OF AMERICAN IRON AND STEEL.**

7 (a) IN GENERAL.—None of the funds appropriated
8 or otherwise made available by this Act may be used for
9 a project for the construction, alteration, maintenance, or
10 repair of a public building or public work unless all of the
11 iron and steel used in the project is produced in the United
12 States.

13 (b) EXCEPTIONS.—Subsection (a) shall not apply in
14 any case in which the head of the Federal department or
15 agency involved finds that—

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

18 (2) iron and steel are not produced in the
19 United States in sufficient and reasonably available
20 quantities and of a satisfactory quality; or

21 (3) inclusion of iron and steel produced in the
22 United States will increase the cost of the overall
23 project by more than 25 percent.

24 (c) WRITTEN JUSTIFICATION FOR WAIVER.—If the
25 head of a Federal department or agency determines that
26 it is necessary to waive the application of subsection (a)

1 based on a finding under subsection (b), the head of the
2 department or agency shall publish in the Federal Register
3 a detailed written justification as to why the provision is
4 being waived.

5 (d) DEFINITIONS.—In this section, the terms “public
6 building” and “public work” have the meanings given such
7 terms in section 1 of the Buy American Act (41 U.S.C.
8 10e) and include airports, bridges, canals, dams, dikes,
9 pipelines, railroads, multiline mass transit systems, roads,
10 tunnels, harbors, and piers.

11 **SEC. 1111. WAGE RATE REQUIREMENTS.**

12 Notwithstanding any other provision of law and in
13 a manner consistent with other provisions in this Act, all
14 laborers and mechanics employed by contractors and sub-
15 contractors on projects funded directly by or assisted in
16 whole or in part by and through the Federal Government
17 pursuant to this Act shall be paid wages at rates not less
18 than those prevailing on projects of a character similar
19 in the locality as determined by the Secretary of Labor
20 in accordance with subchapter IV of chapter 31 of title
21 40, United States Code. With respect to the labor stand-
22 ards specified in this section, the Secretary of Labor shall
23 have the authority and functions set forth in Reorganiza-
24 tion Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C.
25 App.) and section 3145 of title 40, United States Code.

1 **SEC. 1112. ADDITIONAL ASSURANCE OF APPROPRIATE USE**
2 **OF FUNDS.**

3 None of the funds provided by this Act may be made
4 available to the State of Illinois, or any agency of the
5 State, unless: (1) the use of such funds by the State is
6 approved in legislation enacted by the State after the date
7 of the enactment of this Act; or (2) Rod R. Blagojevich
8 no longer holds the office of Governor of the State of Illi-
9 nois. The preceding sentence shall not apply to any funds
10 provided directly to a unit of local government: (1) by a
11 Federal department or agency; or (2) by an established
12 formula from the State.

13 **SEC. 1113. PERSISTENT POVERTY COUNTIES.**

14 (a) ALLOCATION REQUIREMENT.—Of the amount ap-
15 propriated in this Act for “Department of Agriculture—
16 Rural Development Programs—Rural Community Ad-
17 vancement Program”, at least 10 percent shall be allo-
18 cated for assistance in persistent poverty counties.

19 (b) DEFINITION.—For purposes of this section, the
20 term “persistent poverty counties” means any county that
21 has had 20 percent or more of its population living in pov-
22 erty over the past 30 years, as measured by the 1980,
23 1990, and 2000 decennial censuses.

1 **SEC. 1114. REQUIRED PARTICIPATION IN E-VERIFY PRO-**
2 **GRAM.**

3 None of the funds made available in this Act may
4 be used to enter into a contract with an entity that does
5 not participate in the E-verify program described in sec-
6 tion 401(b) of the Illegal Immigration Reform and Immig-
7 rant Responsibility Act of 1996 (8 U.S.C. 1324a note).

8 **SEC. 1115. ADDITIONAL FUNDING DISTRIBUTION AND AS-**
9 **SURANCE OF APPROPRIATE USE OF FUNDS.**

10 (a) CERTIFICATION BY GOVERNOR.—Not later than
11 45 days after the date of enactment of this Act, for funds
12 provided to any State or agency thereof, the Governor of
13 the State shall certify that the State will request and use
14 funds provided by this Act.

15 (b) ACCEPTANCE BY STATE LEGISLATURE.—If funds
16 provided to any State in any division of this Act are not
17 accepted for use by the Governor, then acceptance by the
18 State legislature, by means of the adoption of a concurrent
19 resolution, shall be sufficient to provide funding to such
20 State.

21 (c) DISTRIBUTION.—After the adoption of a State
22 legislature's concurrent resolution, funding to the State
23 will be for distribution to local governments, councils of
24 government, public entities, and public-private entities
25 within the State either by formula or at the State's discre-
26 tion.

1 **Subtitle B—Accountability in**
2 **Recovery Act Spending**

3 **PART 1—TRANSPARENCY AND OVERSIGHT**
4 **REQUIREMENTS**

5 **SEC. 1201. TRANSPARENCY REQUIREMENTS.**

6 (a) **REQUIREMENTS FOR FEDERAL AGENCIES.—**

7 Each Federal agency shall publish on the website Recov-
8 ery.gov (as established under section 1226 of this sub-
9 title)—

10 (1) a plan for using funds made available in
11 this Act to the agency; and

12 (2) all announcements for grant competitions,
13 allocations of formula grants, and awards of com-
14 petitive grants using those funds.

15 (b) **REQUIREMENTS FOR FEDERAL, STATE, AND**
16 **LOCAL GOVERNMENT AGENCIES.—**

17 (1) **INFRASTRUCTURE INVESTMENT FUND-**
18 **ING.—**With respect to funds made available under
19 this Act for infrastructure investments to Federal,
20 State, or local government agencies, the following re-
21 quirements apply:

22 (A) Each such agency shall notify the pub-
23 lic of funds obligated to particular infrastruc-
24 ture investments by posting the notification on
25 the website Recovery.gov.

1 (B) The notification required by subpara-
2 graph (A) shall include the following:

3 (i) A description of the infrastructure
4 investment funded.

5 (ii) The purpose of the infrastructure
6 investment.

7 (iii) The total cost of the infrastruc-
8 ture investment.

9 (iv) The rationale of the agency for
10 funding the infrastructure investment with
11 funds made available under this Act.

12 (v) The name of the person to contact
13 at the agency if there are concerns with
14 the infrastructure investment and, with re-
15 spect to Federal agencies, an email address
16 for the Federal official in the agency whom
17 the public can contact.

18 (vi) In the case of State or local agen-
19 cies, a certification from the Governor,
20 mayor, or other chief executive, as appro-
21 priate, that the infrastructure investment
22 has received the full review and vetting re-
23 quired by law and that the chief executive
24 accepts responsibility that the infrastruc-
25 ture investment is an appropriate use of

1 taxpayer dollars. A State or local agency
2 may not receive infrastructure investment
3 funding from funds made available in this
4 Act unless this certification is made.

5 (2) OPERATIONAL FUNDING.—With respect to
6 funds made available under this Act in the form of
7 grants for operational purposes to State or local gov-
8 ernment agencies or other organizations, the agency
9 or organization shall publish on the website Recov-
10 ery.gov a description of the intended use of the
11 funds, including the number of jobs sustained or cre-
12 ated.

13 (c) AVAILABILITY ON INTERNET OF CONTRACTS AND
14 GRANTS.—Each contract awarded or grant issued using
15 funds made available in this Act shall be posted on the
16 Internet and linked to the website Recovery.gov. Propri-
17 etary data that is required to be kept confidential under
18 applicable Federal or State law or regulation shall be re-
19 dacted before posting.

20 **SEC. 1202. INSPECTOR GENERAL REVIEWS.**

21 (a) REVIEWS.—Any inspector general of a Federal
22 department or executive agency shall review, as appro-
23 priate, any concerns raised by the public about specific
24 investments using funds made available in this Act. Any
25 findings of an inspector general resulting from such a re-

1 view shall be relayed immediately to the head of each de-
2 partment and agency. In addition, the findings of such re-
3 views, along with any audits conducted by any inspector
4 general of funds made available in this Act, shall be posted
5 on the Internet and linked to the website Recovery.gov.

6 (b) EXAMINATION OF RECORDS.—The Inspector
7 General of the agency concerned may examine any records
8 related to obligations of funds made available in this Act.

9 **SEC. 1203. GOVERNMENT ACCOUNTABILITY OFFICE RE-**
10 **VIEWS AND REPORTS.**

11 (a) REVIEWS AND REPORTS.—The Comptroller Gen-
12 eral of the United States shall conduct bimonthly reviews
13 and prepare reports on such reviews on the use by selected
14 States and localities of funds made available in this Act.
15 Such reports, along with any audits conducted by the
16 Comptroller General of such funds, shall be posted on the
17 Internet and linked to the website Recovery.gov.

18 (b) EXAMINATION OF RECORDS.—The Comptroller
19 General may examine any records related to obligations
20 of funds made available in this Act.

21 **SEC. 1204. COUNCIL OF ECONOMIC ADVISERS REPORTS.**

22 The Chairman of the Council of Economic Advisers,
23 in consultation with the Director of the Office of Manage-
24 ment and Budget and the Secretary of the Treasury, shall
25 submit quarterly reports to Congress detailing the esti-

1 mated impact of programs under this Act on employment,
2 economic growth, and other key economic indicators.

3 **SEC. 1205. SPECIAL CONTRACTING PROVISIONS.**

4 The Federal Acquisition Regulation shall apply to
5 contracts awarded with funds made available in this Act.
6 To the maximum extent possible, such contracts shall be
7 awarded as fixed-price contracts through the use of com-
8 petitive procedures. Existing contracts so awarded may be
9 utilized in order to obligate such funds expeditiously. Any
10 contract awarded with such funds that is not fixed-price
11 and not awarded using competitive procedures shall be
12 posted in a special section of the website Recovery.gov.

13 **PART 2—ACCOUNTABILITY AND TRANSPARENCY**
14 **BOARD**

15 **SEC. 1221. ESTABLISHMENT OF THE ACCOUNTABILITY AND**
16 **TRANSPARENCY BOARD.**

17 There is established a board to be known as the “Re-
18 covery Act Accountability and Transparency Board”
19 (hereafter in this subtitle referred to as the “Board”) to
20 coordinate and conduct oversight of Federal spending
21 under this Act to prevent waste, fraud, and abuse.

22 **SEC. 1222. COMPOSITION OF BOARD.**

23 (a) MEMBERSHIP.—The Board shall be composed of
24 seven members as follows:

1 (1) The Chief Performance Officer of the Presi-
2 dent, who shall chair the Board.

3 (2) Six members designated by the President
4 from the inspectors general and deputy secretaries
5 of the Departments of Education, Energy, Health
6 and Human Services, Transportation, and other
7 Federal departments and agencies to which funds
8 are made available in this Act.

9 (b) TERMS.—Each member of the Board shall serve
10 for a term to be determined by the President.

11 **SEC. 1223. FUNCTIONS OF THE BOARD.**

12 (a) OVERSIGHT.—The Board shall coordinate and
13 conduct oversight of spending under this Act to prevent
14 waste, fraud, and abuse. In addition to responsibilities set
15 forth in this subtitle, the responsibilities of the Board shall
16 include the following:

17 (1) Ensuring that the reporting of information
18 regarding contract and grants under this Act meets
19 applicable standards and specifies the purpose of the
20 contract or grant and measures of performance.

21 (2) Verifying that competition requirements ap-
22 plicable to contracts and grants under this Act and
23 other applicable Federal law have been satisfied.

1 (3) Investigating spending under this Act to de-
2 termine whether wasteful spending, poor contract or
3 grant management, or other abuses are occurring.

4 (4) Reviewing whether there are sufficient
5 qualified acquisition and grant personnel overseeing
6 spending under this Act.

7 (5) Reviewing whether acquisition and grant
8 personnel receive adequate training and whether
9 there are appropriate mechanisms for interagency
10 collaboration.

11 (b) REPORTS.—

12 (1) FLASH AND OTHER REPORTS.—The Board
13 shall submit to Congress reports, to be known as
14 “flash reports”, on potential management and fund-
15 ing problems that require immediate attention. The
16 Board also shall submit to Congress such other re-
17 ports as the Board considers appropriate on the use
18 and benefits of funds made available in this Act.

19 (2) QUARTERLY.—The Board shall submit to
20 the President and Congress quarterly reports sum-
21 marizing its findings and the findings of agency in-
22 spectors general and may issue additional reports as
23 appropriate.

24 (3) ANNUALLY.—On an annual basis, the
25 Board shall prepare a consolidated report on the use

1 of funds under this Act. All reports shall be publicly
2 available and shall be posted on the Internet website
3 Recovery.gov, except that portions of reports may be
4 redacted if the portions would disclose information
5 that is protected from public disclosure under sec-
6 tion 552 of title 5, United States Code (popularly
7 known as the Freedom of Information Act).

8 (c) RECOMMENDATIONS TO AGENCIES.—The Board
9 shall make recommendations to Federal agencies on meas-
10 ures to prevent waste, fraud, and abuse. A Federal agency
11 shall, within 30 days after receipt of any such rec-
12 ommendation, submit to the Board, the President, and the
13 congressional committees of jurisdiction a report on
14 whether the agency agrees or disagrees with the rec-
15 ommendations and what steps, if any, the agency plans
16 to take to implement the recommendations.

17 **SEC. 1224. POWERS OF THE BOARD.**

18 (a) COORDINATION OF AUDITS AND INVESTIGATIONS
19 BY AGENCY INSPECTORS GENERAL.—The Board shall co-
20 ordinate the audits and investigations of spending under
21 this Act by agency inspectors general.

22 (b) CONDUCT OF REVIEWS BY BOARD.—The Board
23 may conduct reviews of spending under this Act and may
24 collaborate on such reviews with any inspector general.

1 (c) MEETINGS.—The Board may, for the purpose of
2 carrying out its duties under this Act, hold public meet-
3 ings, sit and act at times and places, and receive informa-
4 tion as the Board considers appropriate. The Board shall
5 meet at least once a month.

6 (d) OBTAINING OFFICIAL DATA.—The Board may
7 secure directly from any department or agency of the
8 United States information necessary to enable it to carry
9 out its duties under this Act. Upon request of the Chair-
10 man of the Board, the head of that department or agency
11 shall furnish that information to the Board.

12 (e) CONTRACTS.—The Board may enter into con-
13 tracts to enable the Board to discharge its duties under
14 this Act.

15 **SEC. 1225. STAFFING.**

16 (a) EXECUTIVE DIRECTOR.—The Chairman of the
17 Board may appoint and fix the compensation of an execu-
18 tive director and other personnel as may be required to
19 carry out the functions of the Board. The Director shall
20 be paid at the rate of basic pay for level IV of the Execu-
21 tive Schedule.

22 (b) STAFF OF FEDERAL AGENCIES.—Upon request
23 of the Board, the head of any Federal department or agen-
24 cy may detail any Federal official or employee, including
25 officials and employees of offices of inspector general, to

1 the Board without reimbursement from the Board, and
2 such detailed staff shall retain the rights, status, and
3 privileges of his or her regular employment without inter-
4 ruption.

5 (c) OFFICE SPACE.—Office space shall be provided
6 to the Board within the Executive Office of the President.

7 **SEC. 1226. RECOVERY.GOV.**

8 (a) REQUIREMENT TO ESTABLISH WEBSITE.—The
9 Board shall establish and maintain a website on the Inter-
10 net to be named Recovery.gov, to foster greater account-
11 ability and transparency in the use of funds made avail-
12 able in this Act.

13 (b) PURPOSE.—Recovery.gov shall be a portal or
14 gateway to key information related to this Act and provide
15 a window to other Government websites with related infor-
16 mation.

17 (c) MATTERS COVERED.—In establishing the website
18 Recovery.gov, the Board shall ensure the following:

19 (1) The website shall provide materials explain-
20 ing what this Act means for citizens. The materials
21 shall be easy to understand and regularly updated.

22 (2) The website shall provide accountability in-
23 formation, including a database of findings from au-
24 dits, inspectors general, and the Government Ac-
25 countability Office.

1 (3) The website shall provide data on relevant
2 economic, financial, grant, and contract information
3 in user-friendly visual presentations to enhance pub-
4 lic awareness of the use funds made available in this
5 Act.

6 (4) The website shall provide detailed data on
7 contracts awarded by the Government for purposes
8 of carrying out this Act, including information about
9 the competitiveness of the contracting process, noti-
10 fication of solicitations for contracts to be awarded,
11 and information about the process that was used for
12 the award of contracts.

13 (5) The website shall include printable reports
14 on funds made available in this Act obligated by
15 month to each State and congressional district.

16 (6) The website shall provide a means for the
17 public to give feedback on the performance of con-
18 tracts awarded for purposes of carrying out this Act.

19 (7) The website shall be enhanced and updated
20 as necessary to carry out the purposes of this sub-
21 title.

22 (8) The website shall provide, by location, links
23 to and information on how to access job opportuni-
24 ties created at or by entities receiving funding under
25 this Act, including, if possible, links to or informa-

1 tion about local employment agencies; state, local
2 and other public agencies receiving funding; and pri-
3 vate firms contracted to perform work funded by
4 this Act.

5 **SEC. 1227. PRESERVATION OF THE INDEPENDENCE OF IN-**
6 **SPECTORS GENERAL.**

7 Inspectors general shall retain independent authority
8 to determine whether to conduct an audit or investigation
9 of spending under this Act. If the Board requests that
10 an inspector general conduct or refrain from conducting
11 an audit or investigation and the inspector general rejects
12 the request in whole or in part, the inspector general shall,
13 within 30 days after receipt of the request, submit to the
14 Board, the agency head, and the congressional committees
15 of jurisdiction a report explaining why the inspector gen-
16 eral has rejected the request in whole or in part.

17 **SEC. 1228. COORDINATION WITH THE COMPTROLLER GEN-**
18 **ERAL AND STATE AUDITORS.**

19 The Board shall coordinate its oversight activities
20 with the Comptroller General of the United States and
21 State auditor generals.

22 **SEC. 1229. INDEPENDENT ADVISORY PANEL.**

23 (a) ESTABLISHMENT.—There is established a panel
24 to be known as the “Independent Advisory Panel” to ad-
25 vise the Board.

1 (b) MEMBERSHIP.—The Panel shall be composed of
2 five members appointed by the President from among indi-
3 viduals with expertise in economics, public finance, con-
4 tracting, accounting, or other relevant fields.

5 (c) FUNCTIONS.—The Panel shall make rec-
6 ommendations to the Board on actions the Board could
7 take to prevent waste, fraud, and abuse in Federal spend-
8 ing under this Act.

9 (d) TRAVEL EXPENSES.—Each member of the Panel
10 shall receive travel expenses, including per diem in lieu
11 of subsistence, in accordance with applicable provisions
12 under subchapter I of chapter 57 of title 5, United States
13 Code.

14 **SEC. 1230. FUNDING.**

15 There is hereby appropriated to the Board
16 \$14,000,000 to carry out this subtitle.

17 **SEC. 1231. BOARD TERMINATION.**

18 The Board shall terminate 12 months after 90 per-
19 cent of the funds made available under this Act have been
20 expended, as determined by the Director of the Office of
21 Management and Budget.

1 **PART 3—ADDITIONAL ACCOUNTABILITY AND**
2 **TRANSPARENCY PROVISIONS**
3 **SEC. 1241. LIMITATION ON THE LENGTH OF CERTAIN NON-**
4 **COMPETITIVE CONTRACTS.**

5 No contract entered into using funds made available
6 in this Act pursuant to the authority provided in section
7 303(c)(2) of the Federal Property and Administrative
8 Services Act of 1949 (41 U.S.C. 253(c)(2)) that is for an
9 amount greater than the simplified acquisition threshold
10 (as defined in section 4(11) of the Office of Federal Pro-
11 curement Policy Act (41 U.S.C. (4)(11))—

12 (1) may exceed the time necessary—

13 (A) to meet the unusual and compelling re-
14 quirements of the work to be performed under
15 the contract; and

16 (B) for the executive agency to enter into
17 another contract for the required goods or serv-
18 ices through the use of competitive procedures;
19 and

20 (2) may exceed one year unless the head of the
21 executive agency entering into such contract deter-
22 mines that exceptional circumstances apply.

1 **SEC. 1242. ACCESS OF GOVERNMENT ACCOUNTABILITY OF-**
2 **FICE AND OFFICES OF INSPECTOR GENERAL**
3 **TO CERTAIN EMPLOYEES.**

4 (a) ACCESS.—Each contract awarded using funds
5 made available in this Act shall provide that the Comp-
6 troller General and his representatives, and any represent-
7 atives of an appropriate inspector general appointed under
8 section 3 or 8G of the Inspector General Act of 1978 (5
9 U.S.C. App.), are authorized—

10 (1) to examine any records of the contractor or
11 any of its subcontractors, or any State or local agen-
12 cy administering such contract, that directly pertain
13 to, and involve transactions relating to, the contract
14 or subcontract; and

15 (2) to interview any current employee regarding
16 such transactions.

17 (b) RELATIONSHIP TO EXISTING AUTHORITY.—
18 Nothing in this section shall be interpreted to limit or re-
19 strict in any way any existing authority of the Comptroller
20 General or an Inspector General.

21 **SEC. 1243. PROTECTING STATE AND LOCAL GOVERNMENT**
22 **AND CONTRACTOR WHISTLEBLOWERS.**

23 (a) PROHIBITION OF REPRISALS.—An employee of
24 any non-Federal employer receiving funds made available
25 in this Act may not be discharged, demoted, or otherwise
26 discriminated against as a reprisal for disclosing to the

1 Board, an inspector general, the Comptroller General, a
2 member of Congress, or a Federal agency head, or their
3 representatives, information that the employee reasonably
4 believes is evidence of—

5 (1) gross mismanagement of an executive agen-
6 cy contract or grant;

7 (2) a gross waste of executive agency funds;

8 (3) a substantial and specific danger to public
9 health or safety; or

10 (4) a violation of law related to an executive
11 agency contract (including the competition for or ne-
12 gotiation of a contract) or grant awarded or issued
13 to carry out this Act.

14 (b) INVESTIGATION OF COMPLAINTS.—

15 (1) A person who believes that the person has
16 been subjected to a reprisal prohibited by subsection
17 (a) may submit a complaint to the inspector general
18 of the executive agency that awarded the contract or
19 issued the grant. Unless the inspector general deter-
20 mines that the complaint is frivolous, the inspector
21 general shall investigate the complaint and, upon
22 completion of such investigation, submit a report of
23 the findings of the investigation to the person, the
24 person's employer, the head of the Federal agency

1 that awarded the contract or issued the grant, and
2 the Board.

3 (2)(A) Except as provided under subparagraph
4 (B), the inspector general shall make a determina-
5 tion that a complaint is frivolous or submit a report
6 under paragraph (1) within 180 days after receiving
7 the complaint.

8 (B) If the inspector general is unable to com-
9 plete an investigation in time to submit a report
10 within the 180-day period specified in subparagraph
11 (A) and the person submitting the complaint agrees
12 to an extension of time, the inspector general shall
13 submit a report under paragraph (1) within such ad-
14 ditional period of time as shall be agreed upon be-
15 tween the inspector general and the person submit-
16 ting the complaint.

17 (c) REMEDY AND ENFORCEMENT AUTHORITY.—

18 (1) Not later than 30 days after receiving an
19 inspector general report pursuant to subsection (b),
20 the head of the agency concerned shall determine
21 whether there is sufficient basis to conclude that the
22 non-Federal employer has subjected the complainant
23 to a reprisal prohibited by subsection (a) and shall
24 either issue an order denying relief or shall take one
25 or more of the following actions:

1 (A) Order the employer to take affirmative
2 action to abate the reprisal.

3 (B) Order the employer to reinstate the
4 person to the position that the person held be-
5 fore the reprisal, together with the compensa-
6 tion (including back pay), employment benefits,
7 and other terms and conditions of employment
8 that would apply to the person in that position
9 if the reprisal had not been taken.

10 (C) Order the employer to pay the com-
11 plainant an amount equal to the aggregate
12 amount of all costs and expenses (including at-
13 torneys' fees and expert witnesses' fees) that
14 were reasonably incurred by the complainant
15 for, or in connection with, bringing the com-
16 plaint regarding the reprisal, as determined by
17 the head of the agency.

18 (2) If the head of an executive agency issues an
19 order denying relief under paragraph (1) or has not
20 issued an order within 210 days after the submission
21 of a complaint under subsection (b), or in the case
22 of an extension of time under paragraph (b)(2)(B),
23 not later than 30 days after the expiration of the ex-
24 tension of time, and there is no showing that such
25 delay is due to the bad faith of the complainant, the

1 complainant shall be deemed to have exhausted all
2 administrative remedies with respect to the com-
3 plaint, and the complainant may bring a de novo ac-
4 tion at law or equity against the employer to seek
5 compensatory damages and other relief available
6 under this section in the appropriate district court
7 of the United States, which shall have jurisdiction
8 over such an action without regard to the amount in
9 controversy. Such an action shall, at the request of
10 either party to the action, be tried by the court with
11 a jury.

12 (3) An inspector general determination and an
13 agency head order denying relief under paragraph
14 (2) shall be admissible in evidence in any de novo
15 action at law or equity brought pursuant to this sub-
16 section.

17 (4) Whenever a person fails to comply with an
18 order issued under paragraph (1), the head of the
19 agency shall file an action for enforcement of such
20 order in the United States district court for a dis-
21 trict in which the reprisal was found to have oc-
22 curred. In any action brought under this paragraph,
23 the court may grant appropriate relief, including in-
24 junctive relief and compensatory and exemplary
25 damages.

1 (5) Any person adversely affected or aggrieved
2 by an order issued under paragraph (1) may obtain
3 review of the order's conformance with this sub-
4 section, and any regulations issued to carry out this
5 section, in the United States court of appeals for a
6 circuit in which the reprisal is alleged in the order
7 to have occurred. No petition seeking such review
8 may be filed more than 60 days after issuance of the
9 order by the head of the agency. Review shall con-
10 form to chapter 7 of title 5.

11 (d) CONSTRUCTION.—Nothing in this section may be
12 construed to authorize the discharge of, demotion of, or
13 discrimination against an employee for a disclosure other
14 than a disclosure protected by subsection (a) or to modify
15 or derogate from a right or remedy otherwise available to
16 the employee.

17 (e) DEFINITIONS.—

18 (1) NON-FEDERAL EMPLOYER RECEIVING
19 FUNDS UNDER THIS ACT.—The term “non-Federal
20 employer receiving funds made available in this Act”
21 means—

22 (A) with respect to a Federal contract
23 awarded or Federal grant issued to carry out
24 this Act, the contractor or grantee, as the case

1 may be, if the contractor or grantee is an em-
2 ployer; or

3 (B) a State or local government, if the
4 State or local government has received funds
5 made available in this Act.

6 (2) EXECUTIVE AGENCY.—The term “executive
7 agency” has the meaning given that term in section
8 4 of the Office of Federal Procurement Policy Act
9 (41 U.S.C. 403).

10 (3) STATE OR LOCAL GOVERNMENT.—The term
11 “State or local government” means—

12 (A) the government of each of the several
13 States, the District of Columbia, the Common-
14 wealth of Puerto Rico, Guam, American Samoa,
15 the Virgin Islands, the Northern Mariana Is-
16 lands, or any other territory or possession of
17 the United States; or

18 (B) the government of any political sub-
19 division of a government listed in subparagraph
20 (A).

21 **PART 4—FURTHER ACCOUNTABILITY AND**

22 **TRANSPARENCY PROVISIONS**

23 **SEC. 1261. SHORT TITLE; TABLE OF CONTENTS.**

24 (a) SHORT TITLE.—This part may be cited as the
25 “Whistleblower Protection Enhancement Act of 2009”.

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

PART 4—FURTHER ACCOUNTABILITY AND TRANSPARENCY PROVISIONS

- Sec. 1261. Short title; table of contents.
- Sec. 1262. Clarification of disclosures covered.
- Sec. 1263. Definitional amendments.
- Sec. 1264. Rebuttable presumption.
- Sec. 1265. Nondisclosure policies, forms, and agreements.
- Sec. 1266. Exclusion of agencies by the President.
- Sec. 1267. Disciplinary action.
- Sec. 1268. Government Accountability Office study on revocation of security clearances.
- Sec. 1269. Alternative recourse.
- Sec. 1270. National security whistleblower rights.
- Sec. 1271. Enhancement of contractor employee whistleblower protections.
- Sec. 1272. Prohibited personnel practices affecting the Transportation Security Administration.
- Sec. 1273. Clarification of whistleblower rights relating to scientific and other research.
- Sec. 1274. Effective date.

3 **SEC. 1262. CLARIFICATION OF DISCLOSURES COVERED.**

4 (a) IN GENERAL.—Section 2302(b)(8) of title 5,
 5 United States Code, is amended—

6 (1) in subparagraph (A)—

7 (A) by striking “which the employee or ap-
 8 plicant reasonably believes evidences” and in-
 9 serting “, without restriction as to time, place,
 10 form, motive, context, forum, or prior disclosure
 11 made to any person by an employee or appli-
 12 cant, including a disclosure made in the ordi-
 13 nary course of an employee’s duties, that the
 14 employee or applicant reasonably believes is evi-
 15 dence of”; and

1 (B) in clause (i), by striking “a violation”
2 and inserting “any violation”; and
3 (2) in subparagraph (B)—

4 (A) by striking “which the employee or ap-
5 plicant reasonably believes evidences” and in-
6 sserting “, without restriction as to time, place,
7 form, motive, context, forum, or prior disclosure
8 made to any person by an employee or appli-
9 cant, including a disclosure made in the ordi-
10 nary course of an employee’s duties, of informa-
11 tion that the employee or applicant reasonably
12 believes is evidence of”; and

13 (B) in clause (i), by striking “a violation”
14 and inserting “any violation (other than a viola-
15 tion of this section)”.

16 (b) PROHIBITED PERSONNEL PRACTICES UNDER
17 SECTION 2302(b)(9).—Title 5, United States Code, is
18 amended in subsections (a)(3), (b)(4)(A), and (b)(4)(B)(i)
19 of section 1214 and in subsections (a) and (e)(1) of sec-
20 tion 1221 by inserting “or 2302(b)(9)(B)–(D)” after “sec-
21 tion 2302(b)(8)” each place it appears.

22 **SEC. 1263. DEFINITIONAL AMENDMENTS.**

23 (a) DISCLOSURE.—Section 2302(a)(2) of title 5,
24 United States Code, is amended—

1 (1) in subparagraph (B)(ii), by striking “and”
2 at the end;

3 (2) in subparagraph (C)(iii), by striking the pe-
4 riod at the end and inserting “; and”; and

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

6 “(D) ‘disclosure’ means a formal or informal
7 communication, but does not include a communica-
8 tion concerning policy decisions that lawfully exer-
9 cise discretionary authority unless the employee or
10 applicant providing the disclosure reasonably believes
11 that the disclosure evidences—

12 “(i) any violation of any law, rule, or regu-
13 lation; or

14 “(ii) gross mismanagement, a gross waste
15 of funds, an abuse of authority, or a substantial
16 and specific danger to public health or safety.”.

17 (b) CLEAR AND CONVINCING EVIDENCE.—Sections
18 1214(b)(4)(B)(ii) and 1221(e)(2) of title 5, United States
19 Code, are amended by adding at the end the following:
20 “For purposes of the preceding sentence, ‘clear and con-
21 vincing evidence’ means evidence indicating that the mat-
22 ter to be proved is highly probable or reasonably certain.”.

23 **SEC. 1264. REBUTTABLE PRESUMPTION.**

24 Section 2302(b) of title 5, United States Code, is
25 amended by adding at the end the following: “For pur-

1 poses of paragraph (8), any presumption relating to the
2 performance of a duty by an employee who has authority
3 to take, direct others to take, recommend, or approve any
4 personnel action may be rebutted by substantial evidence.
5 For purposes of paragraph (8), a determination as to
6 whether an employee or applicant reasonably believes that
7 such employee or applicant has disclosed information that
8 evidences any violation of law, rule, regulation, gross mis-
9 management, a gross waste of funds, an abuse of author-
10 ity, or a substantial and specific danger to public health
11 or safety shall be made by determining whether a disin-
12 terested observer with knowledge of the essential facts
13 known to or readily ascertainable by the employee or appli-
14 cant could reasonably conclude that the actions of the
15 Government evidence such violations, mismanagement,
16 waste, abuse, or danger.”.

17 **SEC. 1265. NONDISCLOSURE POLICIES, FORMS, AND AGREE-**
18 **MENTS.**

19 (a) PERSONNEL ACTION.—Section 2302(a)(2)(A) of
20 title 5, United States Code, is amended—

21 (1) in clause (x), by striking “and” at the end;

22 (2) by redesignating clause (xi) as clause (xii);

23 and

24 (3) by inserting after clause (x) the following:

1 “(xi) the implementation or enforcement of
2 any nondisclosure policy, form, or agreement;
3 and”.

4 (b) PROHIBITED PERSONNEL PRACTICE.—Section
5 2302(b) of title 5, United States Code, is amended—

6 (1) in paragraph (11), by striking “or” at the
7 end;

8 (2) by redesignating paragraph (12) as para-
9 graph (14); and

10 (3) by inserting after paragraph (11) the fol-
11 lowing:

12 “(12) implement or enforce any nondisclosure
13 policy, form, or agreement, if such policy, form, or
14 agreement does not contain the following statement:
15 “These provisions are consistent with and do not su-
16 persede, conflict with, or otherwise alter the em-
17 ployee obligations, rights, or liabilities created by
18 Executive Order No. 12958; section 7211 of title 5,
19 United States Code (governing disclosures to Con-
20 gress); section 1034 of title 10, United States Code
21 (governing disclosures to Congress by members of
22 the military); section 2302(b)(8) of title 5, United
23 States Code (governing disclosures of illegality,
24 waste, fraud, abuse, or public health or safety
25 threats); the Intelligence Identities Protection Act of

1 1982 (50 U.S.C. 421 and following) (governing dis-
2 closures that could expose confidential Government
3 agents); and the statutes which protect against dis-
4 closures that could compromise national security, in-
5 cluding sections 641, 793, 794, 798, and 952 of title
6 18, United States Code, and section 4(b) of the Sub-
7 versive Activities Control Act of 1950 (50 U.S.C.
8 783(b)). The definitions, requirements, obligations,
9 rights, sanctions, and liabilities created by such Ex-
10 ecutive order and such statutory provisions are in-
11 corporated into this agreement and are controlling.;

12 “(13) conduct, or cause to be conducted, an in-
13 vestigation, other than any ministerial or nondis-
14 cretionary factfinding activities necessary for the
15 agency to perform its mission, of an employee or ap-
16 plicant for employment because of any activity pro-
17 tected under this section; or”.

18 **SEC. 1266. EXCLUSION OF AGENCIES BY THE PRESIDENT.**

19 Section 2302(a)(2)(C) of title 5, United States Code,
20 is amended by striking clause (ii) and inserting the fol-
21 lowing:

22 “(ii)(I) the Federal Bureau of Investiga-
23 tion, the Central Intelligence Agency, the De-
24 fense Intelligence Agency, the National

1 Geospatial-Intelligence Agency, or the National
2 Security Agency; or

3 “(II) as determined by the President, any
4 Executive agency or unit thereof the principal
5 function of which is the conduct of foreign in-
6 telligence or counterintelligence activities, if the
7 determination (as that determination relates to
8 a personnel action) is made before that per-
9 sonnel action; or”.

10 **SEC. 1267. DISCIPLINARY ACTION.**

11 Section 1215(a)(3) of title 5, United States Code, is
12 amended to read as follows:

13 “(3)(A) A final order of the Board may impose—

14 “(i) disciplinary action consisting of removal,
15 reduction in grade, debarment from Federal employ-
16 ment for a period not to exceed 5 years, suspension,
17 or reprimand;

18 “(ii) an assessment of a civil penalty not to ex-
19 ceed \$1,000; or

20 “(iii) any combination of disciplinary actions
21 described under clause (i) and an assessment de-
22 scribed under clause (ii).

23 “(B) In any case in which the Board finds that an
24 employee has committed a prohibited personnel practice
25 under paragraph (8) or (9) of section 2302(b), the Board

1 shall impose disciplinary action if the Board finds that the
2 activity protected under such paragraph (8) or (9) (as the
3 case may be) was the primary motivating factor, unless
4 that employee demonstrates, by a preponderance of the
5 evidence, that the employee would have taken, failed to
6 take, or threatened to take or fail to take the same per-
7 sonnel action, in the absence of such protected activity.”.

8 **SEC. 1268. GOVERNMENT ACCOUNTABILITY OFFICE STUDY**
9 **ON REVOCATION OF SECURITY CLEARANCES.**

10 (a) REQUIREMENT.—The Comptroller General shall
11 conduct a study of security clearance revocations, taking
12 effect after 1996, with respect to personnel that filed
13 claims under chapter 12 of title 5, United States Code,
14 in connection therewith. The study shall consist of an ex-
15 amination of the number of such clearances revoked, the
16 number restored, and the relationship, if any, between the
17 resolution of claims filed under such chapter and the res-
18 toration of such clearances.

19 (b) REPORT.—Not later than 270 days after the date
20 of the enactment of this Act, the Comptroller General shall
21 submit to the Committee on Oversight and Government
22 Reform of the House of Representatives and the Com-
23 mittee on Homeland Security and Governmental Affairs
24 of the Senate a report on the results of the study required
25 by subsection (a).

1 **SEC. 1269. ALTERNATIVE RECOURSE.**

2 (a) IN GENERAL.—Section 1221 of title 5, United
3 States Code, is amended by adding at the end the fol-
4 lowing:

5 “(k)(1) If, in the case of an employee, former em-
6 ployee, or applicant for employment who seeks corrective
7 action (or on behalf of whom corrective action is sought)
8 from the Merit Systems Protection Board based on an al-
9 leged prohibited personnel practice described in section
10 2302(b)(8) or 2302(b)(9)(B)–(D), no final order or deci-
11 sion is issued by the Board within 180 days after the date
12 on which a request for such corrective action has been duly
13 submitted (or, in the event that a final order or decision
14 is issued by the Board, whether within that 180-day period
15 or thereafter, then, within 90 days after such final order
16 or decision is issued, and so long as such employee, former
17 employee, or applicant has not filed a petition for judicial
18 review of such order or decision under subsection (h))—

19 “(A) such employee, former employee, or appli-
20 cant may, after providing written notice to the
21 Board, bring an action at law or equity for de novo
22 review in the appropriate United States district
23 court, which shall have jurisdiction over such action
24 without regard to the amount in controversy, and
25 which action shall, at the request of either party to
26 such action, be tried by the court with a jury; and

1 “(B) in any such action, the court—

2 “(i) shall apply the standards set forth in
3 subsection (e); and

4 “(ii) may award any relief which the court
5 considers appropriate, including any relief de-
6 scribed in subsection (g).

7 An appeal from a final decision of a district court in an
8 action under this paragraph may, at the election of the
9 appellant, be taken to the Court of Appeals for the Federal
10 Circuit (which shall have jurisdiction of such appeal), in
11 lieu of the United States court of appeals for the circuit
12 embracing the district in which the action was brought.

13 “(2) For purposes of this subsection, the term ‘appro-
14 priate United States district court’, as used with respect
15 to an alleged prohibited personnel practice, means the
16 United States district court for the district in which the
17 prohibited personnel practice is alleged to have been com-
18 mitted, the judicial district in which the employment
19 records relevant to such practice are maintained and ad-
20 ministered, or the judicial district in which resides the em-
21 ployee, former employee, or applicant for employment al-
22 legedly affected by such practice.

23 “(3) This subsection applies with respect to any ap-
24 peal, petition, or other request for corrective action duly
25 submitted to the Board, whether pursuant to section

1 1214(b)(2), the preceding provisions of this section, sec-
2 tion 7513(d), or any otherwise applicable provisions of
3 law, rule, or regulation.”.

4 (b) REVIEW OF MSPB DECISIONS.—Section 7703(b)
5 of such title 5 is amended—

6 (1) in the first sentence of paragraph (1), by
7 striking “the United States Court of Appeals for the
8 Federal Circuit” and inserting “the appropriate
9 United States court of appeals”; and

10 (2) by adding at the end the following:

11 “(3) For purposes of the first sentence of paragraph
12 (1), the term ‘appropriate United States court of appeals’
13 means the United States Court of Appeals for the Federal
14 Circuit, except that in the case of a prohibited personnel
15 practice described in section 2302(b)(8) or
16 2302(b)(9)(B)–(D) (other than a case that, disregarding
17 this paragraph, would otherwise be subject to paragraph
18 (2)), such term means the United States Court of Appeals
19 for the Federal Circuit and any United States court of
20 appeals having jurisdiction over appeals from any United
21 States district court which, under section 1221(k)(2),
22 would be an appropriate United States district court for
23 purposes of such prohibited personnel practice.”.

24 (c) COMPENSATORY DAMAGES.—Section
25 1221(g)(1)(A)(ii) of such title 5 is amended by striking

1 all after “travel expenses,” and inserting “any other rea-
2 sonable and foreseeable consequential damages, and com-
3 pensatory damages (including attorney’s fees, interest,
4 reasonable expert witness fees, and costs).”.

5 (d) CONFORMING AMENDMENTS.—

6 (1) Section 1221(h) of such title 5 is amended
7 by adding at the end the following:

8 “(3) Judicial review under this subsection shall not
9 be available with respect to any decision or order as to
10 which the employee, former employee, or applicant has
11 filed a petition for judicial review under subsection (k).”.

12 (2) Section 7703(c) of such title 5 is amended
13 by striking “court.” and inserting “court, and in the
14 case of a prohibited personnel practice described in
15 section 2302(b)(8) or 2302(b)(9)(B)–(D) brought
16 under any provision of law, rule, or regulation de-
17 scribed in section 1221(k)(3), the employee or appli-
18 cant shall have the right to de novo review in accord-
19 ance with section 1221(k).”.

20 **SEC. 1270. NATIONAL SECURITY WHISTLEBLOWER RIGHTS.**

21 (a) IN GENERAL.—Chapter 23 of title 5, United
22 States Code, is amended by inserting after section 2303
23 the following:

24 **“§ 2303a. National security whistleblower rights**

25 “(a) PROHIBITION OF REPRISALS.—

1 “(1) IN GENERAL.—In addition to any rights
2 provided in section 2303 of this title, title VII of
3 Public Law 105–272, or any other provision of law,
4 an employee or former employee in a covered agency
5 may not be discharged, demoted, or otherwise dis-
6 criminated against (including by denying, sus-
7 pending, or revoking a security clearance, or by oth-
8 erwise restricting access to classified or sensitive in-
9 formation) as a reprisal for making a disclosure de-
10 scribed in paragraph (2).

11 “(2) DISCLOSURES DESCRIBED.—A disclosure
12 described in this paragraph is any disclosure of cov-
13 ered information which is made—

14 “(A) by an employee or former employee in
15 a covered agency (without restriction as to time,
16 place, form, motive, context, or prior disclosure
17 made to any person by an employee or former
18 employee, including a disclosure made in the
19 course of an employee’s duties); and

20 “(B) to an authorized Member of Con-
21 gress, an authorized official of an Executive
22 agency, or the Inspector General of the covered
23 agency in which such employee or former em-
24 ployee is or was employed.

1 “(b) INVESTIGATION OF COMPLAINTS.—An employee
2 or former employee in a covered agency who believes that
3 such employee or former employee has been subjected to
4 a reprisal prohibited by subsection (a) may submit a com-
5 plaint to the Inspector General and the head of the cov-
6 ered agency. The Inspector General shall investigate the
7 complaint and, unless the Inspector General determines
8 that the complaint is frivolous, submit a report of the find-
9 ings of the investigation within 120 days to the employee
10 or former employee (as the case may be) and to the head
11 of the covered agency.

12 “(c) REMEDY.—

13 “(1) Within 180 days of the filing of the com-
14 plaint, the head of the covered agency shall, taking
15 into consideration the report of the Inspector Gen-
16 eral under subsection (b) (if any), determine whether
17 the employee or former employee has been subjected
18 to a reprisal prohibited by subsection (a), and shall
19 either issue an order denying relief or shall imple-
20 ment corrective action to return the employee or
21 former employee, as nearly as possible, to the posi-
22 tion he would have held had the reprisal not oc-
23 curred, including voiding any directive or order de-
24 nying, suspending, or revoking a security clearance
25 or otherwise restricting access to classified or sen-

1 sitive information that constituted a reprisal, as well
2 as providing back pay and related benefits, medical
3 costs incurred, travel expenses, any other reasonable
4 and foreseeable consequential damages, and compen-
5 satory damages (including attorney’s fees, interest,
6 reasonable expert witness fees, and costs). If the
7 head of the covered agency issues an order denying
8 relief, he shall issue a report to the employee or
9 former employee detailing the reasons for the denial.

10 “(2)(A) If the head of the covered agency, in
11 the process of implementing corrective action under
12 paragraph (1), voids a directive or order denying,
13 suspending, or revoking a security clearance or oth-
14 erwise restricting access to classified or sensitive in-
15 formation that constituted a reprisal, the head of the
16 covered agency may re-initiate procedures to issue a
17 directive or order denying, suspending, or revoking
18 a security clearance or otherwise restricting access
19 to classified or sensitive information only if those re-
20 initiated procedures are based exclusively on national
21 security concerns and are unrelated to the actions
22 constituting the original reprisal.

23 “(B) In any case in which the head of a covered
24 agency re-initiates procedures under subparagraph
25 (A), the head of the covered agency shall issue an

1 unclassified report to its Inspector General and to
2 authorized Members of Congress (with a classified
3 annex, if necessary), detailing the circumstances of
4 the agency's re-initiated procedures and describing
5 the manner in which those procedures are based ex-
6 clusively on national security concerns and are unre-
7 lated to the actions constituting the original reprisal.
8 The head of the covered agency shall also provide
9 periodic updates to the Inspector General and au-
10 thorized Members of Congress detailing any signifi-
11 cant actions taken as a result of those procedures,
12 and shall respond promptly to inquiries from author-
13 ized Members of Congress regarding the status of
14 those procedures.

15 “(3) If the head of the covered agency has not
16 made a determination under paragraph (1) within
17 180 days of the filing of the complaint (or he has
18 issued an order denying relief, in whole or in part,
19 whether within that 180-day period or thereafter,
20 then, within 90 days after such order is issued), the
21 employee or former employee may bring an action at
22 law or equity for de novo review to seek any correc-
23 tive action described in paragraph (1) in the appro-
24 priate United States district court (as defined by
25 section 1221(k)(2)), which shall have jurisdiction

1 over such action without regard to the amount in
2 controversy. An appeal from a final decision of a dis-
3 trict court in an action under this paragraph may,
4 at the election of the appellant, be taken to the
5 Court of Appeals for the Federal Circuit (which
6 shall have jurisdiction of such appeal), in lieu of the
7 United States court of appeals for the circuit em-
8 bracing the district in which the action was brought.

9 “(4) An employee or former employee adversely
10 affected or aggrieved by an order issued under para-
11 graph (1), or who seeks review of any corrective ac-
12 tion determined under paragraph (1), may obtain ju-
13 dicial review of such order or determination in the
14 United States Court of Appeals for the Federal Cir-
15 cuit or any United States court of appeals having ju-
16 risdiction over appeals from any United States dis-
17 trict court which, under section 1221(k)(2), would
18 be an appropriate United States district court. No
19 petition seeking such review may be filed more than
20 60 days after issuance of the order or the deter-
21 mination to implement corrective action by the head
22 of the agency. Review shall conform to chapter 7.

23 “(5)(A) If, in any action for damages or relief
24 under paragraph (3) or (4), an Executive agency
25 moves to withhold information from discovery based

1 on a claim that disclosure would be inimical to na-
2 tional security by asserting the privilege commonly
3 referred to as the ‘state secrets privilege’, and if the
4 assertion of such privilege prevents the employee or
5 former employee from establishing an element in
6 support of the employee’s or former employee’s
7 claim, the court shall resolve the disputed issue of
8 fact or law in favor of the employee or former em-
9 ployee, provided that an Inspector General investiga-
10 tion under subsection (b) has resulted in substantial
11 confirmation of that element, or those elements, of
12 the employee’s or former employee’s claim.

13 “(B) In any case in which an Executive agency
14 asserts the privilege commonly referred to as the
15 ‘state secrets privilege’, whether or not an Inspector
16 General has conducted an investigation under sub-
17 section (b), the head of that agency shall, at the
18 same time it asserts the privilege, issue a report to
19 authorized Members of Congress, accompanied by a
20 classified annex if necessary, describing the reasons
21 for the assertion, explaining why the court hearing
22 the matter does not have the ability to maintain the
23 protection of classified information related to the as-
24 sertion, detailing the steps the agency has taken to
25 arrive at a mutually agreeable settlement with the

1 employee or former employee, setting forth the date
2 on which the classified information at issue will be
3 declassified, and providing all relevant information
4 about the underlying substantive matter.

5 “(d) APPLICABILITY TO NON-COVERED AGENCIES.—

6 An employee or former employee in an Executive agency
7 (or element or unit thereof) that is not a covered agency
8 shall, for purposes of any disclosure of covered information
9 (as described in subsection (a)(2)) which consists in whole
10 or in part of classified or sensitive information, be entitled
11 to the same protections, rights, and remedies under this
12 section as if that Executive agency (or element or unit
13 thereof) were a covered agency.

14 “(e) CONSTRUCTION.—Nothing in this section may
15 be construed—

16 “(1) to authorize the discharge of, demotion of,
17 or discrimination against an employee or former em-
18 ployee for a disclosure other than a disclosure pro-
19 tected by subsection (a) or (d) of this section or to
20 modify or derogate from a right or remedy otherwise
21 available to an employee or former employee; or

22 “(2) to preempt, modify, limit, or derogate any
23 rights or remedies available to an employee or
24 former employee under any other provision of law,

1 rule, or regulation (including the Lloyd-La Follette
2 Act).

3 No court or administrative agency may require the ex-
4 haustion of any right or remedy under this section as a
5 condition for pursuing any other right or remedy otherwise
6 available to an employee or former employee under any
7 other provision of law, rule, or regulation (as referred to
8 in paragraph (2)).

9 “(f) DEFINITIONS.—For purposes of this section—

10 “(1) the term ‘covered information’, as used
11 with respect to an employee or former employee,
12 means any information (including classified or sen-
13 sitive information) which the employee or former
14 employee reasonably believes evidences—

15 “(A) any violation of any law, rule, or reg-
16 ulation; or

17 “(B) gross mismanagement, a gross waste
18 of funds, an abuse of authority, or a substantial
19 and specific danger to public health or safety;

20 “(2) the term ‘covered agency’ means—

21 “(A) the Federal Bureau of Investigation,
22 the Office of the Director of National Intel-
23 ligence, the Central Intelligence Agency, the
24 Defense Intelligence Agency, the National
25 Geospatial-Intelligence Agency, the National Se-

1 security Agency, and the National Reconnaissance
2 Office; and

3 “(B) any other Executive agency, or ele-
4 ment or unit thereof, determined by the Presi-
5 dent under section 2302(a)(2)(C)(ii)(II) to have
6 as its principal function the conduct of foreign
7 intelligence or counterintelligence activities;

8 “(3) the term ‘authorized Member of Congress’
9 means—

10 “(A) with respect to covered information
11 about sources and methods of the Central Intel-
12 ligence Agency, the Director of National Intel-
13 ligence, and the National Intelligence Program
14 (as defined in section 3(6) of the National Se-
15 curity Act of 1947), a member of the House
16 Permanent Select Committee on Intelligence,
17 the Senate Select Committee on Intelligence, or
18 any other committees of the House of Rep-
19 resentatives or Senate to which this type of in-
20 formation is customarily provided;

21 “(B) with respect to special access pro-
22 grams specified in section 119 of title 10, an
23 appropriate member of the Congressional de-
24 fense committees (as defined in such section);
25 and

1 “(C) with respect to other covered informa-
2 tion, a member of the House Permanent Select
3 Committee on Intelligence, the Senate Select
4 Committee on Intelligence, the House Com-
5 mittee on Oversight and Government Reform,
6 the Senate Committee on Homeland Security
7 and Governmental Affairs, or any other com-
8 mittees of the House of Representatives or the
9 Senate that have oversight over the program
10 which the covered information concerns; and

11 “(4) the term ‘authorized official of an Execu-
12 tive agency’ shall have such meaning as the Office
13 of Personnel Management shall by regulation pre-
14 scribe, except that such term shall, with respect to
15 any employee or former employee in an agency, in-
16 clude the head, the general counsel, and the ombuds-
17 man of such agency.”.

18 (b) CLERICAL AMENDMENT.—The table of sections
19 for chapter 23 of title 5, United States Code, is amended
20 by inserting after the item relating to section 2303 the
21 following:

“2303a. National security whistleblower rights.”.

1 **SEC. 1271. ENHANCEMENT OF CONTRACTOR EMPLOYEE**
2 **WHISTLEBLOWER PROTECTIONS.**

3 (a) CIVILIAN AGENCY CONTRACTS.—Section 315(c)
4 of the Federal Property and Administrative Services Act
5 of 1949 (41 U.S.C. 265(c)) is amended—

6 (1) in paragraph (1), by striking “If the head”
7 and all that follows through “actions:” and inserting
8 the following: “Not later than 180 days after sub-
9 mission of a complaint under subsection (b), the
10 head of the executive agency concerned shall deter-
11 mine whether the contractor concerned has subjected
12 the complainant to a reprisal prohibited by sub-
13 section (a) and shall either issue an order denying
14 relief or shall take one or more of the following ac-
15 tions:”; and

16 (2) by redesignating paragraph (3) as para-
17 graph (4) and adding after paragraph (2) the fol-
18 lowing new paragraph (3):

19 “(3) If the head of an executive agency has not issued
20 an order within 180 days after the submission of a com-
21 plaint under subsection (b) and there is no showing that
22 such delay is due to the bad faith of the complainant, the
23 complainant shall be deemed to have exhausted his admin-
24 istrative remedies with respect to the complaint, and the
25 complainant may bring an action at law or equity for de
26 novo review to seek compensatory damages and other re-

1 lief available under this section in the appropriate district
2 court of the United States, which shall have jurisdiction
3 over such an action without regard to the amount in con-
4 troversy, and which action shall, at the request of either
5 party to such action, be tried by the court with a jury.”.

6 (b) ARMED SERVICES CONTRACTS.—Section 2409(c)
7 of title 10, United States Code, is amended—

8 (1) in paragraph (1), by striking “If the head”
9 and all that follows through “actions:” and inserting
10 the following: “Not later than 180 days after sub-
11 mission of a complaint under subsection (b), the
12 head of the agency concerned shall determine wheth-
13 er the contractor concerned has subjected the com-
14 plainant to a reprisal prohibited by subsection (a)
15 and shall either issue an order denying relief or shall
16 take one or more of the following actions:”; and

17 (2) by redesignating paragraph (3) as para-
18 graph (4) and adding after paragraph (2) the fol-
19 lowing new paragraph (3):

20 “(3) If the head of an agency has not issued an order
21 within 180 days after the submission of a complaint under
22 subsection (b) and there is no showing that such delay
23 is due to the bad faith of the complainant, the complainant
24 shall be deemed to have exhausted his administrative rem-
25 edies with respect to the complaint, and the complainant

1 may bring an action at law or equity for de novo review
2 to seek compensatory damages and other relief available
3 under this section in the appropriate district court of the
4 United States, which shall have jurisdiction over such an
5 action without regard to the amount in controversy, and
6 which action shall, at the request of either party to such
7 action, be tried by the court with a jury.”.

8 **SEC. 1272. PROHIBITED PERSONNEL PRACTICES AFFECT-**
9 **ING THE TRANSPORTATION SECURITY AD-**
10 **MINISTRATION.**

11 (a) IN GENERAL.—Chapter 23 of title 5, United
12 States Code, is amended—

13 (1) by redesignating sections 2304 and 2305 as
14 sections 2305 and 2306, respectively; and

15 (2) by inserting after section 2303a (as inserted
16 by section 1270) the following:

17 **“§ 2304. Prohibited personnel practices affecting the**
18 **Transportation Security Administration**

19 “(a) IN GENERAL.—Notwithstanding any other pro-
20 vision of law, any individual holding or applying for a posi-
21 tion within the Transportation Security Administration
22 shall be covered by—

23 “(1) the provisions of section 2302(b)(1), (8),
24 and (9);

1 “(2) any provision of law implementing section
2 2302(b)(1), (8), or (9) by providing any right or
3 remedy available to an employee or applicant for em-
4 ployment in the civil service; and

5 “(3) any rule or regulation prescribed under
6 any provision of law referred to in paragraph (1) or
7 (2).

8 “(b) RULE OF CONSTRUCTION.—Nothing in this sec-
9 tion shall be construed to affect any rights, apart from
10 those described in subsection (a), to which an individual
11 described in subsection (a) might otherwise be entitled
12 under law.

13 “(c) EFFECTIVE DATE.—This section shall take ef-
14 fect as of the date of the enactment of this section.”.

15 (b) CLERICAL AMENDMENT.—The table of sections
16 for chapter 23 of title 5, United States Code, is amended
17 by striking the items relating to sections 2304 and 2305,
18 respectively, and by inserting the following:

“2304. Prohibited personnel practices affecting the Transportation Security Ad-
 ministration.

“2305. Responsibility of the Government Accountability Office.

“2306. Coordination with certain other provisions of law.”.

1 **SEC. 1273. CLARIFICATION OF WHISTLEBLOWER RIGHTS**
2 **RELATING TO SCIENTIFIC AND OTHER RE-**
3 **SEARCH.**

4 (a) IN GENERAL.—Section 2302 of title 5, United
5 States Code, is amended by adding at the end the fol-
6 lowing:

7 “(f) As used in section 2302(b)(8), the term ‘abuse
8 of authority’ includes—

9 “(1) any action that compromises the validity
10 or accuracy of federally funded research or analysis;

11 “(2) the dissemination of false or misleading
12 scientific, medical, or technical information;

13 “(3) any action that restricts or prevents an
14 employee or any person performing federally funded
15 research or analysis from publishing in peer-reviewed
16 journals or other scientific publications or making
17 oral presentations at professional society meetings or
18 other meetings of their peers; and

19 “(4) any action that discriminates for or
20 against any employee or applicant for employment
21 on the basis of religion, as defined by section
22 1273(b) of the Whistleblower Protection Enhance-
23 ment Act of 2009.”.

24 (b) DEFINITION.—As used in section 2302(f)(3) of
25 title 5, United States Code (as amended by subsection
26 (a)), the term “on the basis of religion” means—

1 (1) prohibiting personal religious expression by
2 Federal employees to the greatest extent possible,
3 consistent with requirements of law and interests in
4 workplace efficiency;

5 (2) requiring religious participation or non-par-
6 ticipation as a condition of employment, or permit-
7 ting religious harassment;

8 (3) failing to accommodate employees' exercise
9 of their religion;

10 (4) failing to treat all employees with the same
11 respect and consideration, regardless of their religion
12 (or lack thereof);

13 (5) restricting personal religious expression by
14 employees in the Federal workplace except where the
15 employee's interest in the expression is outweighed
16 by the government's interest in the efficient provi-
17 sion of public services or where the expression in-
18 trudes upon the legitimate rights of other employees
19 or creates the appearance, to a reasonable observer,
20 of an official endorsement of religion;

21 (6) regulating employees' personal religious ex-
22 pression on the basis of its content or viewpoint, or
23 suppressing employees' private religious speech in
24 the workplace while leaving unregulated other pri-
25 vate employee speech that has a comparable effect

1 on the efficiency of the workplace, including ideolog-
2 ical speech on politics and other topics;

3 (7) failing to exercise their authority in an
4 evenhanded and restrained manner, and with regard
5 for the fact that Americans are used to expressions
6 of disagreement on controversial subjects, including
7 religious ones;

8 (8) failing to permit an employee to engage in
9 private religious expression in personal work areas
10 not regularly open to the public to the same extent
11 that they may engage in nonreligious private expres-
12 sion, subject to reasonable content- and viewpoint-
13 neutral standards and restrictions;

14 (9) failing to permit an employee to engage in
15 religious expression with fellow employees, to the
16 same extent that they may engage in comparable
17 nonreligious private expression, subject to reasonable
18 and content-neutral standards and restrictions;

19 (10) failing to permit an employee to engage in
20 religious expression directed at fellow employees, and
21 may even attempt to persuade fellow employees of
22 the correctness of their religious views, to the same
23 extent as those employees may engage in comparable
24 speech not involving religion;

1 (11) inhibiting an employee from urging a col-
2 league to participate or not to participate in reli-
3 gious activities to the same extent that, consistent
4 with concerns of workplace efficiency, they may urge
5 their colleagues to engage in or refrain from other
6 personal endeavors, except that the employee must
7 refrain from such expression when a fellow employee
8 asks that it stop or otherwise demonstrates that it
9 is unwelcome;

10 (12) failing to prohibit expression that is part
11 of a larger pattern of verbal attacks on fellow em-
12 ployees (or a specific employee) not sharing the faith
13 of the speaker;

14 (13) preventing an employee from—

15 (A) wearing personal religious jewelry ab-
16 sent special circumstances (such as safety con-
17 cerns) that might require a ban on all similar
18 nonreligious jewelry; or

19 (B) displaying religious art and literature
20 in their personal work areas to the same extent
21 that they may display other art and literature,
22 so long as the viewing public would reasonably
23 understand the religious expression to be that
24 of the employee acting in her personal capacity,
25 and not that of the government itself;

1 (14) prohibiting an employee from using their
2 private time to discuss religion with willing cowork-
3 ers in public spaces to the same extent as they may
4 discuss other subjects, so long as the public would
5 reasonably understand the religious expression to be
6 that of the employees acting in their personal capac-
7 ities;

8 (15) discriminating against an employee on the
9 basis of their religion, religious beliefs, or views con-
10 cerning their religion by promoting, refusing to pro-
11 mote, hiring, refusing to hire, or otherwise favoring
12 or disfavoring, an employee or potential employee
13 because of his or her religion, religious beliefs, or
14 views concerning religion, or by explicitly or implic-
15 itly, insisting that the employee participate in reli-
16 gious activities as a condition of continued employ-
17 ment, promotion, salary increases, preferred job as-
18 signments, or any other incidents of employment or
19 insisting that an employee refrain from participating
20 in religious activities outside the workplace except
21 pursuant to otherwise legal, neutral restrictions that
22 apply to employees' off-duty conduct and expression
23 in general (such as restrictions on political activities
24 prohibited by the Hatch Act);

1 (16) prohibiting a supervisor’s religious expres-
2 sion where it is not coercive and is understood to be
3 his or her personal view, in the same way and to the
4 same extent as other constitutionally valued speech;

5 (17) permitting a hostile environment, or reli-
6 gious harassment, in the form of religiously discrimi-
7 natory intimidation, or pervasive or severe religious
8 ridicule or insult, whether by supervisors or fellow
9 workers, as determined by its frequency or repet-
10 itiveness, and severity;

11 (18) failing to accommodate an employee’s exer-
12 cise of their religion unless such accommodation
13 would impose an undue hardship on the conduct of
14 the agency’s operations, based on real rather than
15 speculative or hypothetical cost and without
16 disfavoring other, nonreligious accommodations; and

17 (19) in those cases where an agency’s work rule
18 imposes a substantial burden on a particular em-
19 ployee’s exercise of religion, failing to grant the em-
20 ployee an exemption from that rule, absent a com-
21 pelling interest in denying the exemption and where
22 there is no less restrictive means of furthering that
23 interest.

24 (c) RULE OF CONSTRUCTION.—Nothing in this sec-
25 tion shall be construed to create any new right, benefit,

1 or trust responsibility, substantive or procedural, enforce-
 2 able at law or equity by a party against the United States,
 3 its agencies, its officers, or any person.

4 **SEC. 1274. EFFECTIVE DATE.**

5 This part shall take effect 30 days after the date of
 6 the enactment of this Act, except as provided in the
 7 amendment made by section 1272(a)(2).

8 **TITLE II—AGRICULTURE, NUTRI-**
 9 **TION, AND RURAL DEVELOP-**
 10 **MENT**

11 DEPARTMENT OF AGRICULTURE
 12 AGRICULTURE BUILDINGS AND FACILITIES AND RENTAL
 13 PAYMENTS

14 For an additional amount for “Agriculture Buildings
 15 and Facilities and Rental Payments”, \$44,000,000, for
 16 necessary construction, repair, and improvement activities:
 17 *Provided*, That section 1106 of this Act shall not apply
 18 to this appropriation.

19 AGRICULTURAL RESEARCH SERVICE
 20 BUILDINGS AND FACILITIES

21 For an additional amount for “Buildings and Facili-
 22 ties”, \$209,000,000, for work on deferred maintenance at
 23 Agricultural Research Service facilities: *Provided*, That
 24 priority in the use of such funds shall be given to critical
 25 deferred maintenance, to projects that can be completed,

1 and to activities that can commence promptly following
2 enactment of this Act.

3 FARM SERVICE AGENCY

4 SALARIES AND EXPENSES

5 For an additional amount for “Salaries and Ex-
6 penses,” \$245,000,000, for the purpose of maintaining
7 and modernizing the information technology system: *Pro-*
8 *vided*, That section 1106 of this Act shall not apply to
9 this appropriation.

10 NATURAL RESOURCES CONSERVATION SERVICE

11 WATERSHED AND FLOOD PREVENTION OPERATIONS

12 For an additional amount for “Watershed and Flood
13 Prevention Operations”, \$350,000,000, of which
14 \$175,000,000 is for necessary expenses to purchase and
15 restore floodplain easements as authorized by section 403
16 of the Agricultural Credit Act of 1978 (16 U.S.C. 2203)
17 (except that no more than \$50,000,000 of the amount pro-
18 vided for the purchase of floodplain easements may be ob-
19 ligated for projects in any one State): *Provided*, That sec-
20 tion 1106 of this Act shall not apply to this appropriation:
21 *Provided further*, That priority in the use of such funds
22 shall be given to projects that can be fully funded and
23 completed with the funds appropriated in this Act, and
24 to activities that can commence promptly following enact-
25 ment of this Act.

1 WATERSHED REHABILITATION PROGRAM

2 For an additional amount for “Watershed Rehabilita-
3 tion Program”, \$50,000,000, for necessary expenses to
4 carry out rehabilitation of structural measures: *Provided*,
5 That section 1106 of this Act shall not apply to this ap-
6 propriation: *Provided further*, That priority in the use of
7 such funds shall be given to projects that can be fully
8 funded and completed with the funds appropriated in this
9 Act, and to activities that can commence promptly fol-
10 lowing enactment of this Act.

11 RURAL DEVELOPMENT PROGRAMS

12 RURAL COMMUNITY ADVANCEMENT PROGRAM

13 (INCLUDING TRANSFERS OF FUNDS)

14 For an additional amount for gross obligations for
15 the principal amount of direct and guaranteed loans as
16 authorized by sections 306 and 310B and described in sec-
17 tions 381E(d)(1), 381E(d)(2), and 381E(d)(3) of the
18 Consolidated Farm and Rural Development Act, to be
19 available from the rural community advancement pro-
20 gram, as follows: \$5,838,000,000, of which
21 \$1,102,000,000 is for rural community facilities direct
22 loans, of which \$2,000,000,000 is for business and indus-
23 try guaranteed loans, and of which \$2,736,000,000 is for
24 rural water and waste disposal direct loans.

1 For an additional amount for the cost of direct loans,
2 loan guarantees, and grants, including the cost of modi-
3 fying loans, as defined in section 502 of the Congressional
4 Budget Act of 1974, as follows: \$1,800,000,000, of which
5 \$63,000,000 is for rural community facilities direct loans,
6 of which \$137,000,000 is for rural community facilities
7 grants authorized under section 306(a) of the Consoli-
8 dated Farm and Rural Development Act, of which
9 \$87,000,000 is for business and industry guaranteed
10 loans, of which \$13,000,000 is for rural business enter-
11 prise grants authorized under section 310B of the Consoli-
12 dated Farm and Rural Development Act, of which
13 \$400,000,000 is for rural water and waste disposal direct
14 loans, and of which \$1,100,000,000 is for rural water and
15 waste disposal grants authorized under section 306(a):
16 *Provided*, That the amounts appropriated under this head-
17 ing shall be transferred to, and merged with, the appro-
18 priation for “Rural Housing Service, Rural Community
19 Facilities Program Account”, the appropriation for
20 “Rural Business-Cooperative Service, Rural Business Pro-
21 gram Account”, and the appropriation for “Rural Utilities
22 Service, Rural Water and Waste Disposal Program Ac-
23 count”: *Provided further*, That priority for awarding such
24 funds shall be given to project applications that dem-
25 onstrate that, if the application is approved, all project

1 elements will be fully funded: *Provided further*, That pri-
2 ority for awarding such funds shall be given to project ap-
3 plications for activities that can be completed if the re-
4 quested funds are provided: *Provided further*, That priority
5 for awarding such funds shall be given to activities that
6 can commence promptly following enactment of this Act.

7 In addition to other available funds, the Secretary of
8 Agriculture may use not more than 3 percent of the funds
9 made available under this account for administrative costs
10 to carry out loans, loan guarantees, and grants funded
11 under this account, which shall be transferred and merged
12 with the appropriation for “Rural Development, Salaries
13 and Expenses” and shall remain available until September
14 30, 2012: *Provided*, That the authority provided in this
15 paragraph shall apply to appropriations under this head-
16 ing in lieu of the provisions of section 1106 of this Act.

17 Funds appropriated by this Act to the Rural Commu-
18 nity Advancement Program for rural community facilities,
19 rural business, and rural water and waste disposal direct
20 loans, loan guarantees and grants may be transferred
21 among these programs: *Provided*, That the Committees on
22 Appropriations of the House of Representatives and the
23 Senate shall be notified at least 15 days in advance of
24 any transfer.

1 RURAL HOUSING SERVICE
2 RURAL HOUSING INSURANCE FUND PROGRAM ACCOUNT
3 (INCLUDING TRANSFERS OF FUNDS)

4 For an additional amount of gross obligations for the
5 principal amount of direct and guaranteed loans as au-
6 thorized by title V of the Housing Act of 1949, to be avail-
7 able from funds in the rural housing insurance fund, as
8 follows: \$22,129,000,000 for loans to section 502 bor-
9 rowers, of which \$4,018,000,000 shall be for direct loans,
10 and of which \$18,111,000,000 shall be for unsubsidized
11 guaranteed loans.

12 For an additional amount for the cost of direct and
13 guaranteed loans, including the cost of modifying loans,
14 as defined in section 502 of the Congressional Budget Act
15 of 1974, as follows: section 502 loans, \$500,000,000, of
16 which \$270,000,000 shall be for direct loans, and of which
17 \$230,000,000 shall be for unsubsidized guaranteed loans.

18 In addition to other available funds, the Secretary of
19 Agriculture may use not more than 3 percent of the funds
20 made available under this account for administrative costs
21 to carry out loans and loan guarantees funded under this
22 account, of which \$1,750,000 will be committed to agency
23 projects associated with maintaining the compliance, safe-
24 ty, and soundness of the portfolio of loans guaranteed
25 through the section 502 guaranteed loan program: *Pro-*

1 *vided*, These funds shall be transferred and merged with
2 the appropriation for “Rural Development, Salaries and
3 Expenses”: *Provided further*, That the authority provided
4 in this paragraph shall apply to appropriations under this
5 heading in lieu of the provisions of section 1106 of this
6 Act.

7 Funds appropriated by this Act to the Rural Housing
8 Insurance Fund Program account for section 502 direct
9 loans and unsubsidized guaranteed loans may be trans-
10 ferred between these programs: *Provided*, That the Com-
11 mittees on Appropriations of the House of Representatives
12 and the Senate shall be notified at least 15 days in ad-
13 vance of any transfer.

14 RURAL UTILITIES SERVICE

15 DISTANCE LEARNING, TELEMEDICINE, AND BROADBAND

16 PROGRAM

17 (INCLUDING TRANSFERS OF FUNDS)

18 For an additional amount for the cost of broadband
19 loans and loan guarantees, as authorized by the Rural
20 Electrification Act of 1936 (7 U.S.C. 901 et seq.) and for
21 grants, \$2,825,000,000: *Provided*, That the cost of direct
22 and guaranteed loans shall be as defined in section 502
23 of the Congressional Budget Act of 1974: *Provided fur-*
24 *ther*, That, notwithstanding title VI of the Rural Elec-
25 trification Act of 1936, this amount is available for grants,

1 loans and loan guarantees for open access broadband in-
2 frastructure in any area of the United States: *Provided*
3 *further*, That at least 75 percent of the area to be served
4 by a project receiving funds from such grants, loans or
5 loan guarantees shall be in a rural area without sufficient
6 access to high speed broadband service to facilitate rural
7 economic development, as determined by the Secretary of
8 Agriculture: *Provided further*, That priority for awarding
9 funds made available under this paragraph shall be given
10 to projects that provide service to the most rural residents
11 that do not have access to broadband service: *Provided fur-*
12 *ther*, That priority shall be given for project applications
13 from borrowers or former borrowers under title II of the
14 Rural Electrification Act of 1936 and for project applica-
15 tions that include such borrowers or former borrowers:
16 *Provided further*, That notwithstanding section 1103 of
17 this Act, 50 percent of the grants, loans, and loan guaran-
18 tees made available under this heading shall be awarded
19 not later than September 30, 2009: *Provided further*, That
20 priority for awarding such funds shall be given to project
21 applications that demonstrate that, if the application is
22 approved, all project elements will be fully funded: *Pro-*
23 *vided further*, That priority for awarding such funds shall
24 be given to project applications for activities that can be
25 completed if the requested funds are provided: *Provided*

1 *further*, That priority for awarding such funds shall be
2 given to activities that can commence promptly following
3 enactment of this Act: *Provided further*, That no area of
4 a project funded with amounts made available under this
5 paragraph may receive funding to provide broadband serv-
6 ice under the Broadband Deployment Grant Program:
7 *Provided further*, That the Secretary shall submit a report
8 on planned spending and actual obligations describing the
9 use of these funds not later than 90 days after the date
10 of enactment of this Act, and quarterly thereafter until
11 all funds are obligated, to the Committees on Appropria-
12 tions of the House of Representatives and the Senate.

13 In addition to other available funds, the Secretary
14 may use not more than 3 percent of the funds made avail-
15 able under this account for administrative costs to carry
16 out loans, loan guarantees, and grants funded under this
17 account, which shall be transferred and merged with the
18 appropriation for “Rural Development, Salaries and Ex-
19 penses” and shall remain available until September 30,
20 2012: *Provided*, That the authority provided in this para-
21 graph shall apply to appropriations under this heading in
22 lieu of the provisions of section 1106 of this Act.

1 FOOD AND NUTRITION SERVICE
2 SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR
3 WOMEN, INFANTS, AND CHILDREN (WIC)

4 For an additional amount for the special supple-
5 mental nutrition program as authorized by section 17 of
6 the Child Nutrition Act of 1966 (42 U.S.C. 1786),
7 \$100,000,000, for the purposes specified in section
8 17(h)(10)(B)(ii) for the Secretary of Agriculture to pro-
9 vide assistance to State agencies to implement new man-
10 agement information systems or improve existing manage-
11 ment information systems for the program.

12 EMERGENCY FOOD ASSISTANCE PROGRAM

13 For an additional amount for the emergency food as-
14 sistance program as authorized by section 27(a) of the
15 Food and Nutrition Act of 2008 (7 U.S.C. 2036(a)) and
16 section 204(a)(1) of the Emergency Food Assistance Act
17 of 1983 (7 U.S.C. 7508(a)(1)), \$150,000,000, of which
18 \$100,000,000 is for the purchase of commodities and of
19 which \$50,000,000 is for costs associated with the dis-
20 tribution of commodities.

21 GENERAL PROVISIONS, THIS TITLE

22 **SEC. 2001. TEMPORARY INCREASE IN BENEFITS UNDER**
23 **THE SUPPLEMENTAL NUTRITION ASSIST-**
24 **ANCE PROGRAM.**

25 (a) MAXIMUM BENEFIT INCREASE.—

1 (1) IN GENERAL.—Beginning the first month
2 that begins not less than 25 days after the date of
3 enactment of this Act, the value of benefits deter-
4 mined under section 8(a) of the Food and Nutrition
5 Act of 2008 and consolidated block grants for Puer-
6 to Rico and American Samoa determined under sec-
7 tion 19(a) of such Act shall be calculated using
8 113.6 percent of the June 2008 value of the thrifty
9 food plan as specified under section 3(o) of such
10 Act.

11 (2) TERMINATION.—

12 (A) The authority provided by this sub-
13 section shall terminate after September 30,
14 2009.

15 (B) Notwithstanding subparagraph (A),
16 the Secretary of Agriculture may not reduce the
17 value of the maximum allotment below the level
18 in effect for fiscal year 2009 as a result of
19 paragraph (1).

20 (b) REQUIREMENTS FOR THE SECRETARY.—In car-
21 rying out this section, the Secretary shall—

22 (1) consider the benefit increases described in
23 subsection (a) to be a “mass change”;

24 (2) require a simple process for States to notify
25 households of the increase in benefits;

1 (3) consider section 16(c)(3)(A) of the Food
2 and Nutrition Act of 2008 (7 U.S.C. 2025(c)(3)(A))
3 to apply to any errors in the implementation of this
4 section, without regard to the 120-day limit de-
5 scribed in that section; and

6 (4) have the authority to take such measures as
7 necessary to ensure the efficient administration of
8 the benefits provided in this section.

9 (c) ADMINISTRATIVE EXPENSES.—

10 (1) IN GENERAL.—For the costs of State ad-
11 ministrative expenses associated with carrying out
12 this section, the Secretary shall make available
13 \$150,000,000 in each of fiscal years 2009 and 2010,
14 to remain available through September 30, 2012, of
15 which \$4,500,000 is for necessary expenses of the
16 Food and Nutrition Service for management and
17 oversight of the program and for monitoring the in-
18 tegrity and evaluating the effects of the payments
19 made under this section.

20 (2) AVAILABILITY OF FUNDS.—Funds described
21 in paragraph (1) shall be made available as grants
22 to State agencies based on each State's share of
23 households that participate in the Supplemental Nu-
24 trition Assistance Program as reported to the De-

1 partment of Agriculture for the 12-month period
2 ending with June, 2008.

3 (d) TREATMENT OF JOBLESS WORKERS.—Beginning
4 with the first month that begins not less than 25 days
5 after the date of enactment of this Act, and for each sub-
6 sequent month through September 30, 2010, jobless
7 adults who comply with work registration and employment
8 and training requirements under section 6, section 20, or
9 section 26 of the Food and Nutrition Act of 2008 (7
10 U.S.C. 2015, 2029, or 2035) shall not be disqualified from
11 the Supplemental Nutrition Assistance Program because
12 of the provisions of section 6(o)(2) of such Act (7 U.S.C.
13 2015(o)(2)). Beginning on October 1, 2010, for the pur-
14 poses of section 6(o), a State agency shall disregard any
15 period during which an individual received Supplemental
16 Nutrition Assistance Program benefits prior to October 1,
17 2010.

18 (e) FUNDING.—There is appropriated to the Sec-
19 retary of Agriculture such sums as are necessary to carry
20 out this section, to remain available until expended. Sec-
21 tion 1106 of this Act shall not apply to this appropriation.

1 **SEC. 2002. AFTERSCHOOL FEEDING PROGRAM FOR AT-RISK**
2 **CHILDREN.**

3 Section 17(r) of the Richard B. Russell National
4 School Lunch Act (42 U.S.C. 1766(r)) is amended by
5 striking paragraph (5).

6 **TITLE III—COMMERCE, JUSTICE,**
7 **AND SCIENCE**

8 **Subtitle A—Commerce**

9 DEPARTMENT OF COMMERCE

10 ECONOMIC DEVELOPMENT ADMINISTRATION

11 ECONOMIC DEVELOPMENT ASSISTANCE PROGRAMS

12 (INCLUDING TRANSFER OF FUNDS)

13 For an additional amount for “Economic Develop-
14 ment Assistance Programs”, \$250,000,000: *Provided*,
15 That the amount set aside from this appropriation pursu-
16 ant to section 1106 of this Act shall not exceed 2 percent
17 instead of the percentage specified in such section: *Pro-*
18 *vided further*, That the amount set aside pursuant to the
19 previous proviso shall be transferred to and merged with
20 the appropriation for “Salaries and Expenses” for pur-
21 poses of program administration and oversight: *Provided*
22 *further*, That up to \$50,000,000 may be transferred to
23 federally authorized regional economic development com-
24 missions.

1 BUREAU OF THE CENSUS

2 PERIODIC CENSUSES AND PROGRAMS

3 For an additional amount for “Periodic Censuses and
4 Programs”, \$1,000,000,000: *Provided*, That section 1106
5 of this Act shall not apply to funds provided under this
6 heading.

7 NATIONAL TELECOMMUNICATIONS AND INFORMATION

8 ADMINISTRATION

9 SALARIES AND EXPENSES

10 For an additional amount for “Salaries and Ex-
11 penses”, \$350,000,000, to remain available until Sep-
12 tember 30, 2011: *Provided*, That funds shall be available
13 to establish the State Broadband Data and Development
14 Grant Program, as authorized by Public Law 110–385,
15 for the development and implementation of statewide ini-
16 tiatives to identify and track the availability and adoption
17 of broadband services within each State, and to develop
18 and maintain a nationwide broadband inventory map, as
19 authorized by section 6001 of division B of this Act.

20 WIRELESS AND BROADBAND DEPLOYMENT GRANT

21 PROGRAMS

22 (INCLUDING TRANSFER OF FUNDS)

23 For necessary expenses related to the Wireless and
24 Broadband Deployment Grant Programs established by
25 section 6002 of division B of this Act, \$2,825,000,000,

1 of which \$1,000,000,000 shall be for Wireless Deployment
2 Grants and \$1,825,000,000 shall be for Broadband De-
3 ployment Grants: *Provided*, That the National Tele-
4 communications and Information Administration shall
5 submit a report on planned spending and actual obliga-
6 tions describing the use of these funds not later than 120
7 days after the date of enactment of this Act, and an up-
8 date report not later than 60 days following the initial re-
9 port, to the Committees on Appropriations of the House
10 of Representatives and the Senate, the Committee on En-
11 ergy and Commerce of the House of Representatives, and
12 the Committee on Commerce, Science, and Transportation
13 of the Senate: *Provided further*, That notwithstanding sec-
14 tion 1103 of this Act, 50 percent of the grants made avail-
15 able under this heading shall be awarded not later than
16 September 30, 2009: *Provided further*, That up to 20 per-
17 cent of the funds provided under this heading for Wireless
18 Deployment Grants and Broadband Deployment Grants
19 may be transferred between these programs: *Provided fur-*
20 *ther*, That the Committees on Appropriations of the House
21 of Representatives and the Senate shall be notified at least
22 15 days in advance of any transfer.

23 DIGITAL-TO-ANALOG CONVERTER BOX PROGRAM

24 Notwithstanding any other provision of law, and in
25 addition to amounts otherwise provided in any other Act,

1 for costs associated with the Digital-to-Analog Converter
2 Box Program, \$650,000,000, to be available until Sep-
3 tember 30, 2009: *Provided*, That these funds shall be
4 available for coupons and related activities, including but
5 not limited to education, consumer support and outreach,
6 as deemed appropriate and necessary to ensure a timely
7 conversion of analog to digital television.

8 NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY
9 SCIENTIFIC AND TECHNICAL RESEARCH AND SERVICES

10 For an additional amount for “Scientific and Tech-
11 nical Research and Services”, \$100,000,000.

12 INDUSTRIAL TECHNOLOGY SERVICES

13 For an additional amount for “Industrial Technology
14 Services”, \$100,000,000, of which \$70,000,000 shall be
15 available for the necessary expenses of the Technology In-
16 novation Program and \$30,000,000 shall be available for
17 the necessary expenses of the Hollings Manufacturing Ex-
18 tension Partnership.

19 CONSTRUCTION OF RESEARCH FACILITIES

20 For an additional amount for “Construction of Re-
21 search Facilities”, as authorized by sections 13 through
22 15 of the Act of March 13, 1901 (15 U.S.C. 278c–278e),
23 \$300,000,000, for a competitive construction grant pro-
24 gram for research science buildings: *Provided further*,
25 That for peer-reviewed grants made under this heading,

1 the time limitation provided in section 1103(b) of this Act
2 shall be 120 days.

3 NATIONAL OCEANIC AND ATMOSPHERIC
4 ADMINISTRATION
5 OPERATIONS, RESEARCH, AND FACILITIES

6 For an additional amount for “Operations, Research,
7 and Facilities”, \$400,000,000, for habitat restoration and
8 mitigation activities.

9 PROCUREMENT, ACQUISITION AND CONSTRUCTION

10 For an additional amount for “Procurement, Acquisi-
11 tion and Construction”, \$600,000,000, for accelerating
12 satellite development and acquisition, acquiring climate
13 sensors and climate modeling capacity, and establishing
14 climate data records: *Provided further*, That not less than
15 \$140,000,000 shall be available for climate data modeling.

16 **Subtitle B—Justice**

17 DEPARTMENT OF JUSTICE

18 STATE AND LOCAL LAW ENFORCEMENT ACTIVITIES

19 OFFICE OF JUSTICE PROGRAMS

20 STATE AND LOCAL LAW ENFORCEMENT ASSISTANCE

21 For an additional amount for “State and Local Law
22 Enforcement Assistance”, \$3,000,000,000, to be available
23 for the Edward Byrne Memorial Justice Assistance Grant
24 Program as authorized by subpart 1 of part E of title I
25 of the Omnibus Crime Control and Safe Streets Act of

1 1968, (except that section 1001(c), and the special rules
2 for Puerto Rico under section 505(g), of such Act shall
3 not apply for purposes of this Act): *Provided*, That section
4 1106 of this Act shall not apply to funds provided under
5 this heading.

6 COMMUNITY ORIENTED POLICING SERVICES

7 For an additional amount for “Community Oriented
8 Policing Services”, \$1,000,000,000, to be available for
9 grants under section 1701 of title I of the 1968 Act (42
10 U.S.C. 3796dd) for the hiring and rehiring of additional
11 career law enforcement officers under part Q of such title
12 notwithstanding subsection (i) of such section: *Provided*,
13 That for peer-reviewed grants made under this heading,
14 the time limitation provided in section 1103(b) of this Act
15 shall be 120 days.

16

17 GENERAL PROVISIONS, THIS SUBTITLE

18 **SEC. 3201. WAIVER OF MATCHING REQUIREMENT AND SAL-**

19 **ARY LIMIT UNDER COPS PROGRAM.**

20 Sections 1701(g) and 1704(c) of the Omnibus Crime
21 Control and Safe Street Act of 1968 (42 U.S.C.
22 3796dd(g) and 3796dd-3(c)) shall not apply with respect
23 to funds appropriated in this or any other Act making ap-
24 propriations for fiscal year 2009 or 2010 for Community

1 Oriented Policing Services authorized under part Q of
2 such Act of 1968.

3 **Subtitle C—Science**

4 NATIONAL AERONAUTICS AND SPACE

5 ADMINISTRATION

6 SCIENCE

7 For an additional amount for “Science”,
8 \$400,000,000, of which not less than \$250,000,000 shall
9 be solely for accelerating the development of the tier 1 set
10 of Earth science climate research missions recommended
11 by the National Academies Decadal Survey.

12 AERONAUTICS

13 For an additional amount for “Aeronautics”,
14 \$150,000,000.

15 CROSS AGENCY SUPPORT PROGRAMS

16 For an additional amount for “Cross Agency Support
17 Programs”, for necessary expenses for restoration and
18 mitigation of National Aeronautics and Space Administra-
19 tion owned infrastructure and facilities related to the con-
20 sequences of hurricanes, floods, and other natural disas-
21 ters occurring during 2008 for which the President de-
22 clared a major disaster under title IV of the Robert T.
23 Stafford Disaster Relief and Emergency Assistance Act of
24 1974, \$50,000,000.

1 NATIONAL SCIENCE FOUNDATION

2 RESEARCH AND RELATED ACTIVITIES

3 For an additional amount for “Research and Related
4 Activities”, \$2,500,000,000: *Provided*, That \$300,000,000
5 shall be available solely for the Major Research Instru-
6 mentation program and \$200,000,000 shall be for activi-
7 ties authorized by title II of Public Law 100–570 for aca-
8 demic research facilities modernization: *Provided*, That for
9 peer-reviewed grants made under this heading, the time
10 limitation provided in section 1103(b) of this Act shall be
11 120 days.

12 EDUCATION AND HUMAN RESOURCES

13 For an additional amount for “Education and
14 Human Resources”, \$100,000,000: *Provided*, That
15 \$60,000,000 shall be for activities authorized by section
16 7030 of Public Law 110–69 and \$40,000,000 shall be for
17 activities authorized by section 9 of the National Science
18 Foundation Authorization Act of 2002 (42 U.S.C. 1862n).

19 MAJOR RESEARCH EQUIPMENT AND FACILITIES

20 CONSTRUCTION

21 For an additional amount for “Major Research
22 Equipment and Facilities Construction”, \$400,000,000,
23 which shall be available only for approved projects.

TITLE IV—DEFENSE

DEPARTMENT OF DEFENSE

FACILITY INFRASTRUCTURE INVESTMENTS, DEFENSE

For expenses, not otherwise provided for, to improve, repair and modernize Department of Defense facilities, restore and modernize Army barracks, and invest in the energy efficiency of Department of Defense facilities, \$4,500,000,000, for Facilities Sustainment, Restoration and Modernization programs of the Department of Defense (including minor construction and major maintenance and repair), which shall be available as follows:

(1) “Operation and Maintenance, Army”, \$1,490,804,000.

(2) “Operation and Maintenance, Navy”, \$624,380,000.

(3) “Operation and Maintenance, Marine Corps”, \$128,499,000.

(4) “Operation and Maintenance, Air Force”, \$1,236,810,000.

(5) “Defense Health Program”, \$454,658,000.

(6) “Operation and Maintenance, Army Reserve”, \$110,899,000.

(7) “Operation and Maintenance, Navy Reserve”, \$62,162,000.

1 (8) “Operation and Maintenance, Marine Corps
2 Reserve”, \$45,038,000.

3 (9) “Operation and Maintenance, Air Force Re-
4 serve”, \$14,881,000.

5 (10) “Operation and Maintenance, Army Na-
6 tional Guard”, \$302,700,000.

7 (11) “Operation and Maintenance, Air National
8 Guard”, \$29,169,000.

9 ENERGY RESEARCH AND DEVELOPMENT, DEFENSE

10 For expenses, not otherwise provided for, for re-
11 search, development, test and evaluation programs for im-
12 provements in energy generation, transmission, regulation,
13 use, and storage, for military installations, military vehi-
14 cles, and other military equipment, \$350,000,000, which
15 shall be available as follows:

16 (1) “Research, Development, Test and Evalua-
17 tion, Army”, \$87,500,000.

18 (2) “Research, Development, Test and Evalua-
19 tion, Navy”, \$87,500,000.

20 (3) “Research, Development, Test and Evalua-
21 tion, Air Force”, \$87,500,000.

22 (4) “Research, Development, Test and Evalua-
23 tion, Defense-Wide”, \$87,500,000

1 TITLE V—ENERGY AND WATER

2 DEPARTMENT OF THE ARMY

3 CORPS OF ENGINEERS—CIVIL

4 CONSTRUCTION

5 For an additional amount for “Construction”,
6 \$2,000,000,000: *Provided*, That section 102 of Public
7 Law 109–103 (33 U.S.C. 2221) shall not apply to funds
8 provided in this paragraph: *Provided further*, That not-
9 withstanding any other provision of law, funds provided
10 in this paragraph shall not be cost shared with the Inland
11 Waterways Trust Fund as authorized in Public Law 99–
12 662: *Provided further*, That funds provided in this para-
13 graph may only be used for programs, projects or activities
14 previously funded: *Provided further*, That the Corps of En-
15 gineers is directed to prioritize funding for activities based
16 on the ability to accelerate existing contracts or fully fund
17 project elements and contracts for such elements in a time
18 period of 2 years after the date of enactment of this Act
19 giving preference to projects and activities that are labor
20 intensive: *Provided further*, That funds provided in this
21 paragraph shall be used for elements of projects, programs
22 or activities that can be completed using funds provided
23 herein: *Provided further*, That funds appropriated in this
24 paragraph may be used by the Secretary of the Army, act-
25 ing through the Chief of Engineers, to undertake work au-

1 thORIZED to be carried out in accordance with one or more
2 of section 14 of the Flood Control Act of 1946 (33 U.S.C.
3 701r), section 205 of the Flood Control Act of 1948 (33
4 U.S.C. 701s), section 206 of the Water Resources Devel-
5 opment Act of 1996 (33 U.S.C. 2330), and section 1135
6 of the Water Resources Development Act of 1986 (33
7 U.S.C. 2309a), notwithstanding the program cost limita-
8 tions set forth in those sections: *Provided further*, That
9 the limitation concerning total project costs in section 902
10 of the Water Resources Development Act of 1986, as
11 amended (33 U.S.C. 2280), shall not apply during fiscal
12 year 2009 to any project that received funds provided in
13 this title: *Provided further*, That for projects that are
14 being completed with funds appropriated in this Act that
15 are otherwise expired or lapsed for obligation, expired or
16 lapsed funds appropriated in this Act may be used to pay
17 the cost of associated supervision, inspection, overhead,
18 engineering and design on those projects and on subse-
19 quent claims, if any: *Provided further*, That the Secretary
20 of the Army shall submit a quarterly report to the Com-
21 mittees on Appropriations of the House of Representatives
22 and the Senate detailing the allocation, obligation and ex-
23 penditures of these funds, beginning not later than 45
24 days after enactment of this Act.

1 MISSISSIPPI RIVER AND TRIBUTARIES

2 For an additional amount for “Mississippi River and
3 Tributaries”, \$250,000,000: *Provided*, That funds pro-
4 vided in this paragraph may only be used for programs,
5 projects, or activities previously funded: *Provided further*,
6 That the Corps of Engineers is directed to prioritize fund-
7 ing for activities based on the ability to accelerate existing
8 contracts or fully fund project elements and contracts for
9 such elements in a time period of 2 years after the date
10 of enactment of this Act giving preference to projects and
11 activities that are labor intensive: *Provided further*, That
12 funds provided in this paragraph shall be used for ele-
13 ments of projects, programs, or activities that can be com-
14 pleted using funds provided herein: *Provided further*, That
15 for projects that are being completed with funds appro-
16 priated in this Act that are otherwise expired or lapsed
17 for obligation, expired or lapsed funds appropriated in this
18 Act may be used to pay the cost of associated supervision,
19 inspection, overhead, engineering and design on those
20 projects and on subsequent claims, if any: *Provided fur-*
21 *ther*, That the Secretary of the Army shall submit a quar-
22 terly report to the Committees on Appropriations of the
23 House of Representatives and the Senate detailing the al-
24 location, obligation and expenditures of these funds, begin-
25 ning not later than 45 days after enactment of this Act.

1 OPERATION AND MAINTENANCE

2 For an additional amount for “Operation and Main-
3 tenance”, \$2,225,000,000: *Provided*, That the Corps of
4 Engineers is directed to prioritize funding for activities
5 based on the ability to accelerate existing contracts or fully
6 fund project elements and contracts for such elements in
7 a time period of 2 years after the date of enactment of
8 this Act giving preference to projects and activities that
9 are labor intensive: *Provided further*, That funds provided
10 in this paragraph shall be used for elements of projects,
11 programs, or activities that can be completed using funds
12 provided herein: *Provided further*, That for projects that
13 are being completed with funds appropriated in this Act
14 that are otherwise expired or lapsed for obligation, expired
15 or lapsed funds appropriated in this Act may be used to
16 pay the cost of associated supervision, inspection, over-
17 head, engineering and design on those projects and on
18 subsequent claims, if any: *Provided further*, That the Sec-
19 retary of the Army shall submit a quarterly report to the
20 Committees on Appropriations of the House of Represent-
21 atives and the Senate detailing the allocation, obligation
22 and expenditures of these funds, beginning not later than
23 45 days after enactment of this Act.

1 REGULATORY PROGRAM

2 For an additional amount for “Regulatory Program”,
3 \$25,000,000.

4 DEPARTMENT OF THE INTERIOR

5 BUREAU OF RECLAMATION

6 WATER AND RELATED RESOURCES

7 For an additional amount for “Water and Related
8 Resources”, \$500,000,000: *Provided*, That of the amount
9 appropriated under this heading, not less than
10 \$126,000,000 shall be used for water reclamation and
11 reuse projects authorized under title XVI of Public Law
12 102–575: *Provided further*, That of the amount appro-
13 priated under this heading, not less than \$80,000,000
14 shall be used for rural water projects and these funds shall
15 be expended primarily on water intake and treatment fa-
16 cilities of such projects: *Provided further*, That the costs
17 of reimbursable activities, other than for maintenance and
18 rehabilitation, carried out with funds made available under
19 this heading shall be repaid pursuant to existing authori-
20 ties and agreements: *Provided further*, That the costs of
21 maintenance and rehabilitation activities carried out with
22 funds provided in this Act shall be repaid pursuant to ex-
23 isting authority, except the length of repayment period
24 shall be determined on needs-based criteria to be estab-
25 lished and adopted by the Commissioner of the Bureau

1 of Reclamation, but in no case shall the repayment period
2 exceed 25 years.

3 DEPARTMENT OF ENERGY

4 ENERGY PROGRAMS

5 ENERGY EFFICIENCY AND RENEWABLE ENERGY

6 For an additional amount for “Energy Efficiency and
7 Renewable Energy”, \$18,500,000,000, which shall be used
8 as follows:

9 (1) \$2,000,000,000 shall be for expenses nec-
10 essary for energy efficiency and renewable energy re-
11 search, development, demonstration and deployment
12 activities, to accelerate the development of tech-
13 nologies, to include advanced batteries, of which not
14 less than \$800,000,000 is for biomass and
15 \$400,000,000 is for geothermal technologies.

16 (2) \$500,000,000 shall be for expenses nec-
17 essary to implement the programs authorized under
18 part E of title III of the Energy Policy and Con-
19 servation Act (42 U.S.C. 6341 et seq.).

20 (3) \$1,000,000,000 shall be for the cost of
21 grants to institutional entities for energy sustain-
22 ability and efficiency under section 399A of the En-
23 ergy Policy and Conservation Act (42 U.S.C.
24 6371h-1).

1 (4) \$6,200,000,000 shall be for the Weatheriza-
2 tion Assistance Program under part A of title IV of
3 the Energy Conservation and Production Act (42
4 U.S.C. 6861 et seq.).

5 (5) \$3,500,000,000 shall be for Energy Effi-
6 ciency and Conservation Block Grants, for imple-
7 mentation of programs authorized under subtitle E
8 of title V of the Energy Independence and Security
9 Act of 2007 (42 U.S.C. 17151 et seq.).

10 (6) \$3,400,000,000 shall be for the State En-
11 ergy Program authorized under part D of title III
12 of the Energy Policy and Conservation Act (42
13 U.S.C. 6321).

14 (7) \$200,000,000 shall be for expenses nec-
15 essary to implement the programs authorized under
16 section 131 of the Energy Independence and Secu-
17 rity Act of 2007 (42 U.S.C. 17011).

18 (8) \$300,000,000 shall be for expenses nec-
19 essary to implement the program authorized under
20 section 124 of the Energy Policy Act of 2005 (42
21 U.S.C. 15821) and the Energy Star program.

22 (9) \$400,000,000 shall be for expenses nec-
23 essary to implement the program authorized under
24 section 721 of the Energy Policy Act of 2005 (42
25 U.S.C. 16071).

1 (10) \$1,000,000,000 shall be for expenses nec-
2 essary for the manufacturing of advanced batteries
3 authorized under section 136(b)(1)(B) of the Energy
4 Independence and Security Act of 2007 (42 U.S.C.
5 17013(b)(1)(B)):

6 *Provided*, That notwithstanding section 3304 of title 5,
7 United States Code, and without regard to the provisions
8 of sections 3309 through 3318 of such title 5, the Sec-
9 retary of Energy may, upon a determination that there
10 is a severe shortage of candidates or a critical hiring need
11 for particular positions, recruit and directly appoint highly
12 qualified individuals into the competitive service: *Provided*
13 *further*, That such authority shall not apply to positions
14 in the Excepted Service or the Senior Executive Service:
15 *Provided further*, That any action authorized herein shall
16 be consistent with the merit principles of section 2301 of
17 such title 5, and the Department shall comply with the
18 public notice requirements of section 3327 of such title
19 5.

20 ELECTRICITY DELIVERY AND ENERGY RELIABILITY

21 For an additional amount for “Electricity Delivery
22 and Energy Reliability,” \$4,500,000,000: *Provided*, That
23 funds shall be available for expenses necessary for elec-
24 tricity delivery and energy reliability activities to mod-
25 ernize the electric grid, enhance security and reliability of

1 the energy infrastructure, energy storage research, devel-
2 opment, demonstration and deployment, and facilitate re-
3 covery from disruptions to the energy supply, and for im-
4 plementation of programs authorized under title XIII of
5 the Energy Independence and Security Act of 2007 (42
6 U.S.C. 17381 et seq.): *Provided further*, That of such
7 amounts, \$100,000,000 shall be for worker training: *Pro-*
8 *vided further*, That the Secretary of Energy may use or
9 transfer amounts provided under this heading to carry out
10 new authority for transmission improvements, if such au-
11 thority is enacted in any subsequent Act, consistent with
12 existing fiscal management practices and procedures.

13 ADVANCED BATTERY LOAN GUARANTEE PROGRAM

14 For the cost of guaranteed loans as authorized by
15 section 135 of the Energy Independence and Security Act
16 of 2007 (42 U.S.C. 17012), \$1,000,000,000, to remain
17 available until expended: *Provided*, That of such amount,
18 \$10,000,000 shall be used for administrative expenses in
19 carrying out the guaranteed loan program, and shall be
20 in lieu of the amount set aside under section 1106 of this
21 Act: *Provided further*, That the cost of such loans, includ-
22 ing the cost of modifying such loans, shall be as defined
23 in section 502 of the Congressional Budget Act of 1974.

1 INSTITUTIONAL LOAN GUARANTEE PROGRAM

2 For the cost of guaranteed loans as authorized by
3 section 399A of the Energy Policy and Conservation Act
4 (42 U.S.C. 6371h-1), \$500,000,000: *Provided*, That of
5 such amount, \$10,000,000 shall be used for administra-
6 tive expenses in carrying out the guaranteed loan pro-
7 gram, and shall be in lieu of the amount set aside under
8 section 1106 of this Act: *Provided further*, That the cost
9 of such loans, including the cost of modifying such loans,
10 shall be as defined in section 502 of the Congressional
11 Budget Act of 1974.

12 INNOVATIVE TECHNOLOGY LOAN GUARANTEE PROGRAM

13 For an additional amount for “Innovative Technology
14 Loan Guarantee Program” for the cost of guaranteed
15 loans authorized by section 1705 of the Energy Policy Act
16 of 2005, \$8,000,000,000: *Provided*, That of such amount,
17 \$25,000,000 shall be used for administrative expenses in
18 carrying out the guaranteed loan program, and shall be
19 in lieu of the amount set aside under section 1106 of this
20 Act: *Provided further*, That the cost of such loans, includ-
21 ing the cost of modifying such loans, shall be as defined
22 in section 502 of the Congressional Budget Act of 1974.

23 FOSSIL ENERGY

24 For an additional amount for “Fossil Energy”,
25 \$2,400,000,000 for necessary expenses to demonstrate

1 carbon capture and sequestration technologies as author-
2 ized under section 702 of the Energy Independence and
3 Security Act of 2007.

4 SCIENCE

5 For an additional amount for “Science”,
6 \$2,000,000,000: *Provided*, That of such amounts, not less
7 than \$400,000,000 shall be used for the Advanced Re-
8 search Projects Agency—Energy authorized under section
9 5012 of the America COMPETES Act (42 U.S.C. 16538):
10 *Provided further*, That of such amounts, not less than
11 \$100,000,000 shall be used for advanced scientific com-
12 puting.

13 ENVIRONMENTAL AND OTHER DEFENSE

14 ACTIVITIES

15 DEFENSE ENVIRONMENTAL CLEANUP

16 For an additional amount for “Defense Environ-
17 mental Cleanup,” \$500,000,000: *Provided*, That such
18 amounts shall be used for elements of projects, programs,
19 or activities that can be completed using funds provided
20 herein.

21 GENERAL PROVISIONS, THIS TITLE

22 **SEC. 5001. WESTERN AREA POWER ADMINISTRATION BOR-** 23 **ROWING AUTHORITY.**

24 The Hoover Power Plant Act of 1984 (Public Law
25 98–381) is amended by adding at the end the following:

1 **“TITLE III—BORROWING**
2 **AUTHORITY**

3 **“SEC. 301. WESTERN AREA POWER ADMINISTRATION BOR-**
4 **ROWING AUTHORITY.**

5 “(a) DEFINITIONS.—In this section—

6 “(1) ADMINISTRATOR.—The term ‘Adminis-

7 trator’ means the Administrator of the Western

8 Area Power Administration.

9 “(2) SECRETARY.—The term ‘Secretary’ means

10 the Secretary of the Treasury.

11 “(b) AUTHORITY.—

12 “(1) IN GENERAL.—Notwithstanding any other

13 provision of law, subject to paragraphs (2) through

14 (5)—

15 “(A) the Western Area Power Administra-

16 tion may borrow funds from the Treasury; and

17 “(B) the Secretary shall, without further

18 appropriation and without fiscal year limitation,

19 loan to the Western Area Power Administra-

20 tion, on such terms as may be fixed by the Ad-

21 ministrator and the Secretary, such sums (not

22 to exceed, in the aggregate (including deferred

23 interest), \$3,250,000,000 in outstanding repay-

24 able balances at any 1 time) as, in the judg-

1 ment of the Administrator, are from time to
2 time required for the purpose of—

3 “(i) constructing, financing, facili-
4 tating, or studying construction of new or
5 upgraded electric power transmission lines
6 and related facilities with at least 1 ter-
7 minus within the area served by the West-
8 ern Area Power Administration; and

9 “(ii) delivering or facilitating the de-
10 livery of power generated by renewable en-
11 ergy resources constructed or reasonably
12 expected to be constructed after the date
13 of enactment of this section.

14 “(2) INTEREST.—The rate of interest to be
15 charged in connection with any loan made pursuant
16 to this subsection shall be fixed by the Secretary,
17 taking into consideration market yields on out-
18 standing marketable obligations of the United States
19 of comparable maturities as of the date of the loan.

20 “(3) REFINANCING.—The Western Area Power
21 Administration may refinance loans taken pursuant
22 to this section within the Treasury.

23 “(4) PARTICIPATION.—The Administrator may
24 permit other entities to participate in projects fi-
25 nanced under this section.

1 “(5) CONGRESSIONAL REVIEW OF DISBURSE-
2 MENT.—Effective upon the date of enactment of this
3 section, the Administrator shall have the authority
4 to have utilized \$1,750,000,000 at any one time. If
5 the Administrator seeks to borrow funds above
6 \$1,750,000,000, the funds will be disbursed unless
7 there is enacted, within 90 calendar days of the first
8 such request, a joint resolution that rescinds the re-
9 mainder of the balance of the borrowing authority
10 provided in this section.

11 “(c) TRANSMISSION LINE AND RELATED FACILITY
12 PROJECTS.—

13 “(1) IN GENERAL.—For repayment purposes,
14 each transmission line and related facility project in
15 which the Western Area Power Administration partici-
16 pates pursuant to this section shall be treated as
17 separate and distinct from—

18 “(A) each other such project; and

19 “(B) all other Western Area Power Admin-
20 istration power and transmission facilities.

21 “(2) PROCEEDS.—The Western Area Power
22 Administration shall apply the proceeds from the use
23 of the transmission capacity from an individual
24 project under this section to the repayment of the
25 principal and interest of the loan from the Treasury

1 attributable to that project, after reserving such
2 funds as the Western Area Power Administration
3 determines are necessary—

4 “(A) to pay for any ancillary services that
5 are provided; and

6 “(B) to meet the costs of operating and
7 maintaining the new project from which the
8 revenues are derived.

9 “(3) SOURCE OF REVENUE.—Revenue from the
10 use of projects under this section shall be the only
11 source of revenue for—

12 “(A) repayment of the associated loan for
13 the project; and

14 “(B) payment of expenses for ancillary
15 services and operation and maintenance.

16 “(4) LIMITATION ON AUTHORITY.—Nothing in
17 this section confers on the Administrator any obliga-
18 tion to provide ancillary services to users of trans-
19 mission facilities developed under this section.

20 “(d) CERTIFICATION.—

21 “(1) IN GENERAL.—For each project in which
22 the Western Area Power Administration participates
23 pursuant to this section, the Administrator shall cer-
24 tify, prior to committing funds for any such project,
25 that—

1 “(A) the project is in the public interest;

2 “(B) the project will not adversely impact
3 system reliability or operations, or other statu-
4 tory obligations; and

5 “(C) it is reasonable to expect that the
6 proceeds from the project shall be adequate to
7 make repayment of the loan.

8 “(2) FORGIVENESS OF BALANCES.—

9 “(A) IN GENERAL.—If, at the end of the
10 useful life of a project, there is a remaining bal-
11 ance owed to the Treasury under this section,
12 the balance shall be forgiven.

13 “(B) UNCONSTRUCTED PROJECTS.—Funds
14 expended to study projects that are considered
15 pursuant to this section but that are not con-
16 structed shall be forgiven.

17 “(C) NOTIFICATION.—The Administrator
18 shall notify the Secretary of such amounts as
19 are to be forgiven under this paragraph.

20 “(e) PUBLIC PROCESSES.—

21 “(1) POLICIES AND PRACTICES.—Prior to re-
22 questing any loans under this section, the Adminis-
23 trator shall use a public process to develop practices
24 and policies that implement the authority granted by
25 this section.

1 “(2) REQUESTS FOR INTERESTS.—In the
2 course of selecting potential projects to be funded
3 under this section, the Administrator shall seek re-
4 quests for interest from entities interested in identi-
5 fying potential projects through one or more notices
6 published in the Federal Register.”.

7 **SEC. 5002. BONNEVILLE POWER ADMINISTRATION.**

8 For the purposes of providing funds to assist in fi-
9 nancing the construction, acquisition, and replacement of
10 the transmission system of the Bonneville Power Adminis-
11 tration and to implement the authority of the Adminis-
12 trator under the Pacific Northwest Electric Power Plan-
13 ning and Conservation Act (16 U.S.C. 839 et seq.), an
14 additional \$3,250,000,000 in borrowing authority is made
15 available under the Federal Columbia River Transmission
16 System Act (16 U.S.C. 838 et seq.), to remain outstanding
17 at any time.

18 **SEC. 5003. APPROPRIATIONS TRANSFER AUTHORITY.**

19 Not to exceed 20 percent of the amounts made avail-
20 able in this Act to the Department of Energy for “Energy
21 Efficiency and Renewable Energy”, “Electricity Delivery
22 and Energy Reliability”, and “Advanced Battery Loan
23 Guarantee Program” may be transferred within and be-
24 tween such accounts, except that no amount specified
25 under any such heading may be increased or decreased

1 by more than a total of 20 percent by such transfers, and
2 notification of such transfers shall be submitted promptly
3 to the Committees on Appropriations of the House of Rep-
4 resentatives and the Senate.

5 **TITLE VI—FINANCIAL SERVICES**
6 **AND GENERAL GOVERNMENT**

7 **Subtitle A—General Services**

8 GENERAL SERVICES ADMINISTRATION

9 FEDERAL BUILDINGS FUND

10 LIMITATIONS ON AVAILABILITY OF REVENUE

11 (INCLUDING TRANSFER OF FUNDS)

12 For an additional amount to be deposited in the Fed-
13 eral Buildings Fund, \$7,700,000,000 for real property ac-
14 tivities with priority given to activities that can commence
15 promptly following enactment of this Act; of which up to
16 \$1,000,000,000 shall be used for construction, repair, and
17 alteration of border facilities and land ports of entry; of
18 which not less than \$6,000,000,000 shall be used for con-
19 struction, repair, and alteration of Federal buildings for
20 projects that will create the greatest impact on energy effi-
21 ciency and conservation; of which \$108,000,000 shall re-
22 main available until September 30, 2012, and shall be
23 used for rental of space costs associated with the construc-
24 tion, repair, and alteration of these projects; *Provided*,
25 That of the amounts provided, \$160,000,000 shall remain

1 available until September 30, 2012, and shall be for build-
2 ing operations in support of the activities described in this
3 paragraph: *Provided further*, That the preceding proviso
4 shall apply to this appropriation in lieu of the provisions
5 of section 1106 of this Act: *Provided further*, That the Ad-
6 ministrator of General Services is authorized to initiate
7 design, construction, repair, alteration, leasing, and other
8 projects through existing authorities of the Administrator:
9 *Provided further*, That the Administrator shall submit a
10 detailed plan, by project, regarding the use of funds to
11 the Committees on Appropriations of the House of Rep-
12 resentatives and the Senate within 30 days after enact-
13 ment of this Act, and shall provide notification to the
14 Committees within 15 days prior to any changes regarding
15 the use of these funds: *Provided further*, That the Admin-
16 istrator shall report to the Committees on the obligation
17 of these funds on a quarterly basis beginning on June 30,
18 2009: *Provided further*, That of the amounts provided,
19 \$4,000,000 shall be transferred to and merged with “Gov-
20 ernment-Wide Policy”, for the Office of Federal High-Per-
21 formance Green Buildings as authorized in the Energy
22 Independence and Security Act of 2007 (Public Law 110-
23 140).

1 ENERGY EFFICIENT FEDERAL MOTOR VEHICLE FLEET
2 PROCUREMENT

3 For capital expenditures and necessary expenses of
4 the General Services Administration's Motor Vehicle Ac-
5 quisition and Motor Vehicle Leasing programs for the ac-
6 quisition of motor vehicles, including plug-in and alter-
7 native fuel vehicles, \$600,000,000: *Provided*, That the
8 amount set aside from this appropriation pursuant to sec-
9 tion 1106 of this Act shall be 1 percent instead of the
10 percentage specified in such section: *Provided further*,
11 That none of these funds may be obligated until the Ad-
12 ministrator of General Services submits to the Committees
13 on Appropriations of the House of Representatives and the
14 Senate, within 90 days after enactment of this Act, a plan
15 for expenditure of the funds that details the current inven-
16 tory of the Federal fleet owned by the General Services
17 Administration, as well as other Federal agencies, and the
18 strategy to expend these funds to replace a portion of the
19 Federal fleet with the goal of substantially increasing en-
20 ergy efficiency over the current status, including increas-
21 ing fuel efficiency and reducing emissions: *Provided fur-*
22 *ther*, That the Administrator shall report to the Commit-
23 tees on the obligation of these funds on a quarterly basis
24 beginning on June 30, 2009.

Subtitle B—Small Business

SMALL BUSINESS ADMINISTRATION

BUSINESS LOANS PROGRAM ACCOUNT

(INCLUDING TRANSFERS OF FUNDS)

For the cost of direct loans and loan guarantees authorized by sections 6202 through 6205 of this Act, \$426,000,000: *Provided*, That such cost, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974. In addition, for administrative expenses to carry out the direct loan and loan guarantee programs authorized by this Act, \$4,000,000, which may be transferred to and merged with the appropriations for Salaries and Expenses: *Provided*, That this sentence shall apply to this appropriation in lieu of the provisions of section 1106 of this Act.

GENERAL PROVISIONS, THIS SUBTITLE

SEC. 6201. ECONOMIC STIMULUS LENDING PROGRAM FOR SMALL BUSINESSES.

(a) PURPOSE.—The purpose of this section is to permit the Small Business Administration to guarantee up to 95 percent of qualifying small business loans made by eligible lenders.

(b) DEFINITIONS.—For purposes of this section:

(1) The term “Administrator” means the Administrator of the Small Business Administration.

1 (2) The term “qualifying small business loan”
2 means any loan to a small business concern that
3 would be eligible for a loan guarantee under section
4 7(a) of the Small Business Act (15 U.S.C. 636) or
5 title V of the Small Business Investment Act of
6 1958 (15 U.S.C. 695 and following).

7 (3) The term “small business concern” has the
8 same meaning as provided by section 3 of the Small
9 Business Act (15 U.S.C. 632).

10 (c) APPLICATION.—In order to participate in the loan
11 guarantee program under this section a lender shall sub-
12 mit an application to the Administrator for the guarantee
13 of up to 95 percent of the principal amount of a qualifying
14 small business loan. The Administrator shall approve or
15 deny each such application within 5 business days after
16 receipt thereof. The Administrator may not delegate to
17 lenders the authority to approve or disapprove such appli-
18 cations.

19 (d) FEES.—The Administrator may charge fees for
20 guarantees issued under this section. Such fees shall not
21 exceed the fees permitted for loan guarantees under sec-
22 tion 7(a) of the Small Business Act (15 U.S.C. 631 and
23 following).

24 (e) INTEREST RATES.—The Administrator may not
25 guarantee under this section any loan that bears interest

1 at a rate higher than 3 percent above the higher of either
2 of the following as quoted in the Wall Street Journal on
3 the first business day of the week in which such guarantee
4 is issued:

5 (1) The London interbank offered rate
6 (LIBOR) for a 3-month period.

7 (2) The Prime Rate.

8 (f) QUALIFIED BORROWERS.—

9 (1) ALIENS UNLAWFULLY PRESENT IN THE
10 UNITED STATES.—A loan guarantee may not be
11 made under this section for a loan made to a con-
12 cern if an individual who is an alien unlawfully
13 present in the United States—

14 (A) has an ownership interest in that con-
15 cern; or

16 (B) has an ownership interest in another
17 concern that itself has an ownership interest in
18 that concern.

19 (2) FIRMS IN VIOLATION OF IMMIGRATION
20 LAWS.—No loan guarantee may be made under this
21 section for a loan to any entity found, based on a
22 determination by the Secretary of Homeland Secu-
23 rity or the Attorney General to have engaged in a
24 pattern or practice of hiring, recruiting or referring

1 for a fee, for employment in the United States an
2 alien knowing the person is an unauthorized alien.

3 (g) CRIMINAL BACKGROUND CHECKS.—Prior to the
4 approval of any loan guarantee under this section, the Ad-
5 ministrator may verify the applicant’s criminal back-
6 ground, or lack thereof, through the best available means,
7 including, if possible, use of the National Crime Informa-
8 tion Center computer system at the Federal Bureau of In-
9 vestigation.

10 (h) APPLICATION OF OTHER LAW.—Nothing in this
11 section shall be construed to exempt any activity of the
12 Administrator under this section from the Federal Credit
13 Reform Act of 1990 (title V of the Congressional Budget
14 and Impoundment Control Act of 1974; 2 U.S.C. 661 and
15 following).

16 (i) SUNSET.—Loan guarantees may not be issued
17 under this section after the date 90 days after the date
18 of establishment (as determined by the Administrator) of
19 the economic recovery program under section 6204.

20 (j) SMALL BUSINESS ACT PROVISIONS.—The provi-
21 sions of the Small Business Act applicable to loan guaran-
22 tees under section 7 of that Act shall apply to loan guaran-
23 tees under this section except as otherwise provided in this
24 section.

1 (k) AUTHORIZATION.—There are authorized to be ap-
2 propriated such sums as may be necessary to carry out
3 this section.

4 **SEC. 6202. ESTABLISHMENT OF SBA SECONDARY MARKET**
5 **LENDING AUTHORITY.**

6 (a) PURPOSE.—The purpose of this section is to pro-
7 vide the Small Business Administration with the authority
8 to establish a Secondary Market Lending Authority within
9 the SBA to make loans to the systemically important SBA
10 secondary market broker-dealers who operate the SBA
11 secondary market.

12 (b) DEFINITIONS.—For purposes of this section:

13 (1) The term “Administrator” means the Ad-
14 ministrator of the SBA.

15 (2) The term “SBA” means the Small Business
16 Administration.

17 (3) The terms “Secondary Market Lending Au-
18 thority” and “Authority” mean the office established
19 under subsection (c).

20 (4) The term “SBA secondary market” means
21 the market for the purchase and sale of loans origi-
22 nated, underwritten, and closed under the Small
23 Business Act.

24 (5) The term “Systemically Important Sec-
25 ondary Market Broker-Dealers” mean those entities

1 designated under subsection (c)(1) as vital to the
2 continued operation of the SBA secondary market
3 by reason of their purchase and sale of the govern-
4 ment guaranteed portion of loans, or pools of loans,
5 originated, underwritten, and closed under the Small
6 Business Act.

7 (c) RESPONSIBILITIES, AUTHORITIES, ORGANIZA-
8 TION, AND LIMITATIONS.—

9 (1) DESIGNATION OF SYSTEMICALLY IMPOR-
10 TANT SBA SECONDARY MARKET BROKER-DEAL-
11 ERS.—The Administrator shall establish a process to
12 designate, in consultation with the Board of Gov-
13 ernors of the Federal Reserve and the Secretary of
14 the Treasury, Systemically Important Secondary
15 Market Broker-Dealers.

16 (2) ESTABLISHMENT OF SBA SECONDARY MAR-
17 KET LENDING AUTHORITY.—

18 (A) ORGANIZATION.—

19 (i) The Administrator shall establish
20 within the SBA an office to provide loans
21 to Systemically Important Secondary Mar-
22 ket Broker-dealers to be used for the pur-
23 pose of financing the inventory of the gov-
24 ernment guaranteed portion of loans, origi-

1 nated, underwritten, and closed under the
2 Small Business Act or pools of such loans.

3 (ii) The Administrator shall appoint a
4 Director of the Authority who shall report
5 to the Administrator.

6 (iii) The Administrator is authorized
7 to hire such personnel as are necessary to
8 operate the Authority.

9 (iv) The Administrator may contract
10 such Authority operations as he determines
11 necessary to qualified third-party compa-
12 nies or individuals.

13 (v) The Administrator is authorized to
14 contract with private sector fiduciary and
15 custodial agents as necessary to operate
16 the Authority.

17 (B) LOANS.—

18 (i) The Administrator shall establish
19 by rule a process under which Systemically
20 Important SBA Secondary Market Broker-
21 Dealers designated under paragraph (1)
22 may apply to the Administrator for loans
23 under this section.

24 (ii) The rule under clause (i) shall
25 provide a process for the Administrator to

1 consider and make decisions regarding
2 whether or not to extend a loan applied for
3 under this section. Such rule shall include
4 provisions to assure each of the following:

5 (I) That loans made under this
6 section are for the sole purpose of fi-
7 nancing the inventory of the govern-
8 ment guaranteed portion of loans,
9 originated, underwritten, and closed
10 under the Small Business Act or pools
11 of such loans.

12 (II) That loans made under this
13 section are fully collateralized to the
14 satisfaction of the Administrator.

15 (III) That there is no limit to the
16 frequency in which a borrower may
17 borrow under this section unless the
18 Administrator determines that doing
19 so would create an undue risk of loss
20 to the agency or the United States.

21 (IV) That there is no limit on the
22 size of a loan, subject to the discretion
23 of the Administrator.

24 (iii) Interest on loans under this sec-
25 tion shall not exceed the Federal Funds

1 target rate as established by the Federal
2 Reserve Board of Governors plus 25 basis
3 points.

4 (iv) The rule under this section shall
5 provide for such loan documents, legal cov-
6 enants, collateral requirements and other
7 required documentation as necessary to
8 protect the interests of the agency, the
9 United States, and the taxpayer.

10 (v) The Administrator shall establish
11 custodial accounts to safeguard any collat-
12 eral pledged to the SBA in connection with
13 a loan under this section.

14 (vi) The Administrator shall establish
15 a process to disburse and receive funds to
16 and from borrowers under this section.

17 (C) LIMITATIONS ON USE OF LOAN PRO-
18 CEEDS BY SYSTEMICALLY IMPORTANT SEC-
19 ONDARY MARKET BROKER-DEALERS.—The Ad-
20 ministrator shall ensure that borrowers under
21 this section are using funds provided under this
22 section only for the purpose specified in sub-
23 paragraph (B)(ii)(I). If the Administrator finds
24 that such funds were used for any other pur-
25 pose, the Administrator shall—

1 (i) require immediate repayment of
2 outstanding loans;

3 (ii) prohibit the borrower, its affili-
4 ates, or any future corporate manifestation
5 of the borrower from using the Authority;
6 and

7 (iii) take any other actions the Ad-
8 ministrator, in consultation with the Attor-
9 ney General of the United States, deems
10 appropriate.

11 (d) REPORT TO CONGRESS.—The Administrator shall
12 submit a report to Congress not later than the third busi-
13 ness day of each month containing a statement of each
14 of the following:

15 (1) The aggregate loan amounts extended dur-
16 ing the preceding month under this section.

17 (2) The aggregate loan amounts repaid under
18 this section during the proceeding month.

19 (3) The aggregate loan amount outstanding
20 under this section.

21 (4) The aggregate value of assets held as collat-
22 eral under this section.

23 (5) The amount of any defaults or delinquencies
24 on loans made under this section.

1 (6) The identity of any borrower found by the
2 Administrator to misuse funds made available under
3 this section.

4 (7) Any other information the Administrator
5 deems necessary to fully inform Congress of undue
6 risk of financial loss to the United States in connec-
7 tion with loans made under this section.

8 (e) DURATION.—The authority of this section shall
9 remain in effect for a period of 2 years after the date of
10 enactment of this section.

11 (f) FUNDING.—Such sums as necessary are author-
12 ized to be appropriated to carry out the provisions of this
13 section.

14 (g) BUDGET TREATMENT.—Nothing in this section
15 shall be construed to exempt any activity of the Adminis-
16 trator under this section from the Federal Credit Reform
17 Act of 1990 (title V of the Congressional Budget and Im-
18 poundment Control Act of 1974; 2 U.S.C. 661 and fol-
19 lowing).

20 (h) EMERGENCY RULEMAKING AUTHORITY.—The
21 Administrator shall promulgate regulations under this sec-
22 tion within 15 days after the date of enactment of enact-
23 ment of this section. In promulgating these regulations,
24 the Administrator the notice requirements of section
25 553(b) of title 5 of the United States Code shall not apply.

1 **SEC. 6203. ESTABLISHMENT OF SBA SECONDARY MARKET**
2 **GUARANTEE AUTHORITY.**

3 (a) PURPOSE.—The purpose of this section is to pro-
4 vide the Administrator with the authority to establish the
5 SBA Secondary Market Guarantee Authority within the
6 SBA to provide a Federal guarantee for pools of first lien
7 504 loans that are to be sold to third-party investors.

8 (b) DEFINITIONS.—For purposes of this section:

9 (1) The term “Administrator” means the Ad-
10 ministrator of the Small Business Administration.

11 (2) The term “first lien position 504 loan”
12 means the first mortgage position, non-federally
13 guaranteed loans made by private sector lenders
14 made under title V of the Small Business Invest-
15 ment Act.

16 (c) ESTABLISHMENT OF AUTHORITY.—

17 (1) ORGANIZATION.—

18 (A) The Administrator shall establish a
19 Secondary Market Guarantee Authority within
20 the Small Business Administration.

21 (B) The Administrator shall appoint a Di-
22 rector of the Authority who shall report to the
23 Administrator.

24 (C) The Administrator is authorized to
25 hire such personnel as are necessary to operate
26 the Authority and may contract such operations

1 of the Authority as necessary to qualified third-
2 party companies or individuals.

3 (D) The Administrator is authorized to
4 contract with private sector fiduciary and custo-
5 dial agents as necessary to operate the Author-
6 ity.

7 (2) GUARANTEE PROCESS.—

8 (A) The Administrator shall establish, by
9 rule, a process in which private sector entities
10 may apply to the Administration for a Federal
11 guarantee on pools of first lien position 504
12 loans that are to be sold to third-party inves-
13 tors.

14 (B) The Administrator shall appoint a Di-
15 rector of the Authority who shall report to the
16 Administrator.

17 (C) The Administrator is authorized to
18 hire such personnel as are necessary to operate
19 the Authority and may contract such operations
20 of the Authority as necessary to qualified third-
21 party companies or individuals.

22 (D) The Administrator is authorized to
23 contract with private sector fiduciary and custo-
24 dial agents as necessary to operate the Author-
25 ity.

1 (3) RESPONSIBILITIES.—

2 (A) The Administrator shall establish, by
3 rule, a process in which private sector entities
4 may apply to the SBA for a Federal guarantee
5 on pools of first lien position 504 loans that are
6 to be sold to third-party investors.

7 (B) The rule under this section shall pro-
8 vide for a process for the Administrator to con-
9 sider and make decisions regarding whether to
10 extend a Federal guarantee referred to in
11 clause (i). Such rule shall also provide that:

12 (i) The seller of the pools purchasing
13 a guarantee under this section retains not
14 less than 5 percent of the dollar amount of
15 the pools to be sold to third-party inves-
16 tors.

17 (ii) The seller of such pools shall ab-
18 sorb any and all losses resulting from a
19 shortage or excess of monthly cash flows.

20 (iii) The Administrator shall receive a
21 monthly fee of not more than 50 basis
22 points on the outstanding balance of the
23 dollar amount of the pools that are guar-
24 anteed.

1 (iv) The Administrator may guarantee
2 not more than \$3,000,000,000 of pools
3 under this authority.

4 (C) The Administrator shall establish doc-
5 uments, legal covenants, and other required
6 documentation to protect the interests of the
7 United States.

8 (D) The Administrator shall establish a
9 process to receive and disburse funds to entities
10 under the authority established in this section.

11 (d) LIMITATIONS.—

12 (1) The Administrator shall ensure that entities
13 purchasing a guarantee under this section are using
14 such guarantee for the purpose of selling 504 first
15 lien position pools to third-party investors.

16 (2) If the Administrator finds that any such
17 guarantee was used for a purpose other than that
18 specified in paragraph (1), the Administrator shall—

19 (A) terminate such guarantee immediately,

20 (B) prohibit the purchaser of the guar-
21 antee or its affiliates (within the meaning of the
22 regulations under 13 CFR 121.103) from using
23 the authority of this section in the future; and

1 (C) take any other actions the Adminis-
2 trator, in consultation with the Attorney Gen-
3 eral of the United States deems appropriate.

4 (e) OVERSIGHT.—The Administrator shall submit a
5 report to Congress not later than the third business day
6 of each month setting forth each of the following:

7 (1) The aggregate amount of guarantees ex-
8 tended under this section during the proceeding
9 month.

10 (2) The aggregate amount of guarantees out-
11 standing.

12 (3) Defaults and payments on defaults made
13 under this section.

14 (4) The identity of each purchaser of a guar-
15 antee found by the Administrator to have misused
16 guarantees under this section.

17 (5) Any other information the Administrator
18 deems necessary to fully inform Congress of undue
19 risk to the United States associated with the
20 issuance of guarantees under this section.

21 (f) DURATION OF PROGRAM.—The authority of this
22 section shall terminate on the date 2 years after the date
23 of enactment of this section.

1 (g) FUNDING.—Such sums as necessary are author-
2 ized to be appropriated to carry out the provisions of this
3 section.

4 (h) BUDGET TREATMENT.—Nothing in this section
5 shall be construed to exempt any activity of the Adminis-
6 trator under this section from the Federal Credit Reform
7 Act of 1990 (title V of the Congressional Budget and Im-
8 poundment Control Act of 1974; 2 U.S.C. 661 and fol-
9 lowing).

10 (i) EMERGENCY RULEMAKING AUTHORITY.—The
11 Administrator shall issue regulations under this section
12 within 15 days after the date of enactment of this section.
13 The notice requirements of section 553(b) of Title 5,
14 United States Code shall not apply to the promulgation
15 of such regulations.

16 **SEC. 6204. ECONOMIC RECOVERY PROGRAM.**

17 (a) PURPOSE.—The purpose of this section is to es-
18 tablish a new lending and refinancing authority within the
19 Small Business Administration.

20 (b) DEFINITIONS.—For purposes of this section:

21 (1) The term “Administrator” means the Ad-
22 ministrator of the Small Business Administration.

23 (2) The term “small business concern” has the
24 same meaning as provided by section 3 of the Small
25 Business Act (15 U.S.C. 632).

1 (c) REFINANCING AUTHORITY.—

2 (1) IN GENERAL.—Upon application from a
3 lender (and with consent of the borrower), the Ad-
4 ministrator may refinance existing non-Small Busi-
5 ness Administration or Small Business Administra-
6 tion loans (including loans under sections 7(a) and
7 504 of the Small Business Act) made to small busi-
8 ness concerns.

9 (2) ELIGIBLE LOANS.—In order to be eligible
10 for refinancing under this section—

11 (A) the amount of the loan refinanced may
12 not exceed \$10,000,000 and a first lien must be
13 conveyed to the Administrator;

14 (B) the lender shall offer to accept from
15 the Administrator as full repayment of the loan
16 an amount equal to less than 100 percent but
17 more than 85 percent of the remaining balance
18 of the principal of the loan; and

19 (C) the loan to be refinanced was made be-
20 fore the date of enactment of this Act and for
21 a purpose that would have been eligible for a
22 loan under any Small Business Administration
23 lending program.

24 (3) TERMS.—The term of the refinancing by
25 the Administrator under this section shall not be

1 less than remaining term on the loan that is refi-
2 nanced but shall not exceed a term of 20 years. The
3 rate of interest on the loan refinanced under this
4 section shall be fixed by the Administrator at a level
5 that the Administrator determines will result in
6 manageable monthly payments for the borrower.

7 (4) LIMIT.—The Administrator may not refi-
8 nance amounts under this section that are greater
9 than the amount the lender agrees to accept from
10 the Administrator as full repayment of the loan as
11 provided in paragraph (2)(B).

12 (d) UNDERWRITING AND OTHER LOAN SERVICES.—

13 (1) IN GENERAL.—The Administrator is au-
14 thorized to engage in underwriting, loan closing,
15 funding, and servicing of loans made to small busi-
16 ness concerns and to guarantee loans made by other
17 entities to small business concerns.

18 (2) APPLICATION PROCESS.—The Adminis-
19 trator shall by rule establish a process in which
20 small business concerns may submit applications to
21 the Administrator for the purposes of securing a
22 loan under this subsection. The Administrator shall,
23 at a minimum, collect all information necessary to
24 determine the creditworthiness and repayment abil-
25 ity of the borrower.

1 (3) PARTICIPATION OF LENDERS.—

2 (A) The Administrator shall by rule estab-
3 lish a process in which the Administrator makes
4 available loan applications and all accom-
5 panying information to lenders for the purpose
6 of such lenders originating, underwriting, clos-
7 ing, and servicing such loans.

8 (B) Lenders are eligible to receive loan ap-
9 plications and accompanying information under
10 this paragraph if they participate in the pro-
11 grams established in section 7(a) of the Small
12 Business Act (15 U.S.C. 636) or title V of the
13 Small Business Investment Act (15 U.S.C.
14 695).

15 (C) The Administrator shall first make
16 available such loan applications and accom-
17 panying information to lenders within 100 miles
18 of a loan applicant's principal office.

19 (D) If a lender described in subparagraph
20 (C) does not agree to originate, underwrite,
21 close, and service such loans within 5 business
22 days of receiving the loan applications, the Ad-
23 ministrator shall subsequently make available
24 such loan applications and accompanying infor-
25 mation to lenders in the Preferred Lenders Pro-

1 gram under section 7(a)(2)(C)(ii) of the Small
2 Business Act (15 U.S.C. 636).

3 (E) If a lender described in subparagraph
4 (C) or (D) does not agree to originate, under-
5 write, close, and service such loans within 10
6 business days of receiving the loan applications,
7 the Administrator may originate, underwrite,
8 close, and service such loans as described in
9 paragraph (1) of this subsection.

10 (4) ASSET SALES.—The Administrator shall
11 offer to sell loans made or refinanced by the Admin-
12 istrator under this section. Such sales shall be made
13 through semi-annual public solicitation (in the Fed-
14 eral Register and in other media) of offers to pur-
15 chase. The Administrator may contract with vendors
16 for due diligence, asset valuation, and other services
17 related to such sales. The Administrator may not
18 sell any loan under this section for less than 90 per-
19 cent of the net present value of the loan, as deter-
20 mined and certified by a qualified third-party.

21 (5) LOANS NOT SOLD.—The Administrator
22 shall maintain and service loans made by the Admin-
23 istrator under this section that are not sold through
24 the asset sales under this section.

1 (e) DURATION.— The authority of this section shall
2 terminate on the date two years after the date on which
3 the program under this section becomes operational (as
4 determined by the Administrator).

5 (f) APPLICATION OF OTHER LAW.—Nothing in this
6 section shall be construed to exempt any activity of the
7 Administrator under this section from the Federal Credit
8 Reform Act of 1990 (title V of the Congressional Budget
9 and Impoundment Control Act of 1974; 2 U.S.C. 661 and
10 following).

11 (g) QUALIFIED LOANS.—

12 (1) ALIENS UNLAWFULLY PRESENT IN THE
13 UNITED STATES.—A loan to any concern shall not
14 be subject to this section if an individual who is an
15 alien unlawfully present in the United States—

16 (A) has an ownership interest in that con-
17 cern; or

18 (B) has an ownership interest in another
19 concern that itself has an ownership interest in
20 that concern.

21 (2) FIRMS IN VIOLATION OF IMMIGRATION
22 LAWS.—No loan shall be subject to this section if
23 the borrower is an entity found, based on a deter-
24 mination by the Secretary of Homeland Security or
25 the Attorney General to have engaged in a pattern

1 or practice of hiring, recruiting or referring for a
2 fee, for employment in the United States an alien
3 knowing the person is an unauthorized alien.

4 (h) REPORTS.—The Administrator shall submit a re-
5 port to Congress semi-annually setting forth the aggregate
6 amount of loans and geographic dispersion of such loans
7 made, underwritten, closed, funded, serviced, sold, guaran-
8 teed, or held by the Administrator under the authority of
9 this section. Such report shall also set forth information
10 concerning loan defaults, prepayments, and recoveries re-
11 lated to loans ,made under the authority of this section.

12 (i) AUTHORIZATION.—There are authorized to be ap-
13 propriated such sums as may be necessary to carry out
14 this section.

15 **SEC. 6205. STIMULUS FOR COMMUNITY DEVELOPMENT**
16 **LENDING.**

17 (a) REFINANCING UNDER THE LOCAL DEVELOP-
18 MENT BUSINESS LOAN PROGRAM.—Section 502 of the
19 Small Business Investment Act of 1958 (15 U.S.C. 696)
20 is amended by adding at the end the following:

21 “(7) PERMISSIBLE DEBT REFINANCING.—

22 “(A) IN GENERAL.—Any financing ap-
23 proved under this title may include a limited
24 amount of debt refinancing.

1 “(B) EXPANSIONS.—If the project involves
2 expansion of a small business concern which
3 has existing indebtedness collateralized by fixed
4 assets, any amount of existing indebtedness
5 that does not exceed $\frac{1}{2}$ of the project cost of
6 the expansion may be refinanced and added to
7 the expansion cost, if—

8 “(i) the proceeds of the indebtedness
9 were used to acquire land, including a
10 building situated thereon, to construct a
11 building thereon, or to purchase equip-
12 ment;

13 “(ii) the borrower has been current on
14 all payments due on the existing debt for
15 not less than 1 year preceding the date of
16 refinancing; and

17 “(iii) the financing under section 504
18 will provide better terms or rate of interest
19 than exists on the debt at the time of refi-
20 nancing.”.

21 (b) JOB CREATION GOALS.—Section 501(e)(1) and
22 section 501(e)(2) of the Small Business Investment Act
23 (15 U.S.C. 695) are each amended by striking “\$50,000”
24 and inserting “\$65,000”.

1 **SEC. 6206. INCREASING SMALL BUSINESS INVESTMENT.**

2 (a) SIMPLIFIED MAXIMUM LEVERAGE LIMITS.—Sec-
3 tion 303(b) of the Small Business Investment Act of 1958
4 (15 U.S.C. 683(b)) is amended—

5 (1) by striking so much of paragraph (2) as
6 precedes subparagraphs (C) and (D) and inserting
7 the following:

8 “(2) MAXIMUM LEVERAGE.—

9 “(A) IN GENERAL.—The maximum
10 amount of outstanding leverage made available
11 to any one company licensed under section
12 301(c) of this Act may not exceed the lesser
13 of—

14 “(i) 300 percent of such company’s
15 private capital; or

16 “(ii) \$150,000,000.

17 “(B) MULTIPLE LICENSES UNDER COM-
18 MON CONTROL.—The maximum amount of out-
19 standing leverage made available to two or more
20 companies licensed under section 301(c) of this
21 Act that are commonly controlled (as deter-
22 mined by the Administrator) and not under
23 capital impairment may not exceed
24 \$225,000,000.”; and

25 (2) by striking paragraph (4).

1 (b) SIMPLIFIED AGGREGATE INVESTMENT LIMITA-
2 TIONS.—Section 306(a) of the Small Business Investment
3 Act of 1958 (15 U.S.C. 686(a)) is amended to read as
4 follows:

5 “(a) PERCENTAGE LIMITATION ON PRIVATE CAP-
6 ITAL.—If any small business investment company has ob-
7 tained financing from the Administrator and such financ-
8 ing remains outstanding, the aggregate amount of securi-
9 ties acquired and for which commitments may be issued
10 by such company under the provisions of this title for any
11 single enterprise shall not, without the approval of the Ad-
12 ministrator, exceed 10 percent of the sum of—

13 “(1) the private capital of such company; and

14 “(2) the total amount of leverage projected by
15 the company in the company’s business plan that
16 was approved by the Administrator at the time of
17 the grant of the company’s license.”.

18 **SEC. 6207. GAO REPORT.**

19 (a) REPORT.—Not later than 30 days after the enact-
20 ment of this Act, the Comptroller General of the United
21 States shall report to the Congress on the actions of the
22 Administrator in implementing the authority established
23 in sections 6201 through 6206 of this Act.

24 (b) INCLUDED ITEM.—The report under this section
25 shall include a summary of the activity of the Adminis-

1 trator under this section and an analysis of whether he
2 is accomplishing the purpose of increasing liquidity in the
3 secondary market for Small Business Administration
4 loans.

5 **TITLE VII—HOMELAND**
6 **SECURITY**

7 DEPARTMENT OF HOMELAND SECURITY

8 U.S. CUSTOMS AND BORDER PROTECTION

9 SALARIES AND EXPENSES

10 For an additional amount for “Salaries and Ex-
11 penses”, \$100,000,000, for non-intrusive detection tech-
12 nology to be deployed at sea ports of entry.

13 CONSTRUCTION

14 For an additional amount for “Construction”,
15 \$150,000,000, to repair and construct inspection facilities
16 at land border ports of entry.

17 TRANSPORTATION SECURITY ADMINISTRATION

18 AVIATION SECURITY

19 For an additional amount for “Aviation Security”,
20 \$500,000,000, for the purchase and installation of explo-
21 sive detection systems and emerging checkpoint tech-
22 nologies: *Provided*, That the Assistant Secretary of Home-
23 land Security (Transportation Security Administration)
24 shall prioritize the award of these funds to accelerate the

1 installations at locations with completed design plans and
2 to expeditiously award new letters of intent.

3 COAST GUARD

4 ALTERATION OF BRIDGES

5 For an additional amount for “Alteration of
6 Bridges”, \$150,000,000, for alteration or removal of ob-
7 structive bridges, as authorized by section 6 of the Tru-
8 man-Hobbs Act (33 U.S.C. 516): *Provided*, That the
9 Coast Guard shall award these funds to those bridges that
10 are ready to proceed to construction.

11 FEDERAL EMERGENCY MANAGEMENT AGENCY

12 EMERGENCY FOOD AND SHELTER

13 For an additional amount for “Emergency Food and
14 Shelter”, \$200,000,000, to carry out the emergency food
15 and shelter program pursuant to title III of the McKin-
16 ney-Vento Homeless Assistance Act (42 U.S.C. 11331 et
17 seq.): *Provided*, That for the purposes of this appropria-
18 tion, the redistribution required by section 1104(b) shall
19 be carried out by the Federal Emergency Management
20 Agency and the National Board, who may reallocate and
21 obligate any funds that are unclaimed or returned to the
22 program: *Provided further*, That the amount set aside
23 from this appropriation pursuant to section 1106 of this
24 Act shall be 3.5 percent instead of the percentage specified
25 in such section.

1 GENERAL PROVISIONS, THIS TITLE

2 **SEC. 7001. EXTENSION OF PROGRAMS.**

3 Section 401(b) of the Illegal Immigration Reform and
4 Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a
5 note) is amended by striking “11-year period” and insert-
6 ing “16-year period”.

7 **SEC. 7002. PROTECTION OF SOCIAL SECURITY ADMINIS-**
8 **TRATION PROGRAMS.**

9 (a) **FUNDING UNDER AGREEMENT.**—Effective for
10 fiscal years beginning on or after October 1, 2008, the
11 Commissioner of Social Security and the Secretary of
12 Homeland Security shall enter into and maintain an
13 agreement which shall—

14 (1) provide funds to the Commissioner for the
15 full costs of the responsibilities of the Commissioner
16 under section 404 of the Illegal Immigration Reform
17 and Immigrant Responsibility Act of 1996 (8 U.S.C.
18 1324a note), including (but not limited to)—

19 (A) acquiring, installing, and maintaining
20 technological equipment and systems necessary
21 for the fulfillment of the responsibilities of the
22 Commissioner under such section 404, but only
23 that portion of such costs that are attributable
24 exclusively to such responsibilities; and

1 (B) responding to individuals who contest
2 a tentative nonconfirmation provided by the
3 basic pilot confirmation system established
4 under such section;

5 (2) provide such funds quarterly in advance of
6 the applicable quarter based on estimating method-
7 ology agreed to by the Commissioner and the Sec-
8 retary (except in such instances where the delayed
9 enactment of an annual appropriation may preclude
10 such quarterly payments); and

11 (3) require an annual accounting and reconcili-
12 ation of the actual costs incurred and the funds pro-
13 vided under the agreement, which shall be reviewed
14 by the Office of Inspector General of the Social Se-
15 curity Administration and the Department of Home-
16 land Security.

17 (b) CONTINUATION OF EMPLOYMENT VERIFICATION
18 IN ABSENCE OF TIMELY AGREEMENT.—In any case in
19 which the agreement required under subsection (a) for any
20 fiscal year beginning on or after October 1, 2008, has not
21 been reached as of October 1 of such fiscal year, the latest
22 agreement between the Commissioner and the Secretary
23 of Homeland Security providing for funding to cover the
24 costs of the responsibilities of the Commissioner under
25 section 404 of the Illegal Immigration Reform and Immi-

1 grant Responsibility Act of 1996 (8 U.S.C. 1324a note)
2 shall be deemed in effect on an interim basis for such fis-
3 cal year until such time as an agreement required under
4 subsection (a) is subsequently reached, except that the
5 terms of such interim agreement shall be modified by the
6 Director of the Office of Management and Budget to ad-
7 just for inflation and any increase or decrease in the vol-
8 ume of requests under the basic pilot confirmation system.
9 In any case in which an interim agreement applies for any
10 fiscal year under this subsection, the Commissioner and
11 the Secretary shall, not later than October 1 of such fiscal
12 year, notify the Committee on Ways and Means, the Com-
13 mittee on the Judiciary, and the Committee on Appropria-
14 tions of the House of Representatives and the Committee
15 on Finance, the Committee on the Judiciary, and the
16 Committee on Appropriations of the Senate of the failure
17 to reach the agreement required under subsection (a) for
18 such fiscal year. Until such time as the agreement re-
19 quired under subsection (a) has been reached for such fis-
20 cal year, the Commissioner and the Secretary shall, not
21 later than the end of each 90-day period after October
22 1 of such fiscal year, notify such Committees of the status
23 of negotiations between the Commissioner and the Sec-
24 retary in order to reach such an agreement.

1 **SEC. 7003. GAO STUDY OF BASIC PILOT CONFIRMATION**
2 **SYSTEM.**

3 (a) **IN GENERAL.**—As soon as practicable after the
4 date of the enactment of this Act, the Comptroller General
5 of the United States shall conduct a study regarding erro-
6 neous tentative nonconfirmations under the basic pilot
7 confirmation system established under section 404(a) of
8 the Illegal Immigration Reform and Immigrant Responsi-
9 bility Act of 1996 (8 U.S.C. 1324a note).

10 (b) **MATTERS TO BE STUDIED.**—In the study re-
11 quired under subsection (a), the Comptroller General shall
12 determine and analyze—

13 (1) the causes of erroneous tentative noncon-
14 firmations under the basic pilot confirmation system;

15 (2) the processes by which such erroneous ten-
16 tative nonconfirmations are remedied; and

17 (3) the effect of such erroneous tentative non-
18 confirmations on individuals, employers, and Federal
19 agencies.

20 (c) **REPORT.**—Not later than 2 years after the date
21 of the enactment of this Act, the Comptroller General shall
22 submit the results of the study required under subsection
23 (a) to the Committee on Ways and Means and the Com-
24 mittee on the Judiciary of the House of Representatives
25 and the Committee on Finance and the Committee on the
26 Judiciary of the Senate.

1 **SEC. 7004. GAO STUDY OF EFFECTS OF BASIC PILOT PRO-**
2 **GRAM ON SMALL ENTITIES.**

3 (a) IN GENERAL.—Not later than 2 years after the
4 date of the enactment of this Act, the Comptroller General
5 of the United States shall submit to the Committees on
6 the Judiciary of the United States House of Representa-
7 tives and the Senate a report containing the Comptroller
8 General’s analysis of the effects of the basic pilot program
9 described in section 403(a) of the Illegal Immigration Re-
10 form and Immigrant Responsibility Act of 1996 (8 U.S.C.
11 1324a note) on small entities (as defined in section 601
12 of title 5, United States Code). The report shall detail—

13 (1) the costs of compliance with such program
14 on small entities;

15 (2) a description and an estimate of the number
16 of small entities enrolled and participating in such
17 program or an explanation of why no such estimate
18 is available;

19 (3) the projected reporting, recordkeeping and
20 other compliance requirements of such program on
21 small entities;

22 (4) factors that impact small entities’ enroll-
23 ment and participation in such program, including
24 access to appropriate technology, geography, entity
25 size, and class of entity; and

1 (5) the steps, if any, the Secretary of Homeland
2 Security has taken to minimize the economic impact
3 of participating in such program on small entities.

4 (b) DIRECT AND INDIRECT EFFECTS.—The report
5 shall cover, and treat separately, direct effects (such as
6 wages, time, and fees spent on compliance) and indirect
7 effects (such as the effect on cash flow, sales, and competi-
8 tiveness).

9 (c) SPECIFIC CONTENTS.—The report shall provide
10 specific and separate details with respect to—

11 (1) small businesses (as defined in section 601
12 of title 5, United States Code) with fewer than 50
13 employees; and

14 (2) small entities operating in States that have
15 mandated use of the basic pilot program.

16 **SEC. 7005. WAIVER OF MATCHING REQUIREMENT UNDER**
17 **SAFER PROGRAM.**

18 Subparagraph (E) of section 34(a)(1) of the Federal
19 Fire Prevention and Control Act of 1974 (15 U.S.C.
20 2229a(a)(1)(E)) shall not apply with respect to funds ap-
21 propriated in this or any other Act making appropriations
22 for fiscal year 2009 or 2010 for grants under such section
23 34.

1 **SEC. 7006. PROCUREMENT FOR DEPARTMENT OF HOME-**
2 **LAND SECURITY.**

3 (a) REQUIREMENT.—Except as provided in sub-
4 sections (c) through (e), funds appropriated or otherwise
5 available to the Department of Homeland Security may
6 not be used for the procurement of an item described in
7 subsection (b) if the item is not grown, reprocessed, re-
8 used, or produced in the United States.

9 (b) COVERED ITEMS.—An item referred to in sub-
10 section (a) is any of the following, if the item is directly
11 related to the national security interests of the United
12 States:

13 (1) An article or item of—

14 (A) clothing and the materials and compo-
15 nents thereof, other than sensors, electronics, or
16 other items added to, and not normally associ-
17 ated with, clothing (and the materials and com-
18 ponents thereof);

19 (B) tents, tarpaulins, or covers;

20 (C) cotton and other natural fiber prod-
21 ucts, woven silk or woven silk blends, spun silk
22 yarn for cartridge cloth, synthetic fabric or
23 coated synthetic fabric (including all textile fi-
24 bers and yarns that are for use in such fabrics),
25 canvas products, or wool (whether in the form

1 of fiber or yarn or contained in fabrics, mate-
2 rials, or manufactured articles); or

3 (D) any item of individual equipment man-
4 ufactured from or containing such fibers, yarns,
5 fabrics, or materials.

6 (c) AVAILABILITY EXCEPTION.—Subsection (a) does
7 not apply to the extent that the Secretary of Homeland
8 Security determines that satisfactory quality and suffi-
9 cient quantity of any such article or item described in sub-
10 section (b)(1) grown, reprocessed, reused, or produced in
11 the United States cannot be procured as and when needed.

12 (d) EXCEPTION FOR CERTAIN PROCUREMENTS OUT-
13 SIDE THE UNITED STATES.—Subsection (a) does not
14 apply to the following:

15 (1) Procurements by vessels in foreign waters.

16 (2) Emergency procurements.

17 (e) EXCEPTION FOR SMALL PURCHASES.—Sub-
18 section (a) does not apply to purchases for amounts not
19 greater than the simplified acquisition threshold referred
20 to in section 2304(g) of title 10, United States Code.

21 (f) APPLICABILITY TO CONTRACTS AND SUB-
22 CONTRACTS FOR PROCUREMENT OF COMMERCIAL
23 ITEMS.—This section is applicable to contracts and sub-
24 contracts for the procurement of commercial items not-

1 withstanding section 34 of the Office of Federal Procure-
2 ment Policy Act (41 U.S.C. 430).

3 (g) GEOGRAPHIC COVERAGE.—In this section, the
4 term “United States” includes the possessions of the
5 United States.

6 (h) NOTIFICATION REQUIRED WITHIN 7 DAYS
7 AFTER CONTRACT AWARD IF CERTAIN EXCEPTIONS AP-
8 PLIED.—In the case of any contract for the procurement
9 of an item described in subsection (b)(1), if the Secretary
10 of Homeland Security applies an exception set forth in
11 subsection (c) with respect to that contract, the Secretary
12 shall, not later than 7 days after the award of the con-
13 tract, post a notification that the exception has been ap-
14 plied on the Internet site maintained by the General Serv-
15 ices Administration know as FedBizOps.gov (or any suc-
16 cessor site).

17 (i) TRAINING DURING FISCAL YEAR 2008.—

18 (1) IN GENERAL.—The Secretary of Homeland
19 Security shall ensure that each member of the acqui-
20 sition workforce in the Department of Homeland Se-
21 curity who participates personally and substantially
22 in the acquisition of textiles on a regular basis re-
23 ceives training during fiscal year 2009 on the re-
24 quirements of this section and the regulations imple-
25 menting this section.

1 (2) INCLUSION OF INFORMATION IN NEW
2 TRAINING PROGRAMS.—The Secretary shall ensure
3 that any training program for the acquisition work
4 force developed or implemented after the date of the
5 enactment of this Act includes comprehensive infor-
6 mation on the requirements described in paragraph
7 (1).

8 (j) CONSISTENCY WITH INTERNATIONAL AGREE-
9 MENTS.—

10 (1) IN GENERAL.—No provision of this section
11 shall apply to the extent the Secretary of Homeland
12 Security, in consultation with the United States
13 Trade Representative, determines that it is in incon-
14 sistent with United States obligations under an
15 international agreement.

16 (2) REPORT.—The Secretary of Homeland Se-
17 curity shall submit a report each year to Congress
18 containing, with respect to the year covered by the
19 report—

20 (A) a list of each provision of this section
21 that did not apply during that year pursuant to
22 a determination by the Secretary under para-
23 graph (1); and

24 (B) a list of each contract awarded by the
25 Department of Homeland Security during that

1 year without regard to a provision in this sec-
2 tion because that provision was made inappli-
3 cable pursuant to such a determination.

4 (k) EFFECTIVE DATE.—This section applies with re-
5 spect to contracts entered into by the Department of
6 Homeland Security after the date of the enactment of this
7 Act.

8 **TITLE VIII—INTERIOR AND** 9 **ENVIRONMENT**

10 DEPARTMENT OF THE INTERIOR

11 BUREAU OF LAND MANAGEMENT

12 CONSTRUCTION

13 (INCLUDING TRANSFERS OF FUNDS)

14 For an additional amount for “Construction”,
15 \$325,000,000, for priority road, bridge, and trail repair
16 or decommissioning, critical deferred maintenance
17 projects, facilities construction and renovation, hazardous
18 fuels reduction, and remediation of abandoned mine or
19 well sites: *Provided*, That funds may be transferred to
20 other appropriate accounts of the Bureau of Land man-
21 agement: *Provided further*, That the amount set aside
22 from this appropriation pursuant to section 1106 of this
23 Act shall be not more than 5 percent instead of the per-
24 centage specified in such section.

1 UNITED STATES FISH AND WILDLIFE SERVICE

2 CONSTRUCTION

3 (INCLUDING TRANSFER OF FUNDS)

4 For an additional amount for “Construction”,
5 \$300,000,000, for priority road and bridge repair and re-
6 placement, and critical deferred maintenance and improve-
7 ment projects on National Wildlife Refuges, National Fish
8 Hatcheries, and other Service properties: *Provided*, That
9 funds may be transferred to “Resource Management”:
10 *Provided further*, That the amount set aside from this ap-
11 propriation pursuant to section 1106 of this Act shall be
12 not more than 5 percent instead of the percentage speci-
13 fied in such section.

14 NATIONAL PARK SERVICE

15 CONSTRUCTION

16 (INCLUDING TRANSFER OF FUNDS)

17 For an additional amount for “Construction”,
18 \$1,700,000,000, for projects to address critical deferred
19 maintenance needs within the National Park System, in-
20 cluding roads, bridges and trails, and for other critical in-
21 frastructure projects: *Provided*, That funds may be trans-
22 ferred to “Operation of the National Park System”: *Pro-*
23 *vided further*, That \$200,000,000 of these funds shall be
24 for projects related to the preservation and repair of his-
25 torical and cultural resources within the National Park

1 System: *Provided further*, That \$15,000,000 of these
2 funds shall be transferred to the “Historic Preservation
3 Fund” for historic preservation projects at historically
4 black colleges and universities as authorized by the His-
5 toric Preservation Fund Act of 1996 and the Omnibus
6 Parks and Public Lands Act of 1996, except that any
7 matching requirements otherwise required for such
8 projects are waived: *Provided further*, That the amount set
9 aside from this appropriation pursuant to section 1106 of
10 this Act shall be not more than 5 percent instead of the
11 percentage specified in such section.

12 CENTENNIAL CHALLENGE

13 To carry out provisions of section 814(g) of Public
14 Law 104–333 relating to challenge cost share agreements,
15 \$100,000,000, for National Park Service Centennial Chal-
16 lenge signature projects and programs: *Provided*, That not
17 less than 50 percent of the total cost of each project or
18 program is derived from non-Federal sources in the form
19 of donated cash, assets, in-kind services, or a pledge of
20 donation guaranteed by an irrevocable letter of credit: *Pro-*
21 *vided further*, That the amount set aside from this appro-
22 priation pursuant to section 1106 of this Act shall be not
23 more than 5 percent instead of the percentage specified
24 in such section.

1 UNITED STATES GEOLOGICAL SURVEY
2 SURVEYS, INVESTIGATIONS, AND RESEARCH

3 For an additional amount for “Surveys, Investiga-
4 tions, and Research”, \$200,000,000, for repair and res-
5 toration of facilities; equipment replacement and upgrades
6 including stream gages, and seismic and volcano moni-
7 toring systems; national map activities; and other critical
8 deferred maintenance and improvement projects: *Pro-*
9 *vided*, That the amount set aside from this appropriation
10 pursuant to section 1106 of this Act shall be not more
11 than 5 percent instead of the percentage specified in such
12 section.

13 BUREAU OF INDIAN AFFAIRS
14 CONSTRUCTION
15 (INCLUDING TRANSFER OF FUNDS)

16 For an additional amount for “Construction”,
17 \$500,000,000, for priority repair and replacement of
18 schools, detention centers, roads, bridges, employee hous-
19 ing, and critical deferred maintenance projects: *Provided*,
20 That not less than \$250,000,000 shall be used for new
21 and replacement schools and detention centers: *Provided*
22 *further*, That funds may be transferred to “Operation of
23 Indian Programs”: *Provided further*, That the amount set
24 aside from this appropriation pursuant to section 1106 of

1 this Act shall be not more than 5 percent instead of the
2 percentage specified in such section.

3 ENVIRONMENTAL PROTECTION AGENCY

4 HAZARDOUS SUBSTANCE SUPERFUND

5 For an additional amount for “Hazardous Substance
6 Superfund”, \$800,000,000, which shall be used for the
7 Superfund Remedial program: *Provided*, That amounts
8 available by law from this appropriation for management
9 and administration shall take the place of the set-aside
10 under section 1106 of this Act.

11 LEAKING UNDERGROUND STORAGE TANK TRUST FUND

12 PROGRAM

13 For an additional amount for “Leaking Underground
14 Storage Tank Trust Fund Program”, to carry out leaking
15 underground storage tank cleanup activities authorized by
16 subtitle I of the Solid Waste Disposal Act, \$200,000,000,
17 which shall be used to carry out leaking underground stor-
18 age tank cleanup activities authorized by section 9003(h)
19 of the Solid Waste Disposal Act, except that such funds
20 shall not be subject to the State matching requirements
21 in section 9003(h)(7)(B): *Provided*, That amounts avail-
22 able by law from this appropriation for management and
23 administration shall take the place of the set-aside under
24 section 1106 of this Act.

1 STATE AND TRIBAL ASSISTANCE GRANTS

2 For an additional amount for “State and Tribal As-
3 sistance Grants”, \$8,400,000,000, which shall be used as
4 follows:

5 (1) \$6,000,000,000 shall be for capitalization
6 grants for the Clean Water State Revolving Funds
7 under title VI of the Federal Water Pollution Con-
8 trol Act (33 U.S.C. 1381 et seq.), except that such
9 funds shall not be subject to the State matching re-
10 quirements in paragraphs (2) and (3) of section
11 602(b) of such Act or to the Federal cost share limi-
12 tations in section 202 of such Act: *Provided*, That
13 the amount set aside from this appropriation pursu-
14 ant to section 1106 of this Act shall be not more
15 than 2 percent instead of the percentage specified in
16 such section: *Provided further*, That, notwith-
17 standing the limitation on amounts specified in sec-
18 tion 518(c) of the Federal Water Pollution Control
19 Act, up to a total of 1.5 percent of such funds may
20 be reserved by the Administrator of the Environ-
21 mental Protection Agency for grants under section
22 518(c) of such Act: *Provided further*, That the re-
23 quirements of section 513 of such Act shall apply to
24 the construction of treatment works carried out in
25 whole or in part with assistance made available

1 under this heading by a Clean Water State Revolv-
2 ing Fund under title VI of such Act, or with assist-
3 ance made available under section 205(m) of such
4 Act, or both: *Provided further*, That, notwith-
5 standing the requirements of section 603(d) of such
6 Act, each State shall use 50 percent of the amount
7 of the capitalization grant received by the State
8 under title VI of such Act to provide assistance, in
9 the form of additional subsidization, including for-
10 giveness of principal, negative interest loans, and
11 grants, to municipalities (as defined in section 502
12 of such Act) for projects that are included on the
13 State's priority list established under section 603(g)
14 of such Act, of which 80 percent shall be for projects
15 to benefit municipalities that meet affordability cri-
16 teria as determined by the Governor of the State
17 and 20 percent shall be for projects to address
18 water-efficiency goals, address energy-efficiency
19 goals, mitigate stormwater runoff, or encourage en-
20 vironmentally sensitive project planning, design, and
21 construction, to the extent that there are sufficient
22 project applications eligible for such assistance.

23 (2) \$2,000,000,000 shall be for capitalization
24 grants for the Drinking Water State Revolving
25 Funds under section 1452 of the Safe Drinking

1 Water Act (42 U.S.C. 300j–12), except that such
2 funds shall not be subject to the State matching re-
3 quirements of section 1452(e) of such Act: *Provided*,
4 That the amount set aside from this appropriation
5 pursuant to section 1106 of this Act shall be not
6 more than 2 percent instead of the percentage speci-
7 fied in such section: *Provided further*, That section
8 1452(k) of the Safe Drinking Water Act shall not
9 apply to such funds: *Provided further*, That the re-
10 quirements of section 1450(e) of such Act (42
11 U.S.C. 300j–9(e)) shall apply to the construction
12 carried out in whole or part with assistance made
13 available under this heading by a Drinking Water
14 State Revolving fund under section 1452 of such
15 Act: *Provided further*, That, notwithstanding the re-
16 quirements of section 1452(a)(2) of such Act, each
17 State shall use 50 percent of the amount of the cap-
18 italization grant received by the State under section
19 1452 of such Act to provide assistance, in the form
20 of additional subsidization, including forgiveness of
21 principal, negative interest loans, and grants, to mu-
22 nicipalities (as defined in section 1401 of such Act)
23 for projects that are included on the State’s priority
24 list established under section 1452(b)(3) of such
25 Act.

1 (3) \$300,000,000 shall be for grants under title
2 VII, Subtitle G of the Energy Policy Act of 2005:
3 *Provided*, That the amount set aside from this ap-
4 propriation pursuant to section 1106 of this Act
5 shall be not more than 3 percent instead of the per-
6 centage specified in such section.

7 (4) \$100,000,000 shall be to carry out section
8 104(k) of the Comprehensive Environmental Re-
9 sponse, Compensation, and Liability Act of 1980:
10 *Provided*, That the amount set aside from this ap-
11 propriation pursuant to section 1106 of this Act
12 shall be not more than 3 percent instead of the per-
13 centage specified in such section.

14 DEPARTMENT OF AGRICULTURE

15 FOREST SERVICE

16 CAPITAL IMPROVEMENT AND MAINTENANCE

17 (INCLUDING TRANSFER OF FUNDS)

18 For an additional amount for “Capital Improvement
19 and Maintenance”, \$650,000,000, for reconstruction, cap-
20 ital improvement, decommissioning, and maintenance of
21 forest roads, bridges and trails; alternative energy tech-
22 nologies, energy efficiency enhancements and deferred
23 maintenance at Federal facilities; and for remediation of
24 abandoned mine sites, removal of fish passage barriers,
25 and other critical habitat, forest improvement and water-

1 shed enhancement projects on Federal lands and waters:
2 *Provided*, That funds may be transferred to “National
3 Forest System”: *Provided further*, That the amount set
4 aside from this appropriation pursuant to section 1106 of
5 this Act shall be not more than 5 percent instead of the
6 percentage specified in such section.

7 WILDLAND FIRE MANAGEMENT

8 (INCLUDING TRANSFERS OF FUNDS)

9 For an additional amount for “Wildland Fire Man-
10 agement”, \$850,000,000, of which \$300,000,000 is for
11 hazardous fuels reduction, forest health, wood to energy
12 grants and rehabilitation and restoration activities on
13 Federal lands, and of which \$550,000,000 is for State fire
14 assistance hazardous fuels projects, volunteer fire assist-
15 ance, cooperative forest health projects, city forest en-
16 hancements, and wood to energy grants on State and pri-
17 vate lands: *Provided*, That amounts in this paragraph may
18 be transferred to “State and Private Forestry” and “Na-
19 tional Forest System”: *Provided further*, That the amount
20 set aside from this appropriation pursuant to section 1106
21 of this Act shall be not more than 5 percent instead of
22 the percentage specified in such section.

1 DEPARTMENT OF HEALTH AND HUMAN
2 SERVICES

3 INDIAN HEALTH SERVICE

4 INDIAN HEALTH FACILITIES

5 For an additional amount for “Indian Health Facili-
6 ties”, \$550,000,000, for priority health care facilities con-
7 struction projects and deferred maintenance, and the pur-
8 chase of equipment and related services, including but not
9 limited to health information technology: *Provided*, That
10 notwithstanding any other provision of law, the amounts
11 available under this paragraph shall be allocated at the
12 discretion of the Director of the Indian Health Service:
13 *Provided further*, That the amount set aside from this ap-
14 propriation pursuant to section 1106 of this Act shall be
15 not more than 5 percent instead of the percentage speci-
16 fied in such section.

17 OTHER RELATED AGENCIES

18 SMITHSONIAN INSTITUTION

19 FACILITIES CAPITAL

20 (INCLUDING TRANSFER OF FUNDS)

21 For an additional amount for “Facilities Capital”,
22 \$150,000,000, for deferred maintenance projects, and for
23 repair, revitalization, and alteration of facilities owned or
24 occupied by the Smithsonian Institution, by contract or
25 otherwise, as authorized by section 2 of the Act of August

1 22, 1949 (63 Stat. 623): *Provided*, That funds may be
2 transferred to “Salaries and Expenses”: *Provided further*,
3 That the amount set aside from this appropriation pursu-
4 ant to section 1106 of this Act shall be not more than
5 5 percent instead of the percentage specified in such sec-
6 tion.

7 NATIONAL FOUNDATION ON THE ARTS AND THE

8 HUMANITIES

9 NATIONAL ENDOWMENT FOR THE ARTS

10 GRANTS AND ADMINISTRATION

11 For an additional amount for “Grants and Adminis-
12 tration”, \$50,000,000, to be distributed in direct grants
13 to fund arts projects and activities which preserve jobs in
14 the non-profit arts sector threatened by declines in philan-
15 thropic and other support during the current economic
16 downturn: *Provided*, That 40 percent of such funds shall
17 be distributed to State arts agencies and regional arts or-
18 ganizations in a manner similar to the agency’s current
19 practice and 60 percent of such funds shall be for competi-
20 tively selected arts projects and activities according to sec-
21 tions 2 and 5(c) of the National Foundation on the Arts
22 and Humanities Act of 1965 (20 U.S.C. 951, 954(c)):
23 *Provided further*, That matching requirements under sec-
24 tion 5(e) of such Act shall be waived: *Provided further*,
25 That the amount set aside from this appropriation pursu-

1 ant to section 1106 of this Act shall be not more than
2 5 percent instead of the percentage specified in such sec-
3 tion.

4 **TITLE IX—LABOR, HEALTH AND**
5 **HUMAN SERVICES, AND EDU-**
6 **CATION**

7 **Subtitle A—Labor**

8 DEPARTMENT OF LABOR

9 EMPLOYMENT AND TRAINING ADMINISTRATION

10 TRAINING AND EMPLOYMENT SERVICES

11 For an additional amount for “Training and Employ-
12 ment Services” for activities under the Workforce Invest-
13 ment Act of 1998 (“WIA”), \$4,000,000,000, which shall
14 be available for obligation on the date of enactment of this
15 Act, as follows:

16 (1) \$500,000,000 for grants to the States for
17 adult employment and training activities.

18 (2) \$1,200,000,000 for grants to the States for
19 youth activities, including summer jobs for youth:
20 *Provided*, That the work readiness performance indi-
21 cator described in section 136(b)(2)(A)(ii)(I) of the
22 WIA shall be the only measure of performance used
23 to assess the effectiveness of summer jobs for youth
24 provided with such funds: *Provided further*, That
25 with respect to the youth activities provided with

1 such funds, section 101(13)(A) of the WIA shall be
2 applied by substituting “age 24” for “age 21”: *Pro-*
3 *vided further*, That no portion of the additional
4 funds provided herein shall be reserved to carry out
5 section 127(b)(1)(A) of the WIA: *Provided further*,
6 That for purposes of section 127(b)(1)(C)(iv) of the
7 WIA, such funds shall be allotted as if the total
8 amount of funding available for youth activities in
9 the fiscal year does not exceed \$1,000,000,000.

10 (3) \$1,000,000,000 for grants to the States for
11 dislocated worker employment and training activi-
12 ties.

13 (4) \$500,000,000 for the dislocated workers as-
14 sistance national reserve to remain available for
15 Federal obligation through June 30, 2010: *Provided*,
16 That such funds shall be made available for grants
17 only to eligible entities that serve areas of high un-
18 employment or high poverty and only for the pur-
19 poses described in subsection 173(a)(1) of the WIA:
20 *Provided further*, That the Secretary of Labor shall
21 ensure that applicants for such funds demonstrate
22 how income support, child care, and other supportive
23 services necessary for an individual’s participation in
24 job training will be provided.

1 (5) \$50,000,000 for YouthBuild activities,
2 which shall remain available for Federal obligation
3 through June 30, 2010.

4 (6) \$750,000,000 for a program of competitive
5 grants for worker training and placement in high
6 growth and emerging industry sectors (including
7 projects funded under section 6002 of division B of
8 this Act): *Provided*, That \$500,000,000 shall be for
9 research, labor exchange and job training projects
10 that prepare workers for careers in the energy effi-
11 ciency and renewable energy industries specified in
12 section 171(e)(1)(B)(ii) of the WIA (as amended by
13 the Green Jobs Act of 2007): *Provided further*, That
14 in awarding grants from those funds not designated
15 in the preceding proviso, the Secretary of Labor
16 shall give priority to projects that prepare workers
17 for careers in the health care sector: *Provided fur-*
18 *ther*, That the provisions of section 1103 of this Act
19 shall not apply to this appropriation:

20 *Provided*, That the additional funds provided to States
21 under this heading are not subject to section 191(a) of
22 the WIA: *Provided further*, That notwithstanding section
23 1106 of this Act, there shall be no amount set aside from
24 the appropriations made in subsections (1) through (3)
25 under this heading and the amount set aside for sub-

1 sections (4) through (6) shall be up to 1 percent instead
2 of the percentage specified in such section.

3 COMMUNITY SERVICE EMPLOYMENT FOR OLDER
4 AMERICANS

5 For an additional amount for “Community Service
6 Employment for Older Americans” to carry out title V of
7 the Older Americans Act of 1965, \$120,000,000, which
8 shall be available for obligation on the date of enactment
9 of this Act: *Provided*, That funds shall be allotted within
10 30 days of such enactment to current grantees in propor-
11 tion to their allotment in program year 2008.

12 STATE UNEMPLOYMENT INSURANCE AND EMPLOYMENT
13 SERVICE OPERATIONS

14 For an additional amount for “State Unemployment
15 Insurance and Employment Service Operations” for
16 grants to the States in accordance with section 6 of the
17 Wagner-Peyser Act, \$500,000,000, which may be ex-
18 pended from the Employment Security Administration Ac-
19 count in the Unemployment Trust Fund, and which shall
20 be available for obligation on the date of enactment of this
21 Act: *Provided*, That such funds shall remain available to
22 the States through September 30, 2010: *Provided further*,
23 That, with respect to such funds, section 6(b)(1) of such
24 Act shall be applied by substituting “one-third” for “two-
25 thirds” in subparagraph (A), with the remaining one-third

1 of the sums to be allotted in accordance with section
2 132(b)(2)(B)(ii)(III) of the Workforce Investment Act of
3 1998: *Provided further*, That not less than \$250,000,000
4 of the amount provided under this heading shall be used
5 by States for reemployment services for unemployment in-
6 surance claimants (including the integrated Employment
7 Service and Unemployment Insurance information tech-
8 nology required to identify and serve the needs of such
9 claimants): *Provided further*, That the Secretary of Labor
10 shall establish planning and reporting procedures nec-
11 essary to provide oversight of funds used for reemploy-
12 ment services.

13 DEPARTMENTAL MANAGEMENT

14 SALARIES AND EXPENSES

15 (INCLUDING TRANSFER OF FUNDS)

16 For an additional amount for “Departmental Man-
17 agement”, \$80,000,000, for the enforcement of worker
18 protection laws and regulations, oversight, and coordina-
19 tion activities related to the infrastructure and unemploy-
20 ment insurance investments in this Act: *Provided*, That
21 the Secretary of Labor may transfer such sums as nec-
22 essary to “Employment and Standards Administration”,
23 “Occupational Safety and Health Administration”, and
24 “Employment and Training Administration—Program
25 Administration” for enforcement, oversight, and coordina-

1 tion activities: *Provided further*, That the provisions of sec-
2 tion 1106 of this Act shall not apply to this appropriation.

3 OFFICE OF JOB CORPS

4 For an additional amount for “Office of Job Corps”,
5 \$300,000,000, for construction, rehabilitation and acquisi-
6 tion of Job Corps Centers, which shall be available upon
7 the date of enactment of this Act and remain available
8 for obligation through June 30, 2010: *Provided*, That sec-
9 tion 1552(a) of title 31, United States Code shall not
10 apply to up to 30 percent of such funds, if such funds
11 are used for a multi-year lease agreement that will result
12 in construction activities that can commence within 120
13 days of enactment of this Act: *Provided further*, That not-
14 withstanding section 3324(a) of title 31, United States
15 Code, the funds referred to in the preceding proviso may
16 be used for advance, progress, and other payments: *Pro-*
17 *vided further*, That the Secretary of Labor may transfer
18 up to 15 percent of such funds to meet the operational
19 needs of such centers, which may include the provision of
20 additional training for careers in the energy efficiency and
21 renewable energy industries: *Provided further*, That pri-
22 ority should be given to activities that can commence
23 promptly following enactment and to those projects that
24 will create the greatest impact on the energy efficiency of
25 Job Corps facilities: *Provided further*, That the Secretary

1 shall provide to the Committees on Appropriations of the
 2 House of Representatives and the Senate a report on the
 3 actual obligations, expenditures, and unobligated balances
 4 for each activity funded under this heading not later than
 5 September 30, 2009 and quarterly thereafter as long as
 6 funding provided under this heading is available for obli-
 7 gation or expenditure.

8 GENERAL PROVISIONS, THIS SUBTITLE

9 **SEC. 9101. ELIGIBLE EMPLOYEES IN THE RECREATIONAL**
 10 **MARINE INDUSTRY.**

11 Section 2(3)(F) of the Longshore and Harbor Work-
 12 ers' Compensation Act (33 U.S.C. 902(3)(F)) is amend-
 13 ed—

14 (1) by striking “, repair, or dismantle”; and

15 (2) by striking the semicolon and inserting “, or
 16 individuals employed to repair any recreational ves-
 17 sel, or to dismantle any part of a recreational vessel
 18 in connection with the repair of such vessel;”.

19 **Subtitle B—Health and Human**
 20 **Services**

21 DEPARTMENT OF HEALTH AND HUMAN
 22 SERVICES

23 HEALTH RESOURCES AND SERVICES

24 For an additional amount for “Health Resources and
 25 Services”, \$2,188,000,000 which shall be used as follows:

1 (1) \$500,000,000, of which \$250,000,000 shall
2 not be available until October 1, 2009, shall be for
3 grants to health centers authorized under section
4 330 of the Public Health Service Act (“PHS Act”).

5 (2) \$1,000,000,000 shall be available for ren-
6 ovation and repair of health centers authorized
7 under section 330 of the PHS Act and for the acqui-
8 sition by such centers of health information tech-
9 nology systems: *Provided*, That the timeframe for
10 the award of grants pursuant to section 1103(b) of
11 this Act shall not be later than 180 days after the
12 date of enactment of this Act instead of the time-
13 frame specified in such section.

14 (3) \$88,000,000 shall be for fit-out and other
15 costs related to moving into a facility to be secured
16 through a competitive lease procurement to replace
17 or renovate a headquarters building for Public
18 Health Service agencies and other components of the
19 Department of Health and Human Services.

20 (4) \$600,000,000, of which \$300,000,000 shall
21 not be available until October 1, 2009, shall be for
22 the training of nurses and primary care physicians
23 and dentists as authorized under titles VII and VIII
24 of the PHS Act, for the provision of health care per-
25 sonnel under the National Health Service Corps pro-

1 gram authorized under title III of the PHS Act, and
2 for the patient navigator program authorized under
3 title III of the PHS Act.

4 CENTERS FOR DISEASE CONTROL AND PREVENTION
5 DISEASE CONTROL, RESEARCH, AND TRAINING

6 For an additional amount for “Disease Control, Re-
7 search, and Training” for equipment, construction, and
8 renovation of facilities, including necessary repairs and
9 improvements to leased laboratories, \$462,000,000: *Pro-*
10 *vided*, That notwithstanding any other provision of law,
11 the Centers for Disease Control and Prevention may
12 award a single contract or related contracts for develop-
13 ment and construction of facilities that collectively include
14 the full scope of the project: *Provided further*, That the
15 solicitation and contract shall contain the clause “avail-
16 ability of funds” found at 48 CFR 52.232–18: *Provided*
17 *further*, That in accordance with applicable authorities,
18 policies, and procedures, the Centers for Disease Control
19 and Prevention shall acquire real property, and make any
20 necessary improvements thereon, to relocate and consoli-
21 date property and facilities of the National Institute for
22 Occupational Safety and Health.

1 NATIONAL INSTITUTES OF HEALTH

2 NATIONAL CENTER FOR RESEARCH RESOURCES

3 For an additional amount for “National Center for
4 Research Resources”, \$1,500,000,000 for grants or con-
5 tracts under section 481A of the Public Health Service
6 Act to renovate or repair existing non-Federal research fa-
7 cilities: *Provided*, That sections 481A(e)(1)(B)(ii), para-
8 graphs (1), (3), and (4) of section 481A(e), and section
9 481B of such Act shall not apply to the use of such funds:
10 *Provided further*, That the references to “20 years” in sub-
11 sections (e)(1)(B)(i) and (f) of section 481A of such Act
12 are deemed to be references to “10 years” for purposes
13 of using such funds: *Provided further*, That the National
14 Center for Research Resources may also use such funds
15 to provide, under the authority of section 301 and title
16 IV of such Act, shared instrumentation and other capital
17 research equipment to recipients of grants and contracts
18 under section 481A of such Act and other appropriate en-
19 tities: *Provided further*, That the Director of the Center
20 shall provide to the Committees on Appropriations of the
21 House of Representatives and the Senate an annual report
22 indicating the number of institutions receiving awards of
23 a grant or contract under section 481A of such Act, the
24 proposed use of the funding, the average award size, a
25 list of grant or contract recipients, and the amount of each

1 award: *Provided further*, That the Center, in obligating
2 such funds, shall require that each entity that applies for
3 a grant or contract under section 481A for any project
4 shall include in its application an assurance described in
5 section 1621(b)(1)(I) of the Public Health Service Act:
6 *Provided further*, That the Center shall give priority in the
7 award of grants and contracts under section 481A of such
8 Act to those applications that are expected to generate de-
9 monstrable energy-saving or beneficial environmental ef-
10 fects: *Provided further*, That the provisions of section 1103
11 of this Act shall not apply to the peer-reviewed grants
12 awarded under this heading.

13 OFFICE OF THE DIRECTOR

14 (INCLUDING TRANSFER OF FUNDS)

15 For an additional amount for “Office of the Direc-
16 tor”, \$1,500,000,000, of which \$750,000,000 shall not be
17 available until October 1, 2009: *Provided*, That such funds
18 shall be transferred to the Institutes and Centers of the
19 National Institutes of Health and to the Common Fund
20 established under section 402A(c)(1) of the Public Health
21 Service Act in proportion to the appropriations otherwise
22 made to such Institutes, Centers, and Common Fund for
23 fiscal year 2009: *Provided further*, That these funds shall
24 be used to support additional scientific research and shall
25 be merged with and be available for the same purposes

1 as the appropriation or fund to which transferred: *Pro-*
 2 *vided further*, That this transfer authority is in addition
 3 to any other transfer authority available to the National
 4 Institutes of Health: *Provided further*, That none of these
 5 funds may be transferred to “National Institutes of
 6 Health—Buildings and Facilities”, the Center for Sci-
 7 entific Review, the Center for Information Technology, the
 8 Clinical Center, the Global Fund for HIV/AIDS, Tuber-
 9 culosis and Malaria, or the Office of the Director (except
 10 for the transfer to the Common Fund): *Provided further*,
 11 That the provisions of section 1103 of this Act shall not
 12 apply to the peer-reviewed grants awarded under this
 13 heading.

14 BUILDINGS AND FACILITIES

15 For an additional amount for “Buildings and Facili-
 16 ties”, \$500,000,000, to fund high priority repair and im-
 17 provement projects for National Institutes of Health facili-
 18 ties on the Bethesda, Maryland campus and other agency
 19 locations.

20 AGENCY FOR HEALTHCARE RESEARCH AND QUALITY

21 HEALTHCARE RESEARCH AND QUALITY

22 (INCLUDING TRANSFER OF FUNDS)

23 For an additional amount for “Healthcare Research
 24 and Quality” to carry out titles III and IX of the Public
 25 Health Service Act, part A of title XI of the Social Secu-

1 rity Act, and section 1013 of the Medicare Prescription
2 Drug, Improvement, and Modernization Act of 2003,
3 \$700,000,000 for comparative effectiveness research: *Pro-*
4 *vided*, That of the amount appropriated in this paragraph,
5 \$400,000,000 shall be transferred to the Office of the Di-
6 rector of the National Institutes of Health (“Office of the
7 Director”) to conduct or support comparative effectiveness
8 research: *Provided further*, That funds transferred to the
9 Office of the Director may be transferred to the national
10 research institutes and national centers of the National
11 Institutes of Health and to the Common Fund established
12 under section 402A(c)(1) of the Public Health Service Act:
13 *Provided further*, That this transfer authority is in addi-
14 tion to any other transfer authority available to the Na-
15 tional Institutes of Health: *Provided further*, That the pro-
16 visions of section 1103 of this Act shall not apply to the
17 peer-reviewed grants awarded under this paragraph: *Pro-*
18 *vided further*, That the amount set aside from this appro-
19 priation pursuant to section 1106 of this Act shall be not
20 more than 1 percent instead of the percentage specified
21 in such section.

22 In addition, \$400,000,000 shall be available for com-
23 parative effectiveness research to be allocated at the dis-
24 cretion of the Secretary of Health and Human Services
25 (“Secretary”): *Provided*, That the funding appropriated in

1 this paragraph shall be used to accelerate the development
2 and dissemination of research assessing the comparative
3 effectiveness of health care treatments and strategies, in-
4 cluding through efforts that: (1) conduct, support, or syn-
5 thesize research that compares the clinical outcomes, ef-
6 fectiveness, and appropriateness of items, services, and
7 procedures that are used to prevent, diagnose, or treat dis-
8 eases, disorders, and other health conditions; and (2) en-
9 courage the development and use of clinical registries, clin-
10 ical data networks, and other forms of electronic health
11 data that can be used to generate or obtain outcomes data:
12 *Provided further*, That the Secretary shall enter into a
13 contract with the Institute of Medicine, for which no more
14 than \$1,500,000 shall be made available from funds pro-
15 vided in this paragraph, to produce and submit a report
16 to the Congress and the Secretary by not later than June
17 30, 2009, that includes recommendations on the national
18 priorities for comparative effectiveness research to be con-
19 ducted or supported with the funds provided in this para-
20 graph and that considers input from stakeholders: *Pro-*
21 *vided further*, That the Secretary shall consider any rec-
22 ommendations of the Federal Coordinating Council for
23 Comparative Effectiveness Research established by section
24 9201 of this Act and any recommendations included in
25 the Institute of Medicine report pursuant to the preceding

1 proviso in designating activities to receive funds provided
2 in this paragraph and may make grants and contracts
3 with appropriate entities, which may include agencies
4 within the Department of Health and Human Services and
5 other governmental agencies, as well as private sector enti-
6 ties, that have demonstrated experience and capacity to
7 achieve the goals of comparative effectiveness research:
8 *Provided further*, That the Secretary shall publish infor-
9 mation on grants and contracts awarded with the funds
10 provided under this heading within a reasonable time of
11 the obligation of funds for such grants and contracts and
12 shall disseminate research findings from such grants and
13 contracts to clinicians, patients, and the general public,
14 as appropriate: *Provided further*, That, to the extent fea-
15 sible, the Secretary shall ensure that the recipients of the
16 funds provided by this paragraph offer an opportunity for
17 public comment on the research: *Provided further*, That
18 the provisions of section 1103 of this Act shall not apply
19 to the peer-reviewed grants awarded under this paragraph:
20 *Provided further*, That the Secretary shall provide the
21 Committees on Appropriations of the House of Represent-
22 atives and the Senate, the Committee on Energy and Com-
23 merce and the Committee on Ways and Means of the
24 House of Representatives, and the Committee on Health,
25 Education, Labor, and Pensions and the Committee on Fi-

1 nance of the Senate with an annual report on the research
2 conducted or supported through the funds provided under
3 this heading: *Provided further*, That the Secretary, jointly
4 with the Directors of the Agency for Healthcare Research
5 and Quality and the National Institutes of Health, shall
6 provide the Committees on Appropriations of the House
7 of Representatives and the Senate a fiscal year 2009 oper-
8 ating plan for the funds appropriated under this heading
9 prior to making any Federal obligations of such funds in
10 fiscal year 2009, but not later than 90 days after the date
11 of enactment of this Act, and a fiscal year 2010 operating
12 plan for such funds prior to making any Federal obliga-
13 tions of such funds in fiscal year 2010, but not later than
14 November 1, 2009, that detail the type of research being
15 conducted or supported, including the priority conditions
16 addressed; and specify the allocation of resources within
17 the Department of Health and Human Services: *Provided*
18 *further*, That the Secretary jointly with the Directors of
19 the Agency for Healthcare Research and Quality and the
20 National Institutes of Health, shall provide to the Com-
21 mittees on Appropriations of the House of Representatives
22 and the Senate a report on the actual obligations, expendi-
23 tures, and unobligated balances for each activity funded
24 under this heading not later than November 1, 2009, and
25 every 6 months thereafter as long as funding provided

1 under this heading is available for obligation or expendi-
2 ture.

3 ADMINISTRATION FOR CHILDREN AND FAMILIES

4 LOW-INCOME HOME ENERGY ASSISTANCE

5 For an additional amount for “Low-Income Home
6 Energy Assistance” for making payments under section
7 2602(b) and section 2602(d) of the Low-Income Home
8 Energy Assistance Act of 1981, \$1,000,000,000, which
9 shall become available on October 1, 2009: *Provided*, That
10 the provisions of section 1106 of this Act shall not apply
11 to this appropriation.

12 PAYMENTS TO STATES FOR THE CHILD CARE AND

13 DEVELOPMENT BLOCK GRANT

14 For an additional amount for “Payments to States
15 for the Child Care and Development Block Grant”,
16 \$2,000,000,000, of which \$1,000,000,000 shall become
17 available on October 1, 2009, which shall be used to sup-
18 plement, not supplant State general revenue funds for
19 child care assistance for low-income families: *Provided*,
20 That the provisions of section 1106 of this Act shall not
21 apply to this appropriation.

22 CHILDREN AND FAMILIES SERVICES PROGRAMS

23 For an additional amount for “Children and Families
24 Services Programs”, \$3,200,000,000, which shall be used
25 as follows:

1 (1) \$1,000,000,000 for carrying out activities
2 under the Head Start Act, of which \$500,000,000
3 shall become available on October 1, 2009.

4 (2) \$1,100,000,000 for expansion of Early
5 Head Start programs, as described in section 645A
6 of the Head Start Act, of which \$550,000,000 shall
7 become available on October 1, 2009: *Provided*, That
8 of the funds provided in this sentence, up to 10 per-
9 cent shall be available for the provision of training
10 and technical assistance to such programs consistent
11 with section 645A(g)(2) of such Act, and up to 3
12 percent shall be available for monitoring the oper-
13 ation of such programs consistent with section 641A
14 of such Act: *Provided further*, That the preceding
15 proviso shall apply to this appropriation in lieu of
16 the provisions of section 1106 of this Act: *Provided*
17 *further*, That the provisions of section 1103 of this
18 Act shall not apply to this appropriation.

19 (3) \$1,000,000,000 for carrying out activities
20 under sections 674 through 679 of the Community
21 Services Block Grant Act, of which \$500,000,000
22 shall become available on October 1, 2009, and of
23 which no part shall be subject to paragraphs (2) and
24 (3) of section 674(b) of such Act: *Provided*, That
25 notwithstanding section 675C(a)(1) of such Act, 100

1 percent of the funds made available to a State from
2 this additional amount shall be distributed to eligible
3 entities as defined in section 673(1) of such Act:
4 *Provided further*, That for services furnished under
5 such Act during fiscal years 2009 and 2010, States
6 may apply the last sentence of section 673(2) of
7 such Act by substituting “200 percent” for “125
8 percent”: *Provided further*, That the provisions of
9 section 1106 of this Act shall not apply to this ap-
10 propriation.

11 (4) \$100,000,000 for carrying out activities
12 under section 1110 of the Social Security Act, of
13 which \$50,000,000 shall become available on Octo-
14 ber 1, 2009: *Provided*, That the Secretary of Health
15 and Human Services shall distribute such amount
16 under the Compassion Capital Fund to eligible faith-
17 based and community organizations: *Provided fur-*
18 *ther*, That the provisions of section 1106 of this Act
19 shall not apply to this appropriation.

20 ADMINISTRATION ON AGING

21 AGING SERVICES PROGRAMS

22 For an additional amount for “Aging Services Pro-
23 grams” under section 311, and subparts 1 and 2 of part
24 C, of title III of the Older Americans Act of 1965,
25 \$200,000,000, of which \$100,000,000 shall become avail-

1 able on October 1, 2009: *Provided*, That the provisions
2 of section 1106 of this Act shall not apply to this appro-
3 priation.

4 OFFICE OF THE SECRETARY

5 OFFICE OF THE NATIONAL COORDINATOR FOR HEALTH

6 INFORMATION TECHNOLOGY

7 (INCLUDING TRANSFER OF FUNDS)

8 For an additional amount for “Office of the National
9 Coordinator for Health Information Technology” to carry
10 out section 9202 of this Act, \$2,000,000,000, to remain
11 available until expended: *Provided*, That of such amount,
12 the Secretary of Health and Human Services shall trans-
13 fer \$20,000,000 to the Director of the National Institute
14 of Standards and Technology in the Department of Com-
15 merce for continued work on advancing health care infor-
16 mation enterprise integration through activities such as
17 technical standards analysis and establishment of con-
18 formance testing infrastructure, so long as such activities
19 are coordinated with the Office of the National Coordi-
20 nator for Health Information Technology: *Provided fur-*
21 *ther*, That the provisions of section 1103 of this Act shall
22 not apply to this appropriation: *Provided further*, That the
23 amount set aside from this appropriation pursuant to sec-
24 tion 1106 of this Act shall be 0.25 percent instead of the
25 percentage specified in such section: *Provided further*,

1 That funds available under this heading shall become
2 available for obligation only upon submission of an annual
3 operating plan by the Secretary to the Committees on Ap-
4 propriations of the House of Representatives and the Sen-
5 ate: *Provided further*, That the fiscal year 2009 operating
6 plan shall be provided not later than 90 days after enact-
7 ment of this Act and that subsequent annual operating
8 plans shall be provided not later than November 1 of each
9 year: *Provided further*, That these operating plans shall
10 describe how expenditures are aligned with the specific ob-
11 jectives, milestones, and metrics of the Federal Health In-
12 formation Technology Strategic Plan, including any subse-
13 quent updates to the Plan; the allocation of resources
14 within the Department of Health and Human Services and
15 other Federal agencies; and the identification of programs
16 and activities that are supported: *Provided further*, That
17 the Secretary shall provide to the Committees on Appro-
18 priations of the House of Representatives and the Senate
19 a report on the actual obligations, expenditures, and unob-
20 ligated balances for each major set of activities not later
21 than November 1, 2009, and every 6 months thereafter
22 as long as funding provided under this heading is available
23 for obligation or expenditure: *Provided further*, That the
24 Comptroller General of the United States shall review on
25 an annual basis the expenditures from funds provided

1 under this heading to determine if such funds are used
2 in a manner consistent with the purpose and requirements
3 under this heading.

4 PUBLIC HEALTH AND SOCIAL SERVICES EMERGENCY
5 FUND
6 (INCLUDING TRANSFER OF FUNDS)

7 For an additional amount for “Public Health and So-
8 cial Services Emergency Fund” to support advanced re-
9 search and development pursuant to section 319L of the
10 Public Health Service Act, \$430,000,000: *Provided*, That
11 the provisions of section 1103 of this Act shall not apply
12 to this appropriation.

13 For an additional amount for “Public Health and So-
14 cial Services Emergency Fund” to prepare for and re-
15 spond to an influenza pandemic, including the develop-
16 ment and purchase of vaccine, antivirals, necessary med-
17 ical supplies, diagnostics, and other surveillance tools,
18 \$420,000,000: *Provided*, That the provisions of section
19 1103 of this Act shall not apply to this appropriation: *Pro-*
20 *vided further*, That products purchased with these funds
21 may, at the discretion of the Secretary of Health and
22 Human Services (“Secretary”), be deposited in the Stra-
23 tegic National Stockpile: *Provided further*, That notwith-
24 standing section 496(b) of the Public Health Service Act,
25 funds may be used for the construction or renovation of

1 privately owned facilities for the production of pandemic
2 influenza vaccine and other biologics, where the Secretary
3 finds such a contract necessary to secure sufficient sup-
4 plies of such vaccines or biologics: *Provided further*, That
5 funds appropriated in this paragraph may be transferred
6 to other appropriation accounts of the Department of
7 Health and Human Services, as determined by the Sec-
8 retary to be appropriate, to be used for the purposed speci-
9 fied in this sentence.

10 For an additional amount for “Public Health and So-
11 cial Services Emergency Fund” to improve information
12 technology security at the Department of Health and
13 Human Services, \$50,000,000: *Provided*, That the Sec-
14 retary shall prepare and submit a report by not later than
15 November 1, 2009, and by not later than 15 days after
16 the end of each month thereafter, updating the status of
17 actions taken and funds obligated in this and previous ap-
18 propriations Acts for pandemic influenza preparedness
19 and response activities, biomedical advanced research and
20 development activities, Project BioShield, and Cyber Secu-
21 rity.

22 PREVENTION AND WELLNESS FUND

23 (INCLUDING TRANSFER OF FUNDS)

24 For necessary expenses for a “Prevention and
25 Wellness Fund” to be administered through the Depart-

1 ment of Health and Human Services Office of the Sec-
2 retary, \$3,000,000,000: *Provided*, That the provisions of
3 section 1103 of this Act shall not apply to this appropria-
4 tion: *Provided further*, That of the amount appropriated
5 under this heading not less than \$2,350,000,000 shall be
6 transferred to the Centers for Disease Control and Pre-
7 vention as follows:

8 (1) Not less than \$954,000,000 shall be used as
9 an additional amount to carry out the immunization
10 program authorized by section 317(a), (j), and
11 (k)(1) of the Public Health Service Act (“section
12 317 immunization program”), of which
13 \$649,900,000 shall be available on October 1, 2009.

14 (2) Not less than \$296,000,000 shall be used as
15 an additional amount to carry out Part A of title
16 XIX of the Public Health Service Act, of which
17 \$148,000,000 shall be available on October 1, 2009.

18 (3) Not less than \$545,000,000 shall be used as
19 an additional amount to carry out chronic disease,
20 health promotion, and genomics programs, as jointly
21 determined by the Secretary of Health and Human
22 Services (“Secretary”) and the Director of the Cen-
23 ters for Disease Control and Prevention (“Direc-
24 tor”).

1 (4) Not less than \$335,000,000 shall be used as
2 an additional amount to carry out domestic HIV/
3 AIDS, viral hepatitis, sexually-transmitted diseases,
4 and tuberculosis prevention programs, as jointly de-
5 termined by the Secretary and the Director.

6 (5) Not less than \$60,000,000 shall be used as
7 an additional amount to carry out environmental
8 health programs, as jointly determined by the Sec-
9 retary and the Director.

10 (6) Not less than \$50,000,000 shall be used as
11 an additional amount to carry out injury prevention
12 and control programs, as jointly determined by the
13 Secretary and the Director.

14 (7) Not less than \$30,000,000 shall be used as
15 an additional amount for public health workforce de-
16 velopment activities, as jointly determined by the
17 Secretary and the Director.

18 (8) Not less than \$40,000,000 shall be used as
19 an additional amount for the National Institute for
20 Occupational Safety and Health to carry out re-
21 search activities within the National Occupational
22 Research Agenda.

23 (9) Not less than \$40,000,000 shall be used as
24 an additional amount for the National Center for
25 Health Statistics:

1 *Provided further*, That of the amount appropriated under
2 this heading not less than \$150,000,000 shall be available
3 for an additional amount to carry out activities to imple-
4 ment a national action plan to prevent healthcare-associ-
5 ated infections, as determined by the Secretary, of which
6 not less \$50,000,000 shall be provided to States to imple-
7 ment healthcare-associated infection reduction strategies:

8 *Provided further*, That of the amount appropriated under
9 this heading \$500,000,000 shall be used to carry out evi-
10 dence-based clinical and community-based prevention and
11 wellness strategies and public health workforce develop-
12 ment activities authorized by the Public Health Service
13 Act, as determined by the Secretary, that deliver specific,
14 measurable health outcomes that address chronic and in-
15 fectious disease rates and health disparities, which shall
16 include evidence-based interventions in obesity, diabetes,
17 heart disease, cancer, tobacco cessation and smoking pre-
18 vention, and oral health, and which may be used for the
19 Healthy Communities program administered by the Cen-
20 ters for Disease Control and Prevention and other existing
21 community-based programs administered by the Depart-
22 ment of Health and Human Services: *Provided further*,
23 That funds appropriated in the preceding proviso may be
24 transferred to other appropriation accounts of the Depart-
25 ment of Health and Human Services, as determined by

1 the Secretary to be appropriate: *Provided further*, That the
2 Secretary shall, directly or through contracts with public
3 or private entities, provide for annual evaluations of pro-
4 grams carried out with funds provided under this heading
5 in order to determine the quality and effectiveness of the
6 programs: *Provided further*, That the Secretary shall, not
7 later than 1 year after the date of enactment of this Act,
8 submit to the Committees on Appropriations of the House
9 of Representatives and the Senate, the Committee on En-
10 ergy and Commerce of the House of Representatives, and
11 the Committee on Health, Education, Labor, and Pen-
12 sions of the Senate, a report: (1) summarizing the annual
13 evaluations of programs from the preceding proviso; and
14 (2) making recommendations concerning future spending
15 on prevention and wellness activities, including any rec-
16 ommendations made by the United States Preventive
17 Services Task Force in the area of clinical preventive serv-
18 ices and the Task Force on Community Preventive Serv-
19 ices in the area of community preventive services: *Provided*
20 *further*, That the Secretary shall enter into a contract with
21 the Institute of Medicine, for which no more than
22 \$1,500,000 shall be made available from funds provided
23 in this paragraph, to produce and submit a report to the
24 Congress and the Secretary by no later than 1 year after
25 the date of enactment of this Act that includes rec-

1 ommendations on the national priorities for clinical and
2 community-based prevention and wellness activities that
3 will have a positive impact in preventing illness or reduc-
4 ing healthcare costs and that considers input from stake-
5 holders: *Provided further*, That the Secretary shall provide
6 to the Committees on Appropriations of the House of Rep-
7 resentatives and the Senate a fiscal year 2009 operating
8 plan for the Prevention and Wellness Fund prior to mak-
9 ing any Federal obligations of funds provided under this
10 heading in fiscal year 2009 (excluding funds to carry out
11 the section 317 immunization program), but not later than
12 90 days after the date of enactment of this Act, and a
13 fiscal year 2010 operating plan for the Prevention and
14 Wellness Fund prior to making any Federal obligations
15 of funds provided under this heading in fiscal year 2010
16 (excluding funds to carry out the section 317 immuniza-
17 tion program), but not later than November 1, 2009, that
18 indicate the prevention priorities to be addressed; provide
19 measurable goals for each prevention priority; detail the
20 allocation of resources within the Department of Health
21 and Human Services; and identify which programs or ac-
22 tivities are supported, including descriptions of any new
23 programs or activities: *Provided further*, That the Sec-
24 retary shall provide to the Committees on Appropriations
25 of the House of Representatives and the Senate a report

1 on the actual obligations, expenditures, and unobligated
2 balances for each activity funded under this heading not
3 later than November 1, 2009, and every 6 months there-
4 after as long as funding provided under this heading is
5 available for obligation or expenditure.

6 GENERAL PROVISIONS, THIS SUBTITLE

7 **SEC. 9201. FEDERAL COORDINATING COUNCIL FOR COM-**
8 **PARATIVE EFFECTIVENESS RESEARCH.**

9 (a) ESTABLISHMENT.—There is hereby established a
10 Federal Coordinating Council for Comparative Effective-
11 ness Research (in this section referred to as the “Coun-
12 cil”).

13 (b) PURPOSE; DUTIES.—The Council shall—

14 (1) assist the offices and agencies of the Fed-
15 eral Government, including the Departments of
16 Health and Human Services, Veterans Affairs, and
17 Defense, and other Federal departments or agencies,
18 to coordinate the conduct or support of comparative
19 effectiveness and related health services research;
20 and

21 (2) advise the President and Congress on—

22 (A) strategies with respect to the infra-
23 structure needs of comparative effectiveness re-
24 search within the Federal Government;

1 (B) appropriate organizational expendi-
2 tures for comparative effectiveness research by
3 relevant Federal departments and agencies; and

4 (C) opportunities to assure optimum co-
5 ordination of comparative effectiveness and re-
6 lated health services research conducted or sup-
7 ported by relevant Federal departments and
8 agencies, with the goal of reducing duplicative
9 efforts and encouraging coordinated and com-
10 plementary use of resources.

11 (c) MEMBERSHIP.—

12 (1) NUMBER AND APPOINTMENT.—The Council
13 shall be composed of not more than 15 members, all
14 of whom are senior Federal officers or employees
15 with responsibility for health-related programs, ap-
16 pointed by the President, acting through the Sec-
17 retary of Health and Human Services (in this sec-
18 tion referred to as the “Secretary”). Members shall
19 first be appointed to the Council not later than 30
20 days after the date of the enactment of this Act.

21 (2) MEMBERS.—

22 (A) IN GENERAL.—The members of the
23 Council shall include one senior officer or em-
24 ployee from each of the following agencies:

1 (i) The Agency for Healthcare Re-
2 search and Quality.

3 (ii) The Centers for Medicare and
4 Medicaid Services.

5 (iii) The National Institutes of
6 Health.

7 (iv) The Office of the National Coor-
8 dinator for Health Information Tech-
9 nology.

10 (v) The Food and Drug Administra-
11 tion.

12 (vi) The Veterans Health Administra-
13 tion within the Department of Veterans
14 Affairs.

15 (vii) The office within the Department
16 of Defense responsible for management of
17 the Department of Defense Military
18 Health Care System.

19 (B) QUALIFICATIONS.—At least half of the
20 members of the Council shall be physicians or
21 other experts with clinical expertise.

22 (3) CHAIRMAN; VICE CHAIRMAN.—The Sec-
23 retary shall serve as Chairman of the Council and
24 shall designate a member to serve as Vice Chairman.

25 (d) REPORTS.—

1 (1) INITIAL REPORT.—Not later than June 30,
2 2009, the Council shall submit to the President and
3 the Congress a report containing information de-
4 scribing Federal activities on comparative effective-
5 ness research and recommendations for additional
6 investments in such research conducted or supported
7 from funds made available for allotment by the Sec-
8 retary for comparative effectiveness research in this
9 Act.

10 (2) ANNUAL REPORT.—The Council shall sub-
11 mit to the President and Congress an annual report
12 regarding its activities and recommendations con-
13 cerning the infrastructure needs, appropriate organi-
14 zational expenditures and opportunities for better
15 coordination of comparative effectiveness research by
16 relevant Federal departments and agencies.

17 (e) STAFFING; SUPPORT.—From funds made avail-
18 able for allotment by the Secretary for comparative effec-
19 tiveness research in this Act, the Secretary shall make
20 available not more than 1 percent to the Council for staff
21 and administrative support.

22 **SEC. 9202. INVESTMENT IN HEALTH INFORMATION TECH-**
23 **NOLOGY.**

24 (a) IN GENERAL.—The Secretary of Health and
25 Human Services shall invest in the infrastructure nec-

1 essary to allow for and promote the electronic exchange
2 and use of health information for each individual in the
3 United States consistent with the goals outlined in the
4 Strategic Plan developed by the Office of the National Co-
5 ordinator for Health Information Technology. Such invest-
6 ment shall include investment in at least the following:

7 (1) Health information technology architecture
8 that will support the nationwide electronic exchange
9 and use of health information in a secure, private,
10 and accurate manner, including connecting health
11 information exchanges, and which may include up-
12 dating and implementing the infrastructure nec-
13 essary within different agencies of the Department
14 of Health and Human Services to support the elec-
15 tronic use and exchange of health information.

16 (2) Integration of health information tech-
17 nology, including electronic medical records, into the
18 initial and ongoing training of health professionals
19 and others in the healthcare industry who would be
20 instrumental to improving the quality of healthcare
21 through the smooth and accurate electronic use and
22 exchange of health information as determined by the
23 Secretary.

24 (3) Training on and dissemination of informa-
25 tion on best practices to integrate health information

1 technology, including electronic records, into a pro-
2 vider's delivery of care, including community health
3 centers receiving assistance under section 330 of the
4 Public Health Service Act and providers partici-
5 pating in one or more of the programs under titles
6 XVIII, XIX, and XXI of the Social Security Act (re-
7 lating to Medicare, Medicaid, and the State Chil-
8 dren's Health Insurance Program).

9 (4) Infrastructure and tools for the promotion
10 of telemedicine, including coordination among Fed-
11 eral agencies in the promotion of telemedicine.

12 (5) Promotion of the interoperability of clinical
13 data repositories or registries.

14 The Secretary shall implement paragraph (3) in coordina-
15 tion with State agencies administering the Medicaid pro-
16 gram and the State Children's Health Insurance Program.

17 (b) LIMITATION.—None of the funds appropriated to
18 carry out this section may be used to make significant in-
19 vestments in, or provide significant funds for, the acquisi-
20 tion of hardware or software or for the use of an electronic
21 health or medical record, or significant components there-
22 of, unless such investments or funds are for certified prod-
23 ucts that would permit the full and accurate electronic ex-
24 change and use of health information in a medical record,
25 including standards for security, privacy, and quality im-

1 improvement functions adopted by the Office of the National
2 Coordinator for Health Information Technology.

3 (c) REPORT.—The Secretary shall annually report to
4 the Committees on Energy and Commerce, on Ways and
5 Means, on Science and Technology, and on Appropriations
6 of the House of Representatives and the Committees on
7 Finance, on Health, Education, Labor, and Pensions, and
8 on Appropriations of the Senate on the uses of these funds
9 and their impact on the infrastructure for the electronic
10 exchange and use of health information.

11 **Subtitle C—Education**

12 DEPARTMENT OF EDUCATION

13 EDUCATION FOR THE DISADVANTAGED

14 For an additional amount for “Education for the Dis-
15 advantaged” to carry out title I of the Elementary and
16 Secondary Education Act of 1965 (“ESEA”),
17 \$13,000,000,000: *Provided*, That \$5,500,000,000 shall be
18 available for targeted grants under section 1125 of the
19 ESEA, of which \$2,750,000,000 shall become available on
20 July 1, 2009, and shall remain available through Sep-
21 tember 30, 2010, and \$2,750,000,000 shall become avail-
22 able on July 1, 2010, and shall remain available through
23 September 30, 2011: *Provided further*, That
24 \$5,500,000,000 shall be available for education finance in-
25 centive grants under section 1125A of the ESEA, of which

1 \$2,750,000,000 shall become available on July 1, 2009,
2 and shall remain available through September 30, 2010,
3 and \$2,750,000,000 shall become available on July 1,
4 2010, and shall remain available through September 30,
5 2011: *Provided further*, That \$2,000,000,000 shall be for
6 school improvement grants under section 1003(g) of the
7 ESEA, of which \$1,000,000,000 shall become available on
8 July 1, 2009, and shall remain available through Sep-
9 tember 30, 2010, and \$1,000,000,000 shall become avail-
10 able on July 1, 2010, and shall remain available through
11 September 30, 2011: *Provided further*, That the provisions
12 of section 1106 of this Act shall not apply to this appro-
13 priation.

14 IMPACT AID

15 For an additional amount for “Impact Aid” to carry
16 out section 8007 of title VIII of the Elementary and Sec-
17 ondary Education Act of 1965, \$100,000,000, which shall
18 remain available through September 30, 2010: *Provided*,
19 That the amount set aside from this appropriation pursu-
20 ant to section 1106 of this Act shall be 1 percent instead
21 of the percentage specified in such section.

22 SCHOOL IMPROVEMENT PROGRAMS

23 For an additional amount for “School Improvement
24 Programs” to carry out subpart 1, part D of title II of
25 the Elementary and Secondary Education Act of 1965

1 (“ESEA”), and subtitle B of title VII of the McKinney-
2 Vento Homeless Assistance Act, \$1,066,000,000: *Pro-*
3 *vided*, That \$1,000,000,000 shall be available for subpart
4 1, part D of title II of the ESEA, of which \$500,000,000
5 shall become available on July 1, 2009, and shall remain
6 available through September 30, 2010, and \$500,000,000
7 shall become available on July 1, 2010, and remain avail-
8 able through September 30, 2011: *Provided further*, That
9 the provisions of section 1106 of this Act shall not apply
10 to these funds: *Provided further*, That \$66,000,000 shall
11 be available for subtitle B of title VII of the McKinney-
12 Vento Homeless Assistance Act, of which \$33,000,000
13 shall become available on July 1, 2009, and shall remain
14 available through September 30, 2010, and \$33,000,000
15 shall become available on July 1, 2010, and remain avail-
16 able through September 30, 2011.

17 INNOVATION AND IMPROVEMENT

18 For an additional amount for “Innovation and Im-
19 provement” to carry out subpart 1, part D and subpart
20 2, part B of title V of the Elementary and Secondary Edu-
21 cation Act of 1965 (“ESEA”), \$225,000,000: *Provided*,
22 That \$200,000,000 shall be available for subpart 1, part
23 D of title V of the ESEA: *Provided further*, That these
24 funds shall be expended as directed in the fifth, sixth, and
25 seventh provisos under the heading “Innovation and Im-

1 provement” in the Department of Education Appropria-
2 tions Act, 2008: *Provided further*, That a portion of these
3 funds shall also be used for a rigorous national evaluation
4 by the Institute of Education Sciences, utilizing random-
5 ized controlled methodology to the extent feasible, that as-
6 sesses the impact of performance-based teacher and prin-
7 cipal compensation systems supported by the funds pro-
8 vided in this Act on teacher and principal recruitment and
9 retention in high-need schools and subjects: *Provided fur-*
10 *ther*, That \$25,000,000 shall be available for subpart 2,
11 part B of title V of the ESEA: *Provided further*, That the
12 amount set aside from this appropriation pursuant to sec-
13 tion 1106 of this Act shall be 1 percent instead of the
14 percentage specified in such section.

15 SPECIAL EDUCATION

16 For an additional amount for “Special Education”
17 for carrying out section 611 and part C of the Individuals
18 with Disabilities Education Act (“IDEA”),
19 \$13,600,000,000: *Provided*, That \$13,000,000,000 shall
20 be available for section 611 of the IDEA, of which
21 \$6,000,000,000 shall become available on July 1, 2009,
22 and remain available through September 30, 2010, and
23 \$7,000,000,000 shall become available on July 1, 2010,
24 and remain available through September 30, 2011: *Pro-*
25 *vided further*, That \$600,000,000 shall be available for

1 part C of the IDEA, of which \$300,000,000 shall become
2 available on July 1, 2009, and remain available through
3 September 30, 2010, and \$300,000,000 shall become
4 available on July 1, 2010, and remain available through
5 September 30, 2011: *Provided further*, That by July 1,
6 2009, the Secretary of Education shall reserve the amount
7 needed for grants under section 643(e) of the IDEA from
8 funds available for obligation on July 1, 2009, with any
9 remaining funds to be allocated in accordance with section
10 643(c) of the IDEA: *Provided further*, That by July 1,
11 2010, the Secretary shall reserve the amount needed for
12 grants under section 643(e) of the IDEA from funds avail-
13 able for obligation on July 1, 2010, with any remaining
14 funds to be allocated in accordance with section 643(c)
15 of the IDEA: *Provided further*, That if every State, as de-
16 fined by section 602(31) of the IDEA, reaches its max-
17 imum allocation under section 611(d)(3)(B)(iii) of the
18 IDEA, and there are remaining funds, such funds shall
19 be proportionally allocated to each State subject to the
20 maximum amounts contained in section 611(a)(2) of the
21 IDEA: *Provided further*, That the provisions of section
22 1106 of this Act shall not apply to this appropriation.

23 REHABILITATION SERVICES AND DISABILITY RESEARCH

24 For an additional amount for “Rehabilitation Serv-
25 ices and Disability Research” for providing grants to

1 States to carry out the Vocational Rehabilitation Services
2 program under part B of title I and parts B and C of
3 chapter 1 and chapter 2 of title VII of the Rehabilitation
4 Act of 1973, \$700,000,000: *Provided*, That \$500,000,000
5 shall be available for part B of title I of the Rehabilitation
6 Act, of which \$250,000,000 shall become available on Oc-
7 tober 1, 2009: *Provided further*, That funds provided here-
8 in shall not be considered in determining the amount re-
9 quired to be appropriated under section 100(b)(1) of the
10 Rehabilitation Act of 1973 in any fiscal year: *Provided fur-*
11 *ther*, That, notwithstanding section 7(14)(A), the Federal
12 share of the costs of vocational rehabilitation services pro-
13 vided with the funds provided herein shall be 100 percent:
14 *Provided further*, That the provisions of section 1106 of
15 this Act shall not apply to these funds: *Provided further*,
16 That \$200,000,000 shall be available for parts B and C
17 of chapter 1 and chapter 2 of title VII of the Rehabilita-
18 tion Act, of which \$100,000,000 shall become available on
19 October 1, 2009: *Provided further*, That \$34,775,000 shall
20 be for State Grants, \$114,581,000 shall be for inde-
21 pendent living centers, and \$50,644,000 shall be for serv-
22 ices for older blind individuals.

23 STUDENT FINANCIAL ASSISTANCE

24 For an additional amount for “Student Financial As-
25 sistance” to carry out subpart 1 of part A and part C

1 of title IV of the Higher Education Act of 1965 (“HEA”),
2 \$16,126,000,000, which shall remain available through
3 September 30, 2011: *Provided*, That \$15,636,000,000
4 shall be available for subpart 1 of part A of title IV of the
5 HEA: *Provided further*, That \$490,000,000 shall be avail-
6 able for part C of title IV of the HEA, of which
7 \$245,000,000 shall become available on October 1, 2009:
8 *Provided further*, That the provisions of section 1106 of
9 this Act shall not apply to this appropriation.

10 The maximum Pell Grant for which a student shall
11 be eligible during award year 2009–2010 shall be \$4,860.

12 STUDENT AID ADMINISTRATION

13 For an additional amount for “Student Aid Adminis-
14 tration” to carry out part D of title I, and subparts 1,
15 3, and 4 of part A, and parts B, C, D, and E of title
16 IV of the Higher Education Act of 1965, \$50,000,000,
17 which shall remain available through September 30, 2011:
18 *Provided*, That such amount shall also be available for an
19 independent audit of programs and activities authorized
20 under section 459A of such Act: *Provided further*, That
21 the provisions of section 1106 of this Act shall not apply
22 to this appropriation.

23 HIGHER EDUCATION

24 For an additional amount for “Higher Education” to
25 carry out part A of title II of the Higher Education Act

1 of 1965, \$100,000,000: *Provided*, That section 203(e)(1)
2 of such Act shall not apply to awards made with these
3 funds.

4 INSTITUTE OF EDUCATION SCIENCES

5 For an additional amount for Institute of Education
6 Sciences to carry out section 208 of the Educational Tech-
7 nical Assistance Act, \$250,000,000, which may be used
8 for Statewide data systems that include postsecondary and
9 workforce information, of which up to \$5,000,000 may be
10 used for State data coordinators and for awards to public
11 or private organizations or agencies to improve data co-
12 ordination: *Provided*, That the amount set aside from this
13 appropriation pursuant to section 1106 of this Act shall
14 be 1 percent instead of the percentage specified in such
15 section.

16 SCHOOL MODERNIZATION, RENOVATION, AND REPAIR

17 For carrying out section 9301 of this Act,
18 \$14,000,000,000: *Provided*, That amount available under
19 section 9301 of this Act for administration and oversight
20 shall take the place of the set-aside under section 1106
21 of this Act.

22 HIGHER EDUCATION MODERNIZATION, RENOVATION,
23 AND REPAIR

24 For carrying out section 9302 of this Act,
25 \$6,000,000,000: *Provided*, That amount available under

1 section 9302 of this Act for administration and oversight
2 shall take the place of the set-aside under section 1106
3 of this Act.

4 GENERAL PROVISIONS, THIS SUBTITLE

5 **SEC. 9301. 21ST CENTURY GREEN HIGH-PERFORMING PUB-**
6 **LIC SCHOOL FACILITIES.**

7 (a) DEFINITIONS.—In this section:

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

11 (2) The term “charter school” has the meaning
12 given such term in section 5210 of the Elementary
13 and Secondary Education Act of 1965.

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

15 (A) has the meaning given to that term in
16 section 9101 of the Elementary and Secondary
17 Education Act of 1965, and shall also include
18 the Recovery School District of Louisiana and
19 the New Orleans Public Schools; and

20 (B) includes any public charter school that
21 constitutes a local educational agency under
22 State law.

23 (4) The term “outlying area”—

24 (A) means the United States Virgin Is-
25 lands, Guam, American Samoa, and the Com-

1 monwealth of the Northern Mariana Islands;
2 and

3 (B) includes the freely associated states of
4 the Republic of the Marshall Islands, the Fed-
5 erated States of Micronesia, and the Republic
6 of Palau.

7 (5) The term “public school facilities” includes
8 charter schools.

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

12 (7) The term “LEED Green Building Rating
13 System” means the United States Green Building
14 Council Leadership in Energy and Environmental
15 Design green building rating standard referred to as
16 the LEED Green Building Rating System.

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

21 (9) The term “CHPS Criteria” means the
22 green building rating program developed by the Col-
23 laborative for High Performance Schools.

1 (10) The term “Green Globes” means the
2 Green Building Initiative environmental design and
3 rating system referred to as Green Globes.

4 (b) PURPOSE.—Grants under this section shall be for
5 the purpose of modernizing, renovating, or repairing pub-
6 lic school facilities, based on their need for such improve-
7 ments, to be safe, healthy, high-performing, and up-to-
8 date technologically.

9 (c) ALLOCATION OF FUNDS.—

10 (1) RESERVATIONS.—

11 (A) IN GENERAL.—From the amount ap-
12 propriated to carry out this section, the Sec-
13 retary of Education shall reserve 1 percent of
14 such amount, consistent with the purpose de-
15 scribed in subsection (b)—

16 (i) to provide assistance to the out-
17 lying areas; and

18 (ii) for payments to the Secretary of
19 the Interior to provide assistance to Bu-
20 reau-funded schools.

21 (B) ADMINISTRATION AND OVERSIGHT.—

22 The Secretary may, in addition, reserve up to
23 \$6,000,000 of such amount for administration
24 and oversight of this section.

25 (2) ALLOCATION TO STATES.—

1 (A) STATE-BY-STATE ALLOCATION.—Of
2 the amount appropriated to carry out this sec-
3 tion, and not reserved under paragraph (1),
4 each State shall be allocated an amount in pro-
5 portion to the amount received by all local edu-
6 cational agencies in the State under part A of
7 title I of the Elementary and Secondary Edu-
8 cation Act of 1965 for fiscal year 2008 relative
9 to the total amount received by all local edu-
10 cational agencies in every State under such part
11 for such fiscal year.

12 (B) STATE ADMINISTRATION.—A State
13 may reserve up to 1 percent of its allocation
14 under subparagraph (A) to carry out its respon-
15 sibilities under this section, including—

16 (i) providing technical assistance to
17 local educational agencies;

18 (ii) developing, within 6 months of re-
19 ceiving its allocation under subparagraph
20 (A), a plan to develop a database that in-
21 cludes an inventory of public school facili-
22 ties in the State and the modernization,
23 renovation, and repair needs of, energy use
24 by, and the carbon footprint of such
25 schools; and

1 (iii) developing a school energy effi-
2 ciency quality plan.

3 (C) GRANTS TO LOCAL EDUCATIONAL
4 AGENCIES.—From the amount allocated to a
5 State under subparagraph (A), each local edu-
6 cational agency in the State that meets the re-
7 quirements of section 1112(a) of the Elemen-
8 tary and Secondary Education Act of 1965
9 shall receive an amount in proportion to the
10 amount received by such local educational agen-
11 cy under part A of title I of that Act for fiscal
12 year 2008 relative to the total amount received
13 by all local educational agencies in the State
14 under such part for such fiscal year, except that
15 no local educational agency that received funds
16 under part A of title I of that Act for such fis-
17 cal year shall receive a grant of less than
18 \$5,000.

19 (D) SPECIAL RULE.—Section 1122(c)(3)
20 of the Elementary and Secondary Education
21 Act of 1965 shall not apply to subparagraph
22 (A) or (C).

23 (3) SPECIAL RULES.—

24 (A) DISTRIBUTIONS BY SECRETARY.—The
25 Secretary of Education shall make and dis-

1 tribute the reservations and allocations de-
2 scribed in paragraphs (1) and (2) not later than
3 30 days after the date of the enactment of this
4 Act.

5 (B) DISTRIBUTIONS BY STATES.—A State
6 shall make and distribute the allocations de-
7 scribed in paragraph (2)(C) within 30 days of
8 receiving such funds from the Secretary.

9 (d) USE IT OR LOSE IT REQUIREMENTS.—

10 (1) DEADLINE FOR BINDING COMMITMENTS.—
11 Each local educational agency receiving funds under
12 this section shall enter into contracts or other bind-
13 ing commitments not later than 1 year after the
14 date of the enactment of this Act (or not later than
15 9 months after such funds are awarded, if later) to
16 make use of 50 percent of such funds, and shall
17 enter into contracts or other binding commitments
18 not later than 2 years after the date of the enact-
19 ment of this Act (or not later than 21 months after
20 such funds are awarded, if later) to make use of the
21 remaining funds. In the case of activities to be car-
22 ried out directly by a local educational agency (rath-
23 er than by contracts, subgrants, or other arrange-
24 ments with third parties), a certification by the
25 agency specifying the amounts, planned timing, and

1 purpose of such expenditures shall be deemed a
2 binding commitment for purposes of this subsection.

3 (2) REDISTRIBUTION OF UNCOMMITTED
4 FUNDS.—A State shall recover or deobligate any
5 funds not committed in accordance with paragraph
6 (1), and redistribute such funds to other local edu-
7 cational agencies eligible under this section and able
8 to make use of such funds in a timely manner (in-
9 cluding binding commitments within 120 days after
10 the reallocation).

11 (e) ALLOWABLE USES OF FUNDS.—A local edu-
12 cational agency receiving a grant under this section shall
13 use the grant for modernization, renovation, or repair of
14 public school facilities, including—

15 (1) repairing, replacing, or installing roofs, in-
16 cluding extensive, intensive or semi-intensive green
17 roofs, electrical wiring, plumbing systems, sewage
18 systems, lighting systems, or components of such
19 systems, windows, or doors, including security doors;

20 (2) repairing, replacing, or installing heating,
21 ventilation, air conditioning systems, or components
22 of such systems (including insulation), including in-
23 door air quality assessments;

24 (3) bringing public schools into compliance with
25 fire, health, and safety codes, including professional

1 installation of fire/life safety alarms, including mod-
2 ernizations, renovations, and repairs that ensure
3 that schools are prepared for emergencies, such as
4 improving building infrastructure to accommodate
5 security measures;

6 (4) modifications necessary to make public
7 school facilities accessible to comply with the Ameri-
8 cans with Disabilities Act of 1990 (42 U.S.C. 12101
9 et seq.) and section 504 of the Rehabilitation Act of
10 1973 (29 U.S.C. 794), except that such modifica-
11 tions shall not be the primary use of the grant;

12 (5) asbestos or polychlorinated biphenyls abate-
13 ment or removal from public school facilities;

14 (6) implementation of measures designed to re-
15 duce or eliminate human exposure to lead-based
16 paint hazards through methods including interim
17 controls, abatement, or a combination of each;

18 (7) implementation of measures designed to re-
19 duce or eliminate human exposure to mold or mil-
20 dew;

21 (8) upgrading or installing educational tech-
22 nology infrastructure to ensure that students have
23 access to up-to-date educational technology;

1 (9) technology activities that are carried out in
2 connection with school repair and renovation, includ-
3 ing—

4 (A) wiring;

5 (B) acquiring hardware and software;

6 (C) acquiring connectivity linkages and re-
7 sources; and

8 (D) acquiring microwave, fiber optics,
9 cable, and satellite transmission equipment;

10 (10) modernization, renovation, or repair of
11 science and engineering laboratory facilities, librar-
12 ies, and career and technical education facilities, in-
13 cluding those related to energy efficiency and renew-
14 able energy, and improvements to building infra-
15 structure to accommodate bicycle and pedestrian ac-
16 cess;

17 (11) renewable energy generation and heating
18 systems, including solar, photovoltaic, wind, geo-
19 thermal, or biomass, including wood pellet, systems
20 or components of such systems;

21 (12) other modernization, renovation, or repair
22 of public school facilities to—

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

1 (B) ensure the health and safety of stu-
2 dents and staff;

3 (C) make them more energy efficient; or

4 (D) reduce class size; and

5 (13) required environmental remediation related
6 to public school modernization, renovation, or repair
7 described in paragraphs (1) through (12).

8 (f) IMPERMISSIBLE USES OF FUNDS.—No funds re-
9 ceived under this section may be used for—

10 (1) payment of maintenance costs; or

11 (2) stadiums or other facilities primarily used
12 for athletic contests or exhibitions or other events
13 for which admission is charged to the general public.

14 (g) SUPPLEMENT, NOT SUPPLANT.—A local edu-
15 cational agency receiving a grant under this section shall
16 use such Federal funds only to supplement and not sup-
17 plant the amount of funds that would, in the absence of
18 such Federal funds, be available for modernization, ren-
19 ovation, or repair of public school facilities.

20 (h) PROHIBITION REGARDING STATE AID.—A State
21 shall not take into consideration payments under this sec-
22 tion in determining the eligibility of any local educational
23 agency in that State for State aid, or the amount of State
24 aid, with respect to free public education of children.

1 (i) SPECIAL RULE ON CONTRACTING.—Each local
2 educational agency receiving a grant under this section
3 shall ensure that, if the agency carries out modernization,
4 renovation, or repair through a contract, the process for
5 any such contract ensures the maximum number of quali-
6 fied bidders, including local, small, minority, and women-
7 and veteran-owned businesses, through full and open com-
8 petition.

9 (j) SPECIAL RULE ON USE OF IRON AND STEEL
10 PRODUCED IN THE UNITED STATES.—

11 (1) IN GENERAL.—A local educational agency
12 shall not obligate or expend funds received under
13 this section for a project for the modernization, ren-
14 ovation, or repair of a public school facility unless all
15 of the iron and steel used in such project is pro-
16 duced in the United States.

17 (2) EXCEPTIONS.—The provisions of paragraph
18 (1) shall not apply in any case in which the local
19 educational agency finds that—

20 (A) their application would be inconsistent
21 with the public interest;

22 (B) iron and steel are not produced in the
23 United States in sufficient and reasonably
24 available quantities and of a satisfactory qual-
25 ity; or

1 (C) inclusion of iron and steel produced in
2 the United States will increase the cost of the
3 overall project contract by more than 25 per-
4 cent.

5 (k) APPLICATION OF GEPA.—The grant program
6 under this section is an applicable program (as that term
7 is defined in section 400 of the General Education Provi-
8 sions Act (20 U.S.C. 1221)) subject to section 439 of such
9 Act (20 U.S.C. 1232b).

10 (l) CHARTER SCHOOLS.—A local educational agency
11 receiving an allocation under this section shall use an equi-
12 table portion of that allocation for allowable activities ben-
13 efitting charter schools within its jurisdiction, as deter-
14 mined based on the percentage of students from low-in-
15 come families in the schools of the agency who are enrolled
16 in charter schools and on the needs of those schools as
17 determined by the agency.

18 (m) GREEN SCHOOLS.—

19 (1) IN GENERAL.—A local educational agency
20 shall use not less than 25 percent of the funds re-
21 ceived under this section for public school mod-
22 ernization, renovation, or repairs that are certified,
23 verified, or consistent with any applicable provisions
24 of—

1 (A) the LEED Green Building Rating Sys-
2 tem;

3 (B) Energy Star;

4 (C) the CHPS Criteria;

5 (D) Green Globes; or

6 (E) an equivalent program adopted by the
7 State or another jurisdiction with authority over
8 the local educational agency.

9 (2) TECHNICAL ASSISTANCE.—The Secretary,
10 in consultation with the Secretary of Energy and the
11 Administrator of the Environmental Protection
12 Agency, shall provide outreach and technical assist-
13 ance to States and school districts concerning the
14 best practices in school modernization, renovation,
15 and repair, including those related to student aca-
16 demic achievement and student and staff health, en-
17 ergy efficiency, and environmental protection.

18 (n) YOUTHBUILD PROGRAMS.—The Secretary of
19 Education, in consultation with the Secretary of Labor,
20 shall work with recipients of funds under this section to
21 promote appropriate opportunities for participants in a
22 YouthBuild program (as defined in section 173A of the
23 Workforce Investment Act of 1998 (29 U.S.C. 2918a)) to
24 gain employment experience on modernization, renovation,
25 and repair projects funded under this section.

1 (o) REPORTING.—

2 (1) REPORTS BY LOCAL EDUCATIONAL AGEN-
3 CIES.—Local educational agencies receiving a grant
4 under this section shall compile, and submit to the
5 State educational agency (which shall compile and
6 submit such reports to the Secretary), a report de-
7 scribing the projects for which such funds were used,
8 including—

9 (A) the number of public schools in the
10 agency, including the number of charter
11 schools;

12 (B) the total amount of funds received by
13 the local educational agency under this section
14 and the amount of such funds expended, includ-
15 ing the amount expended for modernization,
16 renovation, and repair of charter schools;

17 (C) the number of public schools in the
18 agency with a metro-centric locale code of 41,
19 42, or 43 as determined by the National Center
20 for Education Statistics and the percentage of
21 funds received by the agency under this section
22 that were used for projects at such schools;

23 (D) the number of public schools in the
24 agency that are eligible for schoolwide programs
25 under section 1114 of the Elementary and Sec-

1 ondary Education Act of 1965 and the percent-
2 age of funds received by the agency under this
3 section that were used for projects at such
4 schools;

5 (E) the cost of each project, which, if any,
6 of the standards described in subsection (k)(1)
7 the project met, and any demonstrable or ex-
8 pected academic, energy, or environmental ben-
9 efits as a result of the project;

10 (F) if flooring was installed, whether—

11 (i) it was low- or no-VOC (Volatile
12 Organic Compounds) flooring;

13 (ii) it was made from sustainable ma-
14 terials; and

15 (iii) use of flooring described in clause
16 (i) or (ii) was cost effective; and

17 (G) the total number and amount of con-
18 tracts awarded, and the number and amount of
19 contracts awarded to local, small, minority-
20 owned, women-owned, and veteran-owned busi-
21 nesses.

22 (2) REPORTS BY SECRETARY.—Not later than
23 December 31, 2011, the Secretary of Education
24 shall submit to the Committees on Education and
25 Labor and Appropriations of the House of Rep-

1 representatives and the Committees on Health, Edu-
2 cation, Labor, and Pensions and Appropriations of
3 the Senate a report on grants made under this sec-
4 tion, including the information described in para-
5 graph (1), the types of modernization, renovation,
6 and repair funded, and the number of students im-
7 pacted, including the number of students counted
8 under section 1113(a)(5) of the Elementary and
9 Secondary Education Act of 1965.

10 **SEC. 9302. HIGHER EDUCATION MODERNIZATION, RENOVA-**
11 **TION, AND REPAIR.**

12 (a) PURPOSE.—Grants awarded under this section
13 shall be for the purpose of modernizing, renovating, and
14 repairing institution of higher education facilities that are
15 primarily used for instruction, research, or student hous-
16 ing.

17 (b) GRANTS TO STATE HIGHER EDUCATION AGEN-
18 CIES.—

19 (1) FORMULA.—From the amounts appro-
20 priated to carry out this section, the Secretary of
21 Education shall allocate funds to State higher edu-
22 cation agencies based on the number of students at-
23 tending institutions of higher education, with the
24 State higher education agency in each State receiv-
25 ing an amount that is in proportion to the number

1 of full-time equivalent undergraduate students at-
2 tending institutions of higher education in such
3 State for the most recent fiscal year for which there
4 are data available, relative to the total number of
5 full-time equivalent undergraduate students attend-
6 ing institutions of higher education in all States for
7 such fiscal year.

8 (2) APPLICATION.—To be eligible to receive an
9 allocation from the Secretary under paragraph (1),
10 a State higher education agency shall submit an ap-
11 plication to the Secretary at such time and in such
12 manner as the Secretary may reasonably require.

13 (3) REALLOCATION.—Amounts allocated to a
14 State higher education agency under this section
15 that are not obligated by such agency within 6
16 months of the date the agency receives such
17 amounts shall be returned to the Secretary, and the
18 Secretary shall reallocate such amounts to State
19 higher education agencies in other States on the
20 same basis as the original allocations under para-
21 graph (1)(B).

22 (4) ADMINISTRATION AND OVERSIGHT EX-
23 PENSES.—From the amounts appropriated to carry
24 out this section, not more than \$6,000,000 shall be
25 available to the Secretary for administrative and

1 oversight expenses related to carrying out this sec-
2 tion.

3 (c) USE OF GRANTS BY STATE HIGHER EDUCATION
4 AGENCIES.—

5 (1) SUBGRANTS TO INSTITUTIONS OF HIGHER
6 EDUCATION.—

7 (A) IN GENERAL.—Except as provided in
8 paragraph (2), each State higher education
9 agency receiving an allocation under subsection
10 (b)(1) shall use the amount allocated to award
11 subgrants to institutions of higher education
12 within the State to carry out projects in accord-
13 ance with subsection (d)(1).

14 (B) SUBGRANT AWARD ALLOCATION.—A
15 State higher education agency shall award sub-
16 grants to institutions of higher education under
17 this section based on the demonstrated need of
18 each institution for facility modernization, ren-
19 ovation, and repair.

20 (C) PRIORITY CONSIDERATIONS.—In
21 awarding subgrants under this section, each
22 State higher education agency shall give pri-
23 ority consideration to institutions of higher edu-
24 cation with any of the following characteristics:

1 (i) The institution is eligible for Fed-
2 eral assistance under title III or title V of
3 the Higher Education Act of 1965.

4 (ii) The institution was impacted by a
5 major disaster or emergency declared by
6 the President (as defined in section 102(2)
7 of the Robert T. Stafford Disaster Relief
8 and Emergency Assistance Act (42 U.S.C.
9 5122(2))), including an institution affected
10 by a Gulf hurricane disaster, as such term
11 is defined in section 824(g)(1) of the High-
12 er Education Act of 1965 (20 U.S.C.
13 11611–3(g)(1)).

14 (iii) The institution demonstrates that
15 the proposed project or projects to be car-
16 ried out with a subgrant under this section
17 will increase the energy efficiency of the in-
18 stitution’s facilities and comply with the
19 LEED Green Building Rating System.

20 (2) ADMINISTRATIVE AND OVERSIGHT EX-
21 PENSES.—Of the allocation amount received under
22 subsection (b)(1), a State higher education agency
23 may reserve not more than 5 percent of such
24 amount, or \$500,000, whichever is less, for adminis-

1 trative and oversight expenses related to carrying
2 out this section.

3 (d) USE OF SUBGRANTS BY INSTITUTIONS OF HIGH-
4 ER EDUCATION.—

5 (1) PERMISSIBLE USES OF FUNDS.—An institu-
6 tion of higher education receiving a subgrant under
7 this section shall use such subgrant to modernize,
8 renovate, or repair facilities of the institution that
9 are primarily used for instruction, research, or stu-
10 dent housing, which may include any of the fol-
11 lowing:

12 (A) Repair, replacement, or installation of
13 roofs, electrical wiring, plumbing systems, sew-
14 age systems, or lighting systems.

15 (B) Repair, replacement, or installation of
16 heating, ventilation, or air conditioning systems
17 (including insulation).

18 (C) Compliance with fire and safety codes,
19 including—

20 (i) professional installation of fire or
21 life safety alarms; and

22 (ii) modernizations, renovations, and
23 repairs that ensure that the institution's
24 facilities are prepared for emergencies,

1 such as improving building infrastructure
2 to accommodate security measures.

3 (D) Retrofitting necessary to increase the
4 energy efficiency of the institution's facilities.

5 (E) Renovations to the institution's facili-
6 ties necessary to comply with accessibility re-
7 quirements in the Americans with Disabilities
8 Act of 1990 (42 U.S.C. 12101 et seq.) and sec-
9 tion 504 of the Rehabilitation Act of 1973 (29
10 U.S.C. 794).

11 (F) Abatement or removal of asbestos from
12 the institution's facilities.

13 (G) Modernization, renovation, and repair
14 relating to improving science and engineering
15 laboratories, libraries, and instructional facili-
16 ties.

17 (H) Upgrading or installation of edu-
18 cational technology infrastructure.

19 (I) Installation or upgrading of renewable
20 energy generation and heating systems, includ-
21 ing solar, photovoltaic, wind, biomass (including
22 wood pellet), or geothermal systems, or compo-
23 nents of such systems.

1 (J) Other modernization, renovation, or re-
2 pair projects that are primarily for instruction,
3 research, or student housing.

4 (2) GREEN SCHOOL REQUIREMENT.—An insti-
5 tution of higher education receiving a subgrant
6 under this section shall use not less than 25 percent
7 of such subgrant to carry out projects for mod-
8 ernization, renovation, or repair that are certified,
9 verified, or consistent with the applicable provisions
10 of—

11 (A) the LEED Green Building Rating Sys-
12 tem;

13 (B) Energy Star;

14 (C) the CHPS Criteria;

15 (D) Green Globes; or

16 (E) an equivalent program adopted by the
17 State or the State higher education agency.

18 (3) PROHIBITED USES OF FUNDS.—No funds
19 awarded under this section may be used for—

20 (A) the maintenance of systems, equip-
21 ment, or facilities, including maintenance asso-
22 ciated with any permissible uses of funds de-
23 scribed in paragraph (1);

24 (B) modernization, renovation, or repair of
25 stadiums or other facilities primarily used for

1 athletic contests or exhibitions or other events
2 for which admission is charged to the general
3 public;

4 (C) modernization, renovation, or repair of
5 facilities—

6 (i) used for sectarian instruction, reli-
7 gious worship, or a school or department
8 of divinity; or

9 (ii) in which a substantial portion of
10 the functions of the facilities are subsumed
11 in a religious mission; or

12 (D) construction of new facilities.

13 (4) USE IT OR LOSE IT REQUIREMENTS.—

14 (A) DEADLINE FOR BINDING COMMIT-
15 MENTS.—Each institution of higher education
16 receiving a subgrant under this section shall
17 enter into contracts or other binding commit-
18 ments not later than 1 year after the date of
19 the enactment of this Act (or not later than 9
20 months after the subgrant is awarded, if later)
21 to make use of 50 percent of the funds award-
22 ed, and shall enter into contracts or other bind-
23 ing commitments not later than 2 years after
24 the date of the enactment of this Act (or not
25 later than 21 months after the subgrant is

1 awarded, if later) to make use of the remaining
2 funds. In the case of activities to be carried out
3 directly by an institution of higher education re-
4 ceiving such a subgrant (rather than by con-
5 tracts, subgrants, or other arrangements with
6 third parties), a certification by the institution
7 specifying the amounts, planned timing, and
8 purpose of such expenditures shall be deemed a
9 binding commitment for purposes of this sec-
10 tion.

11 (B) REDISTRIBUTION OF UNCOMMITTED
12 FUNDS.—A State higher education agency shall
13 recover or deobligate any subgrant funds not
14 committed in accordance with subparagraph
15 (A), and redistribute such funds to other insti-
16 tutions of higher education that are—

17 (i) eligible for subgrants under this
18 section; and

19 (ii) able to make use of such funds in
20 a timely manner (including binding com-
21 mitments within 120 days after the re-
22 allocation).

23 (e) APPLICATION OF GEPA.—The grant program au-
24 thorized in this section is an applicable program (as that
25 term is defined in section 400 of the General Education

1 Provisions Act (20 U.S.C. 1221)) subject to section 439
2 of such Act (20 U.S.C. 1232b). The Secretary shall, not-
3 withstanding section 437 of such Act (20 U.S.C. 1232)
4 and section 553 of title 5, United States Code, establish
5 such program rules as may be necessary to implement
6 such grant program by notice in the Federal Register.

7 (f) REPORTING.—

8 (1) REPORTS BY INSTITUTIONS.—Not later
9 than September 30, 2011, each institution of higher
10 education receiving a subgrant under this section
11 shall submit to the State higher education agency
12 awarding such subgrant a report describing the
13 projects for which such subgrant was received, in-
14 cluding—

15 (A) a description of each project carried
16 out, or planned to be carried out, with such
17 subgrant, including the types of modernization,
18 renovation, and repair to be completed by each
19 such project;

20 (B) the total amount of funds received by
21 the institution under this section and the
22 amount of such funds expended, as of the date
23 of the report, on the such projects;

24 (C) the actual or planned cost of each such
25 project and any demonstrable or expected aca-

1 demic, energy, or environmental benefits result-
2 ing from such project; and

3 (D) the total number of contracts, and
4 amount of funding for such contracts, awarded
5 by the institution to carry out such projects, as
6 of the date of such report, including the num-
7 ber of contracts, and amount of funding for
8 such contracts, awarded to local, small, minor-
9 ity-owned, women-owned, and veteran-owned
10 businesses, as such terms are defined by the
11 Small Business Act.

12 (2) REPORTS BY STATES.—Not later than De-
13 cember 31, 2011, each State higher education agen-
14 cy receiving a grant under this section shall submit
15 to the Secretary a report containing a compilation of
16 all of the reports under paragraph (1) submitted to
17 the agency by institutions of higher education.

18 (3) REPORTS BY THE SECRETARY.—Not later
19 than March 31, 2012, the Secretary shall submit to
20 the Committee on Education and Labor in the
21 House of Representatives and the Committee on
22 Health, Education, Labor, and Pensions in the Sen-
23 ate and Committees on Appropriations of the House
24 of Representatives and the Senate a report on

1 grants and subgrants made under this section, in-
2 cluding the information described in paragraph (1).

3 (g) DEFINITIONS.—In this section:

4 (1) CHPS CRITERIA.—The term “CHPS Cri-
5 teria” means the green building rating program de-
6 veloped by the Collaborative for High Performance
7 Schools.

8 (2) ENERGY STAR.—The term “Energy Star”
9 means the Energy Star program of the United
10 States Department of Energy and the United States
11 Environmental Protection Agency.

12 (3) GREEN GLOBES.—The term “Green
13 Globes” means the Green Building Initiative envi-
14 ronmental design and rating system referred to as
15 Green Globes.

16 (4) INSTITUTION OF HIGHER EDUCATION.—The
17 term “institution of higher education” has the
18 meaning given such term in section 101 of the High-
19 er Education Act of 1965.

20 (5) LEED GREEN BUILDING RATING SYS-
21 TEM.—The term “LEED Green Building Rating
22 System” means the United States Green Building
23 Council Leadership in Energy and Environmental
24 Design green building rating standard referred to as
25 the LEED Green Building Rating System.

1 (6) SECRETARY.—The term “Secretary” means
2 the Secretary of Education.

3 (7) STATE.—The term “State” has the mean-
4 ing given such term in section 103 of the Higher
5 Education Act of 1965 (20 U.S.C. 1003).

6 (8) STATE HIGHER EDUCATION AGENCY.—The
7 term “State higher education agency” has the mean-
8 ing given such term in section 103 of the Higher
9 Education Act of 1965 (20 U.S.C. 1003).

10 **SEC. 9303. MANDATORY PELL GRANTS.**

11 Section 401(b)(9)(A) of the Higher Education Act of
12 1965 (20 U.S.C. 1070a(b)(9)(A)) is amended—

13 (1) in clause (ii), by striking “\$2,090,000,000”
14 and inserting “\$2,733,000,000”; and

15 (2) in clause (iii), by striking “\$3,030,000,000”
16 and inserting “\$3,861,000,000”.

17 **SEC. 9304. INCREASE STUDENT LOAN LIMITS.**

18 (a) AMENDMENTS.—Section 428H(d) of the Higher
19 Education Act of 1965 (20 U.S.C. 1078–8(d)) is amend-
20 ed—

21 (1) in paragraph (3)—

22 (A) in subparagraph (A), by striking
23 “\$2,000” and inserting “\$4,000”; and

24 (B) in subparagraph (B), by striking
25 “\$31,000” and inserting “\$39,000”; and

1 (2) in paragraph (4)—

2 (A) in subparagraph (A)—

3 (i) in clause (i)(I) and clause (iii)(I),
4 by striking “\$6,000” each place it appears
5 and inserting “\$8,000”; and

6 (ii) in clause (ii)(I) and clause
7 (iii)(II), by striking “\$7,000” each place it
8 appears and inserting “\$9,000”; and

9 (B) in subparagraph (B), by striking
10 “\$57,500” and inserting “\$65,500”.

11 (b) **EFFECTIVE DATE.**—The amendments made by
12 this section shall be effective for loans first disbursed on
13 or after January 1, 2009.

14 **SEC. 9305. STUDENT LENDER SPECIAL ALLOWANCE.**

15 (a) **TEMPORARY CALCULATION RULE.**—Section
16 438(b)(2)(I) of the Higher Education Act of 1965 (20
17 U.S.C. 1087–1(b)(2)(I)) is amended by adding at the end
18 the following new clause:

19 “(vii) **TEMPORARY CALCULATION**
20 **RULE DURING UNSTABLE COMMERCIAL**
21 **PAPER MARKETS.**—

22 “(I) **CALCULATION BASED ON**
23 **LIBOR.**—For the calendar quarter be-
24 ginning on October 1, 2008, and end-
25 ing on December 31, 2008, in com-

1 puting the special allowance paid pur-
2 suant to this subsection with respect
3 to loans for which the first disburse-
4 ment is made on or after January 1,
5 2000, clause (i)(I) of this subpara-
6 graph shall be applied by substituting
7 ‘the rate that is the average rate of
8 the 3-month London Inter Bank Of-
9 fered Rate (LIBOR) for United
10 States dollars in effect for each of the
11 days in such quarter as compiled and
12 released by the British Bankers Asso-
13 ciation, minus 0.13 percent,’ for ‘the
14 average of the bond equivalent rates
15 of the quotes of the 3-month commer-
16 cial paper (financial) rates in effect
17 for each of the days in such quarter
18 as reported by the Federal Reserve in
19 Publication H-15 (or its successor)
20 for such 3-month period’.

21 “(II) PARTICIPATION INTER-
22 ESTS.—Notwithstanding subclause (I)
23 of this clause, the special allowance
24 paid on any loan held by a lender that
25 has sold participation interests in

1 such loan to the Secretary shall be the
 2 rate computed under this subpara-
 3 graph without regard to subclause (I)
 4 of this clause, unless the lender agrees
 5 that the participant’s yield with re-
 6 spect to such participation interest is
 7 to be calculated in accordance with
 8 subclause (I) of this clause.”.

9 (b) CONFORMING AMENDMENTS.—Section
 10 438(b)(2)(I) of the Higher Education Act of 1965 (20
 11 U.S.C. 1087–1(b)(2)(I)) is further amended—

12 (1) in clause (i)(II), by striking “such average
 13 bond equivalent rate” and inserting “the rate deter-
 14 mined under subclause (I)”; and

15 (2) in clause (v)(III), by striking “(iv), and
 16 (vi)” and inserting “(iv), (vi), and (vii)”.

17 **Subtitle D—Related Agencies**

18 CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

19 OPERATING EXPENSES

20 For an additional amount for “Operating Expenses”
 21 to carry out the Domestic Volunteer Service Act of 1973
 22 and the National and Community Service Act of 1990
 23 (“1990 Act”), \$160,000,000, which shall be used to ex-
 24 pand existing AmeriCorps grants: *Provided*, That funds
 25 made available under this heading may be used to provide

1 adjustments to awards made prior to September 30, 2010
2 in order to waive the match requirement authorized in sec-
3 tion 121(e)(4) of part I of subtitle C of the 1990 Act,
4 if the Chief Executive Officer of the Corporation for Na-
5 tional and Community Service (“CEO”) determines that
6 the grantee has reduced capacity to meet this requirement:
7 *Provided further*, That in addition to requirements identi-
8 fied herein, funds provided under this heading shall be
9 subject to the terms and conditions under which funds are
10 appropriated in fiscal year 2009: *Provided further*, That
11 the CEO shall provide the Committees on Appropriations
12 of the House of Representatives and the Senate a fiscal
13 year 2009 operating plan for the funds appropriated under
14 this heading prior to making any Federal obligations of
15 such funds in fiscal year 2009, but not later than 90 days
16 after the date of enactment of this Act, and a fiscal year
17 2010 operating plan for such funds prior to making any
18 Federal obligations of such funds in fiscal year 2010, but
19 not later than November 1, 2009, that detail the allocation
20 of resources and the increased number of volunteers sup-
21 ported by the AmeriCorps programs: *Provided further*,
22 That the CEO shall provide to the Committees on Appro-
23 priations of the House of Representatives and the Senate
24 a report on the actual obligations, expenditures, and unob-
25 ligated balances for each activity funded under this head-

1 ing not later than November 1, 2009, and every 6 months
2 thereafter as long as funding provided under this heading
3 is available for obligation or expenditure.

4 NATIONAL SERVICE TRUST

5 (INCLUDING TRANSFER OF FUNDS)

6 For an additional amount for “National Service
7 Trust” established under subtitle D of title I of the Na-
8 tional and Community Service Act of 1990 (“1990 Act”),
9 \$40,000,000, which shall remain available until expended:
10 *Provided*, That the Corporation for National and Commu-
11 nity Service may transfer additional funds from the
12 amount provided within “Operating Expenses” for grants
13 made under subtitle C of the 1990 Act to this appropria-
14 tion upon determination that such transfer is necessary
15 to support the activities of national service participants
16 and after notice is transmitted to the Committees on Ap-
17 propriations of the House of Representatives and the Sen-
18 ate: *Provided further*, That the amount appropriated for
19 or transferred to the National Service Trust may be in-
20 vested under section 145(b) of the 1990 Act without re-
21 gard to the requirement to apportion funds under 31
22 U.S.C. 1513(b).

1 SOCIAL SECURITY ADMINISTRATION

2 LIMITATION ON ADMINISTRATIVE EXPENSES

3 (INCLUDING TRANSFER OF FUNDS)

4 For an additional amount for “Limitation on Admin-
5 istrative Expenses”, \$900,000,000, which shall be used as
6 follows:

7 (1) \$400,000,000 for the construction and asso-
8 ciated costs to establish a new National Computer
9 Center, which may include lease or purchase of real
10 property: *Provided*, That the construction plan and
11 site selection for such center shall be subject to re-
12 view and approval by the Office of Management and
13 Budget: *Provided further*, That the Committees on
14 Appropriations of the House of Representatives and
15 the Senate shall be notified 15 days in advance of
16 the lease or purchase of such site: *Provided further*,
17 That such center shall continue to be a government-
18 operated facility.

19 (2) \$500,000,000 for processing disability and
20 retirement workloads: *Provided*, That up to
21 \$40,000,000 may be used by the Commissioner of
22 Social Security for health information technology re-
23 search and activities to facilitate the adoption of
24 electronic medical records in disability claims, in-
25 cluding the transfer of funds to “Supplemental Se-

1 security Income Program” to carry out activities
2 under section 1110 of the Social Security Act.

3 **TITLE X—MILITARY CONSTRUCTION AND VETERANS AFFAIRS**

6 DEPARTMENT OF DEFENSE

7 MILITARY CONSTRUCTION, ARMY

8 For an additional amount for “Military Construction,
9 Army”, \$920,000,000: *Provided*, That notwithstanding
10 any other provision of law, such funds may be obligated
11 and expended to carry out planning and design and mili-
12 tary construction projects in the United States not other-
13 wise authorized by law: *Provided further*, That of the
14 amount provided under this heading, \$600,000,000 shall
15 be for training and recruit troop housing, \$220,000,000
16 shall be for permanent party troop housing, and
17 \$100,000,000 shall be for child development centers: *Pro-*
18 *vided further*, That not later than 30 days after the date
19 of enactment of this Act, the Secretary of Defense shall
20 submit to the Committees on Appropriations of the House
21 of Representatives and the Senate an expenditure plan for
22 funds provided under this heading.

23 MILITARY CONSTRUCTION, NAVY AND MARINE CORPS

24 For an additional amount for “Military Construction,
25 Navy and Marine Corps”, \$350,000,000: *Provided*, That

1 notwithstanding any other provision of law, such funds
2 may be obligated and expended to carry out planning and
3 design and military construction projects in the United
4 States not otherwise authorized by law: *Provided further*,
5 That of the amount provided under this heading,
6 \$170,000,000 shall be for sailor and marine housing and
7 \$180,000,000 shall be for child development centers: *Pro-*
8 *vided further*, That not later than 30 days after the date
9 of enactment of this Act, the Secretary of Defense shall
10 submit to the Committees on Appropriations of the House
11 of Representatives and the Senate an expenditure plan for
12 funds provided under this heading.

13 MILITARY CONSTRUCTION, AIR FORCE

14 For an additional amount for “Military Construction,
15 Air Force”, \$280,000,000: *Provided*, That notwith-
16 standing any other provision of law, such funds may be
17 obligated and expended to carry out planning and design
18 and military construction projects in the United States not
19 otherwise authorized by law: *Provided further*, That of the
20 amount provided under this heading, \$200,000,000 shall
21 be for airmen housing and \$80,000,000 shall be for child
22 development centers: *Provided further*, That not later than
23 30 days after the date of enactment of this Act, the Sec-
24 retary of Defense shall submit to the Committees on Ap-
25 propriations of the House of Representatives and the Sen-

1 ate an expenditure plan for funds provided under this
2 heading.

3 MILITARY CONSTRUCTION, DEFENSE-WIDE

4 For an additional amount for “Military Construction,
5 Defense-Wide”, \$3,750,000,000, for the construction of
6 hospitals and ambulatory surgery centers: *Provided*, That
7 notwithstanding any other provision of law, such funds
8 may be obligated and expended to carry out planning and
9 design and military construction projects in the United
10 States not otherwise authorized by law: *Provided further*,
11 That not later than 30 days after the date of enactment
12 of this Act, the Secretary of Defense shall submit to the
13 Committees on Appropriations of the House of Represent-
14 atives and the Senate an expenditure plan for funds pro-
15 vided under this heading.

16 MILITARY CONSTRUCTION, ARMY NATIONAL GUARD

17 For an additional amount for “Military Construction,
18 Army National Guard”, \$140,000,000: *Provided*, That
19 notwithstanding any other provision of law, such funds
20 may be obligated and expended to carry out planning and
21 design and military construction projects in the United
22 States not otherwise authorized by law: *Provided further*,
23 That not later than 30 days after the date of enactment
24 of this Act, the Secretary of Defense shall submit to the
25 Committees on Appropriations of the House of Represent-

1 atives and the Senate an expenditure plan for funds pro-
2 vided under this heading.

3 MILITARY CONSTRUCTION, AIR NATIONAL GUARD

4 For an additional amount for “Military Construction,
5 Air National Guard”, \$70,000,000: *Provided*, That not-
6 withstanding any other provision of law, such funds may
7 be obligated and expended to carry out planning and de-
8 sign and military construction projects in the United
9 States not otherwise authorized by law: *Provided further*,
10 That not later than 30 days after the date of enactment
11 of this Act, the Secretary of Defense shall submit to the
12 Committees on Appropriations of the House of Represent-
13 atives and the Senate an expenditure plan for funds pro-
14 vided under this heading.

15 MILITARY CONSTRUCTION, ARMY RESERVE

16 For an additional amount for “Military Construction,
17 Army Reserve”, \$100,000,000: *Provided*, That notwith-
18 standing any other provision of law, such funds may be
19 obligated and expended to carry out planning and design
20 and military construction projects in the United States not
21 otherwise authorized by law: *Provided further*, That not
22 later than 30 days after the date of enactment of this Act,
23 the Secretary of Defense shall submit to the Committees
24 on Appropriations of the House of Representatives and the

1 Senate an expenditure plan for funds provided under this
2 heading.

3 MILITARY CONSTRUCTION, NAVY RESERVE

4 For an additional amount for “Military Construction,
5 Navy Reserve”, \$30,000,000: *Provided*, That notwith-
6 standing any other provision of law, such funds may be
7 obligated and expended to carry out planning and design
8 and military construction projects in the United States not
9 otherwise authorized by law: *Provided further*, That not
10 later than 30 days after the date of enactment of this Act,
11 the Secretary of Defense shall submit to the Committees
12 on Appropriations of the House of Representatives and the
13 Senate an expenditure plan for funds provided under this
14 heading.

15 MILITARY CONSTRUCTION, AIR FORCE RESERVE

16 For an additional amount for “Military Construction,
17 Air Force Reserve”, \$60,000,000: *Provided*, That notwith-
18 standing any other provision of law, such funds may be
19 obligated and expended to carry out planning and design
20 and military construction projects in the United States not
21 otherwise authorized by law: *Provided further*, That not
22 later than 30 days after the date of enactment of this Act,
23 the Secretary of Defense shall submit to the Committees
24 on Appropriations of the House of Representatives and the

1 Senate an expenditure plan for funds provided under this
2 heading.

3 DEPARTMENT OF DEFENSE BASE CLOSURE ACCOUNT

4 1990

5 For an additional amount to be deposited into the
6 Department of Defense Base Closure Account 1990, es-
7 tablished by section 2906(a)(1) of the Defense Base Clo-
8 sure and Realignment Act of 1990 (10 U.S.C. 2687 note),
9 \$300,000,000: *Provided*, That not later than 30 days after
10 the date of enactment of this Act, the Secretary of Defense
11 shall submit to the Committees on Appropriations of the
12 House of Representatives and the Senate an expenditure
13 plan for funds provided under this heading.

14 DEPARTMENT OF VETERANS AFFAIRS

15 VETERANS HEALTH ADMINISTRATION

16 MEDICAL FACILITIES

17 For an additional amount for “Medical Facilities” for
18 non-recurring maintenance, including energy projects,
19 \$950,000,000: *Provided*, That not later than 30 days after
20 the date of enactment of this Act, the Secretary of Vet-
21 erans Affairs shall submit to the Committees on Appro-
22 priations of the House of Representatives and the Senate
23 an expenditure plan for funds provided under this head-
24 ing.

1 NATIONAL CEMETERY ADMINISTRATION

2 For an additional amount for “National Cemetery
3 Administration” for monument and memorial repairs,
4 \$50,000,000: *Provided*, That not later than 30 days after
5 the date of enactment of this Act, the Secretary of Vet-
6 erans Affairs shall submit to the Committees on Appro-
7 priations of the House of Representatives and the Senate
8 an expenditure plan for funds provided under this head-
9 ing.

10 **TITLE XI—DEPARTMENT OF**
11 **STATE**

12 DEPARTMENT OF STATE

13 ADMINISTRATION OF FOREIGN AFFAIRS

14 CAPITAL INVESTMENT FUND

15 For an additional amount for “Capital Investment
16 Fund”, \$276,000,000, of which up to \$120,000,000 shall
17 be available for the design and construction of a backup
18 information management facility in the United States to
19 support mission-critical operations and projects, and up
20 to \$98,527,000 shall be available to carry out the Depart-
21 ment of State’s responsibilities under the Comprehensive
22 National Cybersecurity Initiative: *Provided*, That the Sec-
23 retary of State shall submit to the Committees on Appro-
24 priations of the House of Representatives and the Senate

1 within 90 days of enactment of this Act a detailed spend-
2 ing plan for funds appropriated under this heading.

3 INTERNATIONAL COMMISSIONS

4 INTERNATIONAL BOUNDARY AND WATER COMMISSION,

5 UNITED STATES AND MEXICO

6 CONSTRUCTION

7 (INCLUDING TRANSFER OF FUNDS)

8 For an additional amount for “Construction” for the
9 water quantity program to meet immediate repair and re-
10 habilitation requirements, \$224,000,000: *Provided*, That
11 up to \$2,000,000 may be transferred to, and merged with,
12 funds available under the heading “International Bound-
13 ary and Water Commission, United States and Mexico—
14 Salaries and Expenses”, and such amount shall be in lieu
15 of amounts available under section 1106 of this Act: *Pro-*
16 *vided*, That the Secretary of State shall submit to the
17 Committees on Appropriations of the House of Represent-
18 atives and the Senate within 90 days of enactment of this
19 Act a detailed spending plan for funds appropriated under
20 this heading.

1 **TITLE XII—TRANSPORTATION,**
2 **AND HOUSING AND URBAN**
3 **DEVELOPMENT**

4 DEPARTMENT OF TRANSPORTATION

5 FEDERAL AVIATION ADMINISTRATION

6 GRANTS-IN-AID FOR AIRPORTS

7 For an additional amount for “Grants-in-Aid for Air-
8 ports”, to enable the Secretary of Transportation to make
9 grants for discretionary projects as authorized by sub-
10 chapter I of chapter 471 and subchapter I of chapter 475
11 of title 49, United States Code, \$3,000,000,000: *Provided,*
12 That such funds shall not be subject to apportionment for-
13 mulas, special apportionment categories, or minimum per-
14 centages under chapter 471: *Provided further,* That the
15 conditions, certifications, and assurances required for
16 grants under subchapter I of chapter 471 of such title
17 apply: *Provided further,* That for purposes of applying sec-
18 tion 1104 of this Act to this appropriation, the deadline
19 for grantees to enter into contracts or other binding com-
20 mitments to make use of not less than 50 percent of the
21 funds awarded shall be 90 days after award of the grant.

22 FEDERAL HIGHWAY ADMINISTRATION

23 HIGHWAY INFRASTRUCTURE INVESTMENT

24 For projects and activities eligible under section 133
25 of title 23, United States Code, section 144 of such title

1 (without regard to subsection (g)), and sections 103, 119,
2 134, 148, and 149 of such title, \$30,000,000,000, of
3 which \$300,000,000 shall be for Indian reservation roads
4 under section 204 of such title; \$250,000,000 shall be for
5 park roads and parkways under section 204 of such title;
6 \$20,000,000 shall be for highway surface transportation
7 and technology training under section 140(b) of such title;
8 and \$20,000,000 shall be for disadvantaged business en-
9 terprises bonding assistance under section 332(e) of title
10 49, United States Code: *Provided*, That the amount set
11 aside from this appropriation pursuant to section 1106 of
12 this Act shall not be more than 0.2 percent of the funds
13 made available under this heading instead of the percent-
14 age specified in such section: *Provided further*, That, after
15 making the set-asides authorized by the previous provisos,
16 the funds made available under this heading shall be dis-
17 tributed among the States, and Puerto Rico, American
18 Samoa, Guam, the Virgin Islands, and the Commonwealth
19 of the Northern Mariana Islands, in the same ratio as the
20 obligation limitation for fiscal year 2008 was distributed
21 among the States in accordance with the formula specified
22 in section 120(a)(6) of division K of Public Law 110–161,
23 but, in the case of the Puerto Rico Highway Program and
24 the Territorial Highway Program, under section 120(a)(5)
25 of such division: *Provided further*, That 45 percent of the

1 funds distributed to a State under this heading shall be
2 suballocated within the State in the manner and for the
3 purposes described in section 133(d) of title 23, United
4 States Code, (without regard to the comparison to fiscal
5 year 2005 in paragraph (2)): *Provided further*, That in
6 selecting projects to be funded, recipients shall give pri-
7 ority to projects that can award contracts within 90 days
8 of enactment of this Act, are included in an approved
9 Statewide Transportation Improvement Program (STIP)
10 and/or Metropolitan Transportation Improvement Pro-
11 gram (TIP), are projected for completion within a three-
12 year time frame, and are located in economically dis-
13 tressed areas as defined by section 301 of the Public
14 Works and Economic Development Act of 1965, as
15 amended (42 U.S.C. 3161): *Provided further*, That funds
16 made available under this heading shall be administered
17 as if apportioned under chapter 1 of title 23, United
18 States Code, except for funds made available for Indian
19 reservation roads and park roads and parkways which
20 shall be administered in accordance with chapter 2 of title
21 23, United States Code: *Provided further*, That the Fed-
22 eral share payable on account of any project or activity
23 carried out with funds made available under this heading
24 shall, at the option of the recipient, be up to 100 percent
25 of the total cost thereof: *Provided further*, That funds

1 made available by this Act shall not be obligated for the
2 purposes authorized under section 115(b) of title 23,
3 United States Code: *Provided further*, That the provisions
4 of section 1101(b) of Public Law 109–59 shall apply to
5 funds made available under this heading: *Provided further*,
6 That, in lieu of the redistribution required by section
7 1104(b) of this Act, if less than 50 percent of the funds
8 made available to each State and territory under this
9 heading are obligated within 90 days after the date of dis-
10 tribution of those funds to the States and territories, then
11 the portion of the 50 percent of the total funding distrib-
12 uted to the State or territory that has not been obligated
13 shall be redistributed, in the manner described in section
14 120(c) of division K of Public Law 110–161, to those
15 States and territories that have obligated at least 50 per-
16 cent of the funds made available under this heading and
17 are able to obligate amounts in addition to those pre-
18 viously distributed, except that, for those funds suballo-
19 cated within the State, if less than 50 percent of the funds
20 so suballocated within the State are obligated within 75
21 days of suballocation, then the portion of the 50 percent
22 of funding so suballocated that has not been obligated will
23 be returned to the State for use anywhere in the State
24 prior to being redistributed in accordance with the first
25 part of this proviso: *Provided further*, That, in lieu of the

1 redistribution required by section 1104(b) of this Act, any
2 funds made available under this heading that are not obli-
3 gated by August 1, 2010, shall be redistributed, in the
4 manner described in section 120(c) of division K of Public
5 Law 110–161, to those States able to obligate amounts
6 in addition to those previously distributed, except that
7 funds suballocated within the State that are not obligated
8 by June 1, 2010, will be returned to the State for use
9 anywhere in the State prior to being redistributed in ac-
10 cordance with the first part of this proviso: *Provided fur-*
11 *ther*, That notwithstanding section 1103 of this Act, funds
12 made available under this heading shall be apportioned not
13 later than 7 days after the date of enactment of this Act.

14 FEDERAL RAILROAD ADMINISTRATION

15 CAPITAL ASSISTANCE FOR INTERCITY PASSENGER RAIL

16 SERVICE

17 For an additional amount for “Capital Assistance for
18 Intercity Passenger Rail Service” to enable the Secretary
19 of Transportation to make grants for capital costs as au-
20 thorized by chapter 244 of title 49 United States Code,
21 \$300,000,000: *Provided*, That notwithstanding section
22 1103 of this Act, the Secretary shall give preference to
23 projects for the repair, rehabilitation, upgrade, or pur-
24 chase of railroad assets or infrastructure that can be
25 awarded within 90 days of enactment of this Act: *Provided*

1 *further*, That in awarding grants for the acquisition of a
2 piece of rolling stock or locomotive, the Secretary shall
3 give preference to FRA-compliant rolling stock and loco-
4 motives: *Provided further*, That the Secretary shall give
5 preference to projects that support the development of
6 intercity high speed rail service: *Provided further*, That the
7 Federal share shall be, at the option of the recipient, up
8 to 100 percent.

9 CAPITAL AND DEBT SERVICE GRANTS TO THE NATIONAL
10 RAILROAD PASSENGER CORPORATION

11 For an additional amount for “Capital and Debt
12 Service Grants to the National Railroad Passenger Cor-
13 poration” (Amtrak) to enable the Secretary of Transpor-
14 tation to make capital grants to Amtrak as authorized by
15 section 101(c) of the Passenger Rail Investment and Im-
16 provement Act of 2008 (Public Law 110–432),
17 \$800,000,000: *Provided*, That priority shall be given to
18 projects for the repair, rehabilitation, or upgrade of rail-
19 road assets or infrastructure: *Provided further*, That none
20 of the funds under this heading shall be used to subsidize
21 the operating losses of Amtrak: *Provided further*, Notwith-
22 standing section 1103 of this Act, funds made available
23 under this heading shall be awarded not later than 7 days
24 after the date of enactment of this Act.

1 FEDERAL TRANSIT ADMINISTRATION
2 TRANSIT CAPITAL ASSISTANCE

3 For transit capital assistance grants, \$6,000,000,000
4 (increased by \$1,500,000,000), of which \$5,400,000,000
5 (increased by \$1,350,000,000) shall be for grants under
6 section 5307 of title 49, United States Code and shall be
7 apportioned in accordance with section 5336 of such title
8 (other than subsections (i)(1) and (j)) but may not be
9 combined or commingled with any other funds apportioned
10 under such section 5336, and of which \$600,000,000 (in-
11 creased by \$150,000,000) shall be for grants under sec-
12 tion 5311 of such title and shall be apportioned in accord-
13 ance with such section 5311 but may not be combined or
14 commingled with any other funds apportioned under that
15 section: *Provided*, That of the funds provided for section
16 5311 under this heading, 3 percent shall be made available
17 for section 5311(c)(1): *Provided further*, That applicable
18 chapter 53 requirements shall apply except that the Fed-
19 eral share of the costs for which a grant is made under
20 this heading shall be, at the option of the recipient, up
21 to 100 percent: *Provided further*, In lieu of the require-
22 ments of section 1103 of this Act, funds made available
23 under this heading shall be apportioned not later than 7
24 days after the date of enactment of this Act: *Provided fur-*
25 *ther*, That for purposes of applying section 1104 of this

1 Act to this appropriation, the deadline for grantees to
2 enter into obligations to make use of not less than 50 per-
3 cent of the funds awarded shall be 90 days after appor-
4 tionment: *Provided further*, That the provisions of section
5 1101(b) of Public Law 109–59 shall apply to funds made
6 available under this heading: *Provided further*, That not-
7 withstanding any other provision of law, of the funds ap-
8 portioned in accordance with section 5336, up to three-
9 quarters of 1 percent shall be available for administrative
10 expenses and program management oversight and of the
11 funds apportioned in accordance with section 5311, up to
12 one-half of 1 percent shall be available for administrative
13 expenses and program management oversight and both
14 amounts shall remain available for obligation until Sep-
15 tember 30, 2012: *Provided further*, That the preceding
16 proviso shall apply in lieu of the provisions in section 1106
17 of this Act.

18 FIXED GUIDEWAY INFRASTRUCTURE INVESTMENT

19 For an amount for capital expenditures authorized
20 under section 5309(b)(2) of title 49, United States Code,
21 \$2,000,000,000: *Provided*, That the Secretary of Trans-
22 portation shall apportion funds under this heading pursu-
23 ant to the formula set forth in section 5337 of title 49,
24 United States Code: *Provided further*, That the funds ap-
25 propriated under this heading shall not be commingled

1 with funds available under the Formula and Bus Grants
2 account: *Provided further*, In lieu of the requirements of
3 section 1103 of this Act, funds made available under this
4 heading shall be apportioned not later than 7 days after
5 the date of enactment of this Act: *Provided further*, That
6 for purposes of applying section 1104 of this Act to this
7 appropriation, the deadline for grantees to enter into obli-
8 gations to make use of not less than 50 percent of the
9 funds awarded shall be 90 days after apportionment: *Pro-*
10 *vided further*, That applicable chapter 53 requirements
11 shall apply except that the Federal share of the costs for
12 which a grant is made under this heading shall be, at the
13 option of the recipient, up to 100 percent: *Provided fur-*
14 *ther*, That the provisions of section 1101(b) of Public Law
15 109–59 shall apply to funds made available under this
16 heading: *Provided further*, That notwithstanding any other
17 provision of law, up to 1 percent of the funds under this
18 heading shall be available for administrative expenses and
19 program management oversight and shall remain available
20 for obligation until September 30, 2012: *Provided further*,
21 That the preceding proviso shall apply in lieu of the provi-
22 sions in section 1106 of this Act.

23 CAPITAL INVESTMENT GRANTS

24 For an additional amount for “Capital Investment
25 Grants”, as authorized under section 5338(c)(4) of title

1 49, United States Code, and allocated under section
2 5309(m)(2)(A) of such title, to enable the Secretary of
3 Transportation to make discretionary grants as authorized
4 by section 5309(d) and (e) of such title, \$1,000,000,000
5 (increased by \$1,500,000,000): *Provided*, That such
6 amount shall be allocated without regard to the limitation
7 under section 5309(m)(2)(A)(i): *Provided further*, That in
8 selecting projects to be funded, priority shall be given to
9 projects that are currently in construction or are able to
10 award contracts based on bids within 90 days of enact-
11 ment of this Act: *Provided further*, That for purposes of
12 applying section 1104 of this Act to this appropriation,
13 the deadline for grantees to enter into contracts or other
14 binding commitments to make use of not less than 50 per-
15 cent of the funds awarded shall be 90 days after award:
16 *Provided further*, That the provisions of section 1101(b)
17 of Public Law 109–59 shall apply to funds made available
18 under this heading: *Provided further*, That applicable
19 chapter 53 requirements shall apply, except that notwith-
20 standing any other provision of law, up to 1 percent of
21 the funds under this heading shall be available for admin-
22 istrative expenses and program management oversight and
23 shall remain available for obligation until September 30,
24 2012: *Provided further*, That the preceding proviso shall
25 apply in lieu of the provisions in section 1106 of this Act.

1 DEPARTMENT OF HOUSING AND URBAN
2 DEVELOPMENT
3 PUBLIC AND INDIAN HOUSING
4 PUBLIC HOUSING CAPITAL FUND

5 For an additional amount for “Public Housing Cap-
6 ital Fund” to carry out capital and management activities
7 for public housing agencies, as authorized under section
8 9 of the United States Housing Act of 1937 (42 U.S.C.
9 1437g) (“the Act”), \$5,000,000,000: *Provided*, That the
10 Secretary of Housing and Urban Development shall dis-
11 tribute at least \$4,000,000,000 of this amount by the
12 same formula used for amounts made available in fiscal
13 year 2008: *Provided further*, That public housing authori-
14 ties shall give priority to capital projects that can award
15 contracts based on bids within 120 days from the date
16 the funds are made available to the public housing au-
17 thorities: *Provided further*, That public housing agencies
18 shall give priority consideration to the rehabilitation of va-
19 cant rental units: *Provided further*, That notwithstanding
20 any other provision of the Act or regulations: (1) funding
21 provided herein may not be used for Operating Fund ac-
22 tivities pursuant to section 9(g) of the Act; and (2) any
23 restriction of funding to replacement housing uses shall
24 be inapplicable: *Provided further*, That public housing
25 agencies shall prioritize capital projects underway or al-

1 ready in their 5-year plans: *Provided further*, That of the
2 amount provided under this heading, the Secretary may
3 obligate up to \$1,000,000,000, for competitive grants to
4 public housing authorities for activities including: (1) in-
5 vestments that leverage private sector funding or financ-
6 ing for housing renovations and energy conservation ret-
7 rofit investments; (2) rehabilitation of units using sustain-
8 able materials and methods that improve energy efficiency,
9 reduce energy costs, or preserve and improve units with
10 good access to public transportation or employment cen-
11 ters; (3) increase the availability of affordable rental hous-
12 ing by expediting rehabilitation projects to bring vacant
13 units into use or by filling the capital investment gap for
14 redevelopment or replacement housing projects which have
15 been approved or are otherwise ready to proceed but are
16 stalled due to the inability to obtain anticipated private
17 capital; or (4) address the needs of seniors and persons
18 with disabilities through improvements to housing and re-
19 lated facilities which attract or promote the coordinated
20 delivery of supportive services: *Provided further*, That the
21 Secretary may waive statutory or regulatory provisions re-
22 lated to the obligation and expenditure of capital funds
23 if necessary to facilitate the timely expenditure of funds
24 (except for requirements related to fair housing, non-
25 discrimination, labor standards, and the environment).

1 ELDERLY, DISABLED, AND SECTION 8 ASSISTED HOUSING
2 ENERGY RETROFIT

3 For grants or loans to owners of properties receiving
4 project-based assistance pursuant to section 202 of the
5 Housing Act of 1959 (12 U.S.C. 17012), section 811 of
6 the Cranston-Gonzalez National Affordable Housing Act
7 (42 U.S.C. 8013), or section 8 of the United States Hous-
8 ing Act of 1937 (42 U.S.C. 1437f), to accomplish energy
9 retrofit investments, \$2,500,000,000: *Provided*, That such
10 loans or grants shall be provided through the Office of
11 Affordable Housing Preservation of the Department of
12 Housing and Urban Development, on such terms and con-
13 ditions as the Secretary of Housing and Urban Develop-
14 ment deems appropriate: *Provided further*, That eligible
15 owners must have at least a satisfactory management re-
16 view rating, be in substantial compliance with applicable
17 performance standards and legal requirements, and com-
18 mit to an additional period of affordability determined by
19 the Secretary: *Provided further*, That the Secretary shall
20 undertake appropriate underwriting and oversight with re-
21 spect to such transactions: *Provided further*, That the Sec-
22 retary may set aside funds made available under this
23 heading for an efficiency incentive payable upon satisfac-
24 tory completion of energy retrofit investments, and may
25 provide additional incentives if such investments resulted

1 in extraordinary job creation for low-income and very low-
2 income persons: *Provided further*, that of the funds pro-
3 vided under this heading, 1 percent shall be available only
4 for staffing, training, technical assistance, technology,
5 monitoring, research and evaluation activities.

6 NATIVE AMERICAN HOUSING BLOCK GRANTS

7 For an additional amount for “Native American
8 Housing Block Grants”, as authorized under title I of the
9 Native American Housing Assistance and Self-Determina-
10 tion Act of 1996 (“NAHASDA”) (25 U.S.C. 4111 et
11 seq.), \$500,000,000: *Provided*, That \$250,000,000 of the
12 amount appropriated under this heading shall be distrib-
13 uted according to the same funding formula used in fiscal
14 year 2008: *Provided further*, That in selecting projects to
15 be funded, recipients shall give priority to projects that
16 can award contracts based on bids within 120 days from
17 the date that funds are available to the recipients: *Pro-
18 vided further*, That in allocating the funds appropriated
19 under this heading, the Secretary of Housing and Urban
20 Development shall not require an additional action plan
21 from grantees: *Provided further*, That the Secretary may
22 obligate \$250,000,000 of the amount appropriated under
23 this heading for competitive grants to eligible entities that
24 apply for funds as authorized under NAHASDA: *Provided
25 further*, That in awarding competitive funds, the Secretary

1 shall give priority to projects that will spur construction
2 and rehabilitation and will create employment opportuni-
3 ties for low-income and unemployed persons.

4 COMMUNITY PLANNING AND DEVELOPMENT

5 COMMUNITY DEVELOPMENT FUND

6 For an additional amount for “Community Develop-
7 ment Fund” \$1,000,000,000, to carry out the community
8 development block grant program under title I of the
9 Housing and Community Development Act of 1974 (42
10 U.S.C. 5301 et seq.): *Provided*, That the amount appro-
11 priated in this paragraph shall be distributed according
12 to the same funding formula used in fiscal year 2008: *Pro-*
13 *vided further*, That in allocating the funds appropriated
14 in this paragraph, the Secretary of Housing and Urban
15 Development shall not require an additional action plan
16 from grantees: *Provided further*, That in selecting projects
17 to be funded, recipients shall give priority to projects that
18 can award contracts based on bids within 120 days from
19 the date the funds are made available to the recipients;
20 *Provided further*, That in administering funds provided in
21 this paragraph, the Secretary may waive any provision of
22 any statute or regulation that the Secretary administers
23 in connection with the obligation by the Secretary or the
24 use by the recipient of these funds (except for require-
25 ments related to fair housing, nondiscrimination, labor

1 standards, and the environment), upon a finding that such
2 waiver is required to facilitate the timely use of such funds
3 and would not be inconsistent with the overall purpose of
4 the statute.

5 For a further additional amount for “Community De-
6 velopment Fund”, \$4,190,000,000, to be used for neigh-
7 borhood stabilization activities related to emergency as-
8 sistance for the redevelopment of abandoned and fore-
9 closed homes as authorized under division B, title III of
10 the Housing and Economic Recovery Act of 2008 (Public
11 Law 110–289), of which—

12 (1) not less than \$3,440,000,000 shall be allo-
13 cated by a competition for which eligible entities
14 shall be States, units of general local government,
15 and nonprofit entities or consortia of nonprofit enti-
16 ties: *Provided*, That the award criteria for such com-
17 petition shall include grantee capacity, leveraging
18 potential, targeted impact of foreclosure prevention,
19 and any additional factors determined by the Sec-
20 retary of Housing and Urban Development: *Provided*
21 *further*, that the Secretary may establish a minimum
22 grant size: *Provided further*, That amounts made
23 available under this Section may be used to: (A) es-
24 tablish financing mechanisms for purchase and rede-
25 velopment of foreclosed-upon homes and residential

1 properties, including such mechanisms as soft-sec-
2 onds, loan loss reserves, and shared-equity loans for
3 low- and moderate-income homebuyers; (B) purchase
4 and rehabilitate homes and residential properties
5 that have been abandoned or foreclosed upon, in
6 order to sell or rent such homes and properties; (C)
7 establish and operate land banks for homes that
8 have been foreclosed upon; (D) demolish foreclosed
9 properties that have become blighted structures; and
10 (E) redevelop demolished or vacant foreclosed prop-
11 erties in order to sell or rent such properties; and

12 (2) up to \$750,000,000 shall be awarded by
13 competition to nonprofit entities or consortia of non-
14 profit entities to provide community stabilization as-
15 sistance by: (A) accelerating state and local govern-
16 ment and nonprofit productivity; (B) increasing the
17 scale and efficiency of property transfers of fore-
18 closed and vacant residential properties from finan-
19 cial institutions and government entities to qualified
20 local housing providers in order to return the prop-
21 erties to productive affordable housing use; (C)
22 building industry and property management capac-
23 ity; and (D) partnering with private sector real es-
24 tate developers and contractors and leveraging pri-
25 vate sector capital: *Provided further*, That such com-

1 community stabilization assistance shall be provided pri-
2 marily in States and areas with high rates of de-
3 faults and foreclosures to support the acquisition, re-
4 habilitation and property management of single-fam-
5 ily and multi-family homes and to work in partner-
6 ship with the private sector real estate industry and
7 to leverage available private and public funds for
8 those purposes: *Provided further*, That for purposes
9 of this paragraph qualified local housing providers
10 shall be nonprofit organizations with demonstrated
11 capabilities in real estate development or acquisition
12 and rehabilitation or property management of single-
13 or multi-family homes, or local or state governments
14 or instrumentalities of such governments: *Provided*
15 *further*, That qualified local housing providers shall
16 be expected to utilize and leverage additional local
17 nonprofit, governmental, for-profit and private re-
18 sources:

19 *Provided further*, That in the case of any foreclosure on
20 any dwelling or residential real property acquired with any
21 amounts made available under this heading, any successor
22 in interest in such property pursuant to the foreclosure
23 shall assume such interest subject to: (1) the provision by
24 such successor in interest of a notice to vacate to any bona
25 fide tenant at least 90 days before the effective date of

1 such notice; and (2) the rights of any bona fide tenant,
2 as of the date of such notice of foreclosure: (A) under any
3 bona fide lease entered into before the notice of foreclosure
4 to occupy the premises until the end of the remaining term
5 of the lease, except that a successor in interest may termi-
6 nate a lease effective on the date of sale of the unit to
7 a purchaser who will occupy the unit as a primary resi-
8 dence, subject to the receipt by the tenant of the 90-day
9 notice under this paragraph; or (B) without a lease or with
10 a lease terminable at will under State law, subject to the
11 receipt by the tenant of the 90-day notice under this para-
12 graph, except that nothing in this paragraph shall affect
13 the requirements for termination of any Federal- or State-
14 subsidized tenancy or of any State or local law that pro-
15 vides longer time periods or other additional protections
16 for tenants: *Provided further*, That, for purposes of this
17 paragraph, a lease or tenancy shall be considered bona fide
18 only if: (1) the mortgagor under the contract is not the
19 tenant; (2) the lease or tenancy was the result of an arms-
20 length transaction; and (3) the lease or tenancy requires
21 the receipt of rent that is not substantially less than fair
22 market rent for the property: *Provided further*, That the
23 recipient of any grant or loan from amounts made avail-
24 able under this heading may not refuse to lease a dwelling
25 unit in housing assisted with such loan or grant to a hold-

1 er of a voucher or certificate of eligibility under section
2 8 of the United States Housing Act of 1937 (42 U.S.C.
3 1437f) because of the status of the prospective tenant as
4 such a holder: *Provided further*, That in the case of any
5 qualified foreclosed housing for which funds made avail-
6 able under this heading are used and in which a recipient
7 of assistance under section 8(o) of the U.S. Housing Act
8 of 1937 resides at the time of acquisition or financing,
9 the owner and any successor in interest shall be subject
10 to the lease and to the housing assistance payments con-
11 tract for the occupied unit: *Provided further*, That
12 vacating the property prior to sale shall not constitute
13 good cause for termination of the tenancy unless the prop-
14 erty is unmarketable while occupied or unless the owner
15 or subsequent purchaser desires the unit for personal or
16 family use: *Provided further*, That this paragraph shall not
17 preempt any State or local law that provides more protec-
18 tion for tenants: *Provided further*, That amounts made
19 available under this heading may be used for the costs
20 of demolishing foreclosed housing that is deteriorated or
21 unsafe: *Provided further*, That the amount for demolition
22 of such housing may not exceed 10 percent of amounts
23 allocated under this paragraph to States and units of gen-
24 eral local government: *Provided further*, That no amounts
25 from a grant made under this paragraph may be used to

1 demolish any public housing (as such term is defined in
2 section 3 of the United States Housing Act of 1937 (42
3 U.S.C. 1437a)): *Provided further*, That section 2301(d)(4)
4 of the Housing and Economic Recovery Act of 2008 (Pub-
5 lic Law 110–289) is repealed.

6 HOME INVESTMENT PARTNERSHIPS PROGRAM

7 For an additional amount for “HOME Investment
8 Partnerships Program” as authorized under Title II of the
9 Cranston-Gonzalez National Affordable Housing Act (“the
10 Act”), \$1,500,000,000: *Provided*, That the amount appro-
11 priated under this heading shall be distributed according
12 to the same funding formula used in fiscal year 2008: *Pro-
13 vided further*, That the Secretary of Housing and Urban
14 Development may waive statutory or regulatory provisions
15 related to the obligation of such funds if necessary to fa-
16 cilitate the timely expenditure of funds (except for require-
17 ments related to fair housing, nondiscrimination, labor
18 standards, and the environment): *Provided further*, That
19 in selecting projects to be funded, recipients shall give pri-
20 ority to projects that can award contracts based on bids
21 within 120 days from the date that funds are available
22 to the recipients.

1 SELF-HELP AND ASSISTED HOMEOWNERSHIP
2 OPPORTUNITY PROGRAM

3 For an additional amount for “Self-Help and As-
4 sisted Homeownership Opportunity Program”, as author-
5 ized under section 11 of the Housing Opportunity Pro-
6 gram Extension Act of 1996, \$10,000,000: *Provided*, That
7 in awarding competitive grant funds, the Secretary of
8 Housing and Urban Development shall give priority to the
9 provision and rehabilitation of sustainable, affordable sin-
10 gle and multifamily units in low-income, high-need rural
11 areas: *Provided further*, That in selecting projects to be
12 funded, grantees shall give priority to projects that can
13 award contracts based on bids within 120 days from the
14 date the funds are made available to the grantee.

15 HOMELESS ASSISTANCE GRANTS

16 For an additional amount for “Homeless Assistance
17 Grants”, for the emergency shelter grants program as au-
18 thorized under subtitle B of tile IV of the McKinney-Vento
19 Homeless Assistance Act, \$1,500,000,000: *Provided*, That
20 in addition to homeless prevention activities specified in
21 the emergency shelter grant program, funds provided
22 under this heading may be used for the provision of short-
23 term or medium-term rental assistance; housing relocation
24 and stabilization services including housing search, medi-
25 ation or outreach to property owners, legal services, credit

1 repair, resolution of security or utility deposits, utility pay-
2 ments, rental assistance for a final month at a location,
3 and moving costs assistance; or other appropriate home-
4 lessness prevention activities; *Provided further*, That these
5 funds shall be allocated pursuant to the formula author-
6 ized by section 413 of such Act: *Provided further*, That
7 the Secretary of Housing and Urban Development may
8 waive statutory or regulatory provisions related to the obli-
9 gation and use of emergency shelter grant funds necessary
10 to facilitate the timely expenditure of funds.

11 OFFICE OF HEALTHY HOMES AND LEAD HAZARD

12 CONTROL

13 LEAD HAZARD REDUCTION

14 For an additional amount for “Lead Hazard Reduc-
15 tion”, for the Lead Hazard Reduction Program as author-
16 ized by section 1011 of the Residential Lead-Based Paint
17 Hazard Reduction Act of 1992, \$100,000,000: *Provided*,
18 That for purposes of environmental review, pursuant to
19 the National Environmental Policy Act of 1969 (42 U.S.C.
20 4321 et seq.) and other provisions of law that further the
21 purposes of such Act, a grant under the Healthy Homes
22 Initiative, Operation Lead Elimination Action Plan
23 (LEAP), or the Lead Technical Studies program under
24 this heading or under prior appropriations Acts for such
25 purposes under this heading, shall be considered to be

1 funds for a special project for purposes of section 305(e)
2 of the Multifamily Housing Property Disposition Reform
3 Act of 1994: *Provided further*, That of the total amount
4 made available under this heading, \$30,000,000 shall be
5 made available on a competitive basis for areas with the
6 highest lead paint abatement needs.

7 GENERAL PROVISIONS, THIS TITLE

8 **SEC. 12001. MAINTENANCE OF EFFORT AND REPORTING**
9 **REQUIREMENTS TO ENSURE TRANSPARENCY**
10 **AND ACCOUNTABILITY.**

11 (a) MAINTENANCE OF EFFORT.—Not later than 30
12 days after the date of enactment of this Act, for each
13 amount that is distributed to a State or agency thereof
14 from an appropriation in this Act for a covered program,
15 the Governor of the State shall certify that the State will
16 maintain its effort with regard to State funding for the
17 types of projects that are funded by the appropriation. As
18 part of this certification, the Governor shall submit to the
19 covered agency a statement identifying the amount of
20 funds the State planned to expend as of October 1, 2008,
21 from non-Federal sources in the period beginning on the
22 date of enactment of this Act through September 30,
23 2010, for the types of projects that are funded by the ap-
24 propriation.

1 (b) FAILURE TO MAINTAIN EFFORT.—If a Governor
2 is unable to certify that Federal funds will not supplant
3 non-Federal funds pursuant to subsection (a), then the
4 Federal funds apportioned to that State under this Act
5 that will supplant non-Federal funds will be recaptured
6 by the appropriate Federal agency and redistributed to
7 States or agencies that can spend the Federal funds with-
8 out supplanting non-Federal funds.

9 (c) PERIODIC REPORTS.—

10 (1) IN GENERAL.—Notwithstanding any other
11 provision of law, each grant recipient shall submit to
12 the covered agency from which they received funding
13 periodic reports on the use of the funds appropriated
14 in this Act for covered programs. Such reports shall
15 be collected and compiled by the covered agency and
16 transmitted to Congress.

17 (2) CONTENTS OF REPORTS.—For amounts re-
18 ceived under each covered program by a grant re-
19 cipient under this Act, the grant recipient shall in-
20 clude in the periodic reports information tracking—

21 (A) the amount of Federal funds appro-
22 priated, allocated, obligated, and outlayed under
23 the appropriation;

24 (B) the number of projects that have been
25 put out to bid under the appropriation and the

1 amount of Federal funds associated with such
2 projects;

3 (C) the number of projects for which con-
4 tracts have been awarded under the appropria-
5 tion and the amount of Federal funds associ-
6 ated with such contracts;

7 (D) the number of projects for which work
8 has begun under such contracts and the
9 amount of Federal funds associated with such
10 contracts;

11 (E) the number of projects for which work
12 has been completed under such contracts and
13 the amount of Federal funds associated with
14 such contracts;

15 (F) the number of jobs created or sus-
16 tained by the Federal funds provided for
17 projects under the appropriation, including in-
18 formation on job sectors and pay levels; and

19 (G) for each covered program report infor-
20 mation tracking the actual aggregate expendi-
21 tures by each grant recipient from non-Federal
22 sources for projects eligible for funding under
23 the program during the period beginning on the
24 date of enactment of this Act through Sep-
25 tember 30, 2010, as compared to the level of

1 such expenditures that were planned to occur
2 during such period as of the date of enactment
3 of this Act.

4 (3) TIMING OF REPORTS.—Each grant recipient
5 shall submit the first of the periodic reports required
6 under this subsection not later than 30 days after
7 the date of enactment of this Act and shall submit
8 updated reports not later than 60 days, 120 days,
9 180 days, 1 year, and 3 years after such date of en-
10 actment.

11 (d) DEFINITIONS.—In this section, the following defi-
12 nitions apply:

13 (1) COVERED AGENCY.—The term “covered
14 agency” means the Federal Aviation Administration,
15 the Federal Highway Administration, the Federal
16 Railroad Administration, and the Federal Transit
17 Administration of the Department of Transpor-
18 tation.

19 (2) COVERED PROGRAM.—The term “covered
20 program” means funds appropriated in this Act for
21 “Grants-in-Aid for Airports” to the Federal Aviation
22 Administration; for “Highway Infrastructure Invest-
23 ment” to the Federal Highway Administration; for
24 “Capital Assistance for Intercity Passenger Rail
25 Service” to the Federal Railroad Administration; for

1 “Transit Capital Assistance”, “Fixed Guideway In-
2 frastructure Investment”, and “Capital Investment
3 Grants” to the Federal Transit Administration.

4 (3) GRANT RECIPIENT.—The term “grant re-
5 cipient” means a State or other recipient of assist-
6 ance provided under a covered program in this Act.
7 Such term does not include a Federal department or
8 agency.

9 **SEC. 12002. FHA LOAN LIMITS FOR 2009.**

10 (a) LOAN LIMIT FLOOR BASED ON 2008 LEVELS.—
11 For mortgages for which the mortgagee issues credit ap-
12 proval for the borrower during calendar year 2009, if the
13 dollar amount limitation on the principal obligation of a
14 mortgage determined under section 203(b)(2) of the Na-
15 tional Housing Act (12 U.S.C. 1709(b)(2)) for any size
16 residence for any area is less than such dollar amount lim-
17 itation that was in effect for such size residence for such
18 area for 2008 pursuant to section 202 of the Economic
19 Stimulus Act of 2008 (Public Law 110–185; 122 Stat.
20 620), notwithstanding any other provision of law, the max-
21 imum dollar amount limitation on the principal obligation
22 of a mortgage for such size residence for such area for
23 purposes of such section 203(b)(2) shall be considered (ex-
24 cept for purposes of section 255(g) of such Act (12 U.S.C.

1 1715z–20(g))) to be such dollar amount limitation in ef-
2 fect for such size residence for such area for 2008.

3 (b) DISCRETIONARY AUTHORITY FOR SUB-AREAS.—

4 Notwithstanding any other provision of law, if the Sec-
5 retary of Housing and Urban Development determines, for
6 any geographic area that is smaller than an area for which
7 dollar amount limitations on the principal obligation of a
8 mortgage are determined under section 203(b)(2) of the
9 National Housing Act, that a higher such maximum dollar
10 amount limitation is warranted for any particular size or
11 sizes of residences in such sub-area by higher median
12 home prices in such sub-area, the Secretary may, for mort-
13 gages for which the mortgagee issues credit approval for
14 the borrower during calendar year 2009, increase the max-
15 imum dollar amount limitation for such size or sizes of
16 residences for such sub-area that is otherwise in effect (in-
17 cluding pursuant to subsection (a) of this section), but in
18 no case to an amount that exceeds the amount specified
19 in section 202(a)(2) of the Economic Stimulus Act of
20 2008.

21 **SEC. 12003. GSE CONFORMING LOAN LIMITS FOR 2009.**

22 (a) LOAN LIMIT FLOOR BASED ON 2008 LEVELS.—

23 For mortgages originated during calendar year 2009, if
24 the limitation on the maximum original principal obliga-
25 tion of a mortgage that may purchased by the Federal

1 National Mortgage Association or the Federal Home Loan
2 Mortgage Corporation determined under section 302(b)(2)
3 of the Federal National Mortgage Association Charter Act
4 (12 U.S.C. 1717(b)(2)) or section 305(a)(2) of the Fed-
5 eral Home Loan Mortgage Corporation Act (12 U.S.C.
6 1754(a)(2)), respectively, for any size residence for any
7 area is less than such maximum original principal obliga-
8 tion limitation that was in effect for such size residence
9 for such area for 2008 pursuant to section 201 of the Eco-
10 nomic Stimulus Act of 2008 (Public Law 110–185; 122
11 Stat. 619), notwithstanding any other provision of law, the
12 limitation on the maximum original principal obligation of
13 a mortgage for such Association and Corporation for such
14 size residence for such area shall be such maximum limita-
15 tion in effect for such size residence for such area for
16 2008.

17 (b) DISCRETIONARY AUTHORITY FOR SUB-AREAS.—
18 Notwithstanding any other provision of law, if the Direc-
19 tor of the Federal Housing Finance Agency determines,
20 for any geographic area that is smaller than an area for
21 which limitations on the maximum original principal obli-
22 gation of a mortgage are determined for the Federal Na-
23 tional Mortgage Association or the Federal Home Loan
24 Mortgage Corporation, that a higher such maximum origi-
25 nal principal obligation limitation is warranted for any

1 particular size or sizes of residences in such sub-area by
2 higher median home prices in such sub-area, the Director
3 may, for mortgages originated during 2009, increase the
4 maximum original principal obligation limitation for such
5 size or sizes of residences for such sub-area that is other-
6 wise in effect (including pursuant to subsection (a) of this
7 section) for such Association and Corporation, but in no
8 case to an amount that exceeds the amount specified in
9 the matter following the comma in section 201(a)(1)(B)
10 of the Economic Stimulus Act of 2008.

11 **SEC. 12004. FHA REVERSE MORTGAGE LOAN LIMITS FOR**
12 **2009.**

13 For mortgages for which the mortgagee issues credit
14 approval for the borrower during calendar year 2009, the
15 second sentence of section 255(g) of the National Housing
16 Act (12 U.S.C. 171520(g)) shall be considered to require
17 that in no case may the benefits of insurance under such
18 section 255 exceed 150 percent of the maximum dollar
19 amount in effect under the sixth sentence of section
20 305(a)(2) of the Federal Home Loan Mortgage Corpora-
21 tion Act (12 U.S.C. 1454(a)(2)).

1 **TITLE XIII—STATE FISCAL**
2 **STABILIZATION FUND**

3 DEPARTMENT OF EDUCATION

4 STATE FISCAL STABILIZATION FUND

5 For necessary expenses for a State Fiscal Stabiliza-
6 tion Fund, \$79,000,000,000, which shall be administered
7 by the Department of Education, of which
8 \$39,500,000,000 shall become available on July 1, 2009,
9 and remain available through September 30, 2010, and
10 \$39,500,000,000 shall become available on July 1, 2010,
11 and remain available through September 30, 2011: *Pro-*
12 *vided*, That the provisions of section 1103 of this Act shall
13 not apply to the funds reserved under section 13001(c)
14 of this title: *Provided further*, That the amount made
15 available under section 13001(b) of this title for adminis-
16 tration and oversight shall take the place of the set-aside
17 under section 1106 of this Act.

18 GENERAL PROVISIONS, THIS TITLE

19 **SEC. 13001. ALLOCATIONS.**

20 (a) OUTLYING AREAS.—From each year’s appropria-
21 tion to carry out this title, the Secretary of Education
22 shall first allocate one half of 1 percent to the outlying
23 areas on the basis of their respective needs, as determined
24 by the Secretary, for activities consistent with this title

1 under such terms and conditions as the Secretary may de-
2 termine.

3 (b) ADMINISTRATION AND OVERSIGHT.—The Sec-
4 retary may, in addition, reserve up to \$12,500,000 each
5 year for administration and oversight of this title, includ-
6 ing for program evaluation.

7 (c) RESERVATION FOR ADDITIONAL PROGRAMS.—
8 After reserving funds under subsections (a) and (b), the
9 Secretary shall reserve \$7,500,000,000 each year for
10 grants under sections 13006 and 13007.

11 (d) STATE ALLOCATIONS.—After carrying out sub-
12 sections (a), (b), and (c), the Secretary shall allocate the
13 remaining funds made available to carry out this title to
14 the States as follows:

15 (1) 61 percent on the basis of their relative
16 population of individuals aged 5 through 24.

17 (2) 39 percent on the basis of their relative
18 total population.

19 (e) STATE GRANTS.—From funds allocated under
20 subsection (d), the Secretary shall make grants to the
21 Governor of each State.

22 (f) REALLOCATION.—The Governor shall return to
23 the Secretary any funds received under subsection (e) that
24 the Governor does not obligate within one year of receiving

1 a grant, and the Secretary shall reallocate such funds to
2 the remaining States in accordance with subsection (d).

3 **SEC. 13002. STATE USES OF FUNDS.**

4 (a) EDUCATION FUND.—

5 (1) IN GENERAL.—For each fiscal year, the
6 Governor shall use at least 61 percent of the State’s
7 allocation under section 13001 for the support of el-
8 ementary, secondary, and postsecondary education.

9 (2) RESTORING 2008 STATE SUPPORT FOR EDU-
10 CATION.—

11 (A) IN GENERAL.—The Governor shall
12 first use the funds described in paragraph (1)—

13 (i) to provide the amount of funds,
14 through the State’s principal elementary
15 and secondary funding formula, that is
16 needed to restore State support for elemen-
17 tary and secondary education to the fiscal
18 year 2008 level; and

19 (ii) to provide the amount of funds to
20 public institutions of higher education in
21 the State that is needed to restore State
22 support for postsecondary education to the
23 fiscal year 2008 level.

24 (B) SHORTFALL.—If the Governor deter-
25 mines that the amount of funds available under

1 paragraph (1) is insufficient to restore State
2 support for education to the levels described in
3 clauses (i) and (ii) of subparagraph (A), the
4 Governor shall allocate those funds between
5 those clauses in proportion to the relative short-
6 fall in State support for the education sectors
7 described in those clauses.

8 (3) SUBGRANTS TO IMPROVE BASIC PROGRAMS
9 OPERATED BY LOCAL EDUCATIONAL AGENCIES.—

10 After carrying out paragraph (2), the Governor shall
11 use any funds remaining under paragraph (1) to
12 provide local educational agencies in the State with
13 subgrants based on their relative shares of funding
14 under part A of title I of the Elementary and Sec-
15 ondary Education Act of 1965 (20 U.S.C. 6311 et
16 seq.) for the most recent year for which data are
17 available.

18 (b) OTHER GOVERNMENT SERVICES.—For each fis-
19 cal year, the Governor may use up to 39 percent of the
20 State’s allocation under section 1301 for public safety and
21 other government services, which may include assistance
22 for elementary and secondary education and public institu-
23 tions of higher education.

1 **SEC. 13003. USES OF FUNDS BY LOCAL EDUCATIONAL**
2 **AGENCIES.**

3 (a) IN GENERAL.—A local educational agency that
4 receives funds under this title may use the funds for any
5 activity authorized by the Elementary and Secondary Edu-
6 cation Act of 1965 (20 U.S.C. 6301 et seq.) (“ESEA”),
7 the Individuals with Disabilities Education Act (20 U.S.C.
8 1400 et seq.) (“IDEA”), or the Carl D. Perkins Career
9 and Technical Education Act of 2006 (20 U.S.C. 2301
10 et seq.) (“the Perkins Act”).

11 (b) PROHIBITION.—A local educational agency may
12 not use funds received under this title for capital projects
13 unless authorized by ESEA, IDEA, or the Perkins Act.

14 **SEC. 13004. USES OF FUNDS BY INSTITUTIONS OF HIGHER**
15 **EDUCATION.**

16 (a) IN GENERAL.—A public institution of higher edu-
17 cation that receives funds under this title shall use the
18 funds for education and general expenditures, and in such
19 a way as to mitigate the need to raise tuition and fees
20 for in-State students.

21 (b) PROHIBITION.—An institution of higher edu-
22 cation may not use funds received under this title to in-
23 crease its endowment.

24 (c) ADDITIONAL PROHIBITION.—An institution of
25 higher education may not use funds received under this
26 title for construction, renovation, or facility repair.

1 **SEC. 13005. STATE APPLICATIONS.**

2 (a) IN GENERAL.—The Governor of a State desiring
3 to receive an allocation under section 13001 shall submit
4 an annual application at such time, in such manner, and
5 containing such information as the Secretary may reason-
6 ably require.

7 (b) FIRST YEAR APPLICATION.—In the first of such
8 applications, the Governor shall—

9 (1) include the assurances described in sub-
10 section (e);

11 (2) provide baseline data that demonstrates the
12 State’s current status in each of the areas described
13 in such assurances; and

14 (3) describe how the State intends to use its al-
15 location.

16 (c) SECOND YEAR APPLICATION.—In the second year
17 application, the Governor shall—

18 (1) include the assurances described in sub-
19 section (e); and

20 (2) describe how the State intends to use its al-
21 location.

22 (d) INCENTIVE GRANT APPLICATION.—The Governor
23 of a State seeking a grant under section 13006 shall—

24 (1) submit an application for consideration;

25 (2) describe the status of the State’s progress
26 in each of the areas described in subsection (e), and

1 the strategies the State is employing to help ensure
2 that high-need students in the State continue mak-
3 ing progress towards meeting the State's student
4 academic achievement standards;

5 (3) describe how the State would use its grant
6 funding, including how it will allocate the funds to
7 give priority to high-need schools and local edu-
8 cational agencies; and

9 (4) include a plan for evaluating its progress in
10 closing achievement gaps.

11 (e) ASSURANCES.—An application under subsection
12 (b) or (c) shall include the following assurances:

13 (1) MAINTENANCE OF EFFORT.—

14 (A) ELEMENTARY AND SECONDARY EDU-
15 CATION.—The State will, in each of fiscal years
16 2009 and 2010, maintain State support for ele-
17 mentary and secondary education at least at
18 the level of such support in fiscal year 2006.

19 (B) HIGHER EDUCATION.—The State will,
20 in each of fiscal years 2009 and 2010, maintain
21 State support for public institutions of higher
22 education (not including support for capital
23 projects or for research and development) at
24 least at the level of such support in fiscal year
25 2006.

1 (2) ACHIEVING EQUITY IN TEACHER DISTRIBUTION.—The State will take actions to comply with
2 TION.—The State will take actions to comply with
3 section 1111(b)(8)(C) of ESEA (20 U.S.C.
4 6311(b)(8)(C)) in order to address inequities in the
5 distribution of teachers between high-and low-pov-
6 erty schools, and to ensure that low-income and mi-
7 nority children are not taught at higher rates than
8 other children by inexperienced, unqualified, or out-
9 of-field teachers.

10 (3) IMPROVING COLLECTION AND USE OF
11 DATA.—The State will establish a longitudinal data
12 system that includes the elements described in sec-
13 tion 6401(e)(2)(D) of the America COMPETES Act
14 (20 U.S.C. 9871).

15 (4) ASSESSMENTS.—The State—

16 (A) will enhance the quality of academic
17 assessments described in section 1111(b)(3) of
18 ESEA (20 U.S.C. 6311(b)(3)) through activi-
19 ties such as those described in section 6112(a)
20 of such Act (20 U.S.C. 7301a(a)); and

21 (B) will comply with the requirements of
22 paragraphs 3(C)(ix) and (6) of section 1111(b)
23 of ESEA (20 U.S.C. 6311(b)) and section
24 612(a)(16) of IDEA (20 U.S.C. 1412(a)(16))
25 related to the inclusion of children with disabil-

1 ities and limited English proficient students in
2 State assessments, the development of valid and
3 reliable assessments for those students, and the
4 provision of accommodations that enable their
5 participation in State assessments.

6 **SEC. 13006. STATE INCENTIVE GRANTS.**

7 (a) IN GENERAL.—From the total amount reserved
8 under section 13001(e) that is not used for section 13007,
9 the Secretary shall, in fiscal year 2010, make grants to
10 States that have made significant progress in meeting the
11 objectives of paragraphs (2), (3), and (4) of section
12 13005(e).

13 (b) BASIS FOR GRANTS.—The Secretary shall deter-
14 mine which States receive grants under this section, and
15 the amount of those grants, on the basis of information
16 provided in State applications under section 13005 and
17 such other criteria as the Secretary determines appro-
18 priate.

19 (c) SUBGRANTS TO LOCAL EDUCATIONAL AGEN-
20 CIES.—Each State receiving a grant under this section
21 shall use at least 50 percent of the grant to provide local
22 educational agencies in the State with subgrants based on
23 their relative shares of funding under part A of title I of
24 ESEA (20 U.S.C. 6311 et seq.) for the most recent year.

1 **SEC. 13007. INNOVATION FUND.**

2 (a) IN GENERAL.—

3 (1) PROGRAM ESTABLISHED.—From the total
4 amount reserved under section 13001(c), the Sec-
5 retary may reserve up to \$325,000,000 each year to
6 establish an Innovation Fund, which shall consist of
7 academic achievement awards that recognize States,
8 local educational agencies, or schools that meet the
9 requirements described in subsection (b).

10 (2) BASIS FOR AWARDS.—The Secretary shall
11 make awards to States, local educational agencies,
12 or schools that have made significant gains in clos-
13 ing the achievement gap as described in subsection
14 (b)(1)—

15 (A) to allow such States, local educational
16 agencies, and schools to expand their work and
17 serve as models for best practices;

18 (B) to allow such States, local educational
19 agencies, and schools to work in partnership
20 with the private sector and the philanthropic
21 community; and

22 (C) to identify and document best practices
23 that can be shared, and taken to scale based on
24 demonstrated success.

25 (b) ELIGIBILITY.—To be eligible for such an award,
26 a State, local educational agency, or school shall—

1 (1) have significantly closed the achievement
2 gaps between groups of students described in section
3 1111(b)(2) of ESEA (20 U.S.C. 6311(b)(2));

4 (2) have exceeded the State's annual measur-
5 able objectives consistent with such section
6 1111(b)(2) for 2 or more consecutive years or have
7 demonstrated success in significantly increasing stu-
8 dent academic achievement for all groups of stu-
9 dents described in such section through another
10 measure, such as measures described in section
11 1111(c)(2) of ESEA;

12 (3) have made significant improvement in other
13 areas, such as graduation rates or increased recruit-
14 ment and placement of high-quality teachers and
15 school leaders, as demonstrated with meaningful
16 data; and

17 (4) demonstrate that they have established
18 partnerships with the private sector, which may in-
19 clude philanthropic organizations, and that the pri-
20 vate sector will provide matching funds in order to
21 help bring results to scale.

22 **SEC. 13008. STATE REPORTS.**

23 For each year of the program under this title, a State
24 receiving funds under this title shall submit a report to

1 the Secretary, at such time and in such manner as the
2 Secretary may require, that describes—

3 (1) the uses of funds provided under this title
4 within the State;

5 (2) how the State distributed the funds it re-
6 ceived under this title;

7 (3) the number of jobs that the Governor esti-
8 mates were saved or created with funds the State re-
9 ceived under this title;

10 (4) tax increases that the Governor estimates
11 were averted because of the availability of funds
12 from this title;

13 (5) the State's progress in reducing inequities
14 in the distribution of teachers, in implementing a
15 State student longitudinal data system, and in devel-
16 oping and implementing valid and reliable assess-
17 ments for limited English proficient students and
18 children with disabilities;

19 (6) the tuition and fee increases for in-State
20 students imposed by public institutions of higher
21 education in the State during the period of avail-
22 ability of funds under this title, and a description of
23 any actions taken by the State to limit those in-
24 creases; and

1 (7) the extent to which public institutions of
2 higher education maintained, increased, or decreased
3 enrollment of in-State students, including students
4 eligible for Pell Grants or other need-based financial
5 assistance.

6 **SEC. 13009. EVALUATION.**

7 The Comptroller General of the United States shall
8 conduct evaluations of the programs under sections 13006
9 and 13007 which shall include, but not be limited to, the
10 criteria used for the awards made, the States selected for
11 awards, award amounts, how each State used the award
12 received, and the impact of this funding on the progress
13 made toward closing achievement gaps.

14 **SEC. 13010. SECRETARY'S REPORT TO CONGRESS.**

15 The Secretary shall submit a report to the Committee
16 on Education and Labor of the House of Representatives,
17 the Committee on Health, Education, Labor, and Pen-
18 sions of the Senate, and the Committees on Appropria-
19 tions of the House of Representatives and of the Senate,
20 not less than 6 months following the submission of State
21 reports, that evaluates the information provided in the
22 State reports under section 13008.

1 **SEC. 13011. PROHIBITION ON PROVISION OF CERTAIN AS-**
2 **SISTANCE.**

3 No recipient of funds under this title shall use such
4 funds to provide financial assistance to students to attend
5 private elementary or secondary schools.

6 **SEC. 13012. DEFINITIONS.**

7 Except as otherwise provided in this title, as used in
8 this title—

9 (1) the term “institution of higher education”
10 has the meaning given such term in section 101 of
11 the Higher Education Act of 1965 (20 U.S.C.
12 1001);

13 (2) the term “Secretary” means the Secretary
14 of Education;

15 (3) the term “State” means each of the 50
16 States, the District of Columbia, and the Common-
17 wealth of Puerto Rico; and

18 (4) any other term used in this title that is de-
19 fined in section 9101 of ESEA (20 U.S.C. 7801)
20 shall have the meaning given the term in that sec-
21 tion.

1 **DIVISION B—OTHER**
 2 **PROVISIONS**
 3 **TITLE I—TAX PROVISIONS**

4 **SEC. 1000. SHORT TITLE, ETC.**

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

7 (b) **REFERENCE.**—Except as otherwise expressly pro-
 8 vided, whenever in this title an amendment or repeal is
 9 expressed in terms of an amendment to, or repeal of, a
 10 section or other provision, the reference shall be consid-
 11 ered to be made to a section or other provision of the In-
 12 ternal Revenue Code of 1986.

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

Sec. 1000. Short title, etc.

 Subtitle A—Making Work Pay

Sec. 1001. Making work pay credit.

 Subtitle B—Additional Tax Relief for Families With Children

Sec. 1101. Increase in earned income tax credit.

Sec. 1102. Increase of refundable portion of child credit.

 Subtitle C—American Opportunity Tax Credit

Sec. 1201. American opportunity tax credit.

 Subtitle D—Housing Incentives

Sec. 1301. Waiver of requirement to repay first-time homebuyer credit.

Sec. 1302. Coordination of low-income housing credit and low-income housing
 grants.

 Subtitle E—Tax Incentives for Business

 PART 1—TEMPORARY INVESTMENT INCENTIVES

Sec. 1401. Special allowance for certain property acquired during 2009.

Sec. 1402. Temporary increase in limitations on expensing of certain depreciable business assets.

PART 2—5-YEAR CARRYBACK OF OPERATING LOSSES

Sec. 1411. 5-year carryback of operating losses.

Sec. 1412. Exception for TARP recipients.

PART 3—INCENTIVES FOR NEW JOBS

Sec. 1421. Incentives to hire unemployed veterans and disconnected youth.

PART 4—CLARIFICATION OF REGULATIONS RELATED TO LIMITATIONS ON CERTAIN BUILT-IN LOSSES FOLLOWING AN OWNERSHIP CHANGE

Sec. 1431. Clarification of regulations related to limitations on certain built-in losses following an ownership change.

Subtitle F—Fiscal Relief for State and Local Governments

PART 1—IMPROVED MARKETABILITY FOR TAX-EXEMPT BONDS

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

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

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

PART 2—TAX CREDIT BONDS FOR SCHOOLS

Sec. 1511. Qualified school construction bonds.

Sec. 1512. Extension and expansion of qualified zone academy bonds.

PART 3—TAXABLE BOND OPTION FOR GOVERNMENTAL BONDS

Sec. 1521. Taxable bond option for governmental bonds.

PART 4—RECOVERY ZONE BONDS

Sec. 1531. Recovery zone bonds.

Sec. 1532. Tribal economic development bonds.

PART 5—REPEAL OF WITHHOLDING TAX ON GOVERNMENT CONTRACTORS

Sec. 1541. Repeal of withholding tax on government contractors.

Subtitle G—Energy Incentives

PART 1—RENEWABLE ENERGY INCENTIVES

Sec. 1601. Extension of credit for electricity produced from certain renewable resources.

Sec. 1602. Election of investment credit in lieu of production credit.

Sec. 1603. Repeal of certain limitations on credit for renewable energy property.

Sec. 1604. Coordination with renewable energy grants.

PART 2—INCREASED ALLOCATIONS OF NEW CLEAN RENEWABLE ENERGY BONDS AND QUALIFIED ENERGY CONSERVATION BONDS

Sec. 1611. Increased limitation on issuance of new clean renewable energy bonds.

Sec. 1612. Increased limitation and expansion of qualified energy conservation bonds.

PART 3—ENERGY CONSERVATION INCENTIVES

Sec. 1621. Extension and modification of credit for nonbusiness energy property.

Sec. 1622. Modification of credit for residential energy efficient property.

Sec. 1623. Temporary increase in credit for alternative fuel vehicle refueling property.

PART 4—ENERGY RESEARCH INCENTIVES

Sec. 1631. Increased research credit for energy research.

Subtitle H—Other Provisions

PART 1—APPLICATION OF CERTAIN LABOR STANDARDS TO PROJECTS FINANCED WITH CERTAIN TAX-FAVORED BONDS

Sec. 1701. Application of certain labor standards to projects financed with certain tax-favored bonds.

PART 2—GRANTS TO PROVIDE FINANCING FOR LOW-INCOME HOUSING

Sec. 1711. Grants to States for low-income housing projects in lieu of low-income housing credit allocations for 2009.

PART 3—GRANTS FOR SPECIFIED ENERGY PROPERTY IN LIEU OF TAX CREDITS

Sec. 1721. Grants for specified energy property in lieu of tax credits.

PART 4—STUDY OF ECONOMIC, EMPLOYMENT, AND RELATED EFFECTS OF THIS ACT

Sec. 1731. Study of economic, employment, and related effects of this Act.

1 **Subtitle A—Making Work Pay**

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

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

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

7 “(a) ALLOWANCE OF CREDIT.—In the case of an eli-
8 gible individual, there shall be allowed as a credit against

1 the tax imposed by this subtitle for the taxable year an
2 amount equal to the lesser of—

3 “(1) 6.2 percent of earned income of the tax-
4 payer, or

5 “(2) \$500 (\$1,000 in the case of a joint re-
6 turn).

7 “(b) LIMITATION BASED ON MODIFIED ADJUSTED
8 GROSS INCOME.—

9 “(1) IN GENERAL.—The amount allowable as a
10 credit under subsection (a) (determined without re-
11 gard to this paragraph) for the taxable year shall be
12 reduced (but not below zero) by 2 percent of so
13 much of the taxpayer’s modified adjusted gross in-
14 come as exceeds \$75,000 (\$150,000 in the case of
15 a joint return).

16 “(2) MODIFIED ADJUSTED GROSS INCOME.—
17 For purposes of subparagraph (A), the term ‘modi-
18 fied adjusted gross income’ means the adjusted
19 gross income of the taxpayer for the taxable year in-
20 creased by any amount excluded from gross income
21 under section 911, 931, or 933.

22 “(c) DEFINITIONS.—For purposes of this section—

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

25 “(A) any nonresident alien individual,

1 “(B) any individual with respect to whom
2 a deduction under section 151 is allowable to
3 another taxpayer for a taxable year beginning
4 in the calendar year in which the individual’s
5 taxable year begins, and

6 “(C) an estate or trust.

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

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

20 “(d) TERMINATION.—This section shall not apply to
21 taxable years beginning after December 31, 2010.”.

22 (b) TREATMENT OF POSSESSIONS.—

23 (1) PAYMENTS TO POSSESSIONS.—

24 (A) MIRROR CODE POSSESSION.—The Sec-
25 retary of the Treasury shall pay to each posses-

1 sion of the United States with a mirror code
2 tax system amounts equal to the loss to that
3 possession by reason of the amendments made
4 by this section with respect to taxable years be-
5 ginning in 2009 and 2010. Such amounts shall
6 be determined by the Secretary of the Treasury
7 based on information provided by the govern-
8 ment of the respective possession.

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

1 (2) COORDINATION WITH CREDIT ALLOWED
2 AGAINST UNITED STATES INCOME TAXES.—No cred-
3 it shall be allowed against United States income
4 taxes for any taxable year under section 36A of the
5 Internal Revenue Code of 1986 (as added by this
6 section) to any person—

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

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

14 (3) DEFINITIONS AND SPECIAL RULES.—

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

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

1 ity of the residents of such possession under
2 such system is determined by reference to the
3 income tax laws of the United States as if such
4 possession were the United States.

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

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

1 (d) CONFORMING AMENDMENTS.—

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

4 (2) Section 1324(b)(2) of title 31, United
5 States Code, is amended by inserting “36A,” after
6 “36,”.

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

“Sec. 36A. Making work pay credit.”.

11 (e) EFFECTIVE DATE.—This section shall apply to
12 taxable years beginning after December 31, 2008.

13 **Subtitle B—Additional Tax Relief**
14 **for Families With Children**

15 **SEC. 1101. INCREASE IN EARNED INCOME TAX CREDIT.**

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

19 “(3) SPECIAL RULES FOR 2009 AND 2010.—In
20 the case of any taxable year beginning in 2009 or
21 2010—

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

1 “(B) REDUCTION OF MARRIAGE PEN-
2 ALTY.—

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

6 “(ii) INFLATION ADJUSTMENT.—In
7 the case of any taxable year beginning in
8 2010, the \$5,000 amount in clause (i)
9 shall be increased by an amount equal to—

10 “(I) such dollar amount, multi-
11 plied by

12 “(II) the cost of living adjust-
13 ment determined under section 1(f)(3)
14 for the calendar year in which the tax-
15 able year begins determined by sub-
16 stituting ‘calendar year 2008’ for ‘cal-
17 endar year 1992’ in subparagraph (B)
18 thereof.

19 “(iii) ROUNDING.—Subparagraph (A)
20 of subsection (j)(2) shall apply after taking
21 into account any increase under clause
22 (ii).”.

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

1 **SEC. 1102. INCREASE OF REFUNDABLE PORTION OF CHILD**
2 **CREDIT.**

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

5 “(4) **SPECIAL RULE FOR 2009 AND 2010.**—Not-
6 withstanding paragraph (3), in the case of any tax-
7 able year beginning in 2009 or 2010, the dollar
8 amount in effect for such taxable year under para-
9 graph (1)(B)(i) shall be zero.”.

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

13 **Subtitle C—American Opportunity**
14 **Tax Credit**

15 **SEC. 1201. AMERICAN OPPORTUNITY TAX CREDIT.**

16 (a) **IN GENERAL.**—Section 25A (relating to Hope
17 scholarship credit) is amended by redesignating subsection
18 (i) as subsection (j) and by inserting after subsection (h)
19 the following new subsection:

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

22 “(1) **INCREASE IN CREDIT.**—The Hope Scholar-
23 ship Credit shall be an amount equal to the sum
24 of—

25 “(A) 100 percent of so much of the quali-
26 fied tuition and related expenses paid by the

1 taxpayer during the taxable year (for education
2 furnished to the eligible student during any
3 academic period beginning in such taxable year)
4 as does not exceed \$2,000, plus

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

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

11 “(3) QUALIFIED TUITION AND RELATED EX-
12 PENSES TO INCLUDE REQUIRED COURSE MATE-
13 RIALS.—Subsection (f)(1)(A) shall be applied by
14 substituting ‘tuition, fees, and course materials’ for
15 ‘tuition and fees’.

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

23 “(A) the excess of—

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

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

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

8 “(5) CREDIT ALLOWED AGAINST ALTERNATIVE
9 MINIMUM TAX.—In the case of a taxable year to
10 which section 26(a)(2) does not apply, so much of
11 the credit allowed under subsection (a) as is attrib-
12 utable to the Hope Scholarship Credit shall not ex-
13 ceed the excess of—

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

17 “(B) the sum of the credits allowable
18 under this subpart (other than this subsection
19 and sections 23, 25D, and 30D) and section 27
20 for the taxable year.

21 Any reference in this section or section 24, 25, 26,
22 25B, 904, or 1400C to a credit allowable under this
23 subsection shall be treated as a reference to so much
24 of the credit allowable under subsection (a) as is at-
25 tributable to the Hope Scholarship Credit.

1 “(6) PORTION OF CREDIT MADE REFUND-
2 ABLE.—40 percent of so much of the credit allowed
3 under subsection (a) as is attributable to the Hope
4 Scholarship Credit (determined after application of
5 paragraph (4) and without regard to this paragraph
6 and section 26(a)(2) or paragraph (5), as the case
7 may be) shall be treated as a credit allowable under
8 subpart C (and not allowed under subsection (a)).
9 The preceding sentence shall not apply to any tax-
10 payer for any taxable year if such taxpayer is a child
11 to whom subsection (g) of section 1 applies for such
12 taxable year.

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

20 (b) CONFORMING AMENDMENTS.—

21 (1) Section 24(b)(3)(B) is amended by inserting
22 “25A(i),” after “23,”.

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

1 (3) Section 26(a)(1) is amended by inserting
2 “25A(i),” after “24,”.

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

5 (5) Section 904(i) is amended by inserting
6 “25A(i),” after “24,”.

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

9 (7) Section 1324(b)(2) of title 31, United
10 States Code, is amended by inserting “25A,” before
11 “35”.

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

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

20 (e) TREASURY STUDIES REGARDING EDUCATION IN-
21 CENTIVES.—

22 (1) STUDY REGARDING COORDINATION WITH
23 NON-TAX EDUCATIONAL INCENTIVES.—The Sec-
24 retary of the Treasury, or the Secretary’s delegate,
25 shall study how to coordinate the credit allowed

1 under section 25A of the Internal Revenue Code of
2 1986 with the Federal Pell Grant program under
3 section 401 of the Higher Education Act of 1965.

4 (2) STUDY REGARDING IMPOSITION OF COMMU-
5 NITY SERVICE REQUIREMENTS.—The Secretary of
6 the Treasury, or the Secretary’s delegate, shall study
7 the feasibility of requiring students to perform com-
8 munity service as a condition of taking their tuition
9 and related expenses into account under section 25A
10 of the Internal Revenue Code of 1986.

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

16 **Subtitle D—Housing Incentives**

17 **SEC. 1301. WAIVER OF REQUIREMENT TO REPAY FIRST-** 18 **TIME HOMEBUYER CREDIT.**

19 (a) IN GENERAL.—Paragraph (4) of section 36(f) is
20 amended by adding at the end the following new subpara-
21 graph:

22 “(D) WAIVER OF RECAPTURE FOR PUR-
23 CHASES IN 2009.—In the case of any credit al-
24 lowed with respect to the purchase of a prin-

1 GRANTS RECEIVED IN 2009.—For purposes of
2 this section, the amounts described in clauses
3 (i) through (iv) of subsection (h)(3)(C) with re-
4 spect to any State for 2009 shall each be re-
5 duced by so much of such amount as is taken
6 into account in determining the amount of any
7 grant to such State under section 1711 of the
8 American Recovery and Reinvestment Tax Act
9 of 2009.

10 “(B) SPECIAL RULE FOR BASIS.—Basis of
11 a qualified low-income building shall not be re-
12 duced by the amount of any grant described in
13 subparagraph (A).”.

14 **Subtitle E—Tax Incentives for** 15 **Business**

16 **PART 1—TEMPORARY INVESTMENT INCENTIVES**

17 **SEC. 1401. SPECIAL ALLOWANCE FOR CERTAIN PROPERTY** 18 **ACQUIRED DURING 2009.**

19 (a) IN GENERAL.—Paragraph (2) of section 168(k)
20 is amended—

21 (1) by striking “January 1, 2010” and insert-
22 ing “January 1, 2011”, and

23 (2) by striking “January 1, 2009” each place
24 it appears and inserting “January 1, 2010”.

25 (b) CONFORMING AMENDMENTS.—

1 (1) The heading for subsection (k) of section
2 168 is amended by striking “JANUARY 1, 2009” and
3 inserting “JANUARY 1, 2010”.

4 (2) The heading for clause (ii) of section
5 168(k)(2)(B) is amended by striking “PRE-JANUARY
6 1, 2009” and inserting “PRE-JANUARY 1, 2010”.

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

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

10 (i),

11 (B) by redesignating clause (ii) as clause

12 (v), and

13 (C) by inserting after clause (i) the fol-

14 lowing new clauses:

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

18 “(iii) ‘January 1, 2009’ shall be sub-
19 stituted for ‘January 1, 2010’ each place it
20 appears,

21 “(iv) ‘January 1, 2010’ shall be sub-
22 stituted for ‘January 1, 2011’ in subpara-
23 graph (A)(iv) thereof, and”.

1 (4) Subparagraph (B) of section 168(l)(5) is
2 amended by striking “January 1, 2009” and insert-
3 ing “January 1, 2010”.

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

7 (c) EFFECTIVE DATES.—

8 (1) IN GENERAL.—Except as provided in para-
9 graph (2), the amendments made by this section
10 shall apply to property placed in service after De-
11 cember 31, 2008, in taxable years ending after such
12 date.

13 (2) TECHNICAL AMENDMENT.—Section
14 168(k)(4)(D)(ii) of the Internal Revenue Code of
15 1986, as added by subsection (b)(3)(C), shall apply
16 to taxable years ending after March 31, 2008.

17 **SEC. 1402. TEMPORARY INCREASE IN LIMITATIONS ON EX-**
18 **PENSING OF CERTAIN DEPRECIABLE BUSI-**
19 **NESS ASSETS.**

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

22 (1) by striking “2008” and inserting “2008, or
23 2009”, and

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

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

4 **PART 2—5-YEAR CARRYBACK OF OPERATING**
5 **LOSSES**

6 **SEC. 1411. 5-YEAR CARRYBACK OF OPERATING LOSSES.**

7 (a) IN GENERAL.—Subparagraph (H) of section
8 172(b)(1) is amended to read as follows:

9 “(H) CARRYBACK FOR 2008 AND 2009 NET
10 OPERATING LOSSES.—

11 “(i) IN GENERAL.—In the case of an
12 applicable 2008 or 2009 net operating loss
13 with respect to which the taxpayer has
14 elected the application of this subpara-
15 graph—

16 “(I) such net operating loss shall
17 be reduced by 10 percent of such loss
18 (determined without regard to this
19 subparagraph),

20 “(II) subparagraph (A)(i) shall
21 be applied by substituting any whole
22 number elected by the taxpayer which
23 is more than 2 and less than 6 for ‘2’,

24 “(III) subparagraph (E)(ii) shall
25 be applied by substituting the whole

1 number which is one less than the
2 whole number substituted under sub-
3 clause (II) for ‘2’, and

4 “(IV) subparagraph (F) shall not
5 apply.

6 “(ii) APPLICABLE 2008 OR 2009 NET
7 OPERATING LOSS.—For purposes of this
8 subparagraph, the term ‘applicable 2008
9 or 2009 net operating loss’ means—

10 “(I) the taxpayer’s net operating
11 loss for any taxable year ending in
12 2008 or 2009, or

13 “(II) if the taxpayer elects to
14 have this subclause apply in lieu of
15 subclause (I), the taxpayer’s net oper-
16 ating loss for any taxable year begin-
17 ning in 2008 or 2009.

18 “(iii) ELECTION.—Any election under
19 this subparagraph shall be made in such
20 manner as may be prescribed by the Sec-
21 retary, and shall be made by the due date
22 (including extension of time) for filing the
23 taxpayer’s return for the taxable year of
24 the net operating loss. Any such election,
25 once made, shall be irrevocable.

1 “(iv) COORDINATION WITH ALTER-
2 NATIVE TAX NET OPERATING LOSS DEDUC-
3 TION.—In the case of a taxpayer who
4 elects to have clause (ii)(II) apply, section
5 56(d)(1)(A)(ii) shall be applied by sub-
6 stituting ‘ending during 2001 or 2002 or
7 beginning during 2008 or 2009’ for ‘end-
8 ing during 2001, 2002, 2008, or 2009’.”.

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

12 “(I) the amount of such deduc-
13 tion attributable to the sum of
14 carrybacks of net operating losses
15 from taxable years ending during
16 2001, 2002, 2008, or 2009 and
17 carryovers of net operating losses to
18 such taxable years, or”.

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

22 “(4) CARRYBACK FOR 2008 AND 2009 LOSSES.—
23 “(A) IN GENERAL.—In the case of an ap-
24 plicable 2008 or 2009 loss from operations with

1 respect to which the taxpayer has elected the
2 application of this paragraph—

3 “(i) such loss from operations shall be
4 reduced by 10 percent of such loss (deter-
5 mined without regard to this paragraph),
6 and

7 “(ii) paragraph (1)(A) shall be ap-
8 plied, at the election of the taxpayer, by
9 substituting ‘5’ or ‘4’ for ‘3’.

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

14 “(i) the taxpayer’s loss from oper-
15 ations for any taxable year ending in 2008
16 or 2009, or

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

21 “(C) ELECTION.—Any election under this
22 paragraph shall be made in such manner as
23 may be prescribed by the Secretary, and shall
24 be made by the due date (including extension of
25 time) for filing the taxpayer’s return for the

1 taxable year of the loss from operations. Any
2 such election, once made, shall be irrevocable.

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

10 (d) CONFORMING AMENDMENT.—Section 172 is
11 amended by striking subsection (k).

12 (e) EFFECTIVE DATE.—

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

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

21 (3) LOSS FROM OPERATIONS OF LIFE INSUR-
22 ANCE COMPANIES.—The amendment made by sub-
23 section (d) shall apply to losses from operations aris-
24 ing in taxable years ending after December 31,
25 2007.

1 (4) TRANSITIONAL RULE.—In the case of a net
2 operating loss (or, in the case of a life insurance
3 company, a loss from operations) for a taxable year
4 ending before the date of the enactment of this
5 Act—

6 (A) any election made under section
7 172(b)(3) or 810(b)(3) of the Internal Revenue
8 Code of 1986 with respect to such loss may
9 (notwithstanding such section) be revoked be-
10 fore the applicable date,

11 (B) any election made under section
12 172(b)(1)(H) or 810(b)(4) of such Code with
13 respect to such loss shall (notwithstanding such
14 section) be treated as timely made if made be-
15 fore the applicable date, and

16 (C) any application under section 6411(a)
17 of such Code with respect to such loss shall be
18 treated as timely filed if filed before the appli-
19 cable date.

20 For purposes of this paragraph, the term “applica-
21 ble date” means the date which is 60 days after the
22 date of the enactment of this Act.

23 **SEC. 1412. EXCEPTION FOR TARP RECIPIENTS.**

24 The amendments made by this part shall not apply
25 to—

1 (1) any taxpayer if—

2 (A) the Federal Government acquires, at
3 any time, an equity interest in the taxpayer
4 pursuant to the Emergency Economic Stabiliza-
5 tion Act of 2008, or

6 (B) the Federal Government acquires, at
7 any time, any warrant (or other right) to ac-
8 quire any equity interest with respect to the
9 taxpayer pursuant to such Act,

10 (2) the Federal National Mortgage Association
11 and the Federal Home Loan Mortgage Corporation,
12 and

13 (3) any taxpayer which at any time in 2008 or
14 2009 is a member of the same affiliated group (as
15 defined in section 1504 of the Internal Revenue
16 Code of 1986, determined without regard to sub-
17 section (b) thereof) as a taxpayer described in para-
18 graph (1) or (2).

19 **PART 3—INCENTIVES FOR NEW JOBS**

20 **SEC. 1421. INCENTIVES TO HIRE UNEMPLOYED VETERANS**

21 **AND DISCONNECTED YOUTH.**

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

1 “(14) CREDIT ALLOWED FOR UNEMPLOYED
2 VETERANS AND DISCONNECTED YOUTH HIRED IN
3 2009 OR 2010.—

4 “(A) IN GENERAL.—Any unemployed vet-
5 eran or disconnected youth who begins work for
6 the employer during 2009 or 2010 shall be
7 treated as a member of a targeted group for
8 purposes of this subpart.

9 “(B) DEFINITIONS.—For purposes of this
10 paragraph—

11 “(i) UNEMPLOYED VETERAN.—The
12 term ‘unemployed veteran’ means any vet-
13 eran (as defined in paragraph (3)(B), de-
14 termined without regard to clause (ii)
15 thereof) who is certified by the designated
16 local agency as—

17 “(I) having been discharged or
18 released from active duty in the
19 Armed Forces during 2008, 2009, or
20 2010, and

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

1 “(ii) DISCONNECTED YOUTH.—The
2 term ‘disconnected youth’ means any indi-
3 vidual who is certified by the designated
4 local agency—

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

7 “(II) as not regularly attending
8 any secondary, technical, or post-sec-
9 ondary school during the 6-month pe-
10 riod preceding the hiring date,

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

13 “(IV) as not readily employable
14 by reason of lacking a sufficient num-
15 ber of basic skills.”.

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

1 **PART 4—CLARIFICATION OF REGULATIONS RE-**
2 **LATED TO LIMITATIONS ON CERTAIN BUILT-**
3 **IN LOSSES FOLLOWING AN OWNERSHIP**
4 **CHANGE**

5 **SEC. 1431. CLARIFICATION OF REGULATIONS RELATED TO**
6 **LIMITATIONS ON CERTAIN BUILT-IN LOSSES**
7 **FOLLOWING AN OWNERSHIP CHANGE.**

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

9 (1) The delegation of authority to the Secretary
10 of the Treasury under section 382(m) of the Inter-
11 nal Revenue Code of 1986 does not authorize the
12 Secretary to provide exemptions or special rules that
13 are restricted to particular industries or classes of
14 taxpayers.

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

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

20 (4) However, as taxpayers should generally be
21 able to rely on guidance issued by the Secretary of
22 the Treasury legislation is necessary to clarify the
23 force and effect of Internal Revenue Service Notice
24 2008–83 and restore the proper application under
25 the Internal Revenue Code of 1986 of the limitation

1 on built-in losses following an ownership change of
2 a bank.

3 (b) DETERMINATION OF FORCE AND EFFECT OF IN-
4 TERNAL REVENUE SERVICE NOTICE 2008–83 EXEMPT-
5 ING BANKS FROM LIMITATION ON CERTAIN BUILT-IN
6 LOSSES FOLLOWING OWNERSHIP CHANGE.—

7 (1) IN GENERAL.—Internal Revenue Service
8 Notice 2008–83—

9 (A) shall be deemed to have the force and
10 effect of law with respect to any ownership
11 change (as defined in section 382(g) of the In-
12 ternal Revenue Code of 1986) occurring on or
13 before January 16, 2009, and

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

16 (2) BINDING CONTRACTS.—Notwithstanding
17 paragraph (1), Internal Revenue Service Notice
18 2008–83 shall have the force and effect of law with
19 respect to any ownership change (as so defined)
20 which occurs after January 16, 2009 if such
21 change—

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

24 (B) is pursuant to a written agreement en-
25 tered into on or before such date and such

1 agreement was described on or before such date
2 in a public announcement or in a filing with the
3 Securities and Exchange Commission required
4 by reason of such ownership change.

5 **Subtitle F—Fiscal Relief for State**
6 **and Local Governments**

7 **PART 1—IMPROVED MARKETABILITY FOR TAX-**
8 **EXEMPT BONDS**

9 **SEC. 1501. DE MINIMIS SAFE HARBOR EXCEPTION FOR TAX-**
10 **EXEMPT INTEREST EXPENSE OF FINANCIAL**
11 **INSTITUTIONS.**

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

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

17 “(A) IN GENERAL.—In applying paragraph
18 (2)(A), there shall not be taken into account
19 tax-exempt obligations issued during 2009 or
20 2010.

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

1 “(C) REFUNDINGS.—For purposes of this
2 paragraph, a refunding bond (whether a current
3 or advance refunding) shall be treated as issued
4 on the date of the issuance of the refunded
5 bond (or in the case of a series of refundings,
6 the original bond).”.

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

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

17 **SEC. 1502. MODIFICATION OF SMALL ISSUER EXCEPTION**
18 **TO TAX-EXEMPT INTEREST EXPENSE ALLOCA-**
19 **TION RULES FOR FINANCIAL INSTITUTIONS.**

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

24 “(G) SPECIAL RULES FOR OBLIGATIONS
25 ISSUED DURING 2009 AND 2010.—

1 “(i) INCREASE IN LIMITATION.—In
2 the case of obligations issued during 2009
3 or 2010, subparagraphs (C)(i), (D)(i), and
4 (D)(iii)(II) shall each be applied by sub-
5 stituting ‘\$30,000,000’ for ‘\$10,000,000’.

6 “(ii) QUALIFIED 501(C)(3) BONDS
7 TREATED AS ISSUED BY EXEMPT ORGANI-
8 ZATION.—In the case of a qualified
9 501(c)(3) bond (as defined in section 145)
10 issued during 2009 or 2010, this para-
11 graph shall be applied by treating the
12 501(c)(3) organization for whose benefit
13 such bond was issued as the issuer.

14 “(iii) SPECIAL RULE FOR QUALIFIED
15 FINANCINGS.—In the case of a qualified fi-
16 nancing issue issued during 2009 or
17 2010—

18 “(I) subparagraph (F) shall not
19 apply, and

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

1 treating each qualified portion as a
2 separate issue issued by the qualified
3 borrower with respect to which such
4 portion relates).

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

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

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

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to obligations issued after Decem-
3 ber 31, 2008.

4 **SEC. 1503. TEMPORARY MODIFICATION OF ALTERNATIVE**
5 **MINIMUM TAX LIMITATIONS ON TAX-EXEMPT**
6 **BONDS.**

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

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

22 (b) NO ADJUSTMENT TO ADJUSTED CURRENT
23 EARNINGS FOR INTEREST ON TAX-EXEMPT BONDS
24 ISSUED AFTER 2008.—Subparagraph (B) of section

1 56(g)(4) is amended by adding at the end the following
 2 new clause:

3 “(iv) TAX EXEMPT INTEREST ON
 4 BONDS ISSUED IN 2009 AND 2010.—Clause
 5 (i) shall not apply in the case of any inter-
 6 est on a bond issued after December 31,
 7 2008, and before January 1, 2011. For
 8 purposes of the preceding sentence, a re-
 9 funding bond (whether a current or ad-
 10 vance refunding) shall be treated as issued
 11 on the date of the issuance of the refunded
 12 bond (or in the case of a series of
 13 refundings, the original bond).”.

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

17 **PART 2—TAX CREDIT BONDS FOR SCHOOLS**

18 **SEC. 1511. QUALIFIED SCHOOL CONSTRUCTION BONDS.**

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

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

23 “(a) QUALIFIED SCHOOL CONSTRUCTION BOND.—
 24 For purposes of this subchapter, the term ‘qualified school

1 construction bond' means any bond issued as part of an
2 issue if—

3 “(1) 100 percent of the available project pro-
4 ceeds of such issue are to be used for the construc-
5 tion, rehabilitation, or repair of a public school facil-
6 ity or for the acquisition of land on which such a fa-
7 cility is to be constructed with part of the proceeds
8 of such issue,

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

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

14 “(b) LIMITATION ON AMOUNT OF BONDS DES-
15 IGNATED.—The maximum aggregate face amount of
16 bonds issued during any calendar year which may be des-
17 igned under subsection (a) by any issuer shall not exceed
18 the sum of—

19 “(1) the limitation amount allocated under sub-
20 section (d) for such calendar year to such issuer,
21 and

22 “(2) if such issuer is a large local educational
23 agency (as defined in subsection (e)(4)) or is issuing
24 on behalf of such an agency, the limitation amount

1 allocated under subsection (e) for such calendar year
2 to such agency.

3 “(c) NATIONAL LIMITATION ON AMOUNT OF BONDS
4 DESIGNATED.—There is a national qualified school con-
5 struction bond limitation for each calendar year. Such lim-
6 itation is—

7 “(1) \$11,000,000,000 for 2009,

8 “(2) \$11,000,000,000 for 2010, and

9 “(3) except as provided in subsection (f), zero
10 after 2010.

11 “(d) 60 PERCENT OF LIMITATION ALLOCATED
12 AMONG STATES.—

13 “(1) IN GENERAL.—60 percent of the limitation
14 applicable under subsection (c) for any calendar year
15 shall be allocated by the Secretary among the States
16 in proportion to the respective numbers of children
17 in each State who have attained age 5 but not age
18 18 for the most recent fiscal year ending before such
19 calendar year. The limitation amount allocated to a
20 State under the preceding sentence shall be allocated
21 by the State to issuers within such State.

22 “(2) MINIMUM ALLOCATIONS TO STATES.—

23 “(A) IN GENERAL.—The Secretary shall
24 adjust the allocations under this subsection for

1 any calendar year for each State to the extent
2 necessary to ensure that the sum of—

3 “(i) the amount allocated to such
4 State under this subsection for such year,
5 and

6 “(ii) the aggregate amounts allocated
7 under subsection (e) to large local edu-
8 cational agencies in such State for such
9 year,

10 is not less than an amount equal to such
11 State’s adjusted minimum percentage of the
12 amount to be allocated under paragraph (1) for
13 the calendar year.

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

17 “(i) the minimum percentage de-
18 scribed in section 1124(d) of the Elemen-
19 tary and Secondary Education Act of 1965
20 (20 U.S.C. 6334(d)) for such State for the
21 most recent fiscal year ending before such
22 calendar year, multiplied by

23 “(ii) 1.68.

24 “(3) ALLOCATIONS TO CERTAIN POSSES-
25 SIONS.—The amount to be allocated under para-

1 graph (1) to any possession of the United States
2 other than Puerto Rico shall be the amount which
3 would have been allocated if all allocations under
4 paragraph (1) were made on the basis of respective
5 populations of individuals below the poverty line (as
6 defined by the Office of Management and Budget).
7 In making other allocations, the amount to be allo-
8 cated under paragraph (1) shall be reduced by the
9 aggregate amount allocated under this paragraph to
10 possessions of the United States.

11 “(4) ALLOCATIONS FOR INDIAN SCHOOLS.—In
12 addition to the amounts otherwise allocated under
13 this subsection, \$200,000,000 for calendar year
14 2009, and \$200,000,000 for calendar year 2010,
15 shall be allocated by the Secretary of the Interior for
16 purposes of the construction, rehabilitation, and re-
17 pair of schools funded by the Bureau of Indian Af-
18 fairs. In the case of amounts allocated under the
19 preceding sentence, Indian tribal governments (as
20 defined in section 7701(a)(40)) shall be treated as
21 qualified issuers for purposes of this subchapter.

22 “(e) 40 PERCENT OF LIMITATION ALLOCATED
23 AMONG LARGEST SCHOOL DISTRICTS.—

24 “(1) IN GENERAL.—40 percent of the limitation
25 applicable under subsection (c) for any calendar year

1 shall be allocated under paragraph (2) by the Sec-
2 retary among local educational agencies which are
3 large local educational agencies for such year.

4 “(2) ALLOCATION FORMULA.—The amount to
5 be allocated under paragraph (1) for any calendar
6 year shall be allocated among large local educational
7 agencies in proportion to the respective amounts
8 each such agency received for Basic Grants under
9 subpart 2 of part A of title I of the Elementary and
10 Secondary Education Act of 1965 (20 U.S.C. 6331
11 et seq.) for the most recent fiscal year ending before
12 such calendar year.

13 “(3) ALLOCATION OF UNUSED LIMITATION TO
14 STATE.—The amount allocated under this subsection
15 to a large local educational agency for any calendar
16 year may be reallocated by such agency to the State
17 in which such agency is located for such calendar
18 year. Any amount reallocated to a State under the
19 preceding sentence may be allocated as provided in
20 subsection (d)(1).

21 “(4) LARGE LOCAL EDUCATIONAL AGENCY.—
22 For purposes of this section, the term ‘large local
23 educational agency’ means, with respect to a cal-
24 endar year, any local educational agency if such
25 agency is—

1 “(A) among the 100 local educational
2 agencies with the largest numbers of children
3 aged 5 through 17 from families living below
4 the poverty level, as determined by the Sec-
5 retary using the most recent data available
6 from the Department of Commerce that are
7 satisfactory to the Secretary, or

8 “(B) 1 of not more than 25 local edu-
9 cational agencies (other than those described in
10 subparagraph (A)) that the Secretary of Edu-
11 cation determines (based on the most recent
12 data available satisfactory to the Secretary) are
13 in particular need of assistance, based on a low
14 level of resources for school construction, a high
15 level of enrollment growth, or such other factors
16 as the Secretary deems appropriate.

17 “(f) CARRYOVER OF UNUSED LIMITATION.—If for
18 any calendar year—

19 “(1) the amount allocated under subsection (d)
20 to any State, exceeds

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

24 the limitation amount under such subsection for such
25 State for the following calendar year shall be increased

1 by the amount of such excess. A similar rule shall apply
2 to the amounts allocated under subsection (d)(4) or (e).”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) Paragraph (1) of section 54A(d) is amended
5 by striking “or” at the end of subparagraph (C), by
6 inserting “or” at the end of subparagraph (D), and
7 by inserting after subparagraph (D) the following
8 new subparagraph:

9 “(E) a qualified school construction
10 bond,”.

11 (2) Subparagraph (C) of section 54A(d)(2) is
12 amended by striking “and” at the end of clause (iii),
13 by striking the period at the end of clause (iv) and
14 inserting “, and”, and by adding at the end the fol-
15 lowing new clause:

16 “(v) in the case of a qualified school
17 construction bond, a purpose specified in
18 section 54F(a)(1).”.

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

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

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

1 **SEC. 1512. EXTENSION AND EXPANSION OF QUALIFIED**
2 **ZONE ACADEMY BONDS.**

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

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

9 **PART 3—TAXABLE BOND OPTION FOR**
10 **GOVERNMENTAL BONDS**

11 **SEC. 1521. TAXABLE BOND OPTION FOR GOVERNMENTAL**
12 **BONDS.**

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

16 **“Subpart J—Taxable Bond Option for Governmental**
17 **Bonds**

“Sec. 54AA. Taxable bond option for governmental bonds.

18 **“SEC. 54AA. TAXABLE BOND OPTION FOR GOVERNMENTAL**
19 **BONDS.**

20 “(a) IN GENERAL.—If a taxpayer holds a taxable
21 governmental bond on one or more interest payment dates
22 of the bond during any taxable year, there shall be allowed
23 as a credit against the tax imposed by this chapter for
24 the taxable year an amount equal to the sum of the credits

1 determined under subsection (b) with respect to such
2 dates.

3 “(b) AMOUNT OF CREDIT.—The amount of the credit
4 determined under this subsection with respect to any in-
5 terest payment date for a taxable governmental bond is
6 35 percent of the amount of interest payable by the issuer
7 with respect to such date.

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

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

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

15 “(B) the sum of the credits allowable
16 under this part (other than subpart C and this
17 subpart).

18 “(2) CARRYOVER OF UNUSED CREDIT.—If the
19 credit allowable under subsection (a) exceeds the
20 limitation imposed by paragraph (1) for such taxable
21 year, such excess shall be carried to the succeeding
22 taxable year and added to the credit allowable under
23 subsection (a) for such taxable year (determined be-
24 fore the application of paragraph (1) for such suc-
25 ceeding taxable year).

1 “(d) TAXABLE GOVERNMENTAL BOND.—

2 “(1) IN GENERAL.—For purposes of this sec-
3 tion, the term ‘taxable governmental bond’ means
4 any obligation (other than a private activity bond)
5 if—

6 “(A) the interest on such obligation would
7 (but for this section) be excludable from gross
8 income under section 103, and

9 “(B) the issuer makes an irrevocable elec-
10 tion to have this section apply.

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

13 “(A) a taxable governmental bond shall not
14 be treated as federally guaranteed by reason of
15 the credit allowed under subsection (a) or sec-
16 tion 6432,

17 “(B) the yield on a taxable governmental
18 bond shall be determined without regard to the
19 credit allowed under subsection (a), and

20 “(C) a bond shall not be treated as a tax-
21 able governmental bond if the issue price has
22 more than a de minimis amount (determined
23 under rules similar to the rules of section
24 1273(a)(3)) of premium over the stated prin-
25 cipal amount of the bond.

1 “(e) INTEREST PAYMENT DATE.—For purposes of
2 this section, the term ‘interest payment date’ means any
3 date on which the holder of record of the taxable govern-
4 mental bond is entitled to a payment of interest under
5 such bond.

6 “(f) SPECIAL RULES.—

7 “(1) INTEREST ON TAXABLE GOVERNMENTAL
8 BONDS INCLUDIBLE IN GROSS INCOME FOR FED-
9 ERAL INCOME TAX PURPOSES.—For purposes of this
10 title, interest on any taxable governmental bond
11 shall be includible in gross income.

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

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

19 “(1) ISSUER ALLOWED REFUNDABLE CRED-
20 IT.—In lieu of any credit allowed under this section
21 with respect to such bond, the issuer of such bond
22 shall be allowed a credit as provided in section 6432.

23 “(2) QUALIFIED BOND.—For purposes of this
24 subsection, the term ‘qualified bond’ means any tax-

1 able governmental bond issued as part of an issue
2 if—

3 “(A) 100 percent of the available project
4 proceeds (as defined in section 54A) of such
5 issue are to be used for capital expenditures,
6 and

7 “(B) the issuer makes an irrevocable elec-
8 tion to have this subsection apply.

9 “(h) REGULATIONS.—The Secretary may prescribe
10 such regulations and other guidance as may be necessary
11 or appropriate to carry out this section and section
12 6432.”.

13 (b) CREDIT FOR QUALIFIED BONDS ISSUED BEFORE
14 2011.—Subchapter B of chapter 65, as amended by this
15 Act, is amended by adding at the end the following new
16 section:

17 **“SEC. 6432. CREDIT FOR QUALIFIED BONDS ALLOWED TO**
18 **ISSUER.**

19 “(a) IN GENERAL.—In the case of a qualified bond
20 issued before January 1, 2011, the issuer of such bond
21 shall be allowed a credit with respect to each interest pay-
22 ment under such bond which shall be payable by the Sec-
23 retary as provided in subsection (b).

24 “(b) PAYMENT OF CREDIT.—The Secretary shall pay
25 (contemporaneously with each interest payment date

1 under such bond) to the issuer of such bond (or to any
2 person who makes such interest payments on behalf of the
3 issuer) 35 percent of the interest payable under such bond
4 on such date.

5 “(c) APPLICATION OF ARBITRAGE RULES.—For pur-
6 poses of section 148, the yield on a qualified bond shall
7 be reduced by the credit allowed under this section.

8 “(d) INTEREST PAYMENT DATE.—For purposes of
9 this subsection, the term ‘interest payment date’ means
10 each date on which interest is payable by the issuer under
11 the terms of the bond.

12 “(e) QUALIFIED BOND.—For purposes of this sub-
13 section, the term ‘qualified bond’ has the meaning given
14 such term in section 54AA(h).”.

15 (c) CONFORMING AMENDMENTS.—

16 (1) Section 1324(b)(2) of title 31, United
17 States Code, is amended by striking “or 6428” and
18 inserting “6428, or 6432.”.

19 (2) Section 54A(c)(1)(B) is amended by strik-
20 ing “subpart C” and inserting “subparts C and J”.

21 (3) Sections 54(c)(2), 1397E(c)(2), and
22 1400N(l)(3)(B) are each amended by striking “and
23 I” and inserting “, I, and J”.

24 (4) Section 6401(b)(1) is amended by striking
25 “and I” and inserting “I, and J”.

1 (5) The table of subparts for part IV of sub-
 2 chapter A of chapter 1 is amended by adding at the
 3 end the following new item:

“Subpart J. Taxable bond option for governmental bonds.”.

4 (6) The table of sections for subchapter B of
 5 chapter 65, as amended by this Act, is amended by
 6 adding at the end the following new item:

“Sec. 6432. Credit for qualified bonds allowed to issuer on advance basis.”.

7 (d) **TRANSITIONAL COORDINATION WITH STATE**
 8 **LAW.**—Except as otherwise provided by a State after the
 9 date of the enactment of this Act, the interest on any tax-
 10 able governmental bond (as defined in section 54AA of
 11 the Internal Revenue Code of 1986, as added by this sec-
 12 tion) and the amount of any credit determined under such
 13 section with respect to such bond shall be treated for pur-
 14 poses of the income tax laws of such State as being exempt
 15 from Federal income tax.

16 (e) **EFFECTIVE DATE.**—The amendments made by
 17 this section shall apply to obligations issued after the date
 18 of the enactment of this Act.

19 **PART 4—RECOVERY ZONE BONDS**

20 **SEC. 1531. RECOVERY ZONE BONDS.**

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

23 **“PART III—RECOVERY ZONE BONDS**

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

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

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

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

2 “(a) ALLOCATIONS.—

3 “(1) IN GENERAL.—The Secretary shall allo-
4 cate the national recovery zone economic develop-
5 ment bond limitation and the national recovery zone
6 facility bond limitation among the States in the pro-
7 portion that each such State’s 2008 State employ-
8 ment decline bears to the aggregate of the 2008
9 State employment declines for all of the States.

10 “(2) 2008 STATE EMPLOYMENT DECLINE.—For
11 purposes of this subsection, the term ‘2008 State
12 employment decline’ means, with respect to any
13 State, the excess (if any) of—

14 “(A) the number of individuals employed
15 in such State determined for December 2007,
16 over

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

19 “(3) ALLOCATIONS BY STATES.—

20 “(A) IN GENERAL.—Each State with re-
21 spect to which an allocation is made under
22 paragraph (1) shall reallocate such allocation
23 among the counties and large municipalities in
24 such State in the proportion the each such

1 county's or municipality's 2008 employment de-
2 cline bears to the aggregate of the 2008 em-
3 ployment declines for all the counties and mu-
4 nicipalities in such State.

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

9 “(C) DETERMINATION OF LOCAL EMPLOY-
10 MENT DECLINES.—For purposes of this para-
11 graph, the employment decline of any munici-
12 pality or county shall be determined in the
13 same manner as determining the State employ-
14 ment decline under paragraph (2), except that
15 in the case of a municipality any portion of
16 which is in a county, such portion shall be
17 treated as part of such municipality and not
18 part of such county.

19 “(4) NATIONAL LIMITATIONS.—

20 “(A) RECOVERY ZONE ECONOMIC DEVEL-
21 OPMENT BONDS.—There is a national recovery
22 zone economic development bond limitation of
23 \$10,000,000,000.

1 “(B) RECOVERY ZONE FACILITY BONDS.—

2 There is a national recovery zone facility bond
3 limitation of \$15,000,000,000.

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

6 “(1) any area designated by the issuer as hav-
7 ing significant poverty, unemployment, home fore-
8 closures, or general distress, and

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

11 **“SEC. 1400U-2. RECOVERY ZONE ECONOMIC DEVELOPMENT**
12 **BONDS.**

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

15 “(1) such bond shall be treated as a qualified
16 bond for purposes of section 6432, and

17 “(2) subsection (b) of such section shall be ap-
18 plied by substituting ‘55 percent’ for ‘35 percent’.

19 “(b) RECOVERY ZONE ECONOMIC DEVELOPMENT
20 BOND.—

21 “(1) IN GENERAL.—For purposes of this sec-
22 tion, the term ‘recovery zone economic development
23 bond’ means any taxable governmental bond (as de-
24 fined in section 54AA(d)) issued before January 1,
25 2011, as part of issue if—

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

5 “(B) the issuer designates such bond for
6 purposes of this section.

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

13 “(c) QUALIFIED ECONOMIC DEVELOPMENT PUR-
14 POSE.—For purposes of this section, the term ‘qualified
15 economic development purpose’ means expenditures for
16 purposes of promoting development or other economic ac-
17 tivity in a recovery zone, including—

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

20 “(2) expenditures for public infrastructure and
21 construction of public facilities, and

22 “(3) expenditures for job training and edu-
23 cational programs.

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

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

6 “(b) RECOVERY ZONE FACILITY BOND.—

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

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

13 “(B) such bond is issued before January 1,
14 2011, and

15 “(C) the issuer designates such bond for
16 purposes of this section.

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

23 “(c) RECOVERY ZONE PROPERTY.—For purposes of
24 this section—

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

4 “(A) such property was acquired by the
5 taxpayer by purchase (as defined in section
6 179(d)(2)) after the date on which the designa-
7 tion of the recovery zone took effect,

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

10 “(C) substantially all of the use of which
11 is in the recovery zone and is in the active con-
12 duct of a qualified business by the taxpayer in
13 such zone.

14 “(2) QUALIFIED BUSINESS.—The term ‘quali-
15 fied business’ means any trade or business except
16 that—

17 “(A) the rental to others of real property
18 located in a recovery zone shall be treated as a
19 qualified business only if the property is not
20 residential rental property (as defined in section
21 168(e)(2)), and

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

1 “(3) SPECIAL RULES FOR SUBSTANTIAL REN-
2 OVATIONS AND SALE-LEASEBACK.—Rules similar to
3 the rules of subsections (a)(2) and (b) of section
4 1397D shall apply for purposes of this subsection.

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

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

 “PART III. RECOVERY ZONE BONDS.”.

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

15 **SEC. 1532. TRIBAL ECONOMIC DEVELOPMENT BONDS.**

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

18 “(f) TRIBAL ECONOMIC DEVELOPMENT BONDS.—

19 “(1) ALLOCATION OF LIMITATION.—

20 “(A) IN GENERAL.—The Secretary shall
21 allocate the national tribal economic develop-
22 ment bond limitation among the Indian tribal
23 governments in such manner as the Secretary,
24 in consultation with the Secretary of the Inte-
25 rior, determines appropriate.

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

4 “(2) BONDS TREATED AS EXEMPT FROM
5 TAX.—In the case of a tribal economic development
6 bond—

7 “(A) notwithstanding subsection (c), such
8 bond shall be treated for purposes of this title
9 in the same manner as if such bond were issued
10 by a State, and

11 “(B) section 146 shall not apply.

12 “(3) TRIBAL ECONOMIC DEVELOPMENT
13 BOND.—

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

18 “(i) the interest on which is not ex-
19 empt from tax under section 103 by reason
20 of subsection (c) (determined without re-
21 gard to this subsection) but would be so
22 exempt if issued by a State or local govern-
23 ment, and

24 “(ii) which is designated by the In-
25 dian tribal government as a tribal eco-

1 nomic development bond for purposes of
2 this subsection.

3 “(B) EXCEPTIONS.—The term tribal eco-
4 nomic development bond shall not include any
5 bond issued as part of an issue if any portion
6 of the proceeds of such issue are used to fi-
7 nance—

8 “(i) any portion of a building in which
9 class II or class III gaming (as defined in
10 section 4 of the Indian Gaming Regulatory
11 Act) is conducted or housed or any other
12 property actually used in the conduct of
13 such gaming, or

14 “(ii) any facility located outside the
15 Indian reservation (as defined in section
16 168(j)(6)).

17 “(C) LIMITATION ON AMOUNT OF BONDS
18 DESIGNATED.—The maximum aggregate face
19 amount of bonds which may be designated by
20 any Indian tribal government under subpara-
21 graph (A) shall not exceed the amount of na-
22 tional tribal economic development bond limita-
23 tion allocated to such government under para-
24 graph (1).”.

1 (b) STUDY.—The Secretary of the Treasury, or the
 2 Secretary’s delegate, shall conduct a study of the effects
 3 of the amendment made by subsection (a). Not later than
 4 1 year after the date of the enactment of this Act, the
 5 Secretary of the Treasury, or the Secretary’s delegate,
 6 shall report to Congress on the results of the studies con-
 7 ducted under this paragraph, including the Secretary’s
 8 recommendations regarding such amendment.

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

12 **PART 5—REPEAL OF WITHHOLDING TAX ON**
 13 **GOVERNMENT CONTRACTORS**

14 **SEC. 1541. REPEAL OF WITHHOLDING TAX ON GOVERN-**
 15 **MENT CONTRACTORS.**

16 Section 3402 is amended by striking subsection (t).

17 **Subtitle G—Energy Incentives**

18 **PART 1—RENEWABLE ENERGY INCENTIVES**

19 **SEC. 1601. EXTENSION OF CREDIT FOR ELECTRICITY PRO-**
 20 **DUCED FROM CERTAIN RENEWABLE RE-**
 21 **SOURCES.**

22 (a) IN GENERAL.—Subsection (d) of section 45 is
 23 amended—

24 (1) by striking “2010” in paragraph (1) and in-
 25 serting “2013”,

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

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

6 (b) TECHNICAL AMENDMENT.—Paragraph (5) of
7 section 45(d) is amended by striking “and before” and
8 all that follows and inserting “ and before October 3,
9 2008.”.

10 (c) EFFECTIVE DATE.—

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

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

18 **SEC. 1602. ELECTION OF INVESTMENT CREDIT IN LIEU OF**
19 **PRODUCTION CREDIT.**

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

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

1 “(A) IN GENERAL.—In the case of any
2 qualified investment credit facility placed in
3 service in 2009 or 2010—

4 “(i) such facility shall be treated as
5 energy property for purposes of this sec-
6 tion, and

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

9 “(B) DENIAL OF PRODUCTION CREDIT.—
10 No credit shall be allowed under section 45 for
11 any taxable year with respect to any qualified
12 investment credit facility.

13 “(C) QUALIFIED INVESTMENT CREDIT FA-
14 CILITY.—For purposes of this paragraph, the
15 term ‘qualified investment credit facility’ means
16 any facility described in paragraph (1), (2), (3),
17 (4), (6), (7), (9), or (11) of section 45(d) if no
18 credit has been allowed under section 45 with
19 respect to such facility and the taxpayer makes
20 an irrevocable election to have this paragraph
21 apply to such facility.”.

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

1 **SEC. 1603. REPEAL OF CERTAIN LIMITATIONS ON CREDIT**
2 **FOR RENEWABLE ENERGY PROPERTY.**

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

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

10 (1) IN GENERAL.—Subsection (a) of section 48
11 is amended by striking paragraph (4).

12 (2) CONFORMING AMENDMENTS.—

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

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

17 (c) EFFECTIVE DATE.—

18 (1) IN GENERAL.—Except as provided in para-
19 graph (2),the amendment made by this section shall
20 apply to periods after December 31, 2008, under
21 rules similar to the rules of section 48(m) of the In-
22 ternal Revenue Code of 1986 (as in effect on the day
23 before the date of the enactment of the Revenue
24 Reconciliation Act of 1990).

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

4 **SEC. 1604. COORDINATION WITH RENEWABLE ENERGY**
5 **GRANTS.**

6 Section 48 is amended by adding at the end the fol-
7 lowing new subsection:

8 “(d) COORDINATION WITH DEPARTMENT OF EN-
9 ERGY GRANTS.—In the case of any property with respect
10 to which the Secretary of Energy makes a grant under
11 section 1721 of the American Recovery and Reinvestment
12 Tax Act of 2009—

13 “(1) DENIAL OF PRODUCTION AND INVEST-
14 MENT CREDITS.—No credit shall be determined
15 under this section or section 45 with respect to such
16 property for the taxable year in which such grant is
17 made or any subsequent taxable year.

18 “(2) RECAPTURE OF CREDITS FOR PROGRESS
19 EXPENDITURES MADE BEFORE GRANT.—If a credit
20 was determined under this section with respect to
21 such property for any taxable year ending before
22 such grant is made—

23 “(A) the tax imposed under subtitle A on
24 the taxpayer for the taxable year in which such

1 grant is made shall be increased by so much of
2 such credit as was allowed under section 38,

3 “(B) the general business carryforwards
4 under section 39 shall be adjusted so as to re-
5 capture the portion of such credit which was
6 not so allowed, and

7 “(C) the amount of such grant shall be de-
8 termined without regard to any reduction in the
9 basis of such property by reason of such credit.

10 “(3) TREATMENT OF GRANTS.—Any such grant
11 shall—

12 “(A) not be includible in the gross income
13 of the taxpayer, but

14 “(B) shall be taken into account in deter-
15 mining the basis of the property to which such
16 grant relates, except that the basis of such
17 property shall be reduced under section 50(c) in
18 the same manner as a credit allowed under sub-
19 section (a).”.

1 **PART 2—INCREASED ALLOCATIONS OF NEW**
2 **CLEAN RENEWABLE ENERGY BONDS AND**
3 **QUALIFIED ENERGY CONSERVATION BONDS**

4 **SEC. 1611. INCREASED LIMITATION ON ISSUANCE OF NEW**
5 **CLEAN RENEWABLE ENERGY BONDS.**

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

8 “(4) **ADDITIONAL LIMITATION.**—The national
9 new clean renewable energy bond limitation shall be
10 increased by \$1,600,000,000. Such increase shall be
11 allocated by the Secretary consistent with the rules
12 of paragraphs (2) and (3).”.

13 **SEC. 1612. INCREASED LIMITATION AND EXPANSION OF**
14 **QUALIFIED ENERGY CONSERVATION BONDS.**

15 (a) **INCREASED LIMITATION.**—Subsection (e) of sec-
16 tion 54D is amended by adding at the end the following
17 new paragraph:

18 “(4) **ADDITIONAL LIMITATION.**—The national
19 qualified energy conservation bond limitation shall
20 be increased by \$2,400,000,000. Such increase shall
21 be allocated by the Secretary consistent with the
22 rules of paragraphs (1), (2), and (3).”.

23 (b) **LOANS AND GRANTS TO IMPLEMENT GREEN**
24 **COMMUNITY PROGRAMS.**—

25 (1) **IN GENERAL.**—Subparagraph (A) of section
26 54D(f)(1) is amended by inserting “(or loans or

1 grants for capital expenditures to implement any
2 green community program)” after “Capital expendi-
3 tures”.

4 (2) BONDS TO IMPLEMENT GREEN COMMUNITY
5 PROGRAMS NOT TREATED AS PRIVATE ACTIVITY
6 BONDS FOR PURPOSES OF LIMITATIONS ON QUALI-
7 FIED ENERGY CONSERVATION BONDS.—Subsection
8 (e) of section 54D is amended by adding at the end
9 the following new paragraph:

10 “(4) BONDS TO IMPLEMENT GREEN COMMU-
11 NITY PROGRAMS NOT TREATED AS PRIVATE ACTIV-
12 ITY BONDS.—For purposes of paragraph (3) and
13 subsection (f)(2), a bond shall not be treated as a
14 private activity bond solely because proceeds of the
15 issue of which such bond is a part are to be used
16 for loans or grants for capital expenditures to imple-
17 ment any green community program.”.

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

1 **PART 3—ENERGY CONSERVATION INCENTIVES**
2 **SEC. 1621. EXTENSION AND MODIFICATION OF CREDIT FOR**
3 **NONBUSINESS ENERGY PROPERTY.**

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

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

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

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

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

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

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

1 **SEC. 1622. MODIFICATION OF CREDIT FOR RESIDENTIAL**
2 **ENERGY EFFICIENT PROPERTY.**

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

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

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

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

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

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

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

11 (B) by striking subparagraph (C).

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

15 **SEC. 1623. TEMPORARY INCREASE IN CREDIT FOR ALTER-**
16 **NATIVE FUEL VEHICLE REFUELING PROP-**
17 **ERTY.**

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

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

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

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

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

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

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

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

18 **PART 4—ENERGY RESEARCH INCENTIVES**

19 **SEC. 1631. INCREASED RESEARCH CREDIT FOR ENERGY RE-** 20 **SEARCH.**

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

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

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

5 “(2) QUALIFIED ENERGY RESEARCH EX-
6 PENSES.—For purposes of this subsection, the term
7 ‘qualified energy research expenses’ means so much
8 of the taxpayer’s qualified research expenses as are
9 related to the fields of fuel cells and battery tech-
10 nology, renewable energy, energy conservation tech-
11 nology, efficient transmission and distribution of
12 electricity, and carbon capture and sequestration.

13 “(3) COORDINATION WITH OTHER RESEARCH
14 CREDITS.—

15 “(A) INCREMENTAL CREDIT.—The amount
16 of qualified energy research expenses taken into
17 account under subsection (a)(1)(A) shall not ex-
18 ceed the base amount.

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

24 “(i) in the case of subsection
25 (c)(5)(A), 50 percent of the average quali-

1 fied research expenses for the 3 taxable
2 years preceding the taxable year for which
3 the credit is being determined, and

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

6 “(C) BASIC RESEARCH AND ENERGY RE-
7 SEARCH CONSORTIUM PAYMENTS.—Any amount
8 taken into account under paragraph (1) shall
9 not be taken into account under paragraph (2)
10 or (3) of subsection (a).”.

11 (b) CONFORMING AMENDMENT.—Subparagraph (B)
12 of section 41(i)(1)(B), as redesignated by subsection (a),
13 is amended by inserting “(in the case of the increase in
14 the credit determined under subsection (h), December 31,
15 2010)” after “December 31, 2009”.

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

1 **Subtitle H—Other Provisions**
2 **PART 1—APPLICATION OF CERTAIN LABOR**
3 **STANDARDS TO PROJECTS FINANCED WITH**
4 **CERTAIN TAX-FAVORED BONDS**
5 **SEC. 1701. APPLICATION OF CERTAIN LABOR STANDARDS**
6 **TO PROJECTS FINANCED WITH CERTAIN TAX-**
7 **FAVORED BONDS.**

8 Subchapter IV of chapter 31 of the title 40, United
9 States Code, shall apply to projects financed with the pro-
10 ceeds of—

11 (1) any qualified clean renewable energy bond
12 (as defined in section 54C of the Internal Revenue
13 Code of 1986) issued after the date of the enact-
14 ment of this Act,

15 (2) any qualified energy conservation bond (as
16 defined in section 54D of the Internal Revenue Code
17 of 1986) issued after the date of the enactment of
18 this Act,

19 (3) any qualified zone academy bond (as de-
20 fined in section 54E of the Internal Revenue Code
21 of 1986) issued after the date of the enactment of
22 this Act,

23 (4) any qualified school construction bond (as
24 defined in section 54F of the Internal Revenue Code
25 of 1986), and

1 (5) any recovery zone economic development
2 bond (as defined in section 1400U-2 of the Internal
3 Revenue Code of 1986).

4 **PART 2—GRANTS TO PROVIDE FINANCING FOR**
5 **LOW-INCOME HOUSING**

6 **SEC. 1711. GRANTS TO STATES FOR LOW-INCOME HOUSING**
7 **PROJECTS IN LIEU OF LOW-INCOME HOUS-**
8 **ING CREDIT ALLOCATIONS FOR 2009.**

9 (a) IN GENERAL.—The Secretary of the Treasury
10 shall make a grant to the housing credit agency of each
11 State in an amount equal to such State’s low-income hous-
12 ing grant election amount.

13 (b) LOW-INCOME HOUSING GRANT ELECTION
14 AMOUNT.—For purposes of this section, the term “low-
15 income housing grant election amount” means, with re-
16 spect to any State, such amount as the State may elect
17 which does not exceed 85 percent of the product of—

18 (1) the sum of—

19 (A) 100 percent of the State housing credit
20 ceiling for 2009 which is attributable to
21 amounts described in clauses (i) and (iii) of sec-
22 tion 42(h)(3)(C) of the Internal Revenue Code
23 of 1986, and

24 (B) 40 percent of the State housing credit
25 ceiling for 2009 which is attributable to

1 amounts described in clauses (ii) and (iv) of
2 such section, multiplied by

3 (2) 10.

4 (c) SUBAWARDS FOR LOW-INCOME BUILDINGS.—

5 (1) IN GENERAL.—A State housing credit agen-
6 cy receiving a grant under this section shall use such
7 grant to make subawards to finance the construction
8 or acquisition and rehabilitation of qualified low-in-
9 come buildings. A subaward under this section may
10 be made to finance a qualified low-income building
11 with or without an allocation under section 42 of the
12 Internal Revenue Code of 1986, except that a State
13 housing credit agency may make subawards to fi-
14 nance qualified low-income buildings without an allo-
15 cation only if it makes a determination that such use
16 will increase the total funds available to the State to
17 build and rehabilitate affordable housing. In com-
18 plying with such determination requirement, a State
19 housing credit agency shall establish a process in
20 which applicants that are allocated credits are re-
21 quired to demonstrate good faith efforts to obtain
22 investment commitments for such credits before the
23 agency makes such subawards.

24 (2) SUBAWARDS SUBJECT TO SAME REQUIRE-
25 MENTS AS LOW-INCOME HOUSING CREDIT ALLOCA-

1 TIONS.—Any such subaward with respect to any
2 qualified low-income building shall be made in the
3 same manner and shall be subject to the same limi-
4 tations (including rent, income, and use restrictions
5 on such building) as an allocation of housing credit
6 dollar amount allocated by such State housing credit
7 agency under section 42 of the Internal Revenue
8 Code of 1986, except that such subawards shall not
9 be limited by, or otherwise affect (except as provided
10 in subsection (h)(3)(J) of such section), the State
11 housing credit ceiling applicable to such agency.

12 (3) COMPLIANCE AND ASSET MANAGEMENT.—
13 The State housing credit agency shall perform asset
14 management functions to ensure compliance with
15 section 42 of the Internal Revenue Code of 1986
16 and the long-term viability of buildings funded by
17 any subaward under this section. The State housing
18 credit agency may collect reasonable fees from a
19 subaward recipient to cover expenses associated with
20 the performance of its duties under this paragraph.
21 The State housing credit agency may retain an
22 agent or other private contractor to satisfy the re-
23 quirements of this paragraph.

24 (4) RECAPTURE.—The State housing credit
25 agency shall impose conditions or restrictions, in-

1 including a requirement providing for recapture, on
2 any subaward under this section so as to assure that
3 the building with respect to which such subaward is
4 made remains a qualified low-income building during
5 the compliance period. Any such recapture shall be
6 payable to the Secretary of the Treasury for deposit
7 in the general fund of the Treasury and may be en-
8 forced by means of liens or such other methods as
9 the Secretary of the Treasury determines appro-
10 priate.

11 (d) RETURN OF UNUSED GRANT FUNDS.—Any grant
12 funds not used to make subawards under this section be-
13 fore January 1, 2011, shall be returned to the Secretary
14 of the Treasury on such date. Any subawards returned
15 to the State housing credit agency on or after such date
16 shall be promptly returned to the Secretary of the Treas-
17 ury. Any amounts returned to the Secretary of the Treas-
18 ury under this subsection shall be deposited in the general
19 fund of the Treasury.

20 (e) DEFINITIONS.—Any term used in this section
21 which is also used in section 42 of the Internal Revenue
22 Code of 1986 shall have the same meaning for purposes
23 of this section as when used in such section 42. Any ref-
24 erence in this section to the Secretary of the Treasury
25 shall be treated as including the Secretary's delegate.

1 (f) APPROPRIATIONS.—There is hereby appropriated
2 to the Secretary of the Treasury such sums as may be
3 necessary to carry out this section.

4 **PART 3—GRANTS FOR SPECIFIED ENERGY**
5 **PROPERTY IN LIEU OF TAX CREDITS**

6 **SEC. 1721. GRANTS FOR SPECIFIED ENERGY PROPERTY IN**
7 **LIEU OF TAX CREDITS.**

8 (a) IN GENERAL.—Upon application, the Secretary
9 of Energy shall, within 60 days of the application and sub-
10 ject to the requirements of this section, provide a grant
11 to each person who places in service specified energy prop-
12 erty during 2009 or 2010 to reimburse such person for
13 a portion of the expense of such facility as provided in
14 subsection (b).

15 (b) GRANT AMOUNT.—

16 (1) IN GENERAL.—The amount of the grant
17 under subsection (a) with respect to any specified
18 energy property shall be the applicable percentage of
19 the basis of such facility.

20 (2) APPLICABLE PERCENTAGE.—For purposes
21 of paragraph (1), the term “applicable percentage”
22 means—

23 (A) 30 percent in the case of any property
24 described in paragraphs (1) through (4) of sub-
25 section (c), and

1 (B) 10 percent in the case of any other
2 property.

3 (3) DOLLAR LIMITATIONS.—In the case of
4 property described in paragraph (2), (6), or (7) of
5 subsection (c), the amount of any grant under this
6 section with respect to such property shall not ex-
7 ceed the limitation described in section 48(c)(1)(B),
8 48(c)(2)(B), or 48(c)(3)(B) of the Internal Revenue
9 Code of 1986, respectively, with respect to such
10 property.

11 (c) SPECIFIED ENERGY PROPERTY.—For purposes
12 of this section, the term “specified energy property”
13 means any of the following:

14 (1) QUALIFIED FACILITIES.—Any facility de-
15 scribed in paragraph (1), (2), (3), (4), (6), (7), (9),
16 or (11) of section 45(d) of the Internal Revenue
17 Code of 1986.

18 (2) QUALIFIED FUEL CELL PROPERTY.—Any
19 qualified fuel cell property (as defined in section
20 48(c)(1) of such Code).

21 (3) SOLAR PROPERTY.—Any property described
22 in clause (i) or (ii) of section 48(a)(3)(A) of such
23 Code.

1 (4) QUALIFIED SMALL WIND ENERGY PROP-
2 ERTY.—Any qualified small wind energy property
3 (as defined in section 48(c)(4) of such Code).

4 (5) GEOTHERMAL PROPERTY.—Any property
5 described in clause (iii) of section 48(a)(3)(A) of
6 such Code.

7 (6) QUALIFIED MICROTURBINE PROPERTY.—
8 Any qualified microturbine property (as defined in
9 section 48(c)(2) of such Code).

10 (7) COMBINED HEAT AND POWER SYSTEM
11 PROPERTY.—Any combined heat and power system
12 property (as defined in section 48(c)(3) of such
13 Code).

14 (8) GEOTHERMAL HEATPUMP PROPERTY.—Any
15 property described in clause (vii) of section
16 48(a)(3)(A) of such Code.

17 (d) APPLICATION OF CERTAIN RULES.—In making
18 grants under this section, the Secretary of Energy shall
19 apply rules similar to the rules of section 50 of the Inter-
20 nal Revenue Code of 1986. In applying such rules, if the
21 facility is disposed of, or otherwise ceases to be a qualified
22 renewable energy facility, the Secretary of Energy shall
23 provide for the recapture of the appropriate percentage of
24 the grant amount in such manner as the Secretary of En-
25 ergy determines appropriate.

1 (e) EXCEPTION FOR CERTAIN NON-TAXPAYERS.—
2 The Secretary of Energy shall not make any grant under
3 this section to any Federal, State, or local government (or
4 any political subdivision, agency, or instrumentality there-
5 of) or any organization described in section 501(c) of the
6 Internal Revenue Code of 1986 and exempt from tax
7 under section 501(a) of such Code.

8 (f) DEFINITIONS.—Terms used in this section which
9 are also used in section 45 or 48 of the Internal Revenue
10 Code of 1986 shall have the same meaning for purposes
11 of this section as when used in such section 45 or 48.
12 Any reference in this section to the Secretary of the Treas-
13 ury shall be treated as including the Secretary's delegate.

14 (g) COORDINATION BETWEEN DEPARTMENTS OF
15 TREASURY AND ENERGY.—The Secretary of the Treasury
16 shall provide the Secretary of Energy with such technical
17 assistance as the Secretary of Energy may require in car-
18 rying out this section. The Secretary of Energy shall pro-
19 vide the Secretary of the Treasury with such information
20 as the Secretary of the Treasury may require in carrying
21 out the amendment made by section 1604.

22 (h) APPROPRIATIONS.—There is hereby appropriated
23 to the Secretary of Energy such sums as may be necessary
24 to carry out this section.

1 (i) TERMINATION.—The Secretary of Energy shall
2 not make any grant to any person under this section un-
3 less the application of such person for such grant is re-
4 ceived before October 1, 2011.

5 **PART 4—STUDY OF ECONOMIC, EMPLOYMENT,**
6 **AND RELATED EFFECTS OF THIS ACT**

7 **SEC. 1731. STUDY OF ECONOMIC, EMPLOYMENT, AND RE-**
8 **LATED EFFECTS OF THIS ACT.**

9 On February 1, 2010, and every 3 months thereafter
10 in calendar year 2010, the Comptroller General of the
11 United States shall submit to the Committee on Ways and
12 Means a written report on the most recent national (and,
13 where available, State-by-State) information on—

14 (1) the economic effects of this Act;

15 (2) the employment effects of this Act, includ-
16 ing—

17 (A) a comparison of the number of jobs
18 preserved and the number of jobs created as a
19 result of this Act; and

20 (B) a comparison of the numbers of jobs
21 preserved and the number of jobs created in
22 each of the public and private sectors;

23 (3) the share of tax and non-tax expenditures
24 provided under this Act that were spent or saved, by
25 group and income class;

1 (4) how the funds provided to States under this
2 Act have been spent, including a breakdown of—

3 (A) funds used for services provided to citi-
4 zens; and

5 (B) wages and other compensation for
6 public employees; and

7 (5) a description of any funds made available
8 under this Act that remain unspent, and the reasons
9 why.

10 **TITLE II—ASSISTANCE FOR UN-**
11 **EMPLOYED WORKERS AND**
12 **STRUGGLING FAMILIES**

13 **SEC. 2000. SHORT TITLE.**

14 This title may be cited as the “Assistance for Unem-
15 ployed Workers and Struggling Families Act”.

16 **Subtitle A—Unemployment**
17 **Insurance**

18 **SEC. 2001. EXTENSION OF EMERGENCY UNEMPLOYMENT**
19 **COMPENSATION PROGRAM.**

20 (a) IN GENERAL.—Section 4007 of the Supplemental
21 Appropriations Act, 2008 (Public Law 110–252; 26
22 U.S.C. 3304 note), as amended by section 4 of the Unem-
23 ployment Compensation Extension Act of 2008 (Public
24 Law 110–449; 122 Stat. 5015), is amended—

1 (1) by striking “March 31, 2009” each place it
2 appears and inserting “December 31, 2009”;

3 (2) in the heading for subsection (b)(2), by
4 striking “MARCH 31, 2009” and inserting “DECEM-
5 BER 31, 2009”; and

6 (3) in subsection (b)(3), by striking “August
7 27, 2009” and inserting “May 31, 2010”.

8 (b) FINANCING PROVISIONS.—Section 4004 of such
9 Act is amended by adding at the end the following:

10 “(e) TRANSFER OF FUNDS.—Notwithstanding any
11 other provision of law, the Secretary of the Treasury shall
12 transfer from the general fund of the Treasury (from
13 funds not otherwise appropriated)—

14 “(1) to the extended unemployment compensa-
15 tion account (as established by section 905 of the
16 Social Security Act) such sums as the Secretary of
17 Labor estimates to be necessary to make payments
18 to States under this title by reason of the amend-
19 ments made by section 2001(a) of the Assistance for
20 Unemployed Workers and Struggling Families Act;
21 and

22 “(2) to the employment security administration
23 account (as established by section 901 of the Social
24 Security Act) such sums as the Secretary of Labor
25 estimates to be necessary for purposes of assisting

1 States in meeting administrative costs by reason of
2 the amendments referred to in paragraph (1).
3 There are appropriated from the general fund of the
4 Treasury, without fiscal year limitation, the sums referred
5 to in the preceding sentence and such sums shall not be
6 required to be repaid.”.

7 **SEC. 2002. INCREASE IN UNEMPLOYMENT COMPENSATION**
8 **BENEFITS.**

9 (a) **FEDERAL-STATE AGREEMENTS.**—Any State
10 which desires to do so may enter into and participate in
11 an agreement under this section with the Secretary of
12 Labor (hereinafter in this section referred to as the “Sec-
13 retary”). Any State which is a party to an agreement
14 under this section may, upon providing 30 days’ written
15 notice to the Secretary, terminate such agreement.

16 (b) **PROVISIONS OF AGREEMENT.**—

17 (1) **ADDITIONAL COMPENSATION.**—Any agree-
18 ment under this section shall provide that the State
19 agency of the State will make payments of regular
20 compensation to individuals in amounts and to the
21 extent that they would be determined if the State
22 law of the State were applied, with respect to any
23 week for which the individual is (disregarding this
24 section) otherwise entitled under the State law to re-
25 ceive regular compensation, as if such State law had

1 been modified in a manner such that the amount of
2 regular compensation (including dependents' allow-
3 ances) payable for any week shall be equal to the
4 amount determined under the State law (before the
5 application of this paragraph) plus an additional
6 \$25.

7 (2) ALLOWABLE METHODS OF PAYMENT.—Any
8 additional compensation provided for in accordance
9 with paragraph (1) shall be payable either—

10 (A) as an amount which is paid at the
11 same time and in the same manner as any reg-
12 ular compensation otherwise payable for the
13 week involved; or

14 (B) at the option of the State, by pay-
15 ments which are made separately from, but on
16 the same weekly basis as, any regular com-
17 pensation otherwise payable.

18 (c) NONREDUCTION RULE.—An agreement under
19 this section shall not apply (or shall cease to apply) with
20 respect to a State upon a determination by the Secretary
21 that the method governing the computation of regular
22 compensation under the State law of that State has been
23 modified in a manner such that—

24 (1) the average weekly benefit amount of reg-
25 ular compensation which will be payable during the

1 period of the agreement (determined disregarding
2 any additional amounts attributable to the modifica-
3 tion described in subsection (b)(1)) will be less than
4 (2) the average weekly benefit amount of reg-
5 ular compensation which would otherwise have been
6 payable during such period under the State law, as
7 in effect on December 31, 2008.

8 (d) PAYMENTS TO STATES.—

9 (1) IN GENERAL.—

10 (A) FULL REIMBURSEMENT.—There shall
11 be paid to each State which has entered into an
12 agreement under this section an amount equal
13 to 100 percent of—

14 (i) the total amount of additional
15 compensation (as described in subsection
16 (b)(1)) paid to individuals by the State
17 pursuant to such agreement; and

18 (ii) any additional administrative ex-
19 penses incurred by the State by reason of
20 such agreement (as determined by the Sec-
21 retary).

22 (B) TERMS OF PAYMENTS.—Sums payable
23 to any State by reason of such State's having
24 an agreement under this section shall be pay-
25 able, either in advance or by way of reimburse-

1 ment (as determined by the Secretary), in such
2 amounts as the Secretary estimates the State
3 will be entitled to receive under this section for
4 each calendar month, reduced or increased, as
5 the case may be, by any amount by which the
6 Secretary finds that his estimates for any prior
7 calendar month were greater or less than the
8 amounts which should have been paid to the
9 State. Such estimates may be made on the
10 basis of such statistical, sampling, or other
11 method as may be agreed upon by the Secretary
12 and the State agency of the State involved.

13 (2) CERTIFICATIONS.—The Secretary shall
14 from time to time certify to the Secretary of the
15 Treasury for payment to each State the sums pay-
16 able to such State under this section.

17 (3) APPROPRIATION.—There are appropriated
18 from the general fund of the Treasury, without fiscal
19 year limitation, such sums as may be necessary for
20 purposes of this subsection.

21 (e) APPLICABILITY.—

22 (1) IN GENERAL.—An agreement entered into
23 under this section shall apply to weeks of unemploy-
24 ment—

1 (A) beginning after the date on which such
2 agreement is entered into; and

3 (B) ending before January 1, 2010.

4 (2) TRANSITION RULE FOR INDIVIDUALS RE-
5 MAINING ENTITLED TO REGULAR COMPENSATION AS
6 OF JANUARY 1, 2010.—In the case of any individual
7 who, as of the date specified in paragraph (1)(B),
8 has not yet exhausted all rights to regular com-
9 pensation under the State law of a State with re-
10 spect to a benefit year that began before such date,
11 additional compensation (as described in subsection
12 (b)(1)) shall continue to be payable to such indi-
13 vidual for any week beginning on or after such date
14 for which the individual is otherwise eligible for reg-
15 ular compensation with respect to such benefit year.

16 (3) TERMINATION.—Notwithstanding any other
17 provision of this subsection, no additional compensa-
18 tion (as described in subsection (b)(1)) shall be pay-
19 able for any week beginning after June 30, 2010.

20 (f) FRAUD AND OVERPAYMENTS.—The provisions of
21 section 4005 of the Supplemental Appropriations Act,
22 2008 (Public Law 110–252; 122 Stat. 2356) shall apply
23 with respect to additional compensation (as described in
24 subsection (b)(1)) to the same extent and in the same

1 manner as in the case of emergency unemployment com-
2 pensation.

3 (g) APPLICATION TO OTHER UNEMPLOYMENT BENE-
4 FITS.—

5 (1) IN GENERAL.—Each agreement under this
6 section shall include provisions to provide that the
7 purposes of the preceding provisions of this section
8 shall be applied with respect to unemployment bene-
9 fits described in subsection (h)(3) to the same extent
10 and in the same manner as if those benefits were
11 regular compensation.

12 (2) ELIGIBILITY AND TERMINATION RULES.—
13 Additional compensation (as described in subsection
14 (b)(1))—

15 (A) shall not be payable, pursuant to this
16 subsection, with respect to any unemployment
17 benefits described in subsection (h)(3) for any
18 week beginning on or after the date specified in
19 subsection (e)(1)(B), except in the case of an
20 individual who was eligible to receive additional
21 compensation (as so described) in connection
22 with any regular compensation or any unem-
23 ployment benefits described in subsection (h)(3)
24 for any period of unemployment ending before
25 such date; and

1 (B) shall in no event be payable for any
2 week beginning after the date specified in sub-
3 section (e)(3).

4 (h) DISREGARD OF ADDITIONAL COMPENSATION FOR
5 PURPOSES OF MEDICAID AND SCHIP.—The monthly
6 equivalent of any additional compensation paid under this
7 section shall be disregarded in considering the amount of
8 income of an individual for any purposes under title XIX
9 and title XXI of the Social Security Act.

10 (i) DEFINITIONS.—For purposes of this section—

11 (1) the terms “compensation”, “regular com-
12 pensation”, “benefit year”, “State”, “State agency”,
13 “State law”, and “week” have the respective mean-
14 ings given such terms under section 205 of the Fed-
15 eral-State Extended Unemployment Compensation
16 Act of 1970 (26 U.S.C. 3304 note);

17 (2) the term “emergency unemployment com-
18 pensation” means emergency unemployment com-
19 pensation under title IV of the Supplemental Appro-
20 priations Act, 2008 (Public Law 110–252; 122 Stat.
21 2353); and

22 (3) any reference to unemployment benefits de-
23 scribed in this paragraph shall be considered to refer
24 to—

1 (A) extended compensation (as defined by
2 section 205 of the Federal-State Extended Un-
3 employment Compensation Act of 1970); and

4 (B) unemployment compensation (as de-
5 fined by section 85(b) of the Internal Revenue
6 Code of 1986) provided under any program ad-
7 ministered by a State under an agreement with
8 the Secretary.

9 **SEC. 2003. SPECIAL TRANSFERS FOR UNEMPLOYMENT**
10 **COMPENSATION MODERNIZATION.**

11 (a) IN GENERAL.—Section 903 of the Social Security
12 Act (42 U.S.C. 1103) is amended by adding at the end
13 the following:

14 “Special Transfers in Fiscal Years 2009, 2010, and 2011
15 for Modernization

16 “(f)(1)(A) In addition to any other amounts, the Sec-
17 retary of Labor shall provide for the making of unemploy-
18 ment compensation modernization incentive payments
19 (hereinafter ‘incentive payments’) to the accounts of the
20 States in the Unemployment Trust Fund, by transfer from
21 amounts reserved for that purpose in the Federal unem-
22 ployment account, in accordance with succeeding provi-
23 sions of this subsection.

24 “(B) The maximum incentive payment allowable
25 under this subsection with respect to any State shall, as

1 determined by the Secretary of Labor, be equal to the
2 amount obtained by multiplying \$7,000,000,000 by the
3 same ratio as would apply under subsection (a)(2)(B) for
4 purposes of determining such State's share of any excess
5 amount (as described in subsection (a)(1)) that would
6 have been subject to transfer to State accounts, as of Oc-
7 tober 1, 2008, under the provisions of subsection (a).

8 “(C) Of the maximum incentive payment determined
9 under subparagraph (B) with respect to a State—

10 “(i) one-third shall be transferred to the ac-
11 count of such State upon a certification under para-
12 graph (4)(B) that the State law of such State meets
13 the requirements of paragraph (2); and

14 “(ii) the remainder shall be transferred to the
15 account of such State upon a certification under
16 paragraph (4)(B) that the State law of such State
17 meets the requirements of paragraph (3).

18 “(2) The State law of a State meets the requirements
19 of this paragraph if such State law—

20 “(A) uses a base period that includes the most
21 recently completed calendar quarter before the start
22 of the benefit year for purposes of determining eligi-
23 bility for unemployment compensation; or

24 “(B) provides that, in the case of an individual
25 who would not otherwise be eligible for unemploy-

1 ment compensation under the State law because of
2 the use of a base period that does not include the
3 most recently completed calendar quarter before the
4 start of the benefit year, eligibility shall be deter-
5 mined using a base period that includes such cal-
6 endar quarter.

7 “(3) The State law of a State meets the requirements
8 of this paragraph if such State law includes provisions to
9 carry out at least 2 of the following subparagraphs:

10 “(A) An individual shall not be denied regular
11 unemployment compensation under any State law
12 provisions relating to availability for work, active
13 search for work, or refusal to accept work, solely be-
14 cause such individual is seeking only part-time work
15 (as defined by the Secretary of Labor), except that
16 the State law provisions carrying out this subpara-
17 graph may exclude an individual if a majority of the
18 weeks of work in such individual’s base period do
19 not include part-time work (as so defined).

20 “(B) An individual shall not be disqualified
21 from regular unemployment compensation for sepa-
22 rating from employment if that separation is for any
23 compelling family reason. For purposes of this sub-
24 paragraph, the term ‘compelling family reason’
25 means the following:

1 “(i) Domestic violence, verified by such
2 reasonable and confidential documentation as
3 the State law may require, which causes the in-
4 dividual reasonably to believe that such individ-
5 ual’s continued employment would jeopardize
6 the safety of the individual or of any member
7 of the individual’s immediate family (as defined
8 by the Secretary of Labor).

9 “(ii) The illness or disability of a member
10 of the individual’s immediate family (as those
11 terms are defined by the Secretary of Labor).

12 “(iii) The need for the individual to accom-
13 pany such individual’s spouse—

14 “(I) to a place from which it is im-
15 practical for such individual to commute;
16 and

17 “(II) due to a change in location of
18 the spouse’s employment.

19 “(C) Weekly unemployment compensation is
20 payable under this subparagraph to any individual
21 who is unemployed (as determined under the State
22 unemployment compensation law), has exhausted all
23 rights to regular unemployment compensation under
24 the State law, and is enrolled and making satisfac-
25 tory progress in a State-approved training program

1 or in a job training program authorized under the
2 Workforce Investment Act of 1998. Such programs
3 shall prepare individuals who have been separated
4 from a declining occupation, or who have been invol-
5 untarily and indefinitely separated from employment
6 as a result of a permanent reduction of operations
7 at the individual's place of employment, for entry
8 into a high-demand occupation. The amount of un-
9 employment compensation payable under this sub-
10 paragraph to an individual for a week of unemploy-
11 ment shall be equal to the individual's average week-
12 ly benefit amount (including dependents' allowances)
13 for the most recent benefit year, and the total
14 amount of unemployment compensation payable
15 under this subparagraph to any individual shall be
16 equal to at least 26 times the individual's average
17 weekly benefit amount (including dependents' allow-
18 ances) for the most recent benefit year.

19 (D) Dependents' allowances are provided, in
20 the case of any individual who is entitled to receive
21 regular unemployment compensation and who has
22 any dependents (as defined by State law), in an
23 amount equal to at least \$15 per dependent per
24 week, subject to any aggregate limitation on such al-
25 lowances which the State law may establish (but

1 which aggregate limitation on the total allowance for
2 dependents paid to an individual may not be less
3 than \$50 for each week of unemployment or 50 per-
4 cent of the individual's weekly benefit amount for
5 the benefit year, whichever is less).

6 “(4)(A) Any State seeking an incentive payment
7 under this subsection shall submit an application therefor
8 at such time, in such manner, and complete with such in-
9 formation as the Secretary of Labor may within 60 days
10 after the date of the enactment of this subsection prescribe
11 (whether by regulation or otherwise), including informa-
12 tion relating to compliance with the requirements of para-
13 graph (2) or (3), as well as how the State intends to use
14 the incentive payment to improve or strengthen the State's
15 unemployment compensation program. The Secretary of
16 Labor shall, within 30 days after receiving a complete ap-
17 plication, notify the State agency of the State of the Sec-
18 retary's findings with respect to the requirements of para-
19 graph (2) or (3) (or both).

20 “(B)(i) If the Secretary of Labor finds that the State
21 law provisions (disregarding any State law provisions
22 which are not then currently in effect as permanent law
23 or which are subject to discontinuation) meet the require-
24 ments of paragraph (2) or (3), as the case may be, the
25 Secretary of Labor shall thereupon make a certification

1 to that effect to the Secretary of the Treasury, together
2 with a certification as to the amount of the incentive pay-
3 ment to be transferred to the State account pursuant to
4 that finding. The Secretary of the Treasury shall make
5 the appropriate transfer within 7 days after receiving such
6 certification.

7 “(ii) For purposes of clause (i), State law provisions
8 which are to take effect within 12 months after the date
9 of their certification under this subparagraph shall be con-
10 sidered to be in effect as of the date of such certification.

11 “(C)(i) No certification of compliance with the re-
12 quirements of paragraph (2) or (3) may be made with re-
13 spect to any State whose State law is not otherwise eligible
14 for certification under section 303 or approvable under
15 section 3304 of the Federal Unemployment Tax Act.

16 “(ii) No certification of compliance with the require-
17 ments of paragraph (3) may be made with respect to any
18 State whose State law is not in compliance with the re-
19 quirements of paragraph (2).

20 “(iii) No application under subparagraph (A) may be
21 considered if submitted before the date of the enactment
22 of this subsection or after the latest date necessary (as
23 specified by the Secretary of Labor) to ensure that all in-
24 centive payments under this subsection are made before
25 October 1, 2011.

1 “(5)(A) Except as provided in subparagraph (B), any
2 amount transferred to the account of a State under this
3 subsection may be used by such State only in the payment
4 of cash benefits to individuals with respect to their unem-
5 ployment (including for dependents’ allowances and for
6 unemployment compensation under paragraph (3)(C)), ex-
7 clusive of expenses of administration.

8 “(B) A State may, subject to the same conditions as
9 set forth in subsection (c)(2) (excluding subparagraph (B)
10 thereof, and deeming the reference to ‘subsections (a) and
11 (b)’ in subparagraph (D) thereof to include this sub-
12 section), use any amount transferred to the account of
13 such State under this subsection for the administration
14 of its unemployment compensation law and public employ-
15 ment offices.

16 “(6) Out of any money in the Federal unemployment
17 account not otherwise appropriated, the Secretary of the
18 Treasury shall reserve \$7,000,000,000 for incentive pay-
19 ments under this subsection. Any amount so reserved shall
20 not be taken into account for purposes of any determina-
21 tion under section 902, 910, or 1203 of the amount in
22 the Federal unemployment account as of any given time.
23 Any amount so reserved for which the Secretary of the
24 Treasury has not received a certification under paragraph
25 (4)(B) by the deadline described in paragraph (4)(C)(iii)

1 shall, upon the close of fiscal year 2011, become unre-
2 stricted as to use as part of the Federal unemployment
3 account.

4 “(7) For purposes of this subsection, the terms ‘ben-
5 efit year’, ‘base period’, and ‘week’ have the respective
6 meanings given such terms under section 205 of the Fed-
7 eral-State Extended Unemployment Compensation Act of
8 1970 (26 U.S.C. 3304 note).

9 “Special Transfer in Fiscal Year 2009 for Administration

10 “(g)(1) In addition to any other amounts, the Sec-
11 retary of the Treasury shall transfer from the employment
12 security administration account to the account of each
13 State in the Unemployment Trust Fund, within 30 days
14 after the date of the enactment of this subsection, the
15 amount determined with respect to such State under para-
16 graph (2).

17 “(2) The amount to be transferred under this sub-
18 section to a State account shall (as determined by the Sec-
19 retary of Labor and certified by such Secretary to the Sec-
20 retary of the Treasury) be equal to the amount obtained
21 by multiplying \$500,000,000 by the same ratio as deter-
22 mined under subsection (f)(1)(B) with respect to such
23 State.

24 “(3) Any amount transferred to the account of a
25 State as a result of the enactment of this subsection may

1 be used by the State agency of such State only in the pay-
2 ment of expenses incurred by it for—

3 “(A) the administration of the provisions of its
4 State law carrying out the purposes of subsection
5 (f)(2) or any subparagraph of subsection (f)(3);

6 “(B) improved outreach to individuals who
7 might be eligible for regular unemployment com-
8 pensation by virtue of any provisions of the State
9 law which are described in subparagraph (A);

10 “(C) the improvement of unemployment benefit
11 and unemployment tax operations, including re-
12 sponding to increased demand for unemployment
13 compensation; and

14 “(D) staff-assisted reemployment services for
15 unemployment compensation claimants.”.

16 (b) REGULATIONS.—The Secretary of Labor may
17 prescribe any regulations, operating instructions, or other
18 guidance necessary to carry out the amendment made by
19 subsection (a).

20 **Subtitle B—Assistance for**
21 **Vulnerable Individuals**

22 **SEC. 2101. EMERGENCY FUND FOR TANF PROGRAM.**

23 (a) IN GENERAL.—Section 403 of the Social Security
24 Act (42 U.S.C. 603) is amended by adding at the end the
25 following:

1 “(c) EMERGENCY FUND.—

2 “(1) ESTABLISHMENT.—There is established in
3 the Treasury of the United States a fund which
4 shall be known as the ‘Emergency Contingency
5 Fund for State Temporary Assistance for Needy
6 Families Programs’ (in this subsection referred to as
7 the ‘Emergency Fund’).

8 “(2) DEPOSITS INTO FUND.—Out of any money
9 in the Treasury of the United States not otherwise
10 appropriated, there are appropriated such sums as
11 are necessary for payment to the Emergency Fund.

12 “(3) GRANTS.—

13 “(A) GRANT RELATED TO CASELOAD IN-
14 CREASES.—

15 “(i) IN GENERAL.—For each calendar
16 quarter in fiscal year 2009 or 2010, the
17 Secretary shall make a grant from the
18 Emergency Fund to each State that—

19 “(I) requests a grant under this
20 subparagraph for the quarter; and

21 “(II) meets the requirement of
22 clause (ii) for the quarter.

23 “(ii) CASELOAD INCREASE REQUIRE-
24 MENT.—A State meets the requirement of
25 this clause for a quarter if the average

1 monthly assistance caseload of the State
2 for the quarter exceeds the average month-
3 ly assistance caseload of the State for the
4 corresponding quarter in the emergency
5 fund base year of the State.

6 “(iii) AMOUNT OF GRANT.—Subject to
7 paragraph (5), the amount of the grant to
8 be made to a State under this subpara-
9 graph for a quarter shall be 80 percent of
10 the amount (if any) by which the total ex-
11 penditures of the State for basic assistance
12 (as defined by the Secretary) in the quar-
13 ter, whether under the State program
14 funded under this part or as qualified
15 State expenditures, exceeds the total ex-
16 penditures of the State for such assistance
17 for the corresponding quarter in the emer-
18 gency fund base year of the State.

19 “(B) GRANT RELATED TO INCREASED EX-
20 PENDITURES FOR NON-RECURRENT SHORT
21 TERM BENEFITS.—

22 “(i) IN GENERAL.—For each calendar
23 quarter in fiscal year 2009 or 2010, the
24 Secretary shall make a grant from the
25 Emergency Fund to each State that—

1 “(I) requests a grant under this
2 subparagraph for the quarter; and

3 “(II) meets the requirement of
4 clause (ii) for the quarter.

5 “(ii) NON-RECURRENT SHORT TERM
6 EXPENDITURE REQUIREMENT.—A State
7 meets the requirement of this clause for a
8 quarter if the total expenditures of the
9 State for non-recurrent short term benefits
10 in the quarter, whether under the State
11 program funded under this part or as
12 qualified State expenditures, exceeds the
13 total such expenditures of the State for
14 non-recurrent short term benefits in the
15 corresponding quarter in the emergency
16 fund base year of the State.

17 “(iii) AMOUNT OF GRANT.—Subject to
18 paragraph (5), the amount of the grant to
19 be made to a State under this subpara-
20 graph for a quarter shall be an amount
21 equal to 80 percent of the excess described
22 in clause (ii).

23 “(C) GRANT RELATED TO INCREASED EX-
24 PENDITURES FOR SUBSIDIZED EMPLOYMENT.—

1 “(i) IN GENERAL.—For each calendar
2 quarter in fiscal year 2009 or 2010, the
3 Secretary shall make a grant from the
4 Emergency Fund to each State that—

5 “(I) requests a grant under this
6 subparagraph for the quarter; and

7 “(II) meets the requirement of
8 clause (ii) for the quarter.

9 “(ii) SUBSIDIZED EMPLOYMENT EX-
10 PENDITURE REQUIREMENT.—A State
11 meets the requirement of this clause for a
12 quarter if the total expenditures of the
13 State for subsidized employment in the
14 quarter, whether under the State program
15 funded under this part or as qualified
16 State expenditures, exceeds the total of
17 such expenditures of the State in the cor-
18 responding quarter in the emergency fund
19 base year of the State.

20 “(iii) AMOUNT OF GRANT.—Subject to
21 paragraph (5), the amount of the grant to
22 be made to a State under this subpara-
23 graph for a quarter shall be an amount
24 equal to 80 percent of the excess described
25 in clause (ii).

1 “(4) AUTHORITY TO MAKE NECESSARY ADJUST-
2 MENTS TO DATA AND COLLECT NEEDED DATA.—In
3 determining the size of the caseload of a State and
4 the expenditures of a State for basic assistance, non-
5 recurrent short-term benefits, and subsidized em-
6 ployment, during any period for which the State re-
7 quests funds under this subsection, and during the
8 emergency fund base year of the State, the Sec-
9 retary may make appropriate adjustments to the
10 data to ensure that the data reflect expenditures
11 under the State program funded under this part and
12 qualified State expenditures. The Secretary may de-
13 velop a mechanism for collecting expenditure data,
14 including procedures which allow States to make
15 reasonable estimates, and may set deadlines for
16 making revisions to the data.

17 “(5) LIMITATION.—The total amount payable
18 to a single State under subsection (b) and this sub-
19 section for a fiscal year shall not exceed 25 percent
20 of the State family assistance grant.

21 “(6) LIMITATIONS ON USE OF FUNDS.—A State
22 to which an amount is paid under this subsection
23 may use the amount only as authorized by section
24 404.

1 “(7) TIMING OF IMPLEMENTATION.—The Sec-
2 retary shall implement this subsection as quickly as
3 reasonably possible, pursuant to appropriate guid-
4 ance to States.

5 “(8) DEFINITIONS.—In this subsection:

6 “(A) AVERAGE MONTHLY ASSISTANCE
7 CASELOAD.—The term ‘average monthly assist-
8 ance caseload’ means, with respect to a State
9 and a quarter, the number of families receiving
10 assistance during the quarter under the State
11 program funded under this part or as qualified
12 State expenditures, subject to adjustment under
13 paragraph (4).

14 “(B) EMERGENCY FUND BASE YEAR.—

15 “(i) IN GENERAL.—The term ‘emer-
16 gency fund base year’ means, with respect
17 to a State and a category described in
18 clause (ii), whichever of fiscal year 2007 or
19 2008 is the fiscal year in which the
20 amount described by the category with re-
21 spect to the State is the lesser.

22 “(ii) CATEGORIES DESCRIBED.—The
23 categories described in this clause are the
24 following:

1 “(I) The average monthly assist-
2 ance caseload of the State.

3 “(II) The total expenditures of
4 the State for non-recurrent short term
5 benefits, whether under the State pro-
6 gram funded under this part or as
7 qualified State expenditures.

8 “(III) The total expenditures of
9 the State for subsidized employment,
10 whether under the State program
11 funded under this part or as qualified
12 State expenditures.

13 “(C) QUALIFIED STATE EXPENDITURES.—
14 The term ‘qualified State expenditures’ has the
15 meaning given the term in section 409(a)(7).”.

16 (b) TEMPORARY MODIFICATION OF CASELOAD RE-
17 DUCTION CREDIT.—Section 407(b)(3)(A)(i) of such Act
18 (42 U.S.C. 607(b)(3)(A)(i)) is amended by inserting “(or
19 if the immediately preceding fiscal year is fiscal year 2009
20 or 2010, then, at State option, during the emergency fund
21 base year of the State with respect to the average monthly
22 assistance caseload of the State (within the meaning of
23 section 403(c)(8)(B)))” before “under the State”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall take effect on the date of the enactment
3 of this Act.

4 **SEC. 2102. ONE-TIME EMERGENCY PAYMENT TO SSI RECIPI-**
5 **ENTS.**

6 (a) PAYMENT AUTHORITY.—

7 (1) IN GENERAL.—At the earliest practicable
8 date in calendar year 2009 but not later than 120
9 days after the date of the enactment of this section,
10 the Commissioner of Social Security shall make a
11 one-time payment to each individual who is deter-
12 mined by the Commissioner in calendar year 2009 to
13 be an individual who—

14 (A) is entitled to a cash benefit under the
15 supplemental security income program under
16 title XVI of the Social Security Act (other than
17 pursuant to section 1611(e)(1)(B) of such Act)
18 for at least 1 day in the calendar month in
19 which the first payment under this section is to
20 be made; or

21 (B)(i) was entitled to such a cash benefit
22 (other than pursuant to section 1611(e)(1)(B)
23 of such Act) for at least 1 day in the 2-month
24 period preceding that calendar month; and

1 (ii) whose entitlement to that benefit
2 ceased in that 2-month period solely because
3 the income of the individual (and the income of
4 the spouse, if any, of the individual) exceeded
5 the applicable income limit described in para-
6 graph (1)(A) or (2)(A) of section 1611(a) of
7 such Act.

8 (2) AMOUNT OF PAYMENT.—Subject to sub-
9 section (b)(1) of this section, the amount of the pay-
10 ment shall be—

11 (A) in the case of an individual eligible for
12 a payment under this section who does not have
13 a spouse eligible for such a payment, an
14 amount equal to the average of the cash bene-
15 fits payable in the aggregate under section
16 1611 or 1619(a) of the Social Security Act to
17 eligible individuals who do not have an eligible
18 spouse, for the most recent month for which
19 data on payment of the benefits are available,
20 as determined by the Commissioner of Social
21 Security; or

22 (B) in the case of an individual eligible for
23 a payment under this section who has a spouse
24 eligible for such a payment, an amount equal to
25 the average of the cash benefits payable in the

1 aggregate under section 1611 or 1619(a) of the
2 Social Security Act to eligible individuals who
3 have an eligible spouse, for the most recent
4 month for which data on payment of the bene-
5 fits are available, as so determined.

6 (b) ADMINISTRATIVE PROVISIONS.—

7 (1) AUTHORITY TO WITHHOLD PAYMENT TO
8 RECOVER PRIOR OVERPAYMENT OF SSI BENEFITS.—
9 The Commissioner of Social Security may withhold
10 part or all of a payment otherwise required to be
11 made under subsection (a) of this section to an indi-
12 vidual, in order to recover a prior overpayment of
13 benefits to the individual under the supplemental se-
14 curity income program under title XVI of the Social
15 Security Act, subject to the limitations of section
16 1631(b) of such Act.

17 (2) PAYMENT TO BE DISREGARDED IN DETER-
18 MINING UNDERPAYMENTS UNDER THE SSI PRO-
19 GRAM.—A payment under subsection (a) shall be
20 disregarded in determining whether there has been
21 an underpayment of benefits under the supplemental
22 security income program under title XVI of the So-
23 cial Security Act.

24 (3) NONASSIGNMENT.—The provisions of sec-
25 tion 1631(d) of the Social Security Act shall apply

1 with respect to payments under this section to the
2 same extent as they apply in the case of title XVI
3 of such Act.

4 (c) PAYMENTS TO BE DISREGARDED FOR PURPOSES
5 OF ALL FEDERAL AND FEDERALLY ASSISTED PRO-
6 GRAMS.—A payment under subsection (a) shall not be re-
7 garded as income to the recipient, and shall not be re-
8 garded as a resource of the recipient for the month of re-
9 ceipt and the following 6 months, for purposes of deter-
10 mining the eligibility of any individual for benefits or as-
11 sistance, or the amount or extent of benefits or assistance,
12 under any Federal program or under any State or local
13 program financed in whole or in part with Federal funds.

14 (d) APPROPRIATION.—Out of any sums in the Treas-
15 ury of the United States not otherwise appropriated, there
16 are appropriated such sums as may be necessary to carry
17 out this section.

18 **SEC. 2103. TEMPORARY RESUMPTION OF PRIOR CHILD**
19 **SUPPORT LAW.**

20 During the period that begins with October 1, 2008,
21 and ends with September 30, 2010, section 455(a)(1) of
22 the Social Security Act shall be applied and administered
23 as if the phrase “from amounts paid to the State under
24 section 458 or” did not appear in such section.

1 **TITLE III—HEALTH INSURANCE**
 2 **ASSISTANCE FOR THE UNEM-**
 3 **EMPLOYED**

4 **SEC. 3001. SHORT TITLE AND TABLE OF CONTENTS OF**
 5 **TITLE.**

6 (a) SHORT TITLE OF TITLE.—This title may be cited
 7 as the “Health Insurance Assistance for the Unemployed
 8 Act of 2009”.

9 (b) TABLE OF CONTENTS OF TITLE.—The table of
 10 contents of this title is as follows:

Sec. 3001. Short title and table of contents of title.

Sec. 3002. Premium assistance for COBRA benefits and extension of COBRA
 benefits for older or long-term employees.

Sec. 3003. Temporary optional Medicaid coverage for the unemployed.

11 **SEC. 3002. PREMIUM ASSISTANCE FOR COBRA BENEFITS**
 12 **AND EXTENSION OF COBRA BENEFITS FOR**
 13 **OLDER OR LONG-TERM EMPLOYEES.**

14 (a) PREMIUM ASSISTANCE FOR COBRA CONTINU-
 15 ATION COVERAGE FOR INDIVIDUALS AND THEIR FAMI-
 16 LIES.—

17 (1) PROVISION OF PREMIUM ASSISTANCE.—

18 (A) REDUCTION OF PREMIUMS PAY-
 19 ABLE.—In the case of any premium for a pe-
 20 riod of coverage beginning on or after the date
 21 of the enactment of this Act for COBRA con-
 22 tinuation coverage with respect to any assist-
 23 ance eligible individual, such individual shall be

1 treated for purposes of any COBRA continu-
2 ation provision as having paid the amount of
3 such premium if such individual pays 35 per-
4 cent of the amount of such premium (as deter-
5 mined without regard to this subsection).

6 (B) PREMIUM REIMBURSEMENT.—For pro-
7 visions providing the balance of such premium,
8 see section 6431 of the Internal Revenue Code
9 of 1986, as added by paragraph (12).

10 (2) LIMITATION OF PERIOD OF PREMIUM AS-
11 SISTANCE.—

12 (A) IN GENERAL.—Paragraph (1)(A) shall
13 not apply with respect to any assistance eligible
14 individual for months of coverage beginning on
15 or after the earlier of—

16 (i) the first date that such individual
17 is eligible for coverage under any other
18 group health plan (other than coverage
19 consisting of only dental, vision, coun-
20 seling, or referral services (or a combina-
21 tion thereof), coverage under a health re-
22 imbursement arrangement or a health
23 flexible spending arrangement, or coverage
24 of treatment that is furnished in an on-site
25 medical facility maintained by the em-

1 ployer and that consists primarily of first-
2 aid services, prevention and wellness care,
3 or similar care (or a combination thereof))
4 or is eligible for benefits under title XVIII
5 of the Social Security Act, or

6 (ii) the earliest of—

7 (I) the date which is 12 months
8 after the first day of the first month
9 that paragraph (1)(A) applies with re-
10 spect to such individual,

11 (II) the date following the expira-
12 tion of the maximum period of con-
13 tinuation coverage required under the
14 applicable COBRA continuation cov-
15 erage provision, or

16 (III) the date following the expi-
17 ration of the period of continuation
18 coverage allowed under paragraph
19 (4)(B)(ii).

20 (B) TIMING OF ELIGIBILITY FOR ADDI-
21 TIONAL COVERAGE.—For purposes of subpara-
22 graph (A)(i), an individual shall not be treated
23 as eligible for coverage under a group health
24 plan before the first date on which such indi-
25 vidual could be covered under such plan.

1 (C) NOTIFICATION REQUIREMENT.—An
2 assistance eligible individual shall notify in writ-
3 ing the group health plan with respect to which
4 paragraph (1)(A) applies if such paragraph
5 ceases to apply by reason of subparagraph
6 (A)(i). Such notice shall be provided to the
7 group health plan in such time and manner as
8 may be specified by the Secretary of Labor.

9 (3) ASSISTANCE ELIGIBLE INDIVIDUAL.—For
10 purposes of this section, the term “assistance eligible
11 individual” means any qualified beneficiary if—

12 (A) at any time during the period that be-
13 gins with September 1, 2008, and ends with
14 December 31, 2009, such qualified beneficiary
15 is eligible for COBRA continuation coverage,

16 (B) such qualified beneficiary elects such
17 coverage, and

18 (C) the qualifying event with respect to the
19 COBRA continuation coverage consists of the
20 involuntary termination of the covered employ-
21 ee’s employment and occurred during such pe-
22 riod.

23 (4) EXTENSION OF ELECTION PERIOD AND EF-
24 FECT ON COVERAGE.—

1 (A) IN GENERAL.—Notwithstanding sec-
2 tion 605(a) of the Employee Retirement Income
3 Security Act of 1974, section 4980B(f)(5)(A) of
4 the Internal Revenue Code of 1986, section
5 2205(a) of the Public Health Service Act, and
6 section 8905a(c)(2) of title 5, United States
7 Code, in the case of an individual who is a
8 qualified beneficiary described in paragraph
9 (3)(A) as of the date of the enactment of this
10 Act and has not made the election referred to
11 in paragraph (3)(B) as of such date, such indi-
12 vidual may elect the COBRA continuation cov-
13 erage under the COBRA continuation coverage
14 provisions containing such sections during the
15 60-day period commencing with the date on
16 which the notification required under paragraph
17 (7)(C) is provided to such individual.

18 (B) COMMENCEMENT OF COVERAGE; NO
19 REACH-BACK.—Any COBRA continuation cov-
20 erage elected by a qualified beneficiary during
21 an extended election period under subparagraph
22 (A)—

23 (i) shall commence on the date of the
24 enactment of this Act, and

1 (ii) shall not extend beyond the period
2 of COBRA continuation coverage that
3 would have been required under the appli-
4 cable COBRA continuation coverage provi-
5 sion if the coverage had been elected as re-
6 quired under such provision.

7 (C) PREEXISTING CONDITIONS.—With re-
8 spect to a qualified beneficiary who elects
9 COBRA continuation coverage pursuant to sub-
10 paragraph (A), the period—

11 (i) beginning on the date of the quali-
12 fying event, and

13 (ii) ending with the day before the
14 date of the enactment of this Act,

15 shall be disregarded for purposes of deter-
16 mining the 63-day periods referred to in section
17 701)(2) of the Employee Retirement Income
18 Security Act of 1974, section 9801(c)(2) of the
19 Internal Revenue Code of 1986, and section
20 2701(c)(2) of the Public Health Service Act.

21 (5) EXPEDITED REVIEW OF DENIALS OF PRE-
22 MIUM ASSISTANCE.—In any case in which an indi-
23 vidual requests treatment as an assistance eligible
24 individual and is denied such treatment by the group
25 health plan by reason of such individual's ineligi-

1 bility for COBRA continuation coverage, the Sec-
2 retary of Labor (or the Secretary of Health and
3 Human services in connection with COBRA continu-
4 ation coverage which is provided other than pursu-
5 ant to part 6 of subtitle B of title I of the Employee
6 Retirement Income Security Act of 1974), in con-
7 sultation with the Secretary of the Treasury, shall
8 provide for expedited review of such denial. An indi-
9 vidual shall be entitled to such review upon applica-
10 tion to such Secretary in such form and manner as
11 shall be provided by such Secretary. Such Secretary
12 shall make a determination regarding such individ-
13 ual's eligibility within 10 business days after receipt
14 of such individual's application for review under this
15 paragraph.

16 (6) DISREGARD OF SUBSIDIES FOR PURPOSES
17 OF FEDERAL AND STATE PROGRAMS.—Notwith-
18 standing any other provision of law, any premium
19 reduction with respect to an assistance eligible indi-
20 vidual under this subsection shall not be considered
21 income or resources in determining eligibility for, or
22 the amount of assistance or benefits provided under,
23 any other public benefit provided under Federal law
24 or the law of any State or political subdivision there-
25 of.

1 (7) NOTICES TO INDIVIDUALS.—

2 (A) GENERAL NOTICE.—

3 (i) IN GENERAL.—In the case of no-
4 tices provided under section 606(4) of the
5 Employee Retirement Income Security Act
6 of 1974 (29 U.S.C. 1166(4)), section
7 4980B(f)(6)(D) of the Internal Revenue
8 Code of 1986, section 2206(4) of the Pub-
9 lic Health Service Act (42 U.S.C. 300bb-
10 6(4)), or section 8905a(f)(2)(A) of title 5,
11 United States Code, with respect to indi-
12 viduals who, during the period described in
13 paragraph (3)(A), become entitled to elect
14 COBRA continuation coverage, such no-
15 tices shall include an additional notifica-
16 tion to the recipient of the availability of
17 premium reduction with respect to such
18 coverage under this subsection.

19 (ii) ALTERNATIVE NOTICE.—In the
20 case of COBRA continuation coverage to
21 which the notice provision under such sec-
22 tions does not apply, the Secretary of
23 Labor, in consultation with the Secretary
24 of the Treasury and the Secretary of
25 Health and Human Services, shall, in co-

1 ordination with administrators of the
2 group health plans (or other entities) that
3 provide or administer the COBRA continu-
4 ation coverage involved, provide rules re-
5 quiring the provision of such notice.

6 (iii) FORM.—The requirement of the
7 additional notification under this subpara-
8 graph may be met by amendment of exist-
9 ing notice forms or by inclusion of a sepa-
10 rate document with the notice otherwise
11 required.

12 (B) SPECIFIC REQUIREMENTS.—Each ad-
13 ditional notification under subparagraph (A)
14 shall include—

15 (i) the forms necessary for estab-
16 lishing eligibility for premium reduction
17 under this subsection,

18 (ii) the name, address, and telephone
19 number necessary to contact the plan ad-
20 ministrator and any other person main-
21 taining relevant information in connection
22 with such premium reduction,

23 (iii) a description of the extended elec-
24 tion period provided for in paragraph
25 (4)(A),

1 (iv) a description of the obligation of
2 the qualified beneficiary under paragraph
3 (2)(C) to notify the plan providing continu-
4 ation coverage of eligibility for subsequent
5 coverage under another group health plan
6 or eligibility for benefits under title XVIII
7 of the Social Security Act and the penalty
8 provided for failure to so notify the plan,
9 and

10 (v) a description, displayed in a
11 prominent manner, of the qualified bene-
12 ficiary's right to a reduced premium and
13 any conditions on entitlement to the re-
14 duced premium.

15 (C) NOTICE RELATING TO RETROACTIVE
16 COVERAGE.—In the case of an individual de-
17 scribed in paragraph (3)(A) who has elected
18 COBRA continuation coverage as of the date of
19 enactment of this Act or an individual described
20 in paragraph (4)(A), the administrator of the
21 group health plan (or other entity) involved
22 shall provide (within 60 days after the date of
23 enactment of this Act) for the additional notifi-
24 cation required to be provided under subpara-
25 graph (A).

1 (D) MODEL NOTICES.—Not later than 30
2 days after the date of enactment of this Act,
3 the Secretary of the Labor, in consultation with
4 the Secretary of the Treasury and the Secretary
5 of Health and Human Services, shall prescribe
6 models for the additional notification required
7 under this paragraph.

8 (8) SAFEGUARDS.—The Secretary of the Treas-
9 ury shall provide such rules, procedures, regulations,
10 and other guidance as may be necessary and appro-
11 priate to prevent fraud and abuse under this sub-
12 section.

13 (9) OUTREACH.—The Secretary of Labor, in
14 consultation with the Secretary of the Treasury and
15 the Secretary of Health and Human Services, shall
16 provide outreach consisting of public education and
17 enrollment assistance relating to premium reduction
18 provided under this subsection. Such outreach shall
19 target employers, group health plan administrators,
20 public assistance programs, States, insurers, and
21 other entities as determined appropriate by such
22 Secretaries. Such outreach shall include an initial
23 focus on those individuals electing continuation cov-
24 erage who are referred to in paragraph (7)(C). In-
25 formation on such premium reduction, including en-

1 rollment, shall also be made available on website of
2 the Departments of Labor, Treasury, and Health
3 and Human Services.

4 (10) DEFINITIONS.—For purposes of this sub-
5 section—

6 (A) ADMINISTRATOR.—The term “admin-
7 istrator” has the meaning given such term in
8 section 3(16) of the Employee Retirement In-
9 come Security Act of 1974.

10 (B) COBRA CONTINUATION COVERAGE.—
11 The term “COBRA continuation coverage”
12 means continuation coverage provided pursuant
13 to part 6 of subtitle B of title I of the Em-
14 ployee Retirement Income Security Act of 1974
15 (other than under section 609), title XXII of
16 the Public Health Service Act, section 4980B of
17 the Internal Revenue Code of 1986 (other than
18 subsection (f)(1) of such section insofar as it
19 relates to pediatric vaccines), or section 8905a
20 of title 5, United States Code, or under a State
21 program that provides continuation coverage
22 comparable to such continuation coverage. Such
23 term does not include coverage under a health
24 flexible spending arrangement.

1 (C) COBRA CONTINUATION PROVISION.—
2 The term “COBRA continuation provision”
3 means the provisions of law described in sub-
4 paragraph (B).

5 (D) COVERED EMPLOYEE.—The term
6 “covered employee” has the meaning given such
7 term in section 607(2) of the Employee Retirement
8 Income Security Act of 1974.

9 (E) QUALIFIED BENEFICIARY.—The term
10 “qualified beneficiary” has the meaning given
11 such term in section 607(3) of the Employee
12 Retirement Income Security Act of 1974.

13 (F) GROUP HEALTH PLAN.—The term
14 “group health plan” has the meaning given
15 such term in section 607(1) of the Employee
16 Retirement Income Security Act of 1974.

17 (G) STATE.—The term “State” includes
18 the District of Columbia, the Commonwealth of
19 Puerto Rico, the Virgin Islands, Guam, Amer-
20 ican Samoa, and the Commonwealth of the
21 Northern Mariana Islands.

22 (11) REPORTS.—

23 (A) INTERIM REPORT.—The Secretary of
24 the Treasury shall submit an interim report to
25 the Committee on Education and Labor, the

1 Committee on Ways and Means, and the Com-
2 mittee on Energy and Commerce of the House
3 of Representatives and the Committee on
4 Health, Education, Labor, and Pensions and
5 the Committee on Finance of the Senate re-
6 garding the premium reduction provided under
7 this subsection that includes—

8 (i) the number of individuals provided
9 such assistance as of the date of the re-
10 port; and

11 (ii) the total amount of expenditures
12 incurred (with administrative expenditures
13 noted separately) in connection with such
14 assistance as of the date of the report.

15 (B) FINAL REPORT.—As soon as prac-
16 ticable after the last period of COBRA continu-
17 ation coverage for which premium reduction is
18 provided under this section, the Secretary of the
19 Treasury shall submit a final report to each
20 Committee referred to in subparagraph (A) that
21 includes—

22 (i) the number of individuals provided
23 premium reduction under this section;

1 (ii) the average dollar amount
2 (monthly and annually) of premium reduc-
3 tions provided to such individuals; and

4 (iii) the total amount of expenditures
5 incurred (with administrative expenditures
6 noted separately) in connection with pre-
7 mium reduction under this section.

8 (12) COBRA PREMIUM ASSISTANCE.—

9 (A) IN GENERAL.—Subchapter B of chap-
10 ter 65 of the Internal Revenue Code of 1986 is
11 amended by adding at the end the following
12 new section:

13 **“SEC. 6431. COBRA PREMIUM ASSISTANCE.**

14 “(a) IN GENERAL.—The entity to whom premiums
15 are payable under COBRA continuation coverage shall be
16 reimbursed for the amount of premiums not paid by plan
17 beneficiaries by reason of section 3002(a) of the Health
18 Insurance Assistance for the Unemployed Act of 2009.
19 Such amount shall be treated as a credit against the re-
20 quirement of such entity to make deposits of payroll taxes
21 and the liability of such entity for payroll taxes. To the
22 extent that such amount exceeds the amount of such
23 taxes, the Secretary shall pay to such entity the amount
24 of such excess. No payment may be made under this sub-
25 section to an entity with respect to any assistance eligible

1 individual until after such entity has received the reduced
2 premium from such individual required under section
3 3002(a)(1)(A) of such Act.

4 “(b) PAYROLL TAXES.—For purposes of this section,
5 the term ‘payroll taxes’ means—

6 “(1) amounts required to be deducted and with-
7 held for the payroll period under section 3401 (relat-
8 ing to wage withholding),

9 “(2) amounts required to be deducted for the
10 payroll period under section 3102 (relating to FICA
11 employee taxes), and

12 “(3) amounts of the taxes imposed for the pay-
13 roll period under section 3111 (relating to FICA em-
14 ployer taxes).

15 “(c) TREATMENT OF CREDIT.—Except as otherwise
16 provided by the Secretary, the credit described in sub-
17 section (a) shall be applied as though the employer had
18 paid to the Secretary, on the day that the qualified bene-
19 ficiary’s premium payment is received, an amount equal
20 to such credit.

21 “(d) TREATMENT OF PAYMENT.—For purposes of
22 section 1324(b)(2) of title 31, United States Code, any
23 payment under this section shall be treated in the same
24 manner as a refund of the credit under section 35.

25 “(e) REPORTING.—

1 “(1) IN GENERAL.—Each entity entitled to re-
2 imbursement under subsection (a) for any period
3 shall submit such reports as the Secretary may re-
4 quire, including—

5 “(A) an attestation of involuntary termi-
6 nation of employment for each covered em-
7 ployee on the basis of whose termination entitle-
8 ment to reimbursement is claimed under sub-
9 section (a), and

10 “(B) a report of the amount of payroll
11 taxes offset under subsection (a) for the report-
12 ing period and the estimated offsets of such
13 taxes for the subsequent reporting period in
14 connection with reimbursements under sub-
15 section (a).

16 “(2) TIMING OF REPORTS RELATING TO
17 AMOUNT OF PAYROLL TAXES.—Reports required
18 under paragraph (1)(B) shall be submitted at the
19 same time as deposits of taxes imposed by chapters
20 21, 22, and 24 or at such time as is specified by the
21 Secretary.

22 “(f) REGULATIONS.—The Secretary may issue such
23 regulations or other guidance as may be necessary or ap-
24 propriate to carry out this section, including the require-
25 ment to report information or the establishment of other

1 methods for verifying the correct amounts of payments
 2 and credits under this section. The Secretary shall issue
 3 such regulations or guidance with respect to the applica-
 4 tion of this section to group health plans that are multiem-
 5 ployer plans (as defined in section 3(37) of the Employee
 6 Retirement Income Security Act of 1974).”.

7 (B) SOCIAL SECURITY TRUST FUNDS HELD
 8 HARMLESS.—In determining any amount trans-
 9 ferred or appropriated to any fund under the
 10 Social Security Act, section 6431 of the Inter-
 11 nal Revenue Code of 1986 shall not be taken
 12 into account.

13 (C) CLERICAL AMENDMENT.—The table of
 14 sections for subchapter B of chapter 65 of the
 15 Internal Revenue Code of 1986 is amended by
 16 adding at the end the following new item:

“Sec. 6431. COBRA premium assistance.”.

17 (D) EFFECTIVE DATE.—The amendments
 18 made by this paragraph shall apply to pre-
 19 miums to which subsection (a)(1)(A) applies.

20 (13) PENALTY FOR FAILURE TO NOTIFY
 21 HEALTH PLAN OF CESSATION OF ELIGIBILITY FOR
 22 PREMIUM ASSISTANCE.—

23 (A) IN GENERAL.—Part I of subchapter B
 24 of chapter 68 of the Internal Revenue Code of

1 1986 is amended by adding at the end the fol-
2 lowing new section:

3 **“SEC. 6720C. PENALTY FOR FAILURE TO NOTIFY HEALTH**
4 **PLAN OF CESSATION OF ELIGIBILITY FOR**
5 **COBRA PREMIUM ASSISTANCE.**

6 “(a) IN GENERAL.—Any person required to notify a
7 group health plan under section 3002(a)(2)(C) of the
8 Health Insurance Assistance for the Unemployed Act of
9 2009 who fails to make such a notification at such time
10 and in such manner as the Secretary of Labor may require
11 shall pay a penalty of 110 percent of the premium reduc-
12 tion provided under such section after termination of eligi-
13 bility under such subsection.

14 “(b) REASONABLE CAUSE EXCEPTION.—No penalty
15 shall be imposed under subsection (a) with respect to any
16 failure if it is shown that such failure is due to reasonable
17 cause and not to willful neglect.”.

18 (B) CLERICAL AMENDMENT.—The table of
19 sections of part I of subchapter B of chapter 68
20 of such Code is amended by adding at the end
21 the following new item:

“Sec. 6720C. Penalty for failure to notify health plan of cessation of eligibility
for COBRA premium assistance.”.

22 (C) EFFECTIVE DATE.—The amendments
23 made by this paragraph shall apply to failures

1 occurring after the date of the enactment of
2 this Act.

3 (14) COORDINATION WITH HCTC.—

4 (A) IN GENERAL.—Subsection (g) of sec-
5 tion 35 of the Internal Revenue Code of 1986
6 is amended by redesignating paragraph (9) as
7 paragraph (10) and inserting after paragraph
8 (8) the following new paragraph:

9 “(9) COBRA PREMIUM ASSISTANCE.—In the
10 case of an assistance eligible individual who receives
11 premium reduction for COBRA continuation cov-
12 erage under section 3002(a) of the Health Insurance
13 Assistance for the Unemployed Act of 2009 for any
14 month during the taxable year, such individual shall
15 not be treated as an eligible individual, a certified
16 individual, or a qualifying family member for pur-
17 poses of this section or section 7527 with respect to
18 such month.”.

19 (B) EFFECTIVE DATE.—The amendment
20 made by subparagraph (A) shall apply to tax-
21 able years ending after the date of the enact-
22 ment of this Act.

23 (15) EXCLUSION OF COBRA PREMIUM ASSIST-
24 ANCE FROM GROSS INCOME.—

1 (A) IN GENERAL.—Part III of subchapter
2 B of chapter 1 of the Internal Revenue Code of
3 1986 is amended by inserting after section
4 139B the following new section:

5 **“SEC. 139C. COBRA PREMIUM ASSISTANCE.**

6 “In the case of an assistance eligible individual (as
7 defined in section 3002 of the Health Insurance Assist-
8 ance for the Unemployed Act of 2009), gross income does
9 not include any premium reduction provided under sub-
10 section (a) of such section.”.

11 (B) CLERICAL AMENDMENT.—The table of
12 sections for part III of subchapter B of chapter
13 1 of such Code is amended by inserting after
14 the item relating to section 139B the following
15 new item:

“Sec. 139C. COBRA premium assistance.”.

16 (C) EFFECTIVE DATE.—The amendments
17 made by this paragraph shall apply to taxable
18 years ending after the date of the enactment of
19 this Act.

20 (b) EXTENSION OF COBRA BENEFITS FOR OLDER
21 OR LONG-TERM EMPLOYEES.—

22 (1) ERISA AMENDMENT.—Section 602(2)(A)
23 of the Employee Retirement Income Security Act of
24 1974 is amended by adding at the end the following
25 new clauses:

1 “(x) SPECIAL RULE FOR OLDER OR
2 LONG-TERM EMPLOYEES GENERALLY.—In
3 the case of a qualifying event described in
4 section 603(2) with respect to a covered
5 employee who (as of such qualifying event)
6 has attained age 55 or has completed 10
7 or more years of service with the entity
8 that is the employer at the time of the
9 qualifying event, clauses (i) and (ii) shall
10 not apply. For purposes of this clause, in
11 the case of a group health plan that is a
12 multiemployer plan, service by the covered
13 employee performed for 2 or more employ-
14 ers during periods for which such employ-
15 ers contributed to such plan shall be treat-
16 ed as service performed for the entity re-
17 ferred to in the preceding sentence.

18 “(xi) YEAR OF SERVICE.— For pur-
19 poses of this subparagraph, the term ‘year
20 of service’ shall have the meaning provided
21 in section 202(a)(3).”.

22 (2) IRC AMENDMENT.—Clause (i) of section
23 4980B(f)(2)(B) of the Internal Revenue Code of
24 1986 is amended by adding at the end the following
25 new subclauses:

1 “(X) SPECIAL RULE FOR OLDER
2 OR LONG-TERM EMPLOYEES GEN-
3 ERALLY.—In the case of a qualifying
4 event described in paragraph (3)(B)
5 with respect to a covered employee
6 who (as of such qualifying event) has
7 attained age 55 or has completed 10
8 or more years of service with the enti-
9 ty that is the employer at the time of
10 the qualifying event, subclauses (I)
11 and (II) shall not apply. For purposes
12 of this subclause, in the case of a
13 group health plan that is a multiem-
14 ployer plan (as defined in section
15 3(37) of the Employee Retirement In-
16 come Security Act of 1974), service by
17 the covered employee performed for 2
18 or more employers during periods for
19 which such employers contributed to
20 such plan shall be treated as service
21 performed for the entity referred to in
22 the preceding sentence.

23 “(XI) YEAR OF SERVICE.— For
24 purposes of this clause, the term ‘year
25 of service’ shall have the meaning pro-

1 vided in section 202(a)(3) of the Em-
2 ployee Retirement Income Security
3 Act of 1974.”.

4 (3) PHSA AMENDMENT.—Section 2202(2)(A)
5 of the Public Health Service Act is amended by add-
6 ing at the end the following new clauses:

7 “(viii) SPECIAL RULE FOR OLDER OR
8 LONG-TERM EMPLOYEES GENERALLY.—In
9 the case of a qualifying event described in
10 section 2203(2) with respect to a covered
11 employee who (as of such qualifying event)
12 has attained age 55 or has completed 10
13 or more years of service with the entity
14 that is the employer at the time of the
15 qualifying event, clauses (i) and (ii) shall
16 not apply. For purposes of this clause, in
17 the case of a group health plan that is a
18 multiemployer plan (as defined in section
19 3(37) of the Employee Retirement Income
20 Security Act of 1974), service by the cov-
21 ered employee performed for 2 or more
22 employers during periods for which such
23 employers contributed to such plan shall be
24 treated as service performed for the entity
25 referred to in the preceding sentence.

1 “(ix) YEAR OF SERVICE.— For pur-
2 poses of this subparagraph, the term ‘year
3 of service’ shall have the meaning provided
4 in section 202(a)(3) of the Employee Re-
5 tirement Income Security Act of 1974.”.

6 (4) EFFECTIVE DATE OF AMENDMENTS.—The
7 amendments made by this subsection shall apply to
8 periods of coverage which would (without regard to
9 the amendments made by this section) end on or
10 after the date of the enactment of this Act.

11 **SEC. 3003. TEMPORARY OPTIONAL MEDICAID COVERAGE**
12 **FOR THE UNEMPLOYED.**

13 (a) IN GENERAL.—Section 1902 of the Social Secu-
14 rity Act (42 U.S.C. 1396b) is amended—

15 (1) in subsection (a)(10)(A)(ii)—

16 (A) by striking “or” at the end of sub-
17 clause (XVIII);

18 (B) by adding “or” at the end of subclause
19 (XIX); and

20 (C) by adding at the end the following new
21 subclause:

22 “(XX) who are described in sub-
23 section (dd)(1) (relating to certain un-
24 employed individuals and their fami-
25 lies);”; and

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

3 “(dd)(1) Individuals described in this paragraph
4 are—

5 “(A) individuals who—

6 “(i) are within one or more of the categories de-
7 scribed in paragraph (2), as elected under the State
8 plan; and

9 “(ii) meet the applicable requirements of para-
10 graph (3); and

11 “(B) individuals who—

12 “(i) are the spouse, or dependent child under
13 19 years of age, of an individual described in sub-
14 paragraph (A); and

15 “(ii) meet the requirement of paragraph (3)(B).

16 “(2) The categories of individuals described in this
17 paragraph are each of the following:

18 “(A)(i) Individuals who are receiving unemploy-
19 ment compensation benefits; and

20 “(ii) individuals who were receiving, but have
21 exhausted, unemployment compensation benefits on
22 or after July 1, 2008.

23 “(B) Individuals who are involuntarily unem-
24 ployed and were involuntarily separated from em-
25 ployment on or after September 1, 2008, and before

1 January 1, 2011, whose family gross income does
2 not exceed a percentage specified by the State (not
3 to exceed 200 percent) of the income official poverty
4 line (as defined by the Office of Management and
5 Budget, and revised annually in accordance with sec-
6 tion 673(2) of the Omnibus Budget Reconciliation
7 Act of 1981) applicable to a family of the size in-
8 volved, and who, but for subsection
9 (a)(10)(A)(ii)(XX), are not eligible for medical as-
10 sistance under this title or health assistance under
11 title XXI.

12 “(C) Individuals who are involuntarily unem-
13 ployed and were involuntarily separated from em-
14 ployment on or after September 1, 2008, and before
15 January 1, 2011, who are members of households
16 participating in the supplemental nutrition assist-
17 ance program established under the Food and Nutri-
18 tion Act of 2008 (7 U.S.C. 2011 et seq.), and who,
19 but for subsection (a)(10)(A)(ii)(XX), are not eligi-
20 ble for medical assistance under this title or health
21 assistance under title XXI.

22 “(3) The requirements of this paragraph with respect
23 to an individual are the following:

24 “(A) In the case of individuals within a cat-
25 egory described in subparagraph (A)(i) of paragraph

1 (2), the individual was involuntarily separated from
2 employment on or after September 1, 2008, and be-
3 fore January 1, 2011, or meets such comparable re-
4 quirement as the Secretary specifies through rule,
5 guidance, or otherwise in the case of an individual
6 who was an independent contractor.

7 “(B) The individual is not otherwise covered
8 under creditable coverage, as defined in section
9 2701(c) of the Public Health Service Act (42 U.S.C.
10 300gg(c)), but applied without regard to paragraph
11 (1)(F) of such section and without regard to cov-
12 erage provided by reason of the application of sub-
13 section (a)(10)(A)(ii)(XX).

14 “(4)(A) No income or resources test shall be applied
15 with respect to any category of individuals described in
16 subparagraph (A) or (C) of paragraph (2) who are eligible
17 for medical assistance only by reason of the application
18 of subsection (a)(10)(A)(ii)(XX).

19 “(B) Nothing in this subsection shall be construed
20 to prevent a State from imposing a resource test for the
21 category of individuals described in paragraph (2)(B)).

22 “(C) In the case of individuals described in paragraph
23 (2)(A) or (2)(C), the requirements of subsections (i)(22)
24 and (x) in section 1903 shall not apply.”.

25 (b) 100 PERCENT FEDERAL MATCHING RATE.—

1 (1) FMAP FOR TIME-LIMITED PERIOD.—The
2 third sentence of section 1905(b) of such Act (42
3 U.S.C. 1396d(b)) is amended by inserting before the
4 period at the end the following: “and for items and
5 services furnished on or after the date of enactment
6 of this Act and before January 1, 2011, to individ-
7 uals who are eligible for medical assistance only by
8 reason of the application of section
9 1902(a)(10)(A)(ii)(XX)”.

10 (2) CERTAIN ENROLLMENT-RELATED ADMINIS-
11 TRATIVE COSTS.—Notwithstanding any other provi-
12 sion of law, for purposes of applying section 1903(a)
13 of the Social Security Act (42 U.S.C. 1396b(a)),
14 with respect to expenditures incurred on or after the
15 date of the enactment of this Act and before Janu-
16 ary 1, 2011, for costs of administration (including
17 outreach and the modification and operation of eligi-
18 bility information systems) attributable to eligibility
19 determination and enrollment of individuals who are
20 eligible for medical assistance only by reason of the
21 application of section 1902(a)(10)(A)(ii)(XX) of
22 such Act, as added by subsection (a)(1), the Federal
23 matching percentage shall be 100 percent instead of
24 the matching percentage otherwise applicable.

1 (c) CONFORMING AMENDMENTS.—(1) Section
 2 1903(f)(4) of such Act (42 U.S.C. 1396c(f)(4)) is amend-
 3 ed by inserting “1902(a)(10)(A)(ii)(XX), or” after
 4 “1902(a)(10)(A)(ii)(XIX),”.

5 (2) Section 1905(a) of such Act (42 U.S.C.
 6 1396d(a)) is amended, in the matter preceding paragraph
 7 (1)—

8 (A) by striking “or” at the end of clause (xii);

9 (B) by adding “or” at the end of clause (xiii);

10 and

11 (C) by inserting after clause (xiii) the following
 12 new clause:

13 “(xiv) individuals described in section
 14 1902(dd)(1),”.

15 **TITLE IV—HEALTH**

16 **INFORMATION TECHNOLOGY**

17 **SEC. 4001. SHORT TITLE; TABLE OF CONTENTS OF TITLE.**

18 (a) SHORT TITLE.—This title may be cited as the
 19 “Health Information Technology for Economic and Clin-
 20 ical Health Act” or the “HITECH Act”.

21 (b) TABLE OF CONTENTS OF TITLE.—The table of
 22 contents of this title is as follows:

Sec. 4001. Short title; table of contents of title.

Subtitle A—Promotion of Health Information Technology

PART I—IMPROVING HEALTH CARE QUALITY, SAFETY, AND EFFICIENCY

Sec. 4101. ONCHIT; standards development and adoption.

“TITLE XXX—HEALTH INFORMATION TECHNOLOGY AND
QUALITY

“Sec. 3000. Definitions.

“Subtitle A—Promotion of Health Information Technology

“Sec. 3001. Office of the National Coordinator for Health Information
Technology.

“Sec. 3002. HIT Policy Committee.

“Sec. 3003. HIT Standards Committee.

“Sec. 3004. Process for adoption of endorsed recommendations; adoption
of initial set of standards, implementation specifications,
and certification criteria.

“Sec. 3005. Application and use of adopted standards and implementation
specifications by Federal agencies.

“Sec. 3006. Voluntary application and use of adopted standards and im-
plementation specifications by private entities.

“Sec. 3007. Federal health information technology.

“Sec. 3008. Transitions.

“Sec. 3009. Relation to HIPAA privacy and security law.

“Sec. 3010. Authorization for appropriations.

Sec. 4102. Technical amendment.

PART II—APPLICATION AND USE OF ADOPTED HEALTH INFORMATION
TECHNOLOGY STANDARDS; REPORTS

Sec. 4111. Coordination of Federal activities with adopted standards and imple-
mentation specifications.

Sec. 4112. Application to private entities.

Sec. 4113. Study and reports.

Subtitle B—Testing of Health Information Technology

Sec. 4201. National Institute for Standards and Technology testing.

Sec. 4202. Research and development programs.

Subtitle C—Incentives for the Use of Health Information Technology

PART I—GRANTS AND LOANS FUNDING

Sec. 4301. Grant, loan, and demonstration programs.

“Subtitle B—Incentives for the Use of Health Information Technology

“Sec. 3011. Immediate funding to strengthen the health information tech-
nology infrastructure.

“Sec. 3012. Health information technology implementation assistance.

“Sec. 3013. State grants to promote health information technology.

“Sec. 3014. Competitive grants to States and Indian tribes for the devel-
opment of loan programs to facilitate the widespread
adoption of certified EHR technology.

“Sec. 3015. Demonstration program to integrate information technology
into clinical education.

“Sec. 3016. Information technology professionals on health care.

“Sec. 3017. General grant and loan provisions.

“Sec. 3018. Authorization for appropriations.

PART II—MEDICARE PROGRAM

- Sec. 4311. Incentives for eligible professionals.
- Sec. 4312. Incentives for hospitals.
- Sec. 4313. Treatment of payments and savings; implementation funding.
- Sec. 4314. Study on application of EHR payment incentives for providers not receiving other incentive payments.

PART III—MEDICAID FUNDING

- Sec. 4321. Medicaid provider HIT adoption and operation payments; implementation funding.
- Sec. 4322. Medicaid nursing home grant program.

Subtitle D—Privacy

- Sec. 4400. Definitions.

PART I—IMPROVED PRIVACY PROVISIONS AND SECURITY PROVISIONS

- Sec. 4401. Application of security provisions and penalties to business associates of covered entities; annual guidance on security provisions.
- Sec. 4402. Notification in the case of breach.
- Sec. 4403. Education on Health Information Privacy.
- Sec. 4404. Application of privacy provisions and penalties to business associates of covered entities.
- Sec. 4405. Restrictions on certain disclosures and sales of health information; accounting of certain protected health information disclosures; access to certain information in electronic format.
- Sec. 4406. Conditions on certain contacts as part of health care operations.
- Sec. 4407. Temporary breach notification requirement for vendors of personal health records and other non-HIPAA covered entities.
- Sec. 4408. Business associate contracts required for certain entities.
- Sec. 4409. Clarification of application of wrongful disclosures criminal penalties.
- Sec. 4410. Improved enforcement.
- Sec. 4411. Audits.
- Sec. 4412. Special rule for information to reduce medication errors and improve patient safety.

PART II—RELATIONSHIP TO OTHER LAWS; REGULATORY REFERENCES;
EFFECTIVE DATE; REPORTS

- Sec. 4421. Relationship to other laws.
- Sec. 4422. Regulatory references.
- Sec. 4423. Effective date.
- Sec. 4424. Studies, reports, guidance.

Subtitle E—Miscellaneous Medicare Provisions

- Sec. 4501. Moratoria on certain Medicare regulations.
- Sec. 4502. Long-term care hospital technical corrections.

1 **Subtitle A—Promotion of Health**
2 **Information Technology**

3 **PART I—IMPROVING HEALTH CARE QUALITY,**
4 **SAFETY, AND EFFICIENCY**

5 **SEC. 4101. ONCHIT; STANDARDS DEVELOPMENT AND ADOPTI-**
6 **ON.**

7 The Public Health Service Act (42 U.S.C. 201 et
8 seq.) is amended by adding at the end the following:

9 **“TITLE XXX—HEALTH INFORMA-**
10 **TION TECHNOLOGY AND**
11 **QUALITY**

12 **“SEC. 3000. DEFINITIONS.**

13 “In this title:

14 “(1) **CERTIFIED EHR TECHNOLOGY.**—The term
15 ‘certified EHR technology’ means a qualified elec-
16 tronic health record that is certified pursuant to sec-
17 tion 3001(c)(5) as meeting standards adopted under
18 section 3004 that are applicable to the type of
19 record involved (as determined by the Secretary,
20 such as an ambulatory electronic health record for
21 office-based physicians or an inpatient hospital elec-
22 tronic health record for hospitals).

23 “(2) **ENTERPRISE INTEGRATION.**—The term
24 ‘enterprise integration’ means the electronic linkage
25 of health care providers, health plans, the govern-

1 ment, and other interested parties, to enable the
2 electronic exchange and use of health information
3 among all the components in the health care infra-
4 structure in accordance with applicable law, and
5 such term includes related application protocols and
6 other related standards.

7 “(3) HEALTH CARE PROVIDER.—The term
8 ‘health care provider’ means a hospital, skilled nurs-
9 ing facility, nursing facility, home health entity or
10 other long term care facility, health care clinic, Fed-
11 erally qualified health center, group practice (as de-
12 fined in section 1877(h)(4) of the Social Security
13 Act), a pharmacist, a pharmacy, a laboratory, a phy-
14 sician (as defined in section 1861(r) of the Social
15 Security Act), a practitioner (as described in section
16 1842(b)(18)(C) of the Social Security Act), a pro-
17 vider operated by, or under contract with, the Indian
18 Health Service or by an Indian tribe (as defined in
19 the Indian Self-Determination and Education Assist-
20 ance Act), tribal organization, or urban Indian orga-
21 nization (as defined in section 4 of the Indian
22 Health Care Improvement Act), a rural health clinic,
23 a covered entity under section 340B, an ambulatory
24 surgical center described in section 1833(i) of the
25 Social Security Act, and any other category of facil-

1 ity or clinician determined appropriate by the Sec-
2 retary.

3 “(4) HEALTH INFORMATION.—The term ‘health
4 information’ has the meaning given such term in
5 section 1171(4) of the Social Security Act.

6 “(5) HEALTH INFORMATION TECHNOLOGY.—
7 The term ‘health information technology’ means
8 hardware, software, integrated technologies and re-
9 lated licenses, intellectual property, upgrades, and
10 packaged solutions sold as services that are specifi-
11 cally designed for use by health care entities for the
12 electronic creation, maintenance, or exchange of
13 health information.

14 “(6) HEALTH PLAN.—The term ‘health plan’
15 has the meaning given such term in section 1171(5)
16 of the Social Security Act.

17 “(7) HIT POLICY COMMITTEE.—The term ‘HIT
18 Policy Committee’ means such Committee estab-
19 lished under section 3002(a).

20 “(8) HIT STANDARDS COMMITTEE.—The term
21 ‘HIT Standards Committee’ means such Committee
22 established under section 3003(a).

23 “(9) INDIVIDUALLY IDENTIFIABLE HEALTH IN-
24 FORMATION.—The term ‘individually identifiable

1 health information’ has the meaning given such term
2 in section 1171(6) of the Social Security Act.

3 “(10) LABORATORY.—The term ‘laboratory’
4 has the meaning given such term in section 353(a).

5 “(11) NATIONAL COORDINATOR.—The term
6 ‘National Coordinator’ means the head of the Office
7 of the National Coordinator for Health Information
8 Technology established under section 3001(a).

9 “(12) PHARMACIST.—The term ‘pharmacist’
10 has the meaning given such term in section 804(2)
11 of the Federal Food, Drug, and Cosmetic Act.

12 “(13) QUALIFIED ELECTRONIC HEALTH
13 RECORD.—The term ‘qualified electronic health
14 record’ means an electronic record of health-related
15 information on an individual that—

16 “(A) includes patient demographic and
17 clinical health information, such as medical his-
18 tory and problem lists; and

19 “(B) has the capacity—

20 “(i) to provide clinical decision sup-
21 port;

22 “(ii) to support physician order entry;

23 “(iii) to capture and query informa-
24 tion relevant to health care quality; and

1 “(iv) to exchange electronic health in-
2 formation with, and integrate such infor-
3 mation from other sources.

4 “(14) STATE.—The term ‘State’ means each of
5 the several States, the District of Columbia, Puerto
6 Rico, the Virgin Islands, Guam, American Samoa,
7 and the Northern Mariana Islands.

8 **“Subtitle A—Promotion of Health**
9 **Information Technology**

10 **“SEC. 3001. OFFICE OF THE NATIONAL COORDINATOR FOR**
11 **HEALTH INFORMATION TECHNOLOGY.**

12 “(a) ESTABLISHMENT.—There is established within
13 the Department of Health and Human Services an Office
14 of the National Coordinator for Health Information Tech-
15 nology (referred to in this section as the ‘Office’). The Of-
16 fice shall be headed by a National Coordinator who shall
17 be appointed by the Secretary and shall report directly to
18 the Secretary.

19 “(b) PURPOSE.—The National Coordinator shall per-
20 form the duties under subsection (c) in a manner con-
21 sistent with the development of a nationwide health infor-
22 mation technology infrastructure that allows for the elec-
23 tronic use and exchange of information and that—

1 “(1) ensures that each patient’s health informa-
2 tion is secure and protected, in accordance with ap-
3 plicable law;

4 “(2) improves health care quality, reduces med-
5 ical errors, reduces health disparities, and advances
6 the delivery of patient-centered medical care;

7 “(3) reduces health care costs resulting from
8 inefficiency, medical errors, inappropriate care, du-
9 plicative care, and incomplete information;

10 “(4) provides appropriate information to help
11 guide medical decisions at the time and place of
12 care;

13 “(5) ensures the inclusion of meaningful public
14 input in such development of such infrastructure;

15 “(6) improves the coordination of care and in-
16 formation among hospitals, laboratories, physician
17 offices, and other entities through an effective infra-
18 structure for the secure and authorized exchange of
19 health care information;

20 “(7) improves public health activities and facili-
21 tates the early identification and rapid response to
22 public health threats and emergencies, including bio-
23 terror events and infectious disease outbreaks;

24 “(8) facilitates health and clinical research and
25 health care quality;

1 “(9) promotes prevention of chronic diseases;

2 “(10) promotes a more effective marketplace,
3 greater competition, greater systems analysis, in-
4 creased consumer choice, and improved outcomes in
5 health care services; and

6 “(11) improves efforts to reduce health dispari-
7 ties.

8 “(c) DUTIES OF THE NATIONAL COORDINATOR.—

9 “(1) STANDARDS.—The National Coordinator
10 shall review and determine whether to endorse each
11 standard, implementation specification, and certifi-
12 cation criterion for the electronic exchange and use
13 of health information that is recommended by the
14 HIT Standards Committee under section 3003 for
15 purposes of adoption under section 3004. The Coor-
16 dinator shall make such determination, and report to
17 the Secretary such determination, not later than 45
18 days after the date the recommendation is received
19 by the Coordinator.

20 “(2) HIT POLICY COORDINATION.—

21 “(A) IN GENERAL.—The National Coordi-
22 nator shall coordinate health information tech-
23 nology policy and programs of the Department
24 with those of other relevant executive branch
25 agencies with a goal of avoiding duplication of

1 efforts and of helping to ensure that each agen-
2 cy undertakes health information technology ac-
3 tivities primarily within the areas of its greatest
4 expertise and technical capability and in a man-
5 ner towards a coordinated national goal.

6 “(B) HIT POLICY AND STANDARDS COM-
7 MITTEES.—The National Coordinator shall be a
8 leading member in the establishment and oper-
9 ations of the HIT Policy Committee and the
10 HIT Standards Committee and shall serve as a
11 liaison among those two Committees and the
12 Federal Government.

13 “(3) STRATEGIC PLAN.—

14 “(A) IN GENERAL.—The National Coordi-
15 nator shall, in consultation with other appro-
16 priate Federal agencies (including the National
17 Institute of Standards and Technology), update
18 the Federal Health IT Strategic Plan (devel-
19 oped as of June 3, 2008) to include specific ob-
20 jectives, milestones, and metrics with respect to
21 the following:

22 “(i) The electronic exchange and use
23 of health information and the enterprise
24 integration of such information.

1 “(ii) The utilization of an electronic
2 health record for each person in the United
3 States by 2014.

4 “(iii) The incorporation of privacy and
5 security protections for the electronic ex-
6 change of an individual’s individually iden-
7 tifiable health information.

8 “(iv) Ensuring security methods to
9 ensure appropriate authorization and elec-
10 tronic authentication of health information
11 and specifying technologies or methodolo-
12 gies for rendering health information unus-
13 able, unreadable, or indecipherable.

14 “(v) Specifying a framework for co-
15 ordination and flow of recommendations
16 and policies under this subtitle among the
17 Secretary, the National Coordinator, the
18 HIT Policy Committee, the HIT Standards
19 Committee, and other health information
20 exchanges and other relevant entities.

21 “(vi) Methods to foster the public un-
22 derstanding of health information tech-
23 nology.

24 “(vii) Strategies to enhance the use of
25 health information technology in improving

1 the quality of health care, reducing medical
2 errors, reducing health disparities, improv-
3 ing public health, and improving the con-
4 tinuity of care among health care settings.

5 “(B) COLLABORATION.—The strategic
6 plan shall be updated through collaboration of
7 public and private entities.

8 “(C) MEASURABLE OUTCOME GOALS.—
9 The strategic plan update shall include measur-
10 able outcome goals.

11 “(D) PUBLICATION.—The National Coor-
12 dinator shall republish the strategic plan, in-
13 cluding all updates.

14 “(4) WEBSITE.—The National Coordinator
15 shall maintain and frequently update an Internet
16 website on which there is posted information on the
17 work, schedules, reports, recommendations, and
18 other information to ensure transparency in pro-
19 motion of a nationwide health information tech-
20 nology infrastructure.

21 “(5) CERTIFICATION.—

22 “(A) IN GENERAL.—The National Coordi-
23 nator, in consultation with the Director of the
24 National Institute of Standards and Tech-
25 nology, shall develop a program (either directly

1 or by contract) for the voluntary certification of
2 health information technology as being in com-
3 pliance with applicable certification criteria
4 adopted under this subtitle. Such program shall
5 include testing of the technology in accordance
6 with section 4201(b) of the HITECH Act.

7 “(B) CERTIFICATION CRITERIA DE-
8 SCRIBED.—In this title, the term ‘certification
9 criteria’ means, with respect to standards and
10 implementation specifications for health infor-
11 mation technology, criteria to establish that the
12 technology meets such standards and implemen-
13 tation specifications.

14 “(6) REPORTS AND PUBLICATIONS.—

15 “(A) REPORT ON ADDITIONAL FUNDING
16 OR AUTHORITY NEEDED.—Not later than 12
17 months after the date of the enactment of this
18 title, the National Coordinator shall submit to
19 the appropriate committees of jurisdiction of
20 the House of Representatives and the Senate a
21 report on any additional funding or authority
22 the Coordinator or the HIT Policy Committee
23 or HIT Standards Committee requires to evalu-
24 ate and develop standards, implementation
25 specifications, and certification criteria, or to

1 achieve full participation of stakeholders in the
2 adoption of a nationwide health information
3 technology infrastructure that allows for the
4 electronic use and exchange of health informa-
5 tion.

6 “(B) IMPLEMENTATION REPORT.—The
7 National Coordinator shall prepare a report
8 that identifies lessons learned from major pub-
9 lic and private health care systems in their im-
10 plementation of health information technology,
11 including information on whether the tech-
12 nologies and practices developed by such sys-
13 tems may be applicable to and usable in whole
14 or in part by other health care providers.

15 “(C) ASSESSMENT OF IMPACT OF HIT ON
16 COMMUNITIES WITH HEALTH DISPARITIES AND
17 UNINSURED, UNDERINSURED, AND MEDICALLY
18 UNDERSERVED AREAS.—The National Coordi-
19 nator shall assess and publish the impact of
20 health information technology in communities
21 with health disparities and in areas with a high
22 proportion of individuals who are uninsured,
23 underinsured, and medically underserved indi-
24 viduals (including urban and rural areas) and
25 identify practices to increase the adoption of

1 such technology by health care providers in
2 such communities.

3 “(D) EVALUATION OF BENEFITS AND
4 COSTS OF THE ELECTRONIC USE AND EX-
5 CHANGE OF HEALTH INFORMATION.—The Na-
6 tional Coordinator shall evaluate and publish
7 evidence on the benefits and costs of the elec-
8 tronic use and exchange of health information
9 and assess to whom these benefits and costs ac-
10 crue.

11 “(E) RESOURCE REQUIREMENTS.—The
12 National Coordinator shall estimate and publish
13 resources required annually to reach the goal of
14 utilization of an electronic health record for
15 each person in the United States by 2014, in-
16 cluding the required level of Federal funding,
17 expectations for regional, State, and private in-
18 vestment, and the expected contributions by vol-
19 unteers to activities for the utilization of such
20 records.

21 “(7) ASSISTANCE.—The National Coordinator
22 may provide financial assistance to consumer advo-
23 cacy groups and not-for-profit entities that work in
24 the public interest for purposes of defraying the cost
25 to such groups and entities to participate under,

1 whether in whole or in part, the National Tech-
2 nology Transfer Act of 1995 (15 U.S.C. 272 note).

3 “(8) GOVERNANCE FOR NATIONWIDE HEALTH
4 INFORMATION NETWORK.—The National Coordi-
5 nator shall establish a governance mechanism for the
6 nationwide health information network.

7 “(d) DETAIL OF FEDERAL EMPLOYEES.—

8 “(1) IN GENERAL.—Upon the request of the
9 National Coordinator, the head of any Federal agen-
10 cy is authorized to detail, with or without reimburse-
11 ment from the Office, any of the personnel of such
12 agency to the Office to assist it in carrying out its
13 duties under this section.

14 “(2) EFFECT OF DETAIL.—Any detail of per-
15 sonnel under paragraph (1) shall—

16 “(A) not interrupt or otherwise affect the
17 civil service status or privileges of the Federal
18 employee; and

19 “(B) be in addition to any other staff of
20 the Department employed by the National Co-
21 ordinator.

22 “(3) ACCEPTANCE OF DETAILEES.—Notwith-
23 standing any other provision of law, the Office may
24 accept detailed personnel from other Federal agen-

1 cies without regard to whether the agency described
2 under paragraph (1) is reimbursed.

3 “(e) CHIEF PRIVACY OFFICER OF THE OFFICE OF
4 THE NATIONAL COORDINATOR.—Not later than 12
5 months after the date of the enactment of this title, the
6 Secretary shall appoint a Chief Privacy Officer of the Of-
7 fice of the National Coordinator, whose duty it shall be
8 to advise the National Coordinator on privacy, security,
9 and data stewardship of electronic health information and
10 to coordinate with other Federal agencies (and similar pri-
11 vacy officers in such agencies), with State and regional
12 efforts, and with foreign countries with regard to the pri-
13 vacy, security, and data stewardship of electronic individ-
14 ually identifiable health information.

15 **“SEC. 3002. HIT POLICY COMMITTEE.**

16 “(a) ESTABLISHMENT.—There is established a HIT
17 Policy Committee to make policy recommendations to the
18 National Coordinator relating to the implementation of a
19 nationwide health information technology infrastructure,
20 including implementation of the strategic plan described
21 in section 3001(c)(3).

22 “(b) DUTIES.—

23 “(1) RECOMMENDATIONS ON HEALTH INFOR-
24 MATION TECHNOLOGY INFRASTRUCTURE.—The HIT
25 Policy Committee shall recommend a policy frame-

1 work for the development and adoption of a nation-
2 wide health information technology infrastructure
3 that permits the electronic exchange and use of
4 health information as is consistent with the strategic
5 plan under section 3001(e)(3) and that includes the
6 recommendations under paragraph (2). The Com-
7 mittee shall update such recommendations and make
8 new recommendations as appropriate.

9 “(2) SPECIFIC AREAS OF STANDARD DEVELOP-
10 MENT.—

11 “(A) IN GENERAL.—The HIT Policy Com-
12 mittee shall recommend the areas in which
13 standards, implementation specifications, and
14 certification criteria are needed for the elec-
15 tronic exchange and use of health information
16 for purposes of adoption under section 3004
17 and shall recommend an order of priority for
18 the development, harmonization, and recogni-
19 tion of such standards, specifications, and cer-
20 tification criteria among the areas so rec-
21 ommended. Such standards and implementation
22 specifications shall include named standards,
23 architectures, and software schemes for the au-
24 thentication and security of individually identifi-
25 able health information and other information

1 as needed to ensure the reproducible develop-
2 ment of common solutions across disparate en-
3 tities.

4 “(B) AREAS REQUIRED FOR CONSIDER-
5 ATION.—For purposes of subparagraph (A), the
6 HIT Policy Committee shall make recommenda-
7 tions for at least the following areas:

8 “(i) Technologies that protect the pri-
9 vacy of health information and promote se-
10 curity in a qualified electronic health
11 record, including for the segmentation and
12 protection from disclosure of specific and
13 sensitive individually identifiable health in-
14 formation with the goal of minimizing the
15 reluctance of patients to seek care (or dis-
16 close information about a condition) be-
17 cause of privacy concerns, in accordance
18 with applicable law, and for the use and
19 disclosure of limited data sets of such in-
20 formation.

21 “(ii) A nationwide health information
22 technology infrastructure that allows for
23 the electronic use and accurate exchange of
24 health information.

1 “(iii) The utilization of a certified
2 electronic health record for each person in
3 the United States by 2014.

4 “(iv) Technologies that as a part of a
5 qualified electronic health record allow for
6 an accounting of disclosures made by a
7 covered entity (as defined for purposes of
8 regulations promulgated under section
9 264(e) of the Health Insurance Portability
10 and Accountability Act of 1996) for pur-
11 poses of treatment, payment, and health
12 care operations (as such terms are defined
13 for purposes of such regulations).

14 “(v) The use of certified electronic
15 health records to improve the quality of
16 health care, such as by promoting the co-
17 ordination of health care and improving
18 continuity of health care among health
19 care providers, by reducing medical errors,
20 by improving population health, by reduc-
21 ing health disparities, and by advancing re-
22 search and education.

23 “(vi) Technologies that allow individ-
24 ually identifiable health information to be
25 rendered unusable, unreadable, or indeci-

1 pherable to unauthorized individuals when
2 such information is transmitted in the na-
3 tionwide health information network or
4 physically transported outside of the se-
5 cured, physical perimeter of a health care
6 provider, health plan, or health care clear-
7 inghouse.

8 “(C) OTHER AREAS FOR CONSIDER-
9 ATION.—In making recommendations under
10 subparagraph (A), the HIT Policy Committee
11 may consider the following additional areas:

12 “(i) The appropriate uses of a nation-
13 wide health information infrastructure, in-
14 cluding for purposes of—

15 “(I) the collection of quality data
16 and public reporting;

17 “(II) biosurveillance and public
18 health;

19 “(III) medical and clinical re-
20 search; and

21 “(IV) drug safety.

22 “(ii) Self-service technologies that fa-
23 cilitate the use and exchange of patient in-
24 formation and reduce wait times.

1 “(iii) Telemedicine technologies, in
2 order to reduce travel requirements for pa-
3 tients in remote areas.

4 “(iv) Technologies that facilitate home
5 health care and the monitoring of patients
6 recuperating at home.

7 “(v) Technologies that help reduce
8 medical errors.

9 “(vi) Technologies that facilitate the
10 continuity of care among health settings.

11 “(vii) Technologies that meet the
12 needs of diverse populations.

13 “(viii) Any other technology that the
14 HIT Policy Committee finds to be among
15 the technologies with the greatest potential
16 to improve the quality and efficiency of
17 health care.

18 “(3) FORUM.—The HIT Policy Committee shall
19 serve as a forum for broad stakeholder input with
20 specific expertise in policies relating to the matters
21 described in paragraphs (1) and (2).

22 “(c) MEMBERSHIP AND OPERATIONS.—

23 “(1) IN GENERAL.—The National Coordinator
24 shall provide leadership in the establishment and op-
25 erations of the HIT Policy Committee.

1 “(2) MEMBERSHIP.—The membership of the
2 HIT Policy Committee shall at least reflect pro-
3 viders, ancillary healthcare workers, consumers, pur-
4 chasers, health plans, technology vendors, research-
5 ers, relevant Federal agencies, and individuals with
6 technical expertise on health care quality, privacy
7 and security, and on the electronic exchange and use
8 of health information.

9 “(3) CONSIDERATION.—The National Coordi-
10 nator shall ensure that the relevant recommenda-
11 tions and comments from the National Committee
12 on Vital and Health Statistics are considered in the
13 development of policies.

14 “(d) APPLICATION OF FACCA.—The Federal Advisory
15 Committee Act (5 U.S.C. App.), other than section 14 of
16 such Act, shall apply to the HIT Policy Committee.

17 “(e) PUBLICATION.—The Secretary shall provide for
18 publication in the Federal Register and the posting on the
19 Internet website of the Office of the National Coordinator
20 for Health Information Technology of all policy rec-
21 ommendations made by the HIT Policy Committee under
22 this section.

23 **“SEC. 3003. HIT STANDARDS COMMITTEE.**

24 “(a) ESTABLISHMENT.—There is established a com-
25 mittee to be known as the HIT Standards Committee to

1 recommend to the National Coordinator standards, imple-
2 mentation specifications, and certification criteria for the
3 electronic exchange and use of health information for pur-
4 poses of adoption under section 3004, consistent with the
5 implementation of the strategic plan described in section
6 3001(c)(3) and beginning with the areas listed in section
7 3002(b)(2)(B) in accordance with policies developed by
8 the HIT Policy Committee.

9 “(b) DUTIES.—

10 “(1) STANDARDS DEVELOPMENT.—

11 “(A) IN GENERAL.—The HIT Standards
12 Committee shall recommend to the National
13 Coordinator standards, implementation speci-
14 fications, and certification criteria described in
15 subsection (a) that have been developed, har-
16 monized, or recognized by the HIT Standards
17 Committee. The HIT Standards Committee
18 shall update such recommendations and make
19 new recommendations as appropriate, including
20 in response to a notification sent under section
21 3004(a)(2)(B). Such recommendations shall be
22 consistent with the latest recommendations
23 made by the HIT Policy Committee.

24 “(B) PILOT TESTING OF STANDARDS AND
25 IMPLEMENTATION SPECIFICATIONS.—In the de-

1 velopment, harmonization, or recognition of
2 standards and implementation specifications,
3 the HIT Standards Committee shall, as appro-
4 priate, provide for the testing of such standards
5 and specifications by the National Institute for
6 Standards and Technology under section
7 4201(a) of the HITECH Act.

8 “(C) CONSISTENCY.—The standards, im-
9 plementation specifications, and certification
10 criteria recommended under this subsection
11 shall be consistent with the standards for infor-
12 mation transactions and data elements adopted
13 pursuant to section 1173 of the Social Security
14 Act.

15 “(2) FORUM.—The HIT Standards Committee
16 shall serve as a forum for the participation of a
17 broad range of stakeholders to provide input on the
18 development, harmonization, and recognition of
19 standards, implementation specifications, and certifi-
20 cation criteria necessary for the development and
21 adoption of a nationwide health information tech-
22 nology infrastructure that allows for the electronic
23 use and exchange of health information.

24 “(3) SCHEDULE.—Not later than 90 days after
25 the date of the enactment of this title, the HIT

1 Standards Committee shall develop a schedule for
2 the assessment of policy recommendations developed
3 by the HIT Policy Committee under section 3002.
4 The HIT Standards Committee shall update such
5 schedule annually. The Secretary shall publish such
6 schedule in the Federal Register.

7 “(4) PUBLIC INPUT.—The HIT Standards
8 Committee shall conduct open public meetings and
9 develop a process to allow for public comment on the
10 schedule described in paragraph (3) and rec-
11 ommendations described in this subsection. Under
12 such process comments shall be submitted in a time-
13 ly manner after the date of publication of a rec-
14 ommendation under this subsection.

15 “(c) MEMBERSHIP AND OPERATIONS.—

16 “(1) IN GENERAL.—The National Coordinator
17 shall provide leadership in the establishment and op-
18 erations of the HIT Standards Committee.

19 “(2) MEMBERSHIP.—The membership of the
20 HIT Standards Committee shall at least reflect pro-
21 viders, ancillary healthcare workers, consumers, pur-
22 chasers, health plans, technology vendors, research-
23 ers, relevant Federal agencies, and individuals with
24 technical expertise on health care quality, privacy

1 and security, and on the electronic exchange and use
2 of health information.

3 “(3) CONSIDERATION.—The National Coordi-
4 nator shall ensure that the relevant recommenda-
5 tions and comments from the National Committee
6 on Vital and Health Statistics are considered in the
7 development of standards.

8 “(4) ASSISTANCE.—For the purposes of car-
9 rying out this section, the Secretary may provide or
10 ensure that financial assistance is provided by the
11 HIT Standards Committee to defray in whole or in
12 part any membership fees or dues charged by such
13 Committee to those consumer advocacy groups and
14 not for profit entities that work in the public inter-
15 est as a part of their mission.

16 “(d) APPLICATION OF FACA.—The Federal Advisory
17 Committee Act (5 U.S.C. App.), other than section 14,
18 shall apply to the HIT Standards Committee.

19 “(e) PUBLICATION.—The Secretary shall provide for
20 publication in the Federal Register and the posting on the
21 Internet website of the Office of the National Coordinator
22 for Health Information Technology of all recommenda-
23 tions made by the HIT Standards Committee under this
24 section.

1 **“SEC. 3004. PROCESS FOR ADOPTION OF ENDORSED REC-**
2 **COMMENDATIONS; ADOPTION OF INITIAL SET**
3 **OF STANDARDS, IMPLEMENTATION SPECI-**
4 **FICATIONS, AND CERTIFICATION CRITERIA.**

5 “(a) PROCESS FOR ADOPTION OF ENDORSED REC-
6 OMMENDATIONS.—

7 “(1) REVIEW OF ENDORSED STANDARDS, IM-
8 PLEMENTATION SPECIFICATIONS, AND CERTIFI-
9 CATION CRITERIA.—Not later than 90 days after the
10 date of receipt of standards, implementation speci-
11 fications, or certification criteria endorsed under sec-
12 tion 3001(c), the Secretary, in consultation with rep-
13 resentatives of other relevant Federal agencies, shall
14 jointly review such standards, implementation speci-
15 fications, or certification criteria and shall determine
16 whether or not to propose adoption of such stand-
17 ards, implementation specifications, or certification
18 criteria.

19 “(2) DETERMINATION TO ADOPT STANDARDS,
20 IMPLEMENTATION SPECIFICATIONS, AND CERTIFI-
21 CATION CRITERIA.—If the Secretary determines—

22 “(A) to propose adoption of any grouping
23 of such standards, implementation specifica-
24 tions, or certification criteria, the Secretary
25 shall, by regulation, determine whether or not

1 to adopt such grouping of standards, implemen-
2 tation specifications, or certification criteria; or

3 “(B) not to propose adoption of any group-
4 ing of standards, implementation specifications,
5 or certification criteria, the Secretary shall no-
6 tify the National Coordinator and the HIT
7 Standards Committee in writing of such deter-
8 mination and the reasons for not proposing the
9 adoption of such recommendation.

10 “(3) PUBLICATION.—The Secretary shall pro-
11 vide for publication in the Federal Register of all de-
12 terminations made by the Secretary under para-
13 graph (1).

14 “(b) ADOPTION OF INITIAL SET OF STANDARDS, IM-
15 PLEMENTATION SPECIFICATIONS, AND CERTIFICATION
16 CRITERIA.—

17 “(1) IN GENERAL.—Not later than December
18 31, 2009, the Secretary shall, through the rule-
19 making process described in section 3004(a), adopt
20 an initial set of standards, implementation specifica-
21 tions, and certification criteria for the areas required
22 for consideration under section 3002(b)(2)(B).

23 “(2) APPLICATION OF CURRENT STANDARDS,
24 IMPLEMENTATION SPECIFICATIONS, AND CERTIFI-
25 CATION CRITERIA.—The standards, implementation

1 specifications, and certification criteria adopted be-
2 fore the date of the enactment of this title through
3 the process existing through the Office of the Na-
4 tional Coordinator for Health Information Tech-
5 nology may be applied towards meeting the require-
6 ment of paragraph (1).

7 **“SEC. 3005. APPLICATION AND USE OF ADOPTED STAND-**
8 **ARDS AND IMPLEMENTATION SPECIFICA-**
9 **TIONS BY FEDERAL AGENCIES.**

10 “For requirements relating to the application and use
11 by Federal agencies of the standards and implementation
12 specifications adopted under section 3004, see section
13 4111 of the HITECH Act.

14 **“SEC. 3006. VOLUNTARY APPLICATION AND USE OF ADOPT-**
15 **ED STANDARDS AND IMPLEMENTATION**
16 **SPECIFICATIONS BY PRIVATE ENTITIES.**

17 “(a) IN GENERAL.—Except as provided under section
18 4112 of the HITECH Act, any standard or implementa-
19 tion specification adopted under section 3004 shall be vol-
20 untary with respect to private entities.

21 “(b) RULE OF CONSTRUCTION.—Nothing in this sub-
22 title shall be construed to require that a private entity that
23 enters into a contract with the Federal Government apply
24 or use the standards and implementation specifications

1 adopted under section 3004 with respect to activities not
2 related to the contract.

3 **“SEC. 3007. FEDERAL HEALTH INFORMATION TECH-**
4 **NOLOGY.**

5 “(a) IN GENERAL.—The National Coordinator shall
6 support the development, routine updating, and provision
7 of qualified EHR technology (as defined in section 3000)
8 consistent with subsections (b) and (c) unless the Sec-
9 retary determines that the needs and demands of pro-
10 viders are being substantially and adequately met through
11 the marketplace.

12 “(b) CERTIFICATION.—In making such EHR tech-
13 nology publicly available, the National Coordinator shall
14 ensure that the qualified EHR technology described in
15 subsection (a) is certified under the program developed
16 under section 3001(c)(3) to be in compliance with applica-
17 ble standards adopted under section 3003(a).

18 “(c) AUTHORIZATION TO CHARGE A NOMINAL
19 FEE.—The National Coordinator may impose a nominal
20 fee for the adoption by a health care provider of the health
21 information technology system developed or approved
22 under subsection (a) and (b). Such fee shall take into ac-
23 count the financial circumstances of smaller providers, low
24 income providers, and providers located in rural or other
25 medically underserved areas.

1 “(d) **RULE OF CONSTRUCTION.**—Nothing in this sec-
2 tion shall be construed to require that a private or govern-
3 ment entity adopt or use the technology provided under
4 this section.

5 **“SEC. 3008. TRANSITIONS.**

6 “(a) **ONCHIT.**—To the extent consistent with sec-
7 tion 3001, all functions, personnel, assets, liabilities, and
8 administrative actions applicable to the National Coordi-
9 nator for Health Information Technology appointed under
10 Executive Order No. 13335 or the Office of such National
11 Coordinator on the date before the date of the enactment
12 of this title shall be transferred to the National Coordi-
13 nator appointed under section 3001(a) and the Office of
14 such National Coordinator as of the date of the enactment
15 of this title.

16 “(b) **AHIC.**—

17 “(1) To the extent consistent with sections
18 3002 and 3003, all functions, personnel, assets, and
19 liabilities applicable to the AHIC Successor, Inc.
20 doing business as the National eHealth Collaborative
21 as of the day before the date of the enactment of
22 this title shall be transferred to the HIT Policy
23 Committee or the HIT Standards Committee, estab-
24 lished under section 3002(a) or 3003(a), as appro-
25 priate, as of the date of the enactment of this title.

1 “(2) In carrying out section 3003(b)(1)(A),
2 until recommendations are made by the HIT Policy
3 Committee, recommendations of the HIT Standards
4 Committee shall be consistent with the most recent
5 recommendations made by such AHIC Successor,
6 Inc.

7 “(c) RULES OF CONSTRUCTION.—

8 “(1) ONCHIT.—Nothing in section 3001 or
9 subsection (a) shall be construed as requiring the
10 creation of a new entity to the extent that the Office
11 of the National Coordinator for Health Information
12 Technology established pursuant to Executive Order
13 No. 13335 is consistent with the provisions of sec-
14 tion 3001.

15 “(2) AHIC.—Nothing in sections 3002 or 3003
16 or subsection (b) shall be construed as prohibiting
17 the AHIC Successor, Inc. doing business as the Na-
18 tional eHealth Collaborative from modifying its char-
19 ter, duties, membership, and any other structure or
20 function required to be consistent with section 3002
21 and 3003 in a manner that would permit the Sec-
22 retary to choose to recognize such AHIC Successor,
23 Inc. as the HIT Policy Committee or the HIT
24 Standards Committee.

1 **“SEC. 3009. RELATION TO HIPAA PRIVACY AND SECURITY**
2 **LAW.**

3 “(a) IN GENERAL.—With respect to the relation of
4 this title to HIPAA privacy and security law:

5 “(1) This title may not be construed as having
6 any effect on the authorities of the Secretary under
7 HIPAA privacy and security law.

8 “(2) The purposes of this title include ensuring
9 that the health information technology standards
10 and implementation specifications adopted under
11 section 3004 take into account the requirements of
12 HIPAA privacy and security law.

13 “(b) DEFINITION.—For purposes of this section, the
14 term ‘HIPAA privacy and security law’ means—

15 “(1) the provisions of part C of title XI of the
16 Social Security Act, section 264 of the Health Insur-
17 ance Portability and Accountability Act of 1996, and
18 subtitle D of title IV of the HITECH Act; and

19 “(2) regulations under such provisions.

20 **“SEC. 3010. AUTHORIZATION FOR APPROPRIATIONS.**

21 “There is authorized to be appropriated to the Office
22 of the National Coordinator for Health Information Tech-
23 nology to carry out this subtitle \$250,000,000 for fiscal
24 year 2009.”.

1 **SEC. 4102. TECHNICAL AMENDMENT.**

2 Section 1171(5) of the Social Security Act (42 U.S.C.
3 1320d) is amended by striking “or C” and inserting “C,
4 or D”.

5 **PART II—APPLICATION AND USE OF ADOPTED**
6 **HEALTH INFORMATION TECHNOLOGY**
7 **STANDARDS; REPORTS**

8 **SEC. 4111. COORDINATION OF FEDERAL ACTIVITIES WITH**
9 **ADOPTED STANDARDS AND IMPLEMENTA-**
10 **TION SPECIFICATIONS.**

11 (a) SPENDING ON HEALTH INFORMATION TECH-
12 NOLOGY SYSTEMS.—As each agency (as defined in the Ex-
13 ecutive order issued on August 22, 2006, relating to pro-
14 moting quality and efficient health care in Federal govern-
15 ment administered or sponsored health care programs) im-
16 plements, acquires, or upgrades health information tech-
17 nology systems used for the direct exchange of individually
18 identifiable health information between agencies and with
19 non-Federal entities, it shall utilize, where available,
20 health information technology systems and products that
21 meet standards and implementation specifications adopted
22 under section 3004 of the Public Health Service Act, as
23 added by section 4101.

24 (b) FEDERAL INFORMATION COLLECTION ACTIVI-
25 TIES.—With respect to a standard or implementation
26 specification adopted under section 3004 of the Public

1 Health Service Act, as added by section 4101, the Presi-
2 dent shall take measures to ensure that Federal activities
3 involving the broad collection and submission of health in-
4 formation are consistent with such standard or implemen-
5 tation specification, respectively, within three years after
6 the date of such adoption.

7 (c) APPLICATION OF DEFINITIONS.—The definitions
8 contained in section 3000 of the Public Health Service
9 Act, as added by section 4101, shall apply for purposes
10 of this part.

11 **SEC. 4112. APPLICATION TO PRIVATE ENTITIES.**

12 Each agency (as defined in such Executive Order
13 issued on August 22, 2006, relating to promoting quality
14 and efficient health care in Federal government adminis-
15 tered or sponsored health care programs) shall require in
16 contracts or agreements with health care providers, health
17 plans, or health insurance issuers that as each provider,
18 plan, or issuer implements, acquires, or upgrades health
19 information technology systems, it shall utilize, where
20 available, health information technology systems and prod-
21 ucts that meet standards and implementation specifica-
22 tions adopted under section 3004 of the Public Health
23 Service Act, as added by section 4101.

1 **SEC. 4113. STUDY AND REPORTS.**

2 (a) REPORT ON ADOPTION OF NATIONWIDE SYS-
3 TEM.—Not later than 2 years after the date of the enact-
4 ment of this Act and annually thereafter, the Secretary
5 of Health and Human Services shall submit to the appro-
6 priate committees of jurisdiction of the House of Rep-
7 resentatives and the Senate a report that—

8 (1) describes the specific actions that have been
9 taken by the Federal Government and private enti-
10 ties to facilitate the adoption of a nationwide system
11 for the electronic use and exchange of health infor-
12 mation;

13 (2) describes barriers to the adoption of such a
14 nationwide system; and

15 (3) contains recommendations to achieve full
16 implementation of such a nationwide system.

17 (b) REIMBURSEMENT INCENTIVE STUDY AND RE-
18 PORT.—

19 (1) STUDY.—The Secretary of Health and
20 Human Services shall carry out, or contract with a
21 private entity to carry out, a study that examines
22 methods to create efficient reimbursement incentives
23 for improving health care quality in Federally quali-
24 fied health centers, rural health clinics, and free
25 clinics.

1 (2) REPORT.—Not later than 2 years after the
2 date of the enactment of this Act, the Secretary of
3 Health and Human Services shall submit to the ap-
4 propriate committees of jurisdiction of the House of
5 Representatives and the Senate a report on the
6 study carried out under paragraph (1).

7 (c) AGING SERVICES TECHNOLOGY STUDY AND RE-
8 PORT.—

9 (1) IN GENERAL.—The Secretary of Health and
10 Human Services shall carry out, or contract with a
11 private entity to carry out, a study of matters relat-
12 ing to the potential use of new aging services tech-
13 nology to assist seniors, individuals with disabilities,
14 and their caregivers throughout the aging process.

15 (2) MATTERS TO BE STUDIED.—The study
16 under paragraph (1) shall include—

17 (A) an evaluation of—

18 (i) methods for identifying current,
19 emerging, and future health technology
20 that can be used to meet the needs of sen-
21 iors and individuals with disabilities and
22 their caregivers across all aging services
23 settings, as specified by the Secretary;

24 (ii) methods for fostering scientific in-
25 novation with respect to aging services

1 technology within the business and aca-
2 demic communities; and

3 (iii) developments in aging services
4 technology in other countries that may be
5 applied in the United States; and

6 (B) identification of—

7 (i) barriers to innovation in aging
8 services technology and devising strategies
9 for removing such barriers; and

10 (ii) barriers to the adoption of aging
11 services technology by health care pro-
12 viders and consumers and devising strate-
13 gies to removing such barriers.

14 (3) REPORT.—Not later than 24 months after
15 the date of the enactment of this Act, the Secretary
16 shall submit to the appropriate committees of juris-
17 diction of the House of Representatives and of the
18 Senate a report on the study carried out under para-
19 graph (1).

20 (4) DEFINITIONS.—For purposes of this sub-
21 section:

22 (A) AGING SERVICES TECHNOLOGY.—The
23 term “aging services technology” means health
24 technology that meets the health care needs of

1 seniors, individuals with disabilities, and the
2 caregivers of such seniors and individuals.

3 (B) SENIOR.—The term “senior” has such
4 meaning as specified by the Secretary.

5 **Subtitle B—Testing of Health**
6 **Information Technology**

7 **SEC. 4201. NATIONAL INSTITUTE FOR STANDARDS AND**
8 **TECHNOLOGY TESTING.**

9 (a) PILOT TESTING OF STANDARDS AND IMPLEMEN-
10 TATION SPECIFICATIONS.—In coordination with the HIT
11 Standards Committee established under section 3003 of
12 the Public Health Service Act, as added by section 4101,
13 with respect to the development of standards and imple-
14 mentation specifications under such section, the Director
15 of the National Institute for Standards and Technology
16 shall test such standards and implementation specifica-
17 tions, as appropriate, in order to assure the efficient im-
18 plementation and use of such standards and implementa-
19 tion specifications.

20 (b) VOLUNTARY TESTING PROGRAM.—In coordina-
21 tion with the HIT Standards Committee established under
22 section 3003 of the Public Health Service Act, as added
23 by section 4101, with respect to the development of stand-
24 ards and implementation specifications under such sec-
25 tion, the Director of the National Institute of Standards

1 and Technology shall support the establishment of a con-
2 formance testing infrastructure, including the develop-
3 ment of technical test beds. The development of this con-
4 formance testing infrastructure may include a program to
5 accredit independent, non-Federal laboratories to perform
6 testing.

7 **SEC. 4202. RESEARCH AND DEVELOPMENT PROGRAMS.**

8 (a) HEALTH CARE INFORMATION ENTERPRISE INTE-
9 GRATION RESEARCH CENTERS.—

10 (1) IN GENERAL.—The Director of the National
11 Institute of Standards and Technology, in consulta-
12 tion with the Director of the National Science Foun-
13 dation and other appropriate Federal agencies, shall
14 establish a program of assistance to institutions of
15 higher education (or consortia thereof which may in-
16 clude nonprofit entities and Federal Government
17 laboratories) to establish multidisciplinary Centers
18 for Health Care Information Enterprise Integration.

19 (2) REVIEW; COMPETITION.—Grants shall be
20 awarded under this subsection on a merit-reviewed,
21 competitive basis.

22 (3) PURPOSE.—The purposes of the Centers de-
23 scribed in paragraph (1) shall be—

24 (A) to generate innovative approaches to
25 health care information enterprise integration

1 by conducting cutting-edge, multidisciplinary
2 research on the systems challenges to health
3 care delivery; and

4 (B) the development and use of health in-
5 formation technologies and other complemen-
6 tary fields.

7 (4) RESEARCH AREAS.—Research areas may in-
8 clude—

9 (A) interfaces between human information
10 and communications technology systems;

11 (B) voice-recognition systems;

12 (C) software that improves interoperability
13 and connectivity among health information sys-
14 tems;

15 (D) software dependability in systems crit-
16 ical to health care delivery;

17 (E) measurement of the impact of informa-
18 tion technologies on the quality and productivity
19 of health care;

20 (F) health information enterprise manage-
21 ment;

22 (G) health information technology security
23 and integrity; and

24 (H) relevant health information technology
25 to reduce medical errors.

1 (5) APPLICATIONS.—An institution of higher
2 education (or a consortium thereof) seeking funding
3 under this subsection shall submit an application to
4 the Director of the National Institute of Standards
5 and Technology at such time, in such manner, and
6 containing such information as the Director may re-
7 quire. The application shall include, at a minimum,
8 a description of—

9 (A) the research projects that will be un-
10 dertaken by the Center established pursuant to
11 assistance under paragraph (1) and the respec-
12 tive contributions of the participating entities;

13 (B) how the Center will promote active col-
14 laboration among scientists and engineers from
15 different disciplines, such as information tech-
16 nology, biologic sciences, management, social
17 sciences, and other appropriate disciplines;

18 (C) technology transfer activities to dem-
19 onstrate and diffuse the research results, tech-
20 nologies, and knowledge; and

21 (D) how the Center will contribute to the
22 education and training of researchers and other
23 professionals in fields relevant to health infor-
24 mation enterprise integration.

1 (b) NATIONAL INFORMATION TECHNOLOGY RE-
2 SEARCH AND DEVELOPMENT PROGRAM.—The National
3 High-Performance Computing Program established by
4 section 101 of the High-Performance Computing Act of
5 1991 (15 U.S.C. 5511) shall coordinate Federal research
6 and development programs related to the development and
7 deployment of health information technology, including ac-
8 tivities related to—

9 (1) computer infrastructure;

10 (2) data security;

11 (3) development of large-scale, distributed, reli-
12 able computing systems;

13 (4) wired, wireless, and hybrid high-speed net-
14 working;

15 (5) development of software and software-inten-
16 sive systems;

17 (6) human-computer interaction and informa-
18 tion management technologies; and

19 (7) the social and economic implications of in-
20 formation technology.

1 **Subtitle C—Incentives for the Use**
2 **of Health Information Technology**

3 **PART I—GRANTS AND LOANS FUNDING**

4 **SEC. 4301. GRANT, LOAN, AND DEMONSTRATION PRO-**
5 **GRAMS.**

6 Title XXX of the Public Health Service Act, as added
7 by section 4101, is amended by adding at the end the fol-
8 lowing new subtitle:

9 **“Subtitle B—Incentives for the Use**
10 **of Health Information Technology**

11 **“SEC. 3011. IMMEDIATE FUNDING TO STRENGTHEN THE**
12 **HEALTH INFORMATION TECHNOLOGY INFRA-**
13 **STRUCTURE.**

14 “(a) IN GENERAL.—The Secretary shall, using
15 amounts appropriated under section 3018, invest in the
16 infrastructure necessary to allow for and promote the elec-
17 tronic exchange and use of health information for each
18 individual in the United States consistent with the goals
19 outlined in the strategic plan developed by the National
20 Coordinator (and as available) under section 3001. To the
21 greatest extent practicable, the Secretary shall ensure that
22 any funds so appropriated shall be used for the acquisition
23 of health information technology that meets standards and
24 certification criteria adopted before the date of the enact-
25 ment of this title until such date as the standards are

1 adopted under section 3004. The Secretary shall invest
2 funds through the different agencies with expertise in such
3 goals, such as the Office of the National Coordinator for
4 Health Information Technology, the Health Resources and
5 Services Administration, the Agency for Healthcare Re-
6 search and Quality, the Centers of Medicare & Medicaid
7 Services, the Centers for Disease Control and Prevention,
8 and the Indian Health Service to support the following:

9 “(1) Health information technology architecture
10 that will support the nationwide electronic exchange
11 and use of health information in a secure, private,
12 and accurate manner, including connecting health
13 information exchanges, and which may include up-
14 dating and implementing the infrastructure nec-
15 essary within different agencies of the Department
16 of Health and Human Services to support the elec-
17 tronic use and exchange of health information.

18 “(2) Development and adoption of appropriate
19 certified electronic health records for categories of
20 providers, as defined in section 3000, not eligible for
21 support under title XVIII or XIX of the Social Secu-
22 rity Act for the adoption of such records.

23 “(3) Training on and dissemination of informa-
24 tion on best practices to integrate health information
25 technology, including electronic health records, into

1 a provider’s delivery of care, consistent with best
2 practices learned from the Health Information Tech-
3 nology Research Center developed under section
4 3012(b), including community health centers receiv-
5 ing assistance under section 330, covered entities
6 under section 340B, and providers participating in
7 one or more of the programs under titles XVIII,
8 XIX, and XXI of the Social Security Act (relating
9 to Medicare, Medicaid, and the State Children’s
10 Health Insurance Program).

11 “(4) Infrastructure and tools for the promotion
12 of telemedicine, including coordination among Fed-
13 eral agencies in the promotion of telemedicine.

14 “(5) Promotion of the interoperability of clinical
15 data repositories or registries.

16 “(6) Promotion of technologies and best prac-
17 tices that enhance the protection of health informa-
18 tion by all holders of individually identifiable health
19 information.

20 “(7) Improvement and expansion of the use of
21 health information technology by public health de-
22 partments.

23 “(8) Provision of \$300 million to support re-
24 gional or sub-national efforts towards health infor-
25 mation exchange.

1 “(b) COORDINATION.—The Secretary shall ensure
2 funds under this section are used in a coordinated manner
3 with other health information promotion activities.

4 “(c) ADDITIONAL USE OF FUNDS.—In addition to
5 using funds as provided in subsection (a), the Secretary
6 may use amounts appropriated under section 3018 to
7 carry out health information technology activities that are
8 provided for under laws in effect on the date of the enact-
9 ment of this title.

10 **“SEC. 3012. HEALTH INFORMATION TECHNOLOGY IMPLE-**
11 **MENTATION ASSISTANCE.**

12 “(a) HEALTH INFORMATION TECHNOLOGY EXTEN-
13 SION PROGRAM.—To assist health care providers to adopt,
14 implement, and effectively use certified EHR technology
15 that allows for the electronic exchange and use of health
16 information, the Secretary, acting through the Office of
17 the National Coordinator, shall establish a health informa-
18 tion technology extension program to provide health infor-
19 mation technology assistance services to be carried out
20 through the Department of Health and Human Services.
21 The National Coordinator shall consult with other Federal
22 agencies with demonstrated experience and expertise in in-
23 formation technology services, such as the National Insti-
24 tute of Standards and Technology, in developing and im-
25 plementing this program.

1 “(b) HEALTH INFORMATION TECHNOLOGY RE-
2 SEARCH CENTER.—

3 “(1) IN GENERAL.—The Secretary shall create
4 a Health Information Technology Research Center
5 (in this section referred to as the ‘Center’) to pro-
6 vide technical assistance and develop or recognize
7 best practices to support and accelerate efforts to
8 adopt, implement, and effectively utilize health infor-
9 mation technology that allows for the electronic ex-
10 change and use of information in compliance with
11 standards, implementation specifications, and certifi-
12 cation criteria adopted under section 3004.

13 “(2) INPUT.—The Center shall incorporate
14 input from—

15 “(A) other Federal agencies with dem-
16 onstrated experience and expertise in informa-
17 tion technology services such as the National
18 Institute of Standards and Technology;

19 “(B) users of health information tech-
20 nology, such as providers and their support and
21 clerical staff and others involved in the care and
22 care coordination of patients, from the health
23 care and health information technology indus-
24 try; and

25 “(C) others as appropriate.

1 “(3) PURPOSES.—The purposes of the Center
2 are to—

3 “(A) provide a forum for the exchange of
4 knowledge and experience;

5 “(B) accelerate the transfer of lessons
6 learned from existing public and private sector
7 initiatives, including those currently receiving
8 Federal financial support;

9 “(C) assemble, analyze, and widely dis-
10 seminate evidence and experience related to the
11 adoption, implementation, and effective use of
12 health information technology that allows for
13 the electronic exchange and use of information
14 including through the regional centers described
15 in subsection (c);

16 “(D) provide technical assistance for the
17 establishment and evaluation of regional and
18 local health information networks to facilitate
19 the electronic exchange of information across
20 health care settings and improve the quality of
21 health care;

22 “(E) provide technical assistance for the
23 development and dissemination of solutions to
24 barriers to the exchange of electronic health in-
25 formation; and

1 “(F) learn about effective strategies to
2 adopt and utilize health information technology
3 in medically underserved communities.

4 “(c) HEALTH INFORMATION TECHNOLOGY RE-
5 REGIONAL EXTENSION CENTERS.—

6 “(1) IN GENERAL.—The Secretary shall provide
7 assistance for the creation and support of regional
8 centers (in this subsection referred to as ‘regional
9 centers’) to provide technical assistance and dissemi-
10 nate best practices and other information learned
11 from the Center to support and accelerate efforts to
12 adopt, implement, and effectively utilize health infor-
13 mation technology that allows for the electronic ex-
14 change and use of information in compliance with
15 standards, implementation specifications, and certifi-
16 cation criteria adopted under section 3004. Activities
17 conducted under this subsection shall be consistent
18 with the strategic plan developed by the National
19 Coordinator, (and, as available) under section 3001.

20 “(2) AFFILIATION.—Regional centers shall be
21 affiliated with any United States-based nonprofit in-
22 stitution or organization, or group thereof, that ap-
23 plies and is awarded financial assistance under this
24 section. Individual awards shall be decided on the
25 basis of merit.

1 “(3) OBJECTIVE.—The objective of the regional
2 centers is to enhance and promote the adoption of
3 health information technology through—

4 “(A) assistance with the implementation,
5 effective use, upgrading, and ongoing mainte-
6 nance of health information technology, includ-
7 ing electronic health records, to healthcare pro-
8 viders nationwide;

9 “(B) broad participation of individuals
10 from industry, universities, and State govern-
11 ments;

12 “(C) active dissemination of best practices
13 and research on the implementation, effective
14 use, upgrading, and ongoing maintenance of
15 health information technology, including elec-
16 tronic health records, to health care providers
17 in order to improve the quality of healthcare
18 and protect the privacy and security of health
19 information;

20 “(D) participation, to the extent prac-
21 ticable, in health information exchanges;

22 “(E) utilization, when appropriate, of the
23 expertise and capability that exists in Federal
24 agencies other than the Department; and

1 “(F) integration of health information
2 technology, including electronic health records,
3 into the initial and ongoing training of health
4 professionals and others in the healthcare in-
5 dustry that would be instrumental to improving
6 the quality of healthcare through the smooth
7 and accurate electronic use and exchange of
8 health information.

9 “(4) REGIONAL ASSISTANCE.—Each regional
10 center shall aim to provide assistance and education
11 to all providers in a region, but shall prioritize any
12 direct assistance first to the following:

13 “(A) Public or not-for-profit hospitals or
14 critical access hospitals.

15 “(B) Federally qualified health centers (as
16 defined in section 1861(aa)(4) of the Social Se-
17 curity Act).

18 “(C) Entities that are located in rural and
19 other areas that serve uninsured, underinsured,
20 and medically underserved individuals (regard-
21 less of whether such area is urban or rural).

22 “(D) Individual or small group practices
23 (or a consortium thereof) that are primarily fo-
24 cused on primary care.

1 “(5) FINANCIAL SUPPORT.—The Secretary may
2 provide financial support to any regional center cre-
3 ated under this subsection for a period not to exceed
4 four years. The Secretary may not provide more
5 than 50 percent of the capital and annual operating
6 and maintenance funds required to create and main-
7 tain such a center, except in an instance of national
8 economic conditions which would render this cost-
9 share requirement detrimental to the program and
10 upon notification to Congress as to the justification
11 to waive the cost-share requirement.

12 “(6) NOTICE OF PROGRAM DESCRIPTION AND
13 AVAILABILITY OF FUNDS.—The Secretary shall pub-
14 lish in the Federal Register, not later than 90 days
15 after the date of the enactment of this title, a draft
16 description of the program for establishing regional
17 centers under this subsection. Such description shall
18 include the following:

19 “(A) A detailed explanation of the program
20 and the programs goals.

21 “(B) Procedures to be followed by the ap-
22 plicants.

23 “(C) Criteria for determining qualified ap-
24 plicants.

1 “(D) Maximum support levels expected to
2 be available to centers under the program.

3 “(7) APPLICATION REVIEW.—The Secretary
4 shall subject each application under this subsection
5 to merit review. In making a decision whether to ap-
6 prove such application and provide financial support,
7 the Secretary shall consider at a minimum the mer-
8 its of the application, including those portions of the
9 application regarding—

10 “(A) the ability of the applicant to provide
11 assistance under this subsection and utilization
12 of health information technology appropriate to
13 the needs of particular categories of health care
14 providers;

15 “(B) the types of service to be provided to
16 health care providers;

17 “(C) geographical diversity and extent of
18 service area; and

19 “(D) the percentage of funding and
20 amount of in-kind commitment from other
21 sources.

22 “(8) BIENNIAL EVALUATION.—Each regional
23 center which receives financial assistance under this
24 subsection shall be evaluated biennially by an evalua-
25 tion panel appointed by the Secretary. Each evalua-

1 tion panel shall be composed of private experts, none
2 of whom shall be connected with the center involved,
3 and of Federal officials. Each evaluation panel shall
4 measure the involved center's performance against
5 the objective specified in paragraph (3). The Sec-
6 retary shall not continue to provide funding to a re-
7 gional center unless its evaluation is overall positive.

8 “(9) CONTINUING SUPPORT.—After the second
9 year of assistance under this subsection, a regional
10 center may receive additional support under this
11 subsection if it has received positive evaluations and
12 a finding by the Secretary that continuation of Fed-
13 eral funding to the center was in the best interest
14 of provision of health information technology exten-
15 sion services.

16 **“SEC. 3013. STATE GRANTS TO PROMOTE HEALTH INFOR-**
17 **MATION TECHNOLOGY.**

18 “(a) IN GENERAL.—The Secretary, acting through
19 the National Coordinator, shall establish a program in ac-
20 cordance with this section to facilitate and expand the
21 electronic movement and use of health information among
22 organizations according to nationally recognized stand-
23 ards.

24 “(b) PLANNING GRANTS.—The Secretary may award
25 a grant to a State or qualified State-designated entity (as

1 described in subsection (f)) that submits an application
2 to the Secretary at such time, in such manner, and con-
3 taining such information as the Secretary may specify, for
4 the purpose of planning activities described in subsection
5 (d).

6 “(c) IMPLEMENTATION GRANTS.—The Secretary
7 may award a grant to a State or qualified State designated
8 entity that—

9 “(1) has submitted, and the Secretary has ap-
10 proved, a plan described in subsection (e) (regardless
11 of whether such plan was prepared using amounts
12 awarded under subsection (b)); and

13 “(2) submits an application at such time, in
14 such manner, and containing such information as
15 the Secretary may specify.

16 “(d) USE OF FUNDS.—Amounts received under a
17 grant under subsection (c) shall be used to conduct activi-
18 ties to facilitate and expand the electronic movement and
19 use of health information among organizations according
20 to nationally recognized standards through activities that
21 include—

22 “(1) enhancing broad and varied participation
23 in the authorized and secure nationwide electronic
24 use and exchange of health information;

1 “(2) identifying State or local resources avail-
2 able towards a nationwide effort to promote health
3 information technology;

4 “(3) complementing other Federal grants, pro-
5 grams, and efforts towards the promotion of health
6 information technology;

7 “(4) providing technical assistance for the de-
8 velopment and dissemination of solutions to barriers
9 to the exchange of electronic health information;

10 “(5) promoting effective strategies to adopt and
11 utilize health information technology in medically
12 underserved communities;

13 “(6) assisting patients in utilizing health infor-
14 mation technology;

15 “(7) encouraging clinicians to work with Health
16 Information Technology Regional Extension Centers
17 as described in section 3012, to the extent they are
18 available and valuable;

19 “(8) supporting public health agencies’ author-
20 ized use of and access to electronic health informa-
21 tion;

22 “(9) promoting the use of electronic health
23 records for quality improvement including through
24 quality measures reporting; and

1 “(10) such other activities as the Secretary may
2 specify.

3 “(e) PLAN.—

4 “(1) IN GENERAL.—A plan described in this
5 subsection is a plan that describes the activities to
6 be carried out by a State or by the qualified State-
7 designated entity within such State to facilitate and
8 expand the electronic movement and use of health
9 information among organizations according to na-
10 tionally recognized standards and implementation
11 specifications.

12 “(2) REQUIRED ELEMENTS.—A plan described
13 in paragraph (1) shall—

14 “(A) be pursued in the public interest;

15 “(B) be consistent with the strategic plan
16 developed by the National Coordinator, (and, as
17 available) under section 3001;

18 “(C) include a description of the ways the
19 State or qualified State-designated entity will
20 carry out the activities described in subsection
21 (b); and

22 “(D) contain such elements as the Sec-
23 retary may require.

1 “(f) QUALIFIED STATE-DESIGNATED ENTITY.—For
2 purposes of this section, to be a qualified State-designated
3 entity, with respect to a State, an entity shall—

4 “(1) be designated by the State as eligible to
5 receive awards under this section;

6 “(2) be a not-for-profit entity with broad stake-
7 holder representation on its governing board;

8 “(3) demonstrate that one of its principal goals
9 is to use information technology to improve health
10 care quality and efficiency through the authorized
11 and secure electronic exchange and use of health in-
12 formation;

13 “(4) adopt nondiscrimination and conflict of in-
14 terest policies that demonstrate a commitment to
15 open, fair, and nondiscriminatory participation by
16 stakeholders; and

17 “(5) conform to such other requirements as the
18 Secretary may establish.

19 “(g) REQUIRED CONSULTATION.—In carrying out
20 activities described in subsections (b) and (c), a State or
21 qualified State-designated entity shall consult with and
22 consider the recommendations of—

23 “(1) health care providers (including providers
24 that provide services to low income and underserved
25 populations);

1 “(2) health plans;

2 “(3) patient or consumer organizations that
3 represent the population to be served;

4 “(4) health information technology vendors;

5 “(5) health care purchasers and employers;

6 “(6) public health agencies;

7 “(7) health professions schools, universities and
8 colleges;

9 “(8) clinical researchers;

10 “(9) other users of health information tech-
11 nology such as the support and clerical staff of pro-
12 viders and others involved in the care and care co-
13 ordination of patients; and

14 “(10) such other entities, as may be determined
15 appropriate by the Secretary.

16 “(h) CONTINUOUS IMPROVEMENT.—The Secretary
17 shall annually evaluate the activities conducted under this
18 section and shall, in awarding grants under this section,
19 implement the lessons learned from such evaluation in a
20 manner so that awards made subsequent to each such
21 evaluation are made in a manner that, in the determina-
22 tion of the Secretary, will lead towards the greatest im-
23 provement in quality of care, decrease in costs, and the
24 most effective authorized and secure electronic exchange
25 of health information.

1 “(i) REQUIRED MATCH.—

2 “(1) IN GENERAL.—For a fiscal year (begin-
3 ning with fiscal year 2011), the Secretary may not
4 make a grant under this section to a State unless
5 the State agrees to make available non-Federal con-
6 tributions (which may include in-kind contributions)
7 toward the costs of a grant awarded under sub-
8 section (c) in an amount equal to—

9 “(A) for fiscal year 2011, not less than \$1
10 for each \$10 of Federal funds provided under
11 the grant;

12 “(B) for fiscal year 2012, not less than \$1
13 for each \$7 of Federal funds provided under
14 the grant; and

15 “(C) for fiscal year 2013 and each subse-
16 quent fiscal year, not less than \$1 for each \$3
17 of Federal funds provided under the grant.

18 “(2) AUTHORITY TO REQUIRE STATE MATCH
19 FOR FISCAL YEARS BEFORE FISCAL YEAR 2011.—For
20 any fiscal year during the grant program under this
21 section before fiscal year 2011, the Secretary may
22 determine the extent to which there shall be required
23 a non-Federal contribution from a State receiving a
24 grant under this section.

1 **“SEC. 3014. COMPETITIVE GRANTS TO STATES AND INDIAN**
2 **TRIBES FOR THE DEVELOPMENT OF LOAN**
3 **PROGRAMS TO FACILITATE THE WIDE-**
4 **SPREAD ADOPTION OF CERTIFIED EHR TECH-**
5 **NOLOGY.**

6 “(a) IN GENERAL.—The National Coordinator may
7 award competitive grants to eligible entities for the estab-
8 lishment of programs for loans to health care providers
9 to conduct the activities described in subsection (e).

10 “(b) ELIGIBLE ENTITY DEFINED.—For purposes of
11 this subsection, the term ‘eligible entity’ means a State
12 or Indian tribe (as defined in the Indian Self-Determina-
13 tion and Education Assistance Act) that—

14 “(1) submits to the National Coordinator an
15 application at such time, in such manner, and con-
16 taining such information as the National Coordi-
17 nator may require;

18 “(2) submits to the National Coordinator a
19 strategic plan in accordance with subsection (d) and
20 provides to the National Coordinator assurances that
21 the entity will update such plan annually in accord-
22 ance with such subsection;

23 “(3) provides assurances to the National Coordi-
24 nator that the entity will establish a Loan Fund
25 in accordance with subsection (c);

1 “(4) provides assurances to the National Coordi-
2 nator that the entity will not provide a loan from
3 the Loan Fund to a health care provider unless the
4 provider agrees to—

5 “(A) submit reports on quality measures
6 adopted by the Federal Government (by not
7 later than 90 days after the date on which such
8 measures are adopted), to—

9 “(i) the Administrator of the Centers
10 for Medicare & Medicaid Services (or his
11 or her designee), in the case of an entity
12 participating in the Medicare program
13 under title XVIII of the Social Security
14 Act or the Medicaid program under title
15 XIX of such Act; or

16 “(ii) the Secretary in the case of other
17 entities;

18 “(B) demonstrate to the satisfaction of the
19 Secretary (through criteria established by the
20 Secretary) that any certified EHR technology
21 purchased, improved, or otherwise financially
22 supported under a loan under this section is
23 used to exchange health information in a man-
24 ner that, in accordance with law and standards
25 (as adopted under section 3004) applicable to

1 the exchange of information, improves the qual-
2 ity of health care, such as promoting care co-
3 ordination; and

4 “(C) comply with such other requirements
5 as the entity or the Secretary may require;

6 “(D) include a plan on how health care
7 providers involved intend to maintain and sup-
8 port the certified EHR technology over time;

9 “(E) include a plan on how the health care
10 providers involved intend to maintain and sup-
11 port the certified EHR technology that would
12 be purchased with such loan, including the type
13 of resources expected to be involved and any
14 such other information as the State or Indian
15 Tribe, respectively, may require; and

16 “(5) agrees to provide matching funds in ac-
17 cordance with subsection (h).

18 “(c) ESTABLISHMENT OF FUND.—For purposes of
19 subsection (b)(3), an eligible entity shall establish a cer-
20 tified EHR technology loan fund (referred to in this sub-
21 section as a ‘Loan Fund’) and comply with the other re-
22 quirements contained in this section. A grant to an eligible
23 entity under this section shall be deposited in the Loan
24 Fund established by the eligible entity. No funds author-
25 ized by other provisions of this title to be used for other

1 purposes specified in this title shall be deposited in any
2 Loan Fund.

3 “(d) STRATEGIC PLAN.—

4 “(1) IN GENERAL.—For purposes of subsection
5 (b)(2), a strategic plan of an eligible entity under
6 this subsection shall identify the intended uses of
7 amounts available to the Loan Fund of such entity.

8 “(2) CONTENTS.—A strategic plan under para-
9 graph (1), with respect to a Loan Fund of an eligi-
10 ble entity, shall include for a year the following:

11 “(A) A list of the projects to be assisted
12 through the Loan Fund during such year.

13 “(B) A description of the criteria and
14 methods established for the distribution of
15 funds from the Loan Fund during the year.

16 “(C) A description of the financial status
17 of the Loan Fund as of the date of submission
18 of the plan.

19 “(D) The short-term and long-term goals
20 of the Loan Fund.

21 “(e) USE OF FUNDS.—Amounts deposited in a Loan
22 Fund, including loan repayments and interest earned on
23 such amounts, shall be used only for awarding loans or
24 loan guarantees, making reimbursements described in sub-
25 section (g)(4)(A), or as a source of reserve and security

1 for leveraged loans, the proceeds of which are deposited
2 in the Loan Fund established under subsection (c). Loans
3 under this section may be used by a health care provider
4 to—

5 “(1) facilitate the purchase of certified EHR
6 technology;

7 “(2) enhance the utilization of certified EHR
8 technology;

9 “(3) train personnel in the use of such tech-
10 nology; or

11 “(4) improve the secure electronic exchange of
12 health information.

13 “(f) TYPES OF ASSISTANCE.—Except as otherwise
14 limited by applicable State law, amounts deposited into a
15 Loan Fund under this section may only be used for the
16 following:

17 “(1) To award loans that comply with the fol-
18 lowing:

19 “(A) The interest rate for each loan shall
20 not exceed the market interest rate.

21 “(B) The principal and interest payments
22 on each loan shall commence not later than 1
23 year after the date the loan was awarded, and
24 each loan shall be fully amortized not later than
25 10 years after the date of the loan.

1 “(C) The Loan Fund shall be credited with
2 all payments of principal and interest on each
3 loan awarded from the Loan Fund.

4 “(2) To guarantee, or purchase insurance for,
5 a local obligation (all of the proceeds of which fi-
6 nance a project eligible for assistance under this
7 subsection) if the guarantee or purchase would im-
8 prove credit market access or reduce the interest
9 rate applicable to the obligation involved.

10 “(3) As a source of revenue or security for the
11 payment of principal and interest on revenue or gen-
12 eral obligation bonds issued by the eligible entity if
13 the proceeds of the sale of the bonds will be depos-
14 ited into the Loan Fund.

15 “(4) To earn interest on the amounts deposited
16 into the Loan Fund.

17 “(5) To make reimbursements described in sub-
18 section (g)(4)(A).

19 “(g) ADMINISTRATION OF LOAN FUNDS.—

20 “(1) COMBINED FINANCIAL ADMINISTRATION.—
21 An eligible entity may (as a convenience and to
22 avoid unnecessary administrative costs) combine, in
23 accordance with applicable State law, the financial
24 administration of a Loan Fund established under
25 this subsection with the financial administration of

1 any other revolving fund established by the entity if
2 otherwise not prohibited by the law under which the
3 Loan Fund was established.

4 “(2) COST OF ADMINISTERING FUND.—Each el-
5 igible entity may annually use not to exceed 4 per-
6 cent of the funds provided to the entity under a
7 grant under this section to pay the reasonable costs
8 of the administration of the programs under this
9 section, including the recovery of reasonable costs
10 expended to establish a Loan Fund which are in-
11 curred after the date of the enactment of this title.

12 “(3) GUIDANCE AND REGULATIONS.—The Na-
13 tional Coordinator shall publish guidance and pro-
14 mulgate regulations as may be necessary to carry
15 out the provisions of this section, including—

16 “(A) provisions to ensure that each eligible
17 entity commits and expends funds allotted to
18 the entity under this section as efficiently as
19 possible in accordance with this title and appli-
20 cable State laws; and

21 “(B) guidance to prevent waste, fraud, and
22 abuse.

23 “(4) PRIVATE SECTOR CONTRIBUTIONS.—

24 “(A) IN GENERAL.—A Loan Fund estab-
25 lished under this section may accept contribu-

1 tions from private sector entities, except that
2 such entities may not specify the recipient or
3 recipients of any loan issued under this sub-
4 section. An eligible entity may agree to reim-
5 burse a private sector entity for any contribu-
6 tion made under this subparagraph, except that
7 the amount of such reimbursement may not be
8 greater than the principal amount of the con-
9 tribution made.

10 “(B) AVAILABILITY OF INFORMATION.—

11 An eligible entity shall make publicly available
12 the identity of, and amount contributed by, any
13 private sector entity under subparagraph (A)
14 and may issue letters of commendation or make
15 other awards (that have no financial value) to
16 any such entity.

17 “(h) MATCHING REQUIREMENTS.—

18 “(1) IN GENERAL.—The National Coordinator
19 may not make a grant under subsection (a) to an el-
20 igible entity unless the entity agrees to make avail-
21 able (directly or through donations from public or
22 private entities) non-Federal contributions in cash to
23 the costs of carrying out the activities for which the
24 grant is awarded in an amount equal to not less

1 than \$1 for each \$5 of Federal funds provided under
2 the grant.

3 “(2) DETERMINATION OF AMOUNT OF NON-
4 FEDERAL CONTRIBUTION.—In determining the
5 amount of non-Federal contributions that an eligible
6 entity has provided pursuant to subparagraph (A),
7 the National Coordinator may not include any
8 amounts provided to the entity by the Federal Gov-
9 ernment.

10 “(i) EFFECTIVE DATE.—The Secretary may not
11 make an award under this section prior to January 1,
12 2010.

13 **“SEC. 3015. DEMONSTRATION PROGRAM TO INTEGRATE IN-**
14 **FORMATION TECHNOLOGY INTO CLINICAL**
15 **EDUCATION.**

16 “(a) IN GENERAL.—The Secretary may award grants
17 under this section to carry out demonstration projects to
18 develop academic curricula integrating certified EHR
19 technology in the clinical education of health professionals.
20 Such awards shall be made on a competitive basis and
21 pursuant to peer review.

22 “(b) ELIGIBILITY.—To be eligible to receive a grant
23 under subsection (a), an entity shall—

1 “(1) submit to the Secretary an application at
2 such time, in such manner, and containing such in-
3 formation as the Secretary may require;

4 “(2) submit to the Secretary a strategic plan
5 for integrating certified EHR technology in the clin-
6 ical education of health professionals to reduce med-
7 ical errors and enhance health care quality;

8 “(3) be—

9 “(A) a school of medicine, osteopathic
10 medicine, dentistry, or pharmacy, a graduate
11 program in behavioral or mental health, or any
12 other graduate health professions school;

13 “(B) a graduate school of nursing or phy-
14 sician assistant studies;

15 “(C) a consortium of two or more schools
16 described in subparagraph (A) or (B); or

17 “(D) an institution with a graduate med-
18 ical education program in medicine, osteopathic
19 medicine, dentistry, pharmacy, nursing, or phy-
20 sician assistance studies;

21 “(4) provide for the collection of data regarding
22 the effectiveness of the demonstration project to be
23 funded under the grant in improving the safety of
24 patients, the efficiency of health care delivery, and
25 in increasing the likelihood that graduates of the

1 grantee will adopt and incorporate certified EHR
2 technology, in the delivery of health care services;
3 and

4 “(5) provide matching funds in accordance with
5 subsection (d).

6 “(c) USE OF FUNDS.—

7 “(1) IN GENERAL.—With respect to a grant
8 under subsection (a), an eligible entity shall—

9 “(A) use grant funds in collaboration with
10 2 or more disciplines; and

11 “(B) use grant funds to integrate certified
12 EHR technology into community-based clinical
13 education.

14 “(2) LIMITATION.—An eligible entity shall not
15 use amounts received under a grant under sub-
16 section (a) to purchase hardware, software, or serv-
17 ices.

18 “(d) FINANCIAL SUPPORT.—The Secretary may not
19 provide more than 50 percent of the costs of any activity
20 for which assistance is provided under subsection (a), ex-
21 cept in an instance of national economic conditions which
22 would render the cost-share requirement under this sub-
23 section detrimental to the program and upon notification
24 to Congress as to the justification to waive the cost-share
25 requirement.

1 “(e) EVALUATION.—The Secretary shall take such
2 action as may be necessary to evaluate the projects funded
3 under this section and publish, make available, and dis-
4 seminate the results of such evaluations on as wide a basis
5 as is practicable.

6 “(f) REPORTS.—Not later than 1 year after the date
7 of enactment of this title, and annually thereafter, the Sec-
8 retary shall submit to the Committee on Health, Edu-
9 cation, Labor, and Pensions and the Committee on Fi-
10 nance of the Senate, and the Committee on Energy and
11 Commerce of the House of Representatives a report
12 that—

13 “(1) describes the specific projects established
14 under this section; and

15 “(2) contains recommendations for Congress
16 based on the evaluation conducted under subsection
17 (e).

18 **“SEC. 3016. INFORMATION TECHNOLOGY PROFESSIONALS**
19 **ON HEALTH CARE.**

20 “(a) IN GENERAL.—The Secretary, in consultation
21 with the Director of the National Science Foundation,
22 shall provide assistance to institutions of higher education
23 (or consortia thereof) to establish or expand medical
24 health informatics education programs, including certifi-
25 cation, undergraduate, and masters degree programs, for

1 both health care and information technology students to
2 ensure the rapid and effective utilization and development
3 of health information technologies (in the United States
4 health care infrastructure).

5 “(b) ACTIVITIES.—Activities for which assistance
6 may be provided under subsection (a) may include the fol-
7 lowing:

8 “(1) Developing and revising curricula in med-
9 ical health informatics and related disciplines.

10 “(2) Recruiting and retaining students to the
11 program involved.

12 “(3) Acquiring equipment necessary for student
13 instruction in these programs, including the installa-
14 tion of testbed networks for student use.

15 “(4) Establishing or enhancing bridge programs
16 in the health informatics fields between community
17 colleges and universities.

18 “(c) PRIORITY.—In providing assistance under sub-
19 section (a), the Secretary shall give preference to the fol-
20 lowing:

21 “(1) Existing education and training programs.

22 “(2) Programs designed to be completed in less
23 than six months.

24 “(d) FINANCIAL SUPPORT.—The Secretary may not
25 provide more than 50 percent of the costs of any activity

1 for which assistance is provided under subsection (a), ex-
2 cept in an instance of national economic conditions which
3 would render the cost-share requirement under this sub-
4 section detrimental to the program and upon notification
5 to Congress as to the justification to waive the cost-share
6 requirement.

7 **“SEC. 3017. GENERAL GRANT AND LOAN PROVISIONS.**

8 “(a) **REPORTS.**—The Secretary may require that an
9 entity receiving assistance under this subtitle shall submit
10 to the Secretary, not later than the date that is 1 year
11 after the date of receipt of such assistance, a report that
12 includes—

13 “(1) an analysis of the effectiveness of the ac-
14 tivities for which the entity receives such assistance,
15 as compared to the goals for such activities; and

16 “(2) an analysis of the impact of the project on
17 health care quality and safety.

18 “(b) **REQUIREMENT TO IMPROVE QUALITY OF CARE**
19 **AND DECREASE IN COSTS.**—The National Coordinator
20 shall annually evaluate the activities conducted under this
21 subtitle and shall, in awarding grants, implement the les-
22 sons learned from such evaluation in a manner so that
23 awards made subsequent to each such evaluation are made
24 in a manner that, in the determination of the National

1 Coordinator, will result in the greatest improvement in the
2 quality and efficiency of health care.

3 **“SEC. 3018. AUTHORIZATION FOR APPROPRIATIONS.**

4 “For the purposes of carrying out this subtitle, there
5 is authorized to be appropriated such sums as may be nec-
6 essary for each of the fiscal years 2009 through 2013.
7 Amounts so appropriated shall remain available until ex-
8 pended.”.

9 **PART II—MEDICARE PROGRAM**

10 **SEC. 4311. INCENTIVES FOR ELIGIBLE PROFESSIONALS.**

11 (a) INCENTIVE PAYMENTS.—Section 1848 of the So-
12 cial Security Act (42 U.S.C. 1395w-4) is amended by add-
13 ing at the end the following new subsection:

14 “(o) INCENTIVES FOR ADOPTION AND MEANINGFUL
15 USE OF CERTIFIED EHR TECHNOLOGY.—

16 “(1) INCENTIVE PAYMENTS.—

17 “(A) IN GENERAL.—Subject to the suc-
18 ceeding subparagraphs of this paragraph, with
19 respect to covered professional services fur-
20 nished by an eligible professional during a pay-
21 ment year (as defined in subparagraph (E)), if
22 the eligible professional is a meaningful EHR
23 user (as determined under paragraph (2)) for
24 the reporting period with respect to such year,
25 in addition to the amount otherwise paid under

1 this part, there also shall be paid to the eligible
2 professional (or to an employer or facility in the
3 cases described in clause (A) of section
4 1842(b)(6)), from the Federal Supplementary
5 Medical Insurance Trust Fund established
6 under section 1841 an amount equal to 75 per-
7 cent of the Secretary's estimate (based on
8 claims submitted not later than 2 months after
9 the end of the payment year) of the allowed
10 charges under this part for all such covered
11 professional services furnished by the eligible
12 professional during such year.

13 “(B) LIMITATIONS ON AMOUNTS OF IN-
14 CENTIVE PAYMENTS.—

15 “(i) IN GENERAL.—In no case shall
16 the amount of the incentive payment pro-
17 vided under this paragraph for an eligible
18 professional for a payment year exceed the
19 applicable amount specified under this sub-
20 paragraph with respect to such eligible
21 professional and such year.

22 “(ii) AMOUNT.—Subject to clause
23 (iii), the applicable amount specified in this
24 subparagraph for an eligible professional is
25 as follows:

1 “(I) For the first payment year
2 for such professional, \$15,000.

3 “(II) For the second payment
4 year for such professional, \$12,000.

5 “(III) For the third payment
6 year for such professional, \$8,000.

7 “(IV) For the fourth payment
8 year for such professional, \$4,000.

9 “(V) For the fifth payment year
10 for such professional, \$2,000.

11 “(VI) For any succeeding pay-
12 ment year for such professional, \$0.

13 “(iii) PHASE DOWN FOR ELIGIBLE
14 PROFESSIONALS FIRST ADOPTING EHR
15 AFTER 2013.—If the first payment year for
16 an eligible professional is after 2013, then
17 the amount specified in this subparagraph
18 for a payment year for such professional is
19 the same as the amount specified in clause
20 (ii) for such payment year for an eligible
21 professional whose first payment year is
22 2013. If the first payment year for an eli-
23 gible professional is after 2015 then the
24 applicable amount specified in this sub-

1 paragraph for such professional for such
2 year and any subsequent year shall be \$0.

3 “(C) NON-APPLICATION TO HOSPITAL-
4 BASED ELIGIBLE PROFESSIONALS.—

5 “(i) IN GENERAL.—No incentive pay-
6 ment may be made under this paragraph
7 in the case of a hospital-based eligible pro-
8 fessional.

9 “(ii) HOSPITAL-BASED ELIGIBLE PRO-
10 FESSIONAL.—For purposes of clause (i),
11 the term ‘hospital-based eligible profes-
12 sional’ means, with respect to covered pro-
13 fessional services furnished by an eligible
14 professional during the reporting period for
15 a payment year, an eligible professional,
16 such as a pathologist, anesthesiologist, or
17 emergency physician, who furnishes sub-
18 stantially all of such services in a hospital
19 setting (whether inpatient or outpatient)
20 and through the use of the facilities and
21 equipment, including computer equipment,
22 of the hospital.

23 “(D) PAYMENT.—

24 “(i) FORM OF PAYMENT.—The pay-
25 ment under this paragraph may be in the

1 form of a single consolidated payment or
2 in the form of such periodic installments
3 as the Secretary may specify.

4 “(ii) COORDINATION OF APPLICATION
5 OF LIMITATION FOR PROFESSIONALS IN
6 DIFFERENT PRACTICES.—In the case of an
7 eligible professional furnishing covered pro-
8 fessional services in more than one practice
9 (as specified by the Secretary), the Sec-
10 retary shall establish rules to coordinate
11 the incentive payments, including the ap-
12 plication of the limitation on amounts of
13 such incentive payments under this para-
14 graph, among such practices.

15 “(iii) COORDINATION WITH MED-
16 ICAID.—The Secretary shall seek, to the
17 maximum extent practicable, to avoid du-
18 plicative requirements from Federal and
19 State Governments to demonstrate mean-
20 ingful use of certified EHR technology
21 under this title and title XIX. The Sec-
22 retary may also adjust the reporting peri-
23 ods under such title and such subsections
24 in order to carry out this clause.

25 “(E) PAYMENT YEAR DEFINED.—

1 “(i) IN GENERAL.—For purposes of
2 this subsection, the term ‘payment year’
3 means a year beginning with 2011.

4 “(ii) FIRST, SECOND, ETC. PAYMENT
5 YEAR.—The term ‘first payment year’
6 means, with respect to covered professional
7 services furnished by an eligible profes-
8 sional, the first year for which an incentive
9 payment is made for such services under
10 this subsection. The terms ‘second pay-
11 ment year’, ‘third payment year’, ‘fourth
12 payment year’, and ‘fifth payment year’
13 mean, with respect to covered professional
14 services furnished by such eligible profes-
15 sional, each successive year immediately
16 following the first payment year for such
17 professional.

18 “(2) MEANINGFUL EHR USER.—

19 “(A) IN GENERAL.—For purposes of para-
20 graph (1), an eligible professional shall be
21 treated as a meaningful EHR user for a report-
22 ing period for a payment year (or, for purposes
23 of subsection (a)(7), for a reporting period
24 under such subsection for a year) if each of the
25 following requirements is met:

1 “(i) MEANINGFUL USE OF CERTIFIED
2 EHR TECHNOLOGY.—The eligible profes-
3 sional demonstrates to the satisfaction of
4 the Secretary, in accordance with subpara-
5 graph (C)(i), that during such period the
6 professional is using certified EHR tech-
7 nology in a meaningful manner, which
8 shall include the use of electronic pre-
9 scribing as determined to be appropriate
10 by the Secretary.

11 “(ii) INFORMATION EXCHANGE.—The
12 eligible professional demonstrates to the
13 satisfaction of the Secretary, in accordance
14 with subparagraph (C)(i), that during such
15 period such certified EHR technology is
16 connected in a manner that provides, in
17 accordance with law and standards appli-
18 cable to the exchange of information, for
19 the electronic exchange of health informa-
20 tion to improve the quality of health care,
21 such as promoting care coordination.

22 “(iii) REPORTING ON MEASURES
23 USING EHR.—Subject to subparagraph
24 (B)(ii) and using such certified EHR tech-
25 nology, the eligible professional submits in-

1 formation for such period, in a form and
2 manner specified by the Secretary, on such
3 clinical quality measures and such other
4 measures as selected by the Secretary
5 under subparagraph (B)(i).

6 The Secretary may provide for the use of alter-
7 native means for meeting the requirements of
8 clauses (i), (ii), and (iii) in the case of an eligi-
9 ble professional furnishing covered professional
10 services in a group practice (as defined by the
11 Secretary). The Secretary shall seek to improve
12 the use of electronic health records and health
13 care quality over time by requiring more strin-
14 gent measures of meaningful use selected under
15 this paragraph.

16 “(B) REPORTING ON MEASURES.—

17 “(i) SELECTION.—The Secretary shall
18 select measures for purposes of subpara-
19 graph (A)(iii) but only consistent with the
20 following:

21 “(I) The Secretary shall provide
22 preference to clinical quality measures
23 that have been endorsed by the entity
24 with a contract with the Secretary
25 under section 1890(a).

1 “(II) Prior to any measure being
2 selected under this subparagraph, the
3 Secretary shall publish in the Federal
4 Register such measure and provide for
5 a period of public comment on such
6 measure.

7 “(ii) LIMITATION.—The Secretary
8 may not require the electronic reporting of
9 information on clinical quality measures
10 under subparagraph (A)(iii) unless the
11 Secretary has the capacity to accept the in-
12 formation electronically, which may be on
13 a pilot basis.

14 “(iii) COORDINATION OF REPORTING
15 OF INFORMATION.—In selecting such
16 measures, and in establishing the form and
17 manner for reporting measures under sub-
18 paragraph (A)(iii), the Secretary shall seek
19 to avoid redundant or duplicative reporting
20 otherwise required, including reporting
21 under subsection (k)(2)(C).

22 “(C) DEMONSTRATION OF MEANINGFUL
23 USE OF CERTIFIED EHR TECHNOLOGY AND IN-
24 FORMATION EXCHANGE.—

1 “(i) IN GENERAL.—A professional
2 may satisfy the demonstration requirement
3 of clauses (i) and (ii) of subparagraph (A)
4 through means specified by the Secretary,
5 which may include—

6 “(I) an attestation;

7 “(II) the submission of claims
8 with appropriate coding (such as a
9 code indicating that a patient encoun-
10 ter was documented using certified
11 EHR technology);

12 “(III) a survey response;

13 “(IV) reporting under subpara-
14 graph (A)(iii); and

15 “(V) other means specified by the
16 Secretary.

17 “(ii) USE OF PART D DATA.—Not-
18 withstanding sections 1860D–15(d)(2)(B)
19 and 1860D–15(f)(2), the Secretary may
20 use data regarding drug claims submitted
21 for purposes of section 1860D–15 that are
22 necessary for purposes of subparagraph
23 (A).

24 “(3) APPLICATION.—

1 “(A) PHYSICIAN REPORTING SYSTEM
2 RULES.—Paragraphs (5), (6), and (8) of sub-
3 section (k) shall apply for purposes of this sub-
4 section in the same manner as they apply for
5 purposes of such subsection.

6 “(B) COORDINATION WITH OTHER PAY-
7 MENTS.—The provisions of this subsection shall
8 not be taken into account in applying the provi-
9 sions of subsection (m) of this section and of
10 section 1833(m) and any payment under such
11 provisions shall not be taken into account in
12 computing allowable charges under this sub-
13 section.

14 “(C) LIMITATIONS ON REVIEW.—There
15 shall be no administrative or judicial review
16 under section 1869, section 1878, or otherwise
17 of the determination of any incentive payment
18 under this subsection and the payment adjust-
19 ment under subsection (a)(7), including the de-
20 termination of a meaningful EHR user under
21 paragraph (2), a limitation under paragraph
22 (1)(B), and the exception under subsection
23 (a)(7)(B).

24 “(D) POSTING ON WEBSITE.—The Sec-
25 retary shall post on the Internet website of the

1 Centers for Medicare & Medicaid Services, in an
2 easily understandable format, a list of the
3 names, business addresses, and business phone
4 numbers of the eligible professionals who are
5 meaningful EHR users and, as determined ap-
6 propriate by the Secretary, of group practices
7 receiving incentive payments under paragraph
8 (1).

9 “(4) CERTIFIED EHR TECHNOLOGY DEFINED.—

10 For purposes of this section, the term ‘certified
11 EHR technology’ means a qualified electronic health
12 record (as defined in 3000(13) of the Public Health
13 Service Act) that is certified pursuant to section
14 3001(e)(5) of such Act as meeting standards adopt-
15 ed under section 3004 of such Act that are applica-
16 ble to the type of record involved (as determined by
17 the Secretary, such as an ambulatory electronic
18 health record for office-based physicians or an inpa-
19 tient hospital electronic health record for hospitals).

20 “(5) DEFINITIONS.—For purposes of this sub-
21 section:

22 “(A) COVERED PROFESSIONAL SERV-
23 ICES.—The term ‘covered professional services’
24 has the meaning given such term in subsection
25 (k)(3).

1 “(B) ELIGIBLE PROFESSIONAL.—The term
2 ‘eligible professional’ means a physician, as de-
3 fined in section 1861(r).

4 “(C) REPORTING PERIOD.—The term ‘re-
5 porting period’ means any period (or periods),
6 with respect to a payment year, as specified by
7 the Secretary.”.

8 (b) INCENTIVE PAYMENT ADJUSTMENT.—Section
9 1848(a) of the Social Security Act (42 U.S.C. 1395w-
10 4(a)) is amended by adding at the end the following new
11 paragraph:

12 “(7) INCENTIVES FOR MEANINGFUL USE OF
13 CERTIFIED EHR TECHNOLOGY.—

14 “(A) ADJUSTMENT.—

15 “(i) IN GENERAL.—Subject to sub-
16 paragraphs (B) and (D), with respect to
17 covered professional services furnished by
18 an eligible professional during 2016 or any
19 subsequent payment year, if the eligible
20 professional is not a meaningful EHR user
21 (as determined under subsection (o)(2)) for
22 a reporting period for the year, the fee
23 schedule amount for such services fur-
24 nished by such professional during the year
25 (including the fee schedule amount for pur-

1 poses of determining a payment based on
2 such amount) shall be equal to the applica-
3 ble percent of the fee schedule amount that
4 would otherwise apply to such services
5 under this subsection (determined after ap-
6 plication of paragraph (3) but without re-
7 gard to this paragraph).

8 “(ii) APPLICABLE PERCENT.—Subject
9 to clause (iii), for purposes of clause (i),
10 the term ‘applicable percent’ means—

11 “(I) for 2016, 99 percent;

12 “(II) for 2017, 98 percent; and

13 “(III) for 2018 and each subse-
14 quent year, 97 percent.

15 “(iii) AUTHORITY TO DECREASE AP-
16 PPLICABLE PERCENTAGE FOR 2019 AND
17 SUBSEQUENT YEARS.—For 2019 and each
18 subsequent year, if the Secretary finds that
19 the proportion of eligible professionals who
20 are meaningful EHR users (as determined
21 under subsection (o)(2)) is less than 75
22 percent, the applicable percent shall be de-
23 creased by 1 percentage point from the ap-
24 plicable percent in the preceding year, but

1 in no case shall the applicable percent be
2 less than 95 percent.

3 “(B) SIGNIFICANT HARDSHIP EXCEP-
4 TION.—The Secretary may, on a case-by-case
5 basis, exempt an eligible professional from the
6 application of the payment adjustment under
7 subparagraph (A) if the Secretary determines,
8 subject to annual renewal, that compliance with
9 the requirement for being a meaningful EHR
10 user would result in a significant hardship, such
11 as in the case of an eligible professional who
12 practices in a rural area without sufficient
13 Internet access. In no case may an eligible pro-
14 fessional be granted an exemption under this
15 subparagraph for more than 5 years.

16 “(C) APPLICATION OF PHYSICIAN REPORT-
17 ING SYSTEM RULES.—Paragraphs (5), (6), and
18 (8) of subsection (k) shall apply for purposes of
19 this paragraph in the same manner as they
20 apply for purposes of such subsection.

21 “(D) NON-APPLICATION TO HOSPITAL-
22 BASED ELIGIBLE PROFESSIONALS.—No pay-
23 ment adjustment may be made under subpara-
24 graph (A) in the case of hospital-based eligible

1 professionals (as defined in subsection
2 (o)(1)(C)(ii)).

3 “(E) DEFINITIONS.—For purposes of this
4 paragraph:

5 “(i) COVERED PROFESSIONAL SERV-
6 ICES.—The term ‘covered professional
7 services’ has the meaning given such term
8 in subsection (k)(3).

9 “(ii) ELIGIBLE PROFESSIONAL.—The
10 term ‘eligible professional’ means a physi-
11 cian, as defined in section 1861(r).

12 “(iii) REPORTING PERIOD.—The term
13 ‘reporting period’ means, with respect to a
14 year, a period specified by the Secretary.”.

15 (c) APPLICATION TO CERTAIN HMO-AFFILIATED
16 ELIGIBLE PROFESSIONALS.—Section 1853 of the Social
17 Security Act (42 U.S.C. 1395w–23) is amended by adding
18 at the end the following new subsection:

19 “(1) APPLICATION OF ELIGIBLE PROFESSIONAL IN-
20 CENTIVES FOR CERTAIN MA ORGANIZATIONS FOR ADOP-
21 TION AND MEANINGFUL USE OF CERTIFIED EHR TECH-
22 NOLOGY.—

23 “(1) IN GENERAL.—Subject to paragraphs (3)
24 and (4), in the case of a qualifying MA organization,
25 the provisions of sections 1848(o) and 1848(a)(7)

1 shall apply with respect to eligible professionals de-
2 scribed in paragraph (2) of the organization who the
3 organization attests under paragraph (6) to be
4 meaningful EHR users in a similar manner as they
5 apply to eligible professionals under such sections.
6 Incentive payments under paragraph (3) shall be
7 made to and payment adjustments under paragraph
8 (4) shall apply to such qualifying organizations.

9 “(2) ELIGIBLE PROFESSIONAL DESCRIBED.—

10 With respect to a qualifying MA organization, an eli-
11 gible professional described in this paragraph is an
12 eligible professional (as defined for purposes of sec-
13 tion 1848(o)) who—

14 “(A)(i) is employed by the organization; or

15 “(ii)(I) is employed by, or is a partner of,
16 an entity that through contract with the organi-
17 zation furnishes at least 80 percent of the enti-
18 ty’s patient care services to enrollees of such or-
19 ganization; and

20 “(II) furnishes at least 80 percent of the
21 professional services of the eligible professional
22 to enrollees of the organization; and

23 “(B) furnishes, on average, at least 20
24 hours per week of patient care services.

1 “(3) ELIGIBLE PROFESSIONAL INCENTIVE PAY-
2 MENTS.—

3 “(A) IN GENERAL.—In applying section
4 1848(o) under paragraph (1), instead of the ad-
5 ditional payment amount under section
6 1848(o)(1)(A) and subject to subparagraph
7 (B), the Secretary may substitute an amount
8 determined by the Secretary to the extent fea-
9 sible and practical to be similar to the esti-
10 mated amount in the aggregate that would be
11 payable if payment for services furnished by
12 such professionals was payable under part B in-
13 stead of this part.

14 “(B) AVOIDING DUPLICATION OF PAY-
15 MENTS.—

16 “(i) IN GENERAL.—If an eligible pro-
17 fessional described in paragraph (2) is eli-
18 gible for the maximum incentive payment
19 under section 1848(o)(1)(A) for the same
20 payment period, the payment incentive
21 shall be made only under such section and
22 not under this subsection.

23 “(ii) METHODS.—In the case of an el-
24 igible professional described in paragraph
25 (2) who is eligible for an incentive payment

1 under section 1848(o)(1)(A) but is not de-
2 scribed in clause (i) for the same payment
3 period, the Secretary shall develop a proc-
4 ess—

5 “(I) to ensure that duplicate pay-
6 ments are not made with respect to
7 an eligible professional both under
8 this subsection and under section
9 1848(o)(1)(A); and

10 “(II) to collect data from Medi-
11 care Advantage organizations to en-
12 sure against such duplicate payments.

13 “(C) FIXED SCHEDULE FOR APPLICATION
14 OF LIMITATION ON INCENTIVE PAYMENTS FOR
15 ALL ELIGIBLE PROFESSIONALS.—In applying
16 section 1848(o)(1)(B)(ii) under subparagraph
17 (A), in accordance with rules specified by the
18 Secretary, a qualifying MA organization shall
19 specify a year (not earlier than 2011) that shall
20 be treated as the first payment year for all eli-
21 gible professionals with respect to such organi-
22 zation.

23 “(4) PAYMENT ADJUSTMENT.—

24 “(A) IN GENERAL.—In applying section
25 1848(a)(7) under paragraph (1), instead of the

1 payment adjustment being an applicable per-
2 cent of the fee schedule amount for a year
3 under such section, subject to subparagraph
4 (D), the payment adjustment under paragraph
5 (1) shall be equal to the percent specified in
6 subparagraph (B) for such year of the payment
7 amount otherwise provided under this section
8 for such year.

9 “(B) SPECIFIED PERCENT.—The percent
10 specified under this subparagraph for a year is
11 100 percent minus a number of percentage
12 points equal to the product of—

13 “(i) the number of percentage points
14 by which the applicable percent (under sec-
15 tion 1848(a)(7)(A)(ii)) for the year is less
16 than 100 percent; and

17 “(ii) the Medicare physician expendi-
18 ture proportion specified in subparagraph
19 (C) for the year.

20 “(C) MEDICARE PHYSICIAN EXPENDITURE
21 PROPORTION.—The Medicare physician expend-
22 iture proportion under this subparagraph for a
23 year is the Secretary’s estimate of the propor-
24 tion, of the expenditures under parts A and B
25 that are not attributable to this part, that are

1 attributable to expenditures for physicians’
2 services.

3 “(D) APPLICATION OF PAYMENT ADJUST-
4 MENT.—In the case that a qualifying MA orga-
5 nization attests that not all eligible profes-
6 sionals are meaningful EHR users with respect
7 to a year, the Secretary shall apply the payment
8 adjustment under this paragraph based on the
9 proportion of such eligible professionals that are
10 not meaningful EHR users for such year.

11 “(5) QUALIFYING MA ORGANIZATION DE-
12 FINED.—In this subsection and subsection (m), the
13 term ‘qualifying MA organization’ means a Medicare
14 Advantage organization that is organized as a health
15 maintenance organization (as defined in section
16 2791(b)(3) of the Public Health Service Act).

17 “(6) MEANINGFUL EHR USER ATTESTATION.—
18 For purposes of this subsection and subsection (m),
19 a qualifying MA organization shall submit an attes-
20 tation, in a form and manner specified by the Sec-
21 retary which may include the submission of such at-
22 testation as part of submission of the initial bid
23 under section 1854(a)(1)(A)(iv), identifying—

24 “(A) whether each eligible professional de-
25 scribed in paragraph (2), with respect to such

1 organization is a meaningful EHR user (as de-
2 fined in section 1848(o)(2)) for a year specified
3 by the Secretary; and

4 “(B) whether each eligible hospital de-
5 scribed in subsection (m)(1), with respect to
6 such organization, is a meaningful EHR user
7 (as defined in section 1886(n)(3)) for an appli-
8 cable period specified by the Secretary.”.

9 (d) CONFORMING AMENDMENTS.—Section 1853 of
10 the Social Security Act (42 U.S.C. 1395w–23) is amend-
11 ed—

12 (1) in subsection (a)(1)(A), by striking “and
13 (i)” and inserting “(i), and (l)”;

14 (2) in subsection (c)—

15 (A) in paragraph (1)(D)(i), by striking
16 “section 1886(h)” and inserting “sections
17 1848(o) and 1886(h)”;

18 (B) in paragraph (6)(A), by inserting after
19 “under part B,” the following: “excluding ex-
20 penditures attributable to subsections (a)(7)
21 and (o) of section 1848,”; and

22 (3) in subsection (f), by inserting “and for pay-
23 ments under subsection (l)” after “with the organi-
24 zation”.

1 (e) CONFORMING AMENDMENTS TO E-PRE-
2 SCRIBING.—

3 (1) Section 1848(a)(5)(A) of the Social Security
4 Act (42 U.S.C. 1395w-4(a)(5)(A)) is amended—

5 (A) in clause (i), by striking “or any sub-
6 sequent year” and inserting “, 2013, 2014, or
7 2015”; and

8 (B) in clause (ii), by striking “and each
9 subsequent year” and inserting “and 2015”.

10 (2) Section 1848(m)(2) of such Act (42 U.S.C.
11 1395w-4(m)(2)) is amended—

12 (A) in subparagraph (A), by striking “For
13 2009” and inserting “Subject to subparagraph
14 (D), for 2009”; and

15 (B) by adding at the end the following new
16 subparagraph:

17 “(D) LIMITATION WITH RESPECT TO EHR
18 INCENTIVE PAYMENTS.—The provisions of this
19 paragraph shall not apply to an eligible profes-
20 sional (or, in the case of a group practice under
21 paragraph (3)(C), to the group practice) if, for
22 the reporting period the eligible professional (or
23 group practice) receives an incentive payment
24 under subsection (o)(1)(A) with respect to a
25 certified EHR technology (as defined in sub-

1 section (o)(4)) that has the capability of elec-
2 tronic prescribing.”.

3 **SEC. 4312. INCENTIVES FOR HOSPITALS.**

4 (a) INCENTIVE PAYMENT.—Section 1886 of the So-
5 cial Security Act (42 U.S.C. 1395ww) is amended by add-
6 ing at the end the following new subsection:

7 “(n) INCENTIVES FOR ADOPTION AND MEANINGFUL
8 USE OF CERTIFIED EHR TECHNOLOGY.—

9 “(1) IN GENERAL.—Subject to the succeeding
10 provisions of this subsection, with respect to inpa-
11 tient hospital services furnished by an eligible hos-
12 pital during a payment year (as defined in para-
13 graph (2)(G)), if the eligible hospital is a meaningful
14 EHR user (as determined under paragraph (3)) for
15 the reporting period with respect to such year, in ad-
16 dition to the amount otherwise paid under this sec-
17 tion, there also shall be paid to the eligible hospital,
18 from the Federal Hospital Insurance Trust Fund es-
19 tablished under section 1817, an amount equal to
20 the applicable amount specified in paragraph (2)(A)
21 for the hospital for such payment year.

22 “(2) PAYMENT AMOUNT.—

23 “(A) IN GENERAL.—Subject to the suc-
24 ceeding subparagraphs of this paragraph, the
25 applicable amount specified in this subpara-

1 graph for an eligible hospital for a payment
2 year is equal to the product of the following:

3 “(i) INITIAL AMOUNT.—The sum of—

4 “(I) the base amount specified in
5 subparagraph (B); plus

6 “(II) the discharge related
7 amount specified in subparagraph (C)
8 for a 12-month period selected by the
9 Secretary with respect to such pay-
10 ment year.

11 “(ii) MEDICARE SHARE.—The Medi-
12 care share as specified in subparagraph
13 (D) for the hospital for a period selected
14 by the Secretary with respect to such pay-
15 ment year.

16 “(iii) TRANSITION FACTOR.—The
17 transition factor specified in subparagraph
18 (E) for the hospital for the payment year.

19 “(B) BASE AMOUNT.—The base amount
20 specified in this subparagraph is \$2,000,000.

21 “(C) DISCHARGE RELATED AMOUNT.—The
22 discharge related amount specified in this sub-
23 paragraph for a 12-month period selected by
24 the Secretary shall be determined as the sum of
25 the amount, based upon total discharges (re-

1 regardless of any source of payment) for the pe-
2 riod, for each discharge up to the 23,000th dis-
3 charge as follows:

4 “(i) For the 1,150th through the
5 23,000th discharge, \$200.

6 “(ii) For any discharge greater than
7 the 23,000th, \$0.

8 “(D) MEDICARE SHARE.—The Medicare
9 share specified under this subparagraph for a
10 hospital for a period selected by the Secretary
11 for a payment year is equal to the fraction—

12 “(i) the numerator of which is the
13 sum (for such period and with respect to
14 the hospital) of—

15 “(I) the number of inpatient-bed-
16 days (as established by the Secretary)
17 which are attributable to individuals
18 with respect to whom payment may be
19 made under part A; and

20 “(II) the number of inpatient-
21 bed-days (as so established) which are
22 attributable to individuals who are en-
23 rolled with a Medicare Advantage or-
24 ganization under part C; and

1 “(ii) the denominator of which is the
2 product of—

3 “(I) the total number of inpa-
4 tient-bed-days with respect to the hos-
5 pital during such period; and

6 “(II) the total amount of the hos-
7 pital’s charges during such period, not
8 including any charges that are attrib-
9 utable to charity care (as such term is
10 used for purposes of hospital cost re-
11 porting under this title), divided by
12 the total amount of the hospital’s
13 charges during such period.

14 Insofar as the Secretary determines that data
15 are not available on charity care necessary to
16 calculate the portion of the formula specified in
17 clause (ii)(II), the Secretary shall use data on
18 uncompensated care and may adjust such data
19 so as to be an appropriate proxy for charity
20 care including a downward adjustment to elimi-
21 nate bad debt data from uncompensated care
22 data. In the absence of the data necessary, with
23 respect to a hospital, for the Secretary to com-
24 pute the amount described in clause (ii)(II), the
25 amount under such clause shall be deemed to

1 be 1. In the absence of data, with respect to a
2 hospital, necessary to compute the amount de-
3 scribed in clause (i)(II), the amount under such
4 clause shall be deemed to be 0.

5 “(E) TRANSITION FACTOR SPECIFIED.—

6 “(i) IN GENERAL.—Subject to clause
7 (ii), the transition factor specified in this
8 subparagraph for an eligible hospital for a
9 payment year is as follows:

10 “(I) For the first payment year
11 for such hospital, 1.

12 “(II) For the second payment
13 year for such hospital, $\frac{3}{4}$.

14 “(III) For the third payment
15 year for such hospital, $\frac{1}{2}$.

16 “(IV) For the fourth payment
17 year for such hospital, $\frac{1}{4}$.

18 “(V) For any succeeding pay-
19 ment year for such hospital, 0.

20 “(ii) PHASE DOWN FOR ELIGIBLE
21 HOSPITALS FIRST ADOPTING EHR AFTER
22 2013.—If the first payment year for an eli-
23 gible hospital is after 2013, then the tran-
24 sition factor specified in this subparagraph
25 for a payment year for such hospital is the

1 same as the amount specified in clause (i)
2 for such payment year for an eligible hos-
3 pital for which the first payment year is
4 2013. If the first payment year for an eli-
5 gible hospital is after 2015 then the transi-
6 tion factor specified in this subparagraph
7 for such hospital and for such year and
8 any subsequent year shall be 0.

9 “(F) FORM OF PAYMENT.—The payment
10 under this subsection for a payment year may
11 be in the form of a single consolidated payment
12 or in the form of such periodic installments as
13 the Secretary may specify.

14 “(G) PAYMENT YEAR DEFINED.—

15 “(i) IN GENERAL.—For purposes of
16 this subsection, the term ‘payment year’
17 means a fiscal year beginning with fiscal
18 year 2011.

19 “(ii) FIRST, SECOND, ETC. PAYMENT
20 YEAR.—The term ‘first payment year’
21 means, with respect to inpatient hospital
22 services furnished by an eligible hospital,
23 the first fiscal year for which an incentive
24 payment is made for such services under
25 this subsection. The terms ‘second pay-

1 ment year’, ‘third payment year’, and
2 ‘fourth payment year’ mean, with respect
3 to an eligible hospital, each successive year
4 immediately following the first payment
5 year for that hospital.

6 “(3) MEANINGFUL EHR USER.—

7 “(A) IN GENERAL.—For purposes of para-
8 graph (1), an eligible hospital shall be treated
9 as a meaningful EHR user for a reporting pe-
10 riod for a payment year (or, for purposes of
11 subsection (b)(3)(B)(ix), for a reporting period
12 under such subsection for a fiscal year) if each
13 of the following requirements are met:

14 “(i) MEANINGFUL USE OF CERTIFIED
15 EHR TECHNOLOGY.—The eligible hospital
16 demonstrates to the satisfaction of the Sec-
17 retary, in accordance with subparagraph
18 (C)(i), that during such period the hospital
19 is using certified EHR technology in a
20 meaningful manner.

21 “(ii) INFORMATION EXCHANGE.—The
22 eligible hospital demonstrates to the satis-
23 faction of the Secretary, in accordance
24 with subparagraph (C)(i), that during such
25 period such certified EHR technology is

1 connected in a manner that provides, in
2 accordance with law and standards appli-
3 cable to the exchange of information, for
4 the electronic exchange of health informa-
5 tion to improve the quality of health care,
6 such as promoting care coordination.

7 “(iii) REPORTING ON MEASURES
8 USING EHR.—Subject to subparagraph
9 (B)(ii) and using such certified EHR tech-
10 nology, the eligible hospital submits infor-
11 mation for such period, in a form and
12 manner specified by the Secretary, on such
13 clinical quality measures and such other
14 measures as selected by the Secretary
15 under subparagraph (B)(i).

16 The Secretary shall seek to improve the use of
17 electronic health records and health care quality
18 over time by requiring more stringent measures
19 of meaningful use selected under this para-
20 graph.

21 “(B) REPORTING ON MEASURES.—

22 “(i) SELECTION.—The Secretary shall
23 select measures for purposes of subpara-
24 graph (A)(iii) but only consistent with the
25 following:

1 “(I) The Secretary shall provide
2 preference to clinical quality measures
3 that have been selected for purposes
4 of applying subsection (b)(3)(B)(viii)
5 or that have been endorsed by the en-
6 tity with a contract with the Secretary
7 under section 1890(a).

8 “(II) Prior to any measure (other
9 than a clinical quality measure that
10 has been selected for purposes of ap-
11 plying subsection (b)(3)(B)(viii))
12 being selected under this subpara-
13 graph, the Secretary shall publish in
14 the Federal Register such measure
15 and provide for a period of public
16 comment on such measure.

17 “(ii) LIMITATIONS.—The Secretary
18 may not require the electronic reporting of
19 information on clinical quality measures
20 under subparagraph (A)(iii) unless the
21 Secretary has the capacity to accept the in-
22 formation electronically, which may be on
23 a pilot basis.

24 “(iii) COORDINATION OF REPORTING
25 OF INFORMATION.—In selecting such

1 measures, and in establishing the form and
2 manner for reporting measures under sub-
3 paragraph (A)(iii), the Secretary shall seek
4 to avoid redundant or duplicative reporting
5 with reporting otherwise required, includ-
6 ing reporting under subsection
7 (b)(3)(B)(viii).

8 “(C) DEMONSTRATION OF MEANINGFUL
9 USE OF CERTIFIED EHR TECHNOLOGY AND IN-
10 FORMATION EXCHANGE.—

11 “(i) IN GENERAL.—A hospital may
12 satisfy the demonstration requirement of
13 clauses (i) and (ii) of subparagraph (A)
14 through means specified by the Secretary,
15 which may include—

16 “(I) an attestation;

17 “(II) the submission of claims
18 with appropriate coding (such as a
19 code indicating that inpatient care
20 was documented using certified EHR
21 technology);

22 “(III) a survey response;

23 “(IV) reporting under subpara-
24 graph (A)(iii); and

1 “(V) other means specified by the
2 Secretary.

3 “(ii) USE OF PART D DATA.—Not-
4 withstanding sections 1860D–15(d)(2)(B)
5 and 1860D–15(f)(2), the Secretary may
6 use data regarding drug claims submitted
7 for purposes of section 1860D–15 that are
8 necessary for purposes of subparagraph
9 (A).

10 “(4) APPLICATION.—

11 “(A) LIMITATIONS ON REVIEW.—There
12 shall be no administrative or judicial review
13 under section 1869, section 1878, or otherwise
14 of the determination of any incentive payment
15 under this subsection and the payment adjust-
16 ment under subsection (b)(3)(B)(ix), including
17 the determination of a meaningful EHR user
18 under paragraph (3), determination of meas-
19 ures applicable to services furnished by eligible
20 hospitals under this subsection, and the excep-
21 tion under subsection (b)(3)(B)(ix)(II).

22 “(B) POSTING ON WEBSITE.—The Sec-
23 retary shall post on the Internet website of the
24 Centers for Medicare & Medicaid Services, in an
25 easily understandable format, a list of the

1 names of the eligible hospitals that are mean-
2 ingful EHR users under this subsection or sub-
3 section (b)(3)(B)(ix) and other relevant data as
4 determined appropriate by the Secretary. The
5 Secretary shall ensure that a hospital has the
6 opportunity to review the other relevant data
7 that are to be made public with respect to the
8 hospital prior to such data being made public.

9 “(5) CERTIFIED EHR TECHNOLOGY DEFINED.—
10 The term ‘certified EHR technology’ has the mean-
11 ing given such term in section 1848(o)(4).

12 “(6) DEFINITIONS.—For purposes of this sub-
13 section:

14 “(A) ELIGIBLE HOSPITAL.—The term ‘eli-
15 gible hospital’ means a subsection (d) hospital.

16 “(B) REPORTING PERIOD.—The term ‘re-
17 porting period’ means any period (or periods),
18 with respect to a payment year, as specified by
19 the Secretary.”.

20 (b) INCENTIVE MARKET BASKET ADJUSTMENT.—
21 Section 1886(b)(3)(B) of the Social Security Act (42
22 U.S.C. 1395ww(b)(3)(B)) is amended—

23 (1) in clause (viii)(I), by inserting “(or, begin-
24 ning with fiscal year 2016, by one-quarter)” after
25 “2.0 percentage points”; and

1 (2) by adding at the end the following new
2 clause:

3 “(ix)(I) For purposes of clause (i) for fiscal year
4 2016 and each subsequent fiscal year, in the case of an
5 eligible hospital (as defined in subsection (n)(6)(A)) that
6 is not a meaningful EHR user (as defined in subsection
7 (n)(3)) for the reporting period for such fiscal year, three-
8 quarters of the applicable percentage increase otherwise
9 applicable under clause (i) for such fiscal year shall be
10 reduced by $33\frac{1}{3}$ percent for fiscal year 2016, $66\frac{2}{3}$ per-
11 cent for fiscal year 2017, and 100 percent for fiscal year
12 2018 and each subsequent fiscal year. Such reduction
13 shall apply only with respect to the fiscal year involved
14 and the Secretary shall not take into account such reduc-
15 tion in computing the applicable percentage increase under
16 clause (i) for a subsequent fiscal year.

17 “(II) The Secretary may, on a case-by-case basis, ex-
18 empt a subsection (d) hospital from the application of sub-
19 clause (I) with respect to a fiscal year if the Secretary
20 determines, subject to annual renewal, that requiring such
21 hospital to be a meaningful EHR user during such fiscal
22 year would result in a significant hardship, such as in the
23 case of a hospital in a rural area without sufficient Inter-
24 net access. In no case may a hospital be granted an ex-
25 emption under this subclause for more than 5 years.

1 “(III) For fiscal year 2016 and each subsequent fis-
2 cal year, a State in which hospitals are paid for services
3 under section 1814(b)(3) shall adjust the payments to
4 each subsection (d) hospital in the State that is not a
5 meaningful EHR user (as defined in subsection (n)(3))
6 in a manner that is designed to result in an aggregate
7 reduction in payments to hospitals in the State that is
8 equivalent to the aggregate reduction that would have oc-
9 curred if payments had been reduced to each subsection
10 (d) hospital in the State in a manner comparable to the
11 reduction under the previous provisions of this clause. The
12 State shall report to the Secretary the methodology it will
13 use to make the payment adjustment under the previous
14 sentence.

15 “(IV) For purposes of this clause, the term ‘reporting
16 period’ means, with respect to a fiscal year, any period
17 (or periods), with respect to the fiscal year, as specified
18 by the Secretary.”.

19 (c) APPLICATION TO CERTAIN HMO-AFFILIATED
20 ELIGIBLE HOSPITALS.—Section 1853 of the Social Secu-
21 rity Act (42 U.S.C. 1395w–23), as amended by section
22 4311(c), is further amended by adding at the end the fol-
23 lowing new subsection:

24 “(m) APPLICATION OF ELIGIBLE HOSPITAL INCEN-
25 TIVES FOR CERTAIN MA ORGANIZATIONS FOR ADOPTION

1 AND MEANINGFUL USE OF CERTIFIED EHR TECH-
2 NOLOGY.—

3 “(1) APPLICATION.—Subject to paragraphs (3)
4 and (4), in the case of a qualifying MA organization,
5 the provisions of sections 1886(n) and
6 1886(b)(3)(B)(ix) shall apply with respect to eligible
7 hospitals described in paragraph (2) of the organiza-
8 tion which the organization attests under subsection
9 (1)(6) to be meaningful EHR users in a similar man-
10 ner as they apply to eligible hospitals under such
11 sections. Incentive payments under paragraph (3)
12 shall be made to and payment adjustments under
13 paragraph (4) shall apply to such qualifying organi-
14 zations.

15 “(2) ELIGIBLE HOSPITAL DESCRIBED.—With
16 respect to a qualifying MA organization, an eligible
17 hospital described in this paragraph is an eligible
18 hospital that is under common corporate governance
19 with such organization and serves individuals en-
20 rolled under an MA plan offered by such organiza-
21 tion.

22 “(3) ELIGIBLE HOSPITAL INCENTIVE PAY-
23 MENTS.—

24 “(A) IN GENERAL.—In applying section
25 1886(n)(2) under paragraph (1), instead of the

1 additional payment amount under section
2 1886(n)(2), there shall be substituted an
3 amount determined by the Secretary to be simi-
4 lar to the estimated amount in the aggregate
5 that would be payable if payment for services
6 furnished by such hospitals was payable under
7 part A instead of this part. In implementing the
8 previous sentence, the Secretary—

9 “(i) shall, insofar as data to deter-
10 mine the discharge related amount under
11 section 1886(n)(2)(C) for an eligible hos-
12 pital are not available to the Secretary, use
13 such alternative data and methodology to
14 estimate such discharge related amount as
15 the Secretary determines appropriate; and

16 “(ii) shall, insofar as data to deter-
17 mine the medicare share described in sec-
18 tion 1886(n)(2)(D) for an eligible hospital
19 are not available to the Secretary, use such
20 alternative data and methodology to esti-
21 mate such share, which data and method-
22 ology may include use of the inpatient bed
23 days (or discharges) with respect to an eli-
24 gible hospital during the appropriate pe-
25 riod which are attributable to both individ-

1 uals for whom payment may be made
2 under part A or individuals enrolled in an
3 MA plan under a Medicare Advantage or-
4 ganization under this part as a proportion
5 of the total number of patient-bed-days (or
6 discharges) with respect to such hospital
7 during such period.

8 “(B) AVOIDING DUPLICATION OF PAY-
9 MENTS.—

10 “(i) IN GENERAL.—In the case of a
11 hospital that for a payment year is an eli-
12 gible hospital described in paragraph (2),
13 is an eligible hospital under section
14 1886(n), and for which at least one-third
15 of their discharges (or bed-days) of Medi-
16 care patients for the year are covered
17 under part A, payment for the payment
18 year shall be made only under section
19 1886(n) and not under this subsection.

20 “(ii) METHODS.—In the case of a
21 hospital that is an eligible hospital de-
22 scribed in paragraph (2) and also is eligi-
23 ble for an incentive payment under section
24 1886(n) but is not described in clause (i)

1 for the same payment period, the Secretary
2 shall develop a process—

3 “(I) to ensure that duplicate pay-
4 ments are not made with respect to
5 an eligible hospital both under this
6 subsection and under section 1886(n);
7 and

8 “(II) to collect data from Medi-
9 care Advantage organizations to en-
10 sure against such duplicate payments.

11 “(4) PAYMENT ADJUSTMENT.—

12 “(A) Subject to paragraph (3), in the case
13 of a qualifying MA organization (as defined in
14 section 1853(l)(5)), if, according to the attesta-
15 tion of the organization submitted under sub-
16 section (l)(6) for an applicable period, one or
17 more eligible hospitals (as defined in section
18 1886(n)(6)(A)) that are under common cor-
19 porate governance with such organization and
20 that serve individuals enrolled under a plan of-
21 fered by such organization are not meaningful
22 EHR users (as defined in section 1886(n)(3))
23 with respect to a period, the payment amount
24 payable under this section for such organization
25 for such period shall be the percent specified in

1 subparagraph (B) for such period of the pay-
2 ment amount otherwise provided under this sec-
3 tion for such period.

4 “(B) SPECIFIED PERCENT.—The percent
5 specified under this subparagraph for a year is
6 100 percent minus a number of percentage
7 points equal to the product of—

8 “(i) the number of the percentage
9 point reduction effected under section
10 1886(b)(3)(B)(ix)(I) for the period; and

11 “(ii) the Medicare hospital expendi-
12 ture proportion specified in subparagraph
13 (C) for the year.

14 “(C) MEDICARE HOSPITAL EXPENDITURE
15 PROPORTION.—The Medicare hospital expendi-
16 ture proportion under this subparagraph for a
17 year is the Secretary’s estimate of the propor-
18 tion, of the expenditures under parts A and B
19 that are not attributable to this part, that are
20 attributable to expenditures for inpatient hos-
21 pital services.

22 “(D) APPLICATION OF PAYMENT ADJUST-
23 MENT.—In the case that a qualifying MA orga-
24 nization attests that not all eligible hospitals
25 are meaningful EHR users with respect to an

1 applicable period, the Secretary shall apply the
2 payment adjustment under this paragraph
3 based on a methodology specified by the Sec-
4 retary, taking into account the proportion of
5 such eligible hospitals, or discharges from such
6 hospitals, that are not meaningful EHR users
7 for such period.”.

8 (d) CONFORMING AMENDMENTS.—

9 (1) Section 1814(b) of the Social Security Act
10 (42 U.S.C. 1395f(b)) is amended—

11 (A) in paragraph (3), in the matter pre-
12 ceding subparagraph (A), by inserting “, sub-
13 ject to section 1886(d)(3)(B)(ix)(III),” after
14 “then”; and

15 (B) by adding at the end the following:
16 “For purposes of applying paragraph (3), there
17 shall be taken into account incentive payments,
18 and payment adjustments under subsection
19 (b)(3)(B)(ix) or (n) of section 1886.”.

20 (2) Section 1851(i)(1) of the Social Security
21 Act (42 U.S.C. 1395w–21(i)(1)) is amended by
22 striking “and 1886(h)(3)(D)” and inserting
23 “1886(h)(3)(D), and 1853(m)”.

1 (3) Section 1853 of the Social Security Act (42
2 U.S.C. 1395w-23), as amended by section
3 4311(d)(1), is amended—

4 (A) in subsection (c)—

5 (i) in paragraph (1)(D)(i), by striking
6 “1848(o)” and inserting “, 1848(o), and
7 1886(n)”; and

8 (ii) in paragraph (6)(A), by inserting
9 “and subsections (b)(3)(B)(ix) and (n) of
10 section 1886” after “section 1848”; and

11 (B) in subsection (f), by inserting “and
12 subsection (m)” after “under subsection (l)”.

13 **SEC. 4313. TREATMENT OF PAYMENTS AND SAVINGS; IM-**
14 **PLEMENTATION FUNDING.**

15 (a) PREMIUM HOLD HARMLESS.—

16 (1) IN GENERAL.—Section 1839(a)(1) of the
17 Social Security Act (42 U.S.C. 1395r(a)(1)) is
18 amended by adding at the end the following: “In ap-
19 plying this paragraph there shall not be taken into
20 account additional payments under section 1848(o)
21 and section 1853(l)(3) and the Government con-
22 tribution under section 1844(a)(3).”.

23 (2) PAYMENT.—Section 1844(a) of such Act
24 (42 U.S.C. 1395w(a)) is amended—

1 (A) in paragraph (2), by striking the pe-
2 riod at the end and inserting “; plus”; and

3 (B) by adding at the end the following new
4 paragraph:

5 “(3) a Government contribution equal to the
6 amount of payment incentives payable under sec-
7 tions 1848(o) and 1853(l)(3).”.

8 (b) MEDICARE IMPROVEMENT FUND.—Section 1898
9 of the Social Security Act (42 U.S.C. 1395iii), as added
10 by section 7002(a) of the Supplemental Appropriations
11 Act, 2008 (Public Law 110–252) and as amended by sec-
12 tion 188(a)(2) of the Medicare Improvements for Patients
13 and Providers Act of 2008 (Public Law 110–275; 122
14 Stat. 2589) and by section 6 of the QI Program Supple-
15 mental Funding Act of 2008, is amended—

16 (1) in subsection (a)—

17 (A) by inserting “medicare” before “fee-
18 for-service”; and

19 (B) by inserting before the period at the
20 end the following: “including, but not limited
21 to, an increase in the conversion factor under
22 section 1848(d) to address, in whole or in part,
23 any projected shortfall in the conversion factor
24 for 2014 relative to the conversion factor for
25 2008 and adjustments to payments for items

1 and services furnished by providers of services
2 and suppliers under such original medicare fee-
3 for-service program”; and

4 (2) in subsection (b)—

5 (A) in paragraph (1), by striking “during
6 fiscal year 2014,” and all that follows and in-
7 serting the following: “during—

8 “(A) fiscal year 2014, \$22,290,000,000;
9 and

10 “(B) fiscal year 2020 and each subsequent
11 fiscal year, the Secretary’s estimate, as of July
12 1 of the fiscal year, of the aggregate reduction
13 in expenditures under this title during the pre-
14 ceding fiscal year directly resulting from the re-
15 duction in payment amounts under sections
16 1848(a)(7), 1853(l)(4), 1853(m)(4), and
17 1886(b)(3)(B)(ix).”; and

18 (B) by adding at the end the following new
19 paragraph:

20 “(4) NO EFFECT ON PAYMENTS IN SUBSE-
21 QUENT YEARS.—In the case that expenditures from
22 the Fund are applied to, or otherwise affect, a pay-
23 ment rate for an item or service under this title for
24 a year, the payment rate for such item or service

1 shall be computed for a subsequent year as if such
2 application or effect had never occurred.”.

3 (c) IMPLEMENTATION FUNDING.—In addition to
4 funds otherwise available, out of any funds in the Treas-
5 ury not otherwise appropriated, there are appropriated to
6 the Secretary of Health and Human Services for the Cen-
7 ter for Medicare & Medicaid Services Program Manage-
8 ment Account, \$60,000,000 for each of fiscal years 2009
9 through 2015 and \$30,000,000 for each succeeding fiscal
10 year through fiscal year 2019, which shall be available for
11 purposes of carrying out the provisions of (and amend-
12 ments made by) this part. Amounts appropriated under
13 this subsection for a fiscal year shall be available until ex-
14 pended.

15 **SEC. 4314. STUDY ON APPLICATION OF EHR PAYMENT IN-**
16 **CENTIVES FOR PROVIDERS NOT RECEIVING**
17 **OTHER INCENTIVE PAYMENTS.**

18 (a) STUDY.—

19 (1) IN GENERAL.—The Secretary of Health and
20 Human Services shall conduct a study to determine
21 the extent to which and manner in which payment
22 incentives (such as under title XVIII or XIX of the
23 Social Security Act) and other funding for purposes
24 of implementing and using certified EHR technology
25 (as defined in section 3000 of the Public Health

1 Service Act) should be made available to health care
2 providers who are receiving minimal or no payment
3 incentives or other funding under this Act, under
4 title XVIII or XIX of the Social Security Act, or
5 otherwise, for such purposes.

6 (2) DETAILS OF STUDY.—Such study shall in-
7 clude an examination of—

8 (A) the adoption rates of certified EHR
9 technology by such health care providers;

10 (B) the clinical utility of such technology
11 by such health care providers;

12 (C) whether the services furnished by such
13 health care providers are appropriate for or
14 would benefit from the use of such technology;

15 (D) the extent to which such health care
16 providers work in settings that might otherwise
17 receive an incentive payment or other funding
18 under this Act, title XVIII or XIX of the Social
19 Security Act, or otherwise;

20 (E) the potential costs and the potential
21 benefits of making payment incentives and
22 other funding available to such health care pro-
23 viders; and

24 (F) any other issues the Secretary deems
25 to be appropriate.

1 (b) REPORT.—Not later than June 30, 2010, the
2 Secretary shall submit to Congress a report on the find-
3 ings and conclusions of the study conducted under sub-
4 section (a).

5 **PART III—MEDICAID FUNDING**

6 **SEC. 4321. MEDICAID PROVIDER HIT ADOPTION AND OPER-**
7 **ATION PAYMENTS; IMPLEMENTATION FUND-**
8 **ING.**

9 (a) IN GENERAL.—Section 1903 of the Social Secu-
10 rity Act (42 U.S.C. 1396b) is amended—

11 (1) in subsection (a)(3)—

12 (A) by striking “and” at the end of sub-
13 paragraph (D);

14 (B) by striking “plus” at the end of sub-
15 paragraph (E) and inserting “and”; and

16 (C) by adding at the end the following new
17 subparagraph:

18 “(F)(i) 100 percent of so much of the
19 sums expended during such quarter as are at-
20 tributable to payments for certified EHR tech-
21 nology (and support services including mainte-
22 nance and training that is for, or is necessary
23 for the adoption and operation of, such tech-
24 nology) by Medicaid providers described in sub-
25 section (t)(1); and

1 “(ii) 90 percent of so much of the sums ex-
2 pended during such quarter as are attributable
3 to payments for reasonable administrative ex-
4 penses related to the administration of pay-
5 ments described in clause (i) if the State meets
6 the condition described in subsection (t)(9);
7 plus”; and

8 (2) by inserting after subsection (s) the fol-
9 lowing new subsection:

10 “(t)(1)(A) For purposes of subsection (a)(3)(F), the
11 payments for certified EHR technology (and support serv-
12 ices including maintenance that is for, or is necessary for
13 the operation of, such technology) by Medicaid providers
14 described in this paragraph are payments made by the
15 State in accordance with this subsection of the applicable
16 percent (as specified in subparagraph (B)) of the net al-
17 lowable costs of Medicaid providers (as defined in para-
18 graph (2)) for such technology (and support services).

19 “(B) For purposes of subparagraph (A), the applica-
20 ble percent is—

21 “(i) in the case of a Medicaid provider de-
22 scribed in paragraph (2)(A), 85 percent; and

23 “(ii) in the case of a Medicaid provider de-
24 scribed in paragraph (2)(B), 100 percent.

1 “(2) In this subsection and subsection (a)(3)(F), the
2 term ‘Medicaid provider’ means—

3 “(A) an eligible professional (as defined in
4 paragraph (3)(B)) who is not hospital-based and has
5 at least 30 percent of the professional’s patient vol-
6 ume (as estimated in accordance with standards es-
7 tablished by the Secretary) attributable to individ-
8 uals who are receiving medical assistance under this
9 title; and

10 “(B)(i) a children’s hospital, (ii) an acute-care
11 hospital that is not described in clause (i) and that
12 has at least 10 percent of the hospital’s patient vol-
13 ume (as estimated in accordance with standards es-
14 tablished by the Secretary) attributable to individ-
15 uals who are receiving medical assistance under this
16 title, or (iii) a Federally-qualified health center or
17 rural health clinic that has at least 30 percent of the
18 center’s or clinic’s patient volume (as estimated in
19 accordance with standards established by the Sec-
20 retary) attributable to individuals who are receiving
21 medical assistance under this title.

22 An eligible professional shall not qualify as a Medicaid
23 provider under this subsection unless the eligible profes-
24 sional has waived, in a manner specified by the Secretary,
25 any right to payment under section 1848(o) with respect

1 to the adoption or support of certified EHR technology
2 by the professional. In applying clauses (ii) and (iii) of
3 subparagraph (B), the standards established by the Sec-
4 retary for patient volume shall include individuals enrolled
5 in a Medicaid managed care plan (under section 1903(m)
6 or section 1932).

7 “(3) In this subsection and subsection (a)(3)(F):

8 “(A) The term ‘certified EHR technology’
9 means a qualified electronic health record (as de-
10 fined in 3000(13) of the Public Health Service Act)
11 that is certified pursuant to section 3001(c)(5) of
12 such Act as meeting standards adopted under sec-
13 tion 3004 of such Act that are applicable to the type
14 of record involved (as determined by the Secretary,
15 such as an ambulatory electronic health record for
16 office-based physicians or an inpatient hospital elec-
17 tronic health record for hospitals).

18 “(B) The term ‘eligible professional’ means a
19 physician as defined in paragraphs (1) and (2) of
20 section 1861(r), and includes a certified nurse mid-
21 wife and a nurse practitioner.

22 “(C) The term ‘hospital-based’ means, with re-
23 spect to an eligible professional, a professional (such
24 as a pathologist, anesthesiologist, or emergency phy-
25 sician) who furnishes substantially all of the individ-

1 ual’s professional services in a hospital setting
2 (whether inpatient or outpatient) and through the
3 use of the facilities and equipment, including com-
4 puter equipment, of the hospital.

5 “(4)(A) The term ‘allowable costs’ means, with re-
6 spect to certified EHR technology of a Medicaid provider,
7 costs of such technology (and support services including
8 maintenance and training that is for, or is necessary for
9 the adoption and operation of, such technology) as deter-
10 mined by the Secretary to be reasonable.

11 “(B) The term ‘net allowable costs’ means allowable
12 costs reduced by any payment that is made to the Med-
13 icaid provider involved from any other source that is di-
14 rectly attributable to payment for certified EHR tech-
15 nology or services described in subparagraph (A).

16 “(C) In no case shall—

17 “(i) the aggregate allowable costs under this
18 subsection (covering one or more years) with respect
19 to a Medicaid provider described in paragraph
20 (2)(A) for purchase and initial implementation of
21 certified EHR technology (and services described in
22 subparagraph (A)) exceed \$25,000 or include costs
23 over a period of longer than 5 years;

24 “(ii) for costs not described in clause (i) relat-
25 ing to the operation, maintenance, or use of certified

1 EHR technology, the annual allowable costs under
2 this subsection with respect to such a Medicaid pro-
3 vider for costs not described in clause (i) for any
4 year exceed \$10,000;

5 “(iii) payment described in paragraph (1) for
6 costs described in clause (ii) be made with respect
7 to such a Medicaid provider over a period of more
8 than 5 years;

9 “(iv) the aggregate allowable costs under this
10 subsection with respect to such a Medicaid provider
11 for all costs exceed \$75,000; or

12 “(v) the allowable costs, whether for purchase
13 and initial implementation, maintenance, or other-
14 wise, for a Medicaid provider described in paragraph
15 (2)(B)(iii) exceed such aggregate or annual limita-
16 tion as the Secretary shall establish, based on an
17 amount determined by the Secretary as being ade-
18 quate to adopt and maintain certified EHR tech-
19 nology, consistent with paragraph (6).

20 “(5) Payments described in paragraph (1) are not in
21 accordance with this subsection unless the following re-
22 quirements are met:

23 “(A) The State provides assurances satisfactory
24 to the Secretary that amounts received under sub-
25 section (a)(3)(F) with respect to costs of a Medicaid

1 provider are paid directly to such provider without
2 any deduction or rebate.

3 “(B) Such Medicaid provider is responsible for
4 payment of the costs described in such paragraph
5 that are not provided under this title.

6 “(C) With respect to payments to such Med-
7 icaid provider for costs other than costs related to
8 the initial adoption of certified EHR technology, the
9 Medicaid provider demonstrates meaningful use of
10 certified EHR technology through a means that is
11 approved by the State and acceptable to the Sec-
12 retary, and that may be based upon the methodolo-
13 gies applied under section 1848(o) or 1886(n).

14 “(D) To the extent specified by the Secretary,
15 the certified EHR technology is compatible with
16 State or Federal administrative management sys-
17 tems.

18 “(6)(A) In no case shall the payments described in
19 paragraph (1), with respect to a hospital, exceed in the
20 aggregate the product of—

21 “(i) the overall hospital EHR amount for the
22 hospital computed under subparagraph (B); and

23 “(ii) the Medicaid share for such hospital com-
24 puted under subparagraph (C).

1 “(B) For purposes of this paragraph, the overall hos-
2 pital EHR amount, with respect to a hospital, is the sum
3 of the applicable amounts specified in section
4 1886(n)(2)(A) for such hospital for the first 4 payment
5 years (as estimated by the Secretary) determined as if the
6 Medicare share specified in clause (ii) of such section were
7 1. The Secretary shall publish in the Federal Register the
8 overall hospital EHR amount for each hospital eligible for
9 payments under this subsection. In computing amounts
10 under paragraph 1886(n)(2)(C) for payment years after
11 the first payment year, the Secretary shall assume that
12 in subsequent payment years discharges increase at the
13 average annual rate of growth of the most recent 3 years
14 for which discharge data are available per year.

15 “(C) The Medicaid share computed under this sub-
16 paragraph, for a hospital for a period specified by the Sec-
17 retary, shall be calculated in the same manner as the
18 Medicare share under section 1886(n)(2)(D) for such a
19 hospital and period, except that there shall be substituted
20 for the numerator under clause (i) of such section the
21 amount that is equal to the number of inpatient-bed-days
22 (as established by the Secretary) which are attributable
23 to individuals who are receiving medical assistance under
24 this title and who are not described in section
25 1886(n)(2)(D)(i). In computing inpatient-bed-days under

1 the previous sentence, the Secretary shall take into ac-
2 count inpatient-bed-days attributable to inpatient-bed-
3 days that are paid for individuals enrolled in a Medicaid
4 managed care plan (under section 1903(m) or section
5 1932).

6 “(7) With respect to health care providers other than
7 hospitals, the Secretary shall ensure coordination of the
8 different programs for payment of such health care pro-
9 viders for adoption or use of health information technology
10 (including certified EHR technology), as well as payments
11 for such health care providers provided under this title or
12 title XVIII, to assure no duplication of funding.

13 “(8) In carrying out paragraph (5)(C), the State and
14 Secretary shall seek, to the maximum extent practicable,
15 to avoid duplicative requirements from Federal and State
16 Governments to demonstrate meaningful use of certified
17 EHR technology under this title and title XVIII. In doing
18 so, the Secretary may deem satisfaction of requirements
19 for such meaningful use for a payment year under title
20 XVIII to be sufficient to qualify as meaningful use under
21 this subsection. The Secretary may also specify the report-
22 ing periods under this subsection in order to carry out this
23 paragraph.

24 “(9) In order to be provided Federal financial partici-
25 pation under subsection (a)(3)(F)(ii), a State must dem-

1 onstrate to the satisfaction of the Secretary, that the
2 State—

3 “(A) is using the funds provided for the pur-
4 poses of administering payments under this sub-
5 section, including tracking of meaningful use by
6 Medicaid providers;

7 “(B) is conducting adequate oversight of the
8 program under this subsection, including routine
9 tracking of meaningful use attestations and report-
10 ing mechanisms; and

11 “(C) is pursuing initiatives to encourage the
12 adoption of certified EHR technology to promote
13 health care quality and the exchange of health care
14 information under this title, subject to applicable
15 laws and regulations governing such exchange.

16 “(10) The Secretary shall periodically submit reports
17 to the Committee on Energy and Commerce of the House
18 of Representatives and the Committee on Finance of the
19 Senate on status, progress, and oversight of payments
20 under paragraph (1).”.

21 (b) IMPLEMENTATION FUNDING.—In addition to
22 funds otherwise available, out of any funds in the Treas-
23 ury not otherwise appropriated, there are appropriated to
24 the Secretary of Health and Human Services for the Cen-
25 ter for Medicare & Medicaid Services Program Manage-

1 ment Account, \$40,000,000 for each of fiscal years 2009
2 through 2015 and \$20,000,000 for each succeeding fiscal
3 year through fiscal year 2019, which shall be available for
4 purposes of carrying out the provisions of (and the amend-
5 ments made by) this part. Amounts appropriated under
6 this subsection for a fiscal year shall be available until ex-
7 pended.

8 **SEC. 4322. MEDICAID NURSING FACILITY GRANT PROGRAM.**

9 (a) IN GENERAL.—The Secretary shall establish a
10 grant program to enhance the meaningful use of certified
11 electronic health records in nursing facilities. In estab-
12 lishing such program, the Secretary shall use payment in-
13 centives for meaningful use of certified EHR technology,
14 similar to those specified in sections 4311, 4312, and
15 4321, as appropriate. For the purpose of such incentives,
16 the Secretary shall define meaningful use in a manner so
17 as to be consistent with such sections to the extent prac-
18 ticable. The Secretary shall award funds to not more than
19 10 States to carry out activities under this section.

20 (b) ACTIVITIES.—The Secretary shall require a State
21 participating in the grant program to—

22 (1) provide payment incentives to nursing facili-
23 ties contingent on the demonstration of meaningful
24 use of certified electronic health records;

1 (2) require participating nursing facilities to en-
2 engage in programs to improve the quality and coordi-
3 nation of care through the use of certified EHR
4 technology, including for persons who are repeatedly
5 admitted to acute care hospitals from the nursing
6 facility and persons who receive services across mul-
7 tiple medical and social services providers (including
8 facility and community-based providers); and

9 (3) provide for training of appropriate per-
10 sonnel in the use of certified electronic health
11 records.

12 (c) TARGETING.—The Secretary shall require a State
13 participating in the grant program to target nursing facili-
14 ties with a significant percentage (but not less than the
15 average in the State) of the facility’s patient volume (as
16 estimated in accordance with standards established by the
17 Secretary) attributable to individuals who are receiving
18 medical assistance under title XIX of the Social Security
19 Act.

20 (d) PRIORITY.—In making grants under this section,
21 the Secretary shall give priority to States with a high pro-
22 portion of total national nursing facility days paid under
23 title XIX of the Social Security Act.

24 (e) LIMITATIONS ON USE OF FUNDS.—A State may
25 not make payments to a nursing facility in excess of 90

1 percent of the costs of such nursing facility for the adop-
2 tion and operation of certified EHR technology.

3 (f) APPLICATION.—No grant may be made to a State
4 under this section unless the State submits an application
5 to the Secretary in a form and manner specified by the
6 Secretary.

7 (g) REPORT.—Not later than the end of the 3-year
8 period beginning on the date that grants under this sec-
9 tion are first awarded, the Secretary shall submit a report
10 to Congress on the activities under this grant program and
11 the effect of this program on quality and coordination of
12 care under title XIX of the Social Security Act.

13 (h) APPROPRIATION.—Out of any money in the
14 Treasury not otherwise appropriated, there is appro-
15 priated to the Secretary of Health and Human Services
16 to carry out this section \$600,000,000, to remain available
17 until expended.

18 **Subtitle D—Privacy**

19 **SEC. 4400. DEFINITIONS.**

20 In this subtitle, except as specified otherwise:

21 (1) BREACH.—The term “breach” means the
22 unauthorized acquisition, access, use, or disclosure
23 of protected health information which compromises
24 the security, privacy, or integrity of protected health
25 information maintained by or on behalf of a person.

1 Such term does not include any unintentional acqui-
2 sition, access, use, or disclosure of such information
3 by an employee or agent of the covered entity or
4 business associate involved if such acquisition, ac-
5 cess, use, or disclosure, respectively, was made in
6 good faith and within the course and scope of the
7 employment or other contractual relationship of such
8 employee or agent, respectively, with the covered en-
9 tity or business associate and if such information is
10 not further acquired, accessed, used, or disclosed by
11 such employee or agent.

12 (2) BUSINESS ASSOCIATE.—The term “business
13 associate” has the meaning given such term in sec-
14 tion 160.103 of title 45, Code of Federal Regula-
15 tions.

16 (3) COVERED ENTITY.—The term “covered en-
17 tity” has the meaning given such term in section
18 160.103 of title 45, Code of Federal Regulations.

19 (4) DISCLOSE.—The terms “disclose” and “dis-
20 closure” have the meaning given the term “disclo-
21 sure” in section 160.103 of title 45, Code of Federal
22 Regulations.

23 (5) ELECTRONIC HEALTH RECORD.—The term
24 “electronic health record” means an electronic
25 record of health-related information on an individual

1 that is created, gathered, managed, and consulted by
2 authorized health care clinicians and staff.

3 (6) HEALTH CARE OPERATIONS.—The term
4 “health care operation” has the meaning given such
5 term in section 164.501 of title 45, Code of Federal
6 Regulations.

7 (7) HEALTH CARE PROVIDER.—The term
8 “health care provider” has the meaning given such
9 term in section 160.103 of title 45, Code of Federal
10 Regulations.

11 (8) HEALTH PLAN.—The term “health plan”
12 has the meaning given such term in section 1171(5)
13 of the Social Security Act.

14 (9) NATIONAL COORDINATOR.—The term “Na-
15 tional Coordinator” means the head of the Office of
16 the National Coordinator for Health Information
17 Technology established under section 3001(a) of the
18 Public Health Service Act, as added by section
19 4101.

20 (10) PAYMENT.—The term “payment” has the
21 meaning given such term in section 164.501 of title
22 45, Code of Federal Regulations.

23 (11) PERSONAL HEALTH RECORD.—The term
24 “personal health record” means an electronic record
25 of individually identifiable health information on an

1 individual that can be drawn from multiple sources
2 and that is managed, shared, and controlled by or
3 for the individual.

4 (12) PROTECTED HEALTH INFORMATION.—The
5 term “protected health information” has the mean-
6 ing given such term in section 160.103 of title 45,
7 Code of Federal Regulations.

8 (13) SECRETARY.—The term “Secretary”
9 means the Secretary of Health and Human Services.

10 (14) SECURITY.—The term “security” has the
11 meaning given such term in section 164.304 of title
12 45, Code of Federal Regulations.

13 (15) STATE.—The term “State” means each of
14 the several States, the District of Columbia, Puerto
15 Rico, the Virgin Islands, Guam, American Samoa,
16 and the Northern Mariana Islands.

17 (16) TREATMENT.—The term “treatment” has
18 the meaning given such term in section 164.501 of
19 title 45, Code of Federal Regulations.

20 (17) USE.—The term “use” has the meaning
21 given such term in section 160.103 of title 45, Code
22 of Federal Regulations.

23 (18) VENDOR OF PERSONAL HEALTH
24 RECORDS.—The term “vendor of personal health
25 records” means an entity, other than a covered enti-

1 ty (as defined in paragraph (3)), that offers or
2 maintains a personal health record.

3 **PART I—IMPROVED PRIVACY PROVISIONS AND**
4 **SECURITY PROVISIONS**

5 **SEC. 4401. APPLICATION OF SECURITY PROVISIONS AND**
6 **PENALTIES TO BUSINESS ASSOCIATES OF**
7 **COVERED ENTITIES; ANNUAL GUIDANCE ON**
8 **SECURITY PROVISIONS.**

9 (a) APPLICATION OF SECURITY PROVISIONS.—Sec-
10 tions 164.308, 164.310, 164.312, and 164.316 of title 45,
11 Code of Federal Regulations, shall apply to a business as-
12 sociate of a covered entity in the same manner that such
13 sections apply to the covered entity. The additional re-
14 quirements of this title that relate to security and that
15 are made applicable with respect to covered entities shall
16 also be applicable to such a business associate and shall
17 be incorporated into the business associate agreement be-
18 tween the business associate and the covered entity.

19 (b) APPLICATION OF CIVIL AND CRIMINAL PEN-
20 ALTIES.—In the case of a business associate that violates
21 any security provision specified in subsection (a), sections
22 1176 and 1177 of the Social Security Act (42 U.S.C.
23 1320d–5, 1320d–6) shall apply to the business associate
24 with respect to such violation in the same manner such

1 sections apply to a covered entity that violates such secu-
2 rity provision.

3 (c) ANNUAL GUIDANCE.—For the first year begin-
4 ning after the date of the enactment of this Act and annu-
5 ally thereafter, the Secretary of Health and Human Serv-
6 ices shall, in consultation with industry stakeholders, an-
7 nually issue guidance on the most effective and appro-
8 priate technical safeguards for use in carrying out the sec-
9 tions referred to in subsection (a) and the security stand-
10 ards in subpart C of part 164 of title 45, Code of Federal
11 Regulations, including the use of standards developed
12 under section 3002(b)(2)(B)(vi) of the Public Health
13 Service Act, as added by section 4101, as such provisions
14 are in effect as of the date before the enactment of this
15 Act.

16 **SEC. 4402. NOTIFICATION IN THE CASE OF BREACH.**

17 (a) IN GENERAL.—A covered entity that accesses,
18 maintains, retains, modifies, records, stores, destroys, or
19 otherwise holds, uses, or discloses unsecured protected
20 health information (as defined in subsection (h)(1)) shall,
21 in the case of a breach of such information that is discov-
22 ered by the covered entity, notify each individual whose
23 unsecured protected health information has been, or is
24 reasonably believed by the covered entity to have been,
25 accessed, acquired, or disclosed as a result of such breach.

1 (b) NOTIFICATION OF COVERED ENTITY BY BUSI-
2 NESS ASSOCIATE.—A business associate of a covered enti-
3 ty that accesses, maintains, retains, modifies, records,
4 stores, destroys, or otherwise holds, uses, or discloses un-
5 secured protected health information shall, following the
6 discovery of a breach of such information, notify the cov-
7 ered entity of such breach. Such notice shall include the
8 identification of each individual whose unsecured protected
9 health information has been, or is reasonably believed by
10 the business associate to have been, accessed, acquired,
11 or disclosed during such breach.

12 (c) BREACHES TREATED AS DISCOVERED.—For pur-
13 poses of this section, a breach shall be treated as discov-
14 ered by a covered entity or by a business associate as of
15 the first day on which such breach is known to such entity
16 or associate, respectively, (including any person, other
17 than the individual committing the breach, that is an em-
18 ployee, officer, or other agent of such entity or associate,
19 respectively) or should reasonably have been known to
20 such entity or associate (or person) to have occurred.

21 (d) TIMELINESS OF NOTIFICATION.—

22 (1) IN GENERAL.—Subject to subsection (g), all
23 notifications required under this section shall be
24 made without unreasonable delay and in no case
25 later than 60 calendar days after the discovery of a

1 breach by the covered entity involved (or business
2 associate involved in the case of a notification re-
3 quired under subsection (b)).

4 (2) BURDEN OF PROOF.—The covered entity in-
5 volved (or business associate involved in the case of
6 a notification required under subsection (b)), shall
7 have the burden of demonstrating that all notifica-
8 tions were made as required under this part, includ-
9 ing evidence demonstrating the necessity of any
10 delay.

11 (e) METHODS OF NOTICE.—

12 (1) INDIVIDUAL NOTICE.—Notice required
13 under this section to be provided to an individual,
14 with respect to a breach, shall be provided promptly
15 and in the following form:

16 (A) Written notification by first-class mail
17 to the individual (or the next of kin of the indi-
18 vidual if the individual is deceased) at the last
19 known address of the individual or the next of
20 kin, respectively, or, if specified as a preference
21 by the individual, by electronic mail. The notifi-
22 cation may be provided in one or more mailings
23 as information is available.

24 (B) In the case in which there is insuffi-
25 cient, or out-of-date contact information (in-

1 including a phone number, email address, or any
2 other form of appropriate communication) that
3 precludes direct written (or, if specified by the
4 individual under subparagraph (A), electronic)
5 notification to the individual, a substitute form
6 of notice shall be provided, including, in the
7 case that there are 10 or more individuals for
8 which there is insufficient or out-of-date contact
9 information, a conspicuous posting for a period
10 determined by the Secretary on the home page
11 of the Web site of the covered entity involved or
12 notice in major print or broadcast media, in-
13 cluding major media in geographic areas where
14 the individuals affected by the breach likely re-
15 side. Such a notice in media or web posting will
16 include a toll-free phone number where an indi-
17 vidual can learn whether or not the individual's
18 unsecured protected health information is pos-
19 sibly included in the breach.

20 (C) In any case deemed by the covered en-
21 tity involved to require urgency because of pos-
22 sible imminent misuse of unsecured protected
23 health information, the covered entity, in addi-
24 tion to notice provided under subparagraph (A),

1 may provide information to individuals by tele-
2 phone or other means, as appropriate.

3 (2) MEDIA NOTICE.—Notice shall be provided
4 to prominent media outlets serving a State or juris-
5 diction, following the discovery of a breach described
6 in subsection (a), if the unsecured protected health
7 information of more than 500 residents of such
8 State or jurisdiction is, or is reasonably believed to
9 have been, accessed, acquired, or disclosed during
10 such breach.

11 (3) NOTICE TO SECRETARY.—Notice shall be
12 provided to the Secretary by covered entities of un-
13 secured protected health information that has been
14 acquired or disclosed in a breach. If the breach was
15 with respect to 500 or more individuals than such
16 notice must be provided immediately. If the breach
17 was with respect to less than 500 individuals, the
18 covered entity involved may maintain a log of any
19 such breach occurring and annually submit such a
20 log to the Secretary documenting such breaches oc-
21 curring during the year involved.

22 (4) POSTING ON HHS PUBLIC WEBSITE.—The
23 Secretary shall make available to the public on the
24 Internet website of the Department of Health and
25 Human Services a list that identifies each covered

1 entity involved in a breach described in subsection
2 (a) in which the unsecured protected health informa-
3 tion of more than 500 individuals is acquired or dis-
4 closed.

5 (f) CONTENT OF NOTIFICATION.—Regardless of the
6 method by which notice is provided to individuals under
7 this section, notice of a breach shall include, to the extent
8 possible, the following:

9 (1) A brief description of what happened, in-
10 cluding the date of the breach and the date of the
11 discovery of the breach, if known.

12 (2) A description of the types of unsecured pro-
13 tected health information that were involved in the
14 breach (such as full name, Social Security number,
15 date of birth, home address, account number, or dis-
16 ability code).

17 (3) The steps individuals should take to protect
18 themselves from potential harm resulting from the
19 breach.

20 (4) A brief description of what the covered enti-
21 ty involved is doing to investigate the breach, to
22 mitigate losses, and to protect against any further
23 breaches.

24 (5) Contact procedures for individuals to ask
25 questions or learn additional information, which

1 shall include a toll-free telephone number, an e-mail
2 address, Web site, or postal address.

3 (g) DELAY OF NOTIFICATION AUTHORIZED FOR LAW
4 ENFORCEMENT PURPOSES.—If a law enforcement official
5 determines that a notification, notice, or posting required
6 under this section would impede a criminal investigation
7 or cause damage to national security, such notification,
8 notice, or posting shall be delayed in the same manner
9 as provided under section 164.528(a)(2) of title 45, Code
10 of Federal Regulations, in the case of a disclosure covered
11 under such section.

12 (h) UNSECURED PROTECTED HEALTH INFORMA-
13 TION.—

14 (1) DEFINITION.—

15 (A) IN GENERAL.—Subject to subpara-
16 graph (B), for purposes of this section, the
17 term “unsecured protected health information”
18 means protected health information that is not
19 secured through the use of a technology or
20 methodology specified by the Secretary in the
21 guidance issued under paragraph (2).

22 (B) EXCEPTION IN CASE TIMELY GUID-
23 ANCE NOT ISSUED.—In the case that the Sec-
24 retary does not issue guidance under paragraph
25 (2) by the date specified in such paragraph, for

1 purposes of this section, the term “unsecured
2 protected health information” shall mean pro-
3 tected health information that is not secured by
4 a technology standard that renders protected
5 health information unusable, unreadable, or in-
6 decipherable to unauthorized individuals and is
7 developed or endorsed by a standards devel-
8 oping organization that is accredited by the
9 American National Standards Institute.

10 (2) GUIDANCE.—For purposes of paragraph (1)
11 and section 407(f)(3), not later than the date that
12 is 60 days after the date of the enactment of this
13 Act, the Secretary shall, after consultation with
14 stakeholders, issue (and annually update) guidance
15 specifying the technologies and methodologies that
16 render protected health information unusable,
17 unreadable, or indecipherable to unauthorized indi-
18 viduals, including use of standards developed under
19 section 3002(b)(2)(B)(vi) of the Public Health Serv-
20 ice Act, as added by section 4101.

21 (i) REPORT TO CONGRESS ON BREACHES.—

22 (1) IN GENERAL.—Not later than 12 months
23 after the date of the enactment of this Act and an-
24 nually thereafter, the Secretary shall prepare and
25 submit to the Committee on Finance and the Com-

1 mittee on Health, Education, Labor, and Pensions
2 of the Senate and the Committee on Ways and
3 Means and the Committee on Energy and Commerce
4 of the House of Representatives a report containing
5 the information described in paragraph (2) regard-
6 ing breaches for which notice was provided to the
7 Secretary under subsection (e)(3).

8 (2) INFORMATION.—The information described
9 in this paragraph regarding breaches specified in
10 paragraph (1) shall include—

11 (A) the number and nature of such
12 breaches; and

13 (B) actions taken in response to such
14 breaches.

15 (j) REGULATIONS; EFFECTIVE DATE.—To carry out
16 this section, the Secretary of Health and Human Services
17 shall promulgate interim final regulations by not later
18 than the date that is 180 days after the date of the enact-
19 ment of this title. The provisions of this section shall apply
20 to breaches that are discovered on or after the date that
21 is 30 days after the date of publication of such interim
22 final regulations.

1 **SEC. 4403. EDUCATION ON HEALTH INFORMATION PRI-**
2 **VACY.**

3 (a) REGIONAL OFFICE PRIVACY ADVISORS.—Not
4 later than 6 months after the date of the enactment of
5 this Act, the Secretary shall designate an individual in
6 each regional office of the Department of Health and
7 Human Services to offer guidance and education to cov-
8 ered entities, business associates, and individuals on their
9 rights and responsibilities related to Federal privacy and
10 security requirements for protected health information.

11 (b) EDUCATION INITIATIVE ON USES OF HEALTH IN-
12 FORMATION.—Not later than 12 months after the date of
13 the enactment of this Act, the Office for Civil Rights with-
14 in the Department of Health and Human Services shall
15 develop and maintain a multi-faceted national education
16 initiative to enhance public transparency regarding the
17 uses of protected health information, including programs
18 to educate individuals about the potential uses of their
19 protected health information, the effects of such uses, and
20 the rights of individuals with respect to such uses. Such
21 programs shall be conducted in a variety of languages and
22 present information in a clear and understandable man-
23 ner.

1 **SEC. 4404. APPLICATION OF PRIVACY PROVISIONS AND**
2 **PENALTIES TO BUSINESS ASSOCIATES OF**
3 **COVERED ENTITIES.**

4 (a) APPLICATION OF CONTRACT REQUIREMENTS.—
5 In the case of a business associate of a covered entity that
6 obtains or creates protected health information pursuant
7 to a written contract (or other written arrangement) de-
8 scribed in section 164.502(e)(2) of title 45, Code of Fed-
9 eral Regulations, with such covered entity, the business
10 associate may use and disclose such protected health infor-
11 mation only if such use or disclosure, respectively, is in
12 compliance with each applicable requirement of section
13 164.504(e) of such title. The additional requirements of
14 this subtitle that relate to privacy and that are made ap-
15 plicable with respect to covered entities shall also be appli-
16 cable to such a business associate and shall be incor-
17 porated into the business associate agreement between the
18 business associate and the covered entity.

19 (b) APPLICATION OF KNOWLEDGE ELEMENTS ASSO-
20 CIATED WITH CONTRACTS.—Section 164.504(e)(1)(ii) of
21 title 45, Code of Federal Regulations, shall apply to a
22 business associate described in subsection (a), with respect
23 to compliance with such subsection, in the same manner
24 that such section applies to a covered entity, with respect
25 to compliance with the standards in sections 164.502(e)
26 and 164.504(e) of such title, except that in applying such

1 section 164.504(e)(1)(ii) each reference to the business as-
2 sociate, with respect to a contract, shall be treated as a
3 reference to the covered entity involved in such contract.

4 (c) APPLICATION OF CIVIL AND CRIMINAL PEN-
5 ALTIES.—In the case of a business associate that violates
6 any provision of subsection (a) or (b), the provisions of
7 sections 1176 and 1177 of the Social Security Act (42
8 U.S.C. 1320d–5, 1320d–6) shall apply to the business as-
9 sociate with respect to such violation in the same manner
10 as such provisions apply to a person who violates a provi-
11 sion of part C of title XI of such Act.

12 **SEC. 4405. RESTRICTIONS ON CERTAIN DISCLOSURES AND**
13 **SALES OF HEALTH INFORMATION; ACCOUNT-**
14 **ING OF CERTAIN PROTECTED HEALTH IN-**
15 **FORMATION DISCLOSURES; ACCESS TO CER-**
16 **TAIN INFORMATION IN ELECTRONIC FOR-**
17 **MAT.**

18 (a) REQUESTED RESTRICTIONS ON CERTAIN DIS-
19 CLOSURES OF HEALTH INFORMATION.—In the case that
20 an individual requests under paragraph (a)(1)(i)(A) of
21 section 164.522 of title 45, Code of Federal Regulations,
22 that a covered entity restrict the disclosure of the pro-
23 tected health information of the individual, notwith-
24 standing paragraph (a)(1)(ii) of such section, the covered
25 entity must comply with the requested restriction if—

1 (1) except as otherwise required by law, the dis-
2 closure is to a health plan for purposes of carrying
3 out payment or health care operations (and is not
4 for purposes of carrying out treatment); and

5 (2) the protected health information pertains
6 solely to a health care item or service for which the
7 health care provider involved has been paid out of
8 pocket in full.

9 (b) DISCLOSURES REQUIRED TO BE LIMITED TO
10 THE LIMITED DATA SET OR THE MINIMUM NEC-
11 CESSARY.—

12 (1) IN GENERAL.—

13 (A) IN GENERAL.—Subject to subpara-
14 graph (B), a covered entity shall be treated as
15 being in compliance with section 164.502(b)(1)
16 of title 45, Code of Federal Regulations, with
17 respect to the use, disclosure, or request of pro-
18 tected health information described in such sec-
19 tion, only if the covered entity limits such pro-
20 tected health information, to the extent prac-
21 ticable, to the limited data set (as defined in
22 section 164.514(e)(2) of such title) or, if needed
23 by such entity, to the minimum necessary to ac-
24 complish the intended purpose of such use, dis-
25 closure, or request, respectively.

1 (B) GUIDANCE.—Not later than 18
2 months after the date of the enactment of this
3 section, the Secretary shall issue guidance on
4 what constitutes “minimum necessary” for pur-
5 poses of subpart E of part 164 of title 45, Code
6 of Federal Regulation. In issuing such guidance
7 the Secretary shall take into consideration the
8 guidance under section 4424(c).

9 (C) SUNSET.—Subparagraph (A) shall not
10 apply on and after the effective date on which
11 the Secretary issues the guidance under sub-
12 paragraph (B).

13 (2) DETERMINATION OF MINIMUM NEC-
14 ESSARY.—For purposes of paragraph (1), in the
15 case of the disclosure of protected health informa-
16 tion, the covered entity or business associate dis-
17 closing such information shall determine what con-
18 stitutes the minimum necessary to accomplish the
19 intended purpose of such disclosure.

20 (3) APPLICATION OF EXCEPTIONS.—The excep-
21 tions described in section 164.502(b)(2) of title 45,
22 Code of Federal Regulations, shall apply to the re-
23 quirement under paragraph (1) as of the effective
24 date described in section 4423 in the same manner

1 that such exceptions apply to section 164.502(b)(1)
2 of such title before such date.

3 (4) RULE OF CONSTRUCTION.—Nothing in this
4 subsection shall be construed as affecting the use,
5 disclosure, or request of protected health information
6 that has been de-identified.

7 (c) ACCOUNTING OF CERTAIN PROTECTED HEALTH
8 INFORMATION DISCLOSURES REQUIRED IF COVERED EN-
9 TITY USES ELECTRONIC HEALTH RECORD.—

10 (1) IN GENERAL.—In applying section 164.528
11 of title 45, Code of Federal Regulations, in the case
12 that a covered entity uses or maintains an electronic
13 health record with respect to protected health infor-
14 mation—

15 (A) the exception under paragraph
16 (a)(1)(i) of such section shall not apply to dis-
17 closures through an electronic health record
18 made by such entity of such information; and

19 (B) an individual shall have a right to re-
20 ceive an accounting of disclosures described in
21 such paragraph of such information made by
22 such covered entity during only the three years
23 prior to the date on which the accounting is re-
24 quested.

1 (2) REGULATIONS.—The Secretary shall pro-
2 mulgate regulations on what information shall be
3 collected about each disclosure referred to in para-
4 graph (1)(A) not later than 18 months after the
5 date on which the Secretary adopts standards on ac-
6 counting for disclosure described in the section
7 3002(b)(2)(B)(iv) of the Public Health Service Act,
8 as added by section 4101. Such regulations shall
9 only require such information to be collected through
10 an electronic health record in a manner that takes
11 into account the interests of individuals in learning
12 the circumstances under which their protected health
13 information is being disclosed and takes into account
14 the administrative burden of accounting for such
15 disclosures.

16 (3) CONSTRUCTION.—Nothing in this sub-
17 section shall be construed as requiring a covered en-
18 tity to account for disclosures of protected health in-
19 formation that are not made by such covered entity
20 or by a business associate acting on behalf of the
21 covered entity.

22 (4) EFFECTIVE DATE.—

23 (A) CURRENT USERS OF ELECTRONIC
24 RECORDS.—In the case of a covered entity inso-
25 far as it acquired an electronic health record as

1 of January 1, 2009, paragraph (1) shall apply
2 to disclosures, with respect to protected health
3 information, made by the covered entity from
4 such a record on and after January 1, 2014.

5 (B) OTHERS.—In the case of a covered en-
6 tity insofar as it acquires an electronic health
7 record after January 1, 2009, paragraph (1)
8 shall apply to disclosures, with respect to pro-
9 tected health information, made by the covered
10 entity from such record on and after the later
11 of the following:

12 (i) January 1, 2011; or

13 (ii) the date that it acquires an elec-
14 tronic health record.

15 (d) REVIEW OF HEALTH CARE OPERATIONS.—Not
16 later than 18 months after the date of the enactment of
17 this title, the Secretary shall promulgate regulations to
18 eliminate from the definition of health care operations
19 under section 164.501 of title 45, Code of Federal Regula-
20 tions, those activities that can reasonably and efficiently
21 be conducted through the use of information that is de-
22 identified (in accordance with the requirements of section
23 164.514(b) of such title) or that should require a valid
24 authorization for use or disclosure. In promulgating such
25 regulations, the Secretary may choose to narrow or clarify

1 activities that the Secretary chooses to retain in the defini-
2 tion of health care operations and the Secretary shall take
3 into account the report under section 424(d). In such reg-
4 ulations the Secretary shall specify the date on which such
5 regulations shall apply to disclosures made by a covered
6 entity, but in no case would such date be sooner than the
7 date that is 24 months after the date of the enactment
8 of this section.

9 (e) PROHIBITION ON SALE OF ELECTRONIC HEALTH
10 RECORDS OR PROTECTED HEALTH INFORMATION.—

11 (1) IN GENERAL.—Except as provided in para-
12 graph (2), a covered entity or business associate
13 shall not directly or indirectly receive remuneration
14 in exchange for any protected health information of
15 an individual unless the covered entity obtained from
16 the individual, in accordance with section 164.508 of
17 title 45, Code of Federal Regulations, a valid au-
18 thorization that includes, in accordance with such
19 section, a specification of whether the protected
20 health information can be further exchanged for re-
21 munerated by the entity receiving protected health
22 information of that individual.

23 (2) EXCEPTIONS.—Paragraph (1) shall not
24 apply in the following cases:

1 (A) The purpose of the exchange is for re-
2 search or public health activities (as described
3 in sections 164.501, 164.512(i), and 164.512(b)
4 of title 45, Code of Federal Regulations) and
5 the price charged reflects the costs of prepara-
6 tion and transmittal of the data for such pur-
7 pose.

8 (B) The purpose of the exchange is for the
9 treatment of the individual and the price
10 charges reflects not more than the costs of
11 preparation and transmittal of the data for
12 such purpose.

13 (C) The purpose of the exchange is the
14 health care operation specifically described in
15 subparagraph (iv) of paragraph (6) of the defi-
16 nition of health care operations in section
17 164.501 of title 45, Code of Federal Regula-
18 tions.

19 (D) The purpose of the exchange is for re-
20 munerated that is provided by a covered entity
21 to a business associate for activities involving
22 the exchange of protected health information
23 that the business associate undertakes on behalf
24 of and at the specific request of the covered en-
25 tity pursuant to a business associate agreement.

1 (E) The purpose of the exchange is to pro-
2 vide an individual with a copy of the individ-
3 ual's protected health information pursuant to
4 section 164.524 of title 45, Code of Federal
5 Regulations.

6 (F) The purpose of the exchange is other-
7 wise determined by the Secretary in regulations
8 to be similarly necessary and appropriate as the
9 exceptions provided in subparagraphs (A)
10 through (E).

11 (3) REGULATIONS.—The Secretary shall pro-
12 mulgate regulations to carry out paragraph (this
13 subsection, including exceptions described in para-
14 graph (2), not later than 18 months after the date
15 of the enactment of this title.

16 (4) EFFECTIVE DATE.—Paragraph (1) shall
17 apply to exchanges occurring on or after the date
18 that is 6 months after the date of the promulgation
19 of final regulations implementing this subsection.

20 (f) ACCESS TO CERTAIN INFORMATION IN ELEC-
21 TRONIC FORMAT.—In applying section 164.524 of title
22 45, Code of Federal Regulations, in the case that a cov-
23 ered entity uses or maintains an electronic health record
24 with respect to protected health information of an indi-
25 vidual—

1 nication is made as described in subparagraph (i),
2 (ii), or (iii) of paragraph (1) of the definition of
3 marketing in section 164.501 of such title.

4 (2) PAYMENT FOR CERTAIN COMMUNICA-
5 TIONS.—A covered entity or business associate may
6 not receive direct or indirect payment in exchange
7 for making any communication described in sub-
8 paragraph (i), (ii), or (iii) of paragraph (1) of the
9 definition of marketing in section 164.501 of title
10 45, Code of Federal Regulations, except—

11 (A) a business associate of a covered entity
12 may receive payment from the covered entity
13 for making any such communication on behalf
14 of the covered entity that is consistent with the
15 written contract (or other written arrangement)
16 described in section 164.502(e)(2) of such title
17 between such business associate and covered en-
18 tity; or

19 (B) a covered entity may receive payment
20 in exchange for making any such communica-
21 tion if the entity obtains from the recipient of
22 the communication, in accordance with section
23 164.508 of title 45, Code of Federal Regula-
24 tions, a valid authorization (as described in

1 paragraph (b) of such section) with respect to
2 such communication.

3 (b) FUNDRAISING.—Fundraising for the benefit of a
4 covered entity shall not be considered a health care oper-
5 ation for purposes of section 164.501 of title 45, Code of
6 Federal Regulations.

7 (c) EFFECTIVE DATE.—This section shall apply to
8 contracting occurring on or after the effective date speci-
9 fied under section 4423.

10 **SEC. 4407. TEMPORARY BREACH NOTIFICATION REQUIRE-**
11 **MENT FOR VENDORS OF PERSONAL HEALTH**
12 **RECORDS AND OTHER NON-HIPAA COVERED**
13 **ENTITIES.**

14 (a) IN GENERAL.—In accordance with subsection (c),
15 each vendor of personal health records, following the dis-
16 covery of a breach of security of unsecured PHR identifi-
17 able health information that is in a personal health record
18 maintained or offered by such vendor, and each entity de-
19 scribed in clause (ii) or (iii) of section 4424(b)(1)(A), fol-
20 lowing the discovery of a breach of security of such infor-
21 mation that is obtained through a product or service pro-
22 vided by such entity, shall—

23 (1) notify each individual who is a citizen or
24 resident of the United States whose unsecured PHR
25 identifiable health information was acquired by an

1 unauthorized person as a result of such a breach of
2 security; and

3 (2) notify the Federal Trade Commission.

4 (b) NOTIFICATION BY THIRD PARTY SERVICE PRO-
5 VIDERS.—A third party service provider that provides
6 services to a vendor of personal health records or to an
7 entity described in clause (ii) or (iii) of section
8 4424(b)(1)(A) in connection with the offering or mainte-
9 nance of a personal health record or a related product or
10 service and that accesses, maintains, retains, modifies,
11 records, stores, destroys, or otherwise holds, uses, or dis-
12 closes unsecured PHR identifiable health information in
13 such a record as a result of such services shall, following
14 the discovery of a breach of security of such information,
15 notify such vendor or entity, respectively, of such breach.
16 Such notice shall include the identification of each indi-
17 vidual whose unsecured PHR identifiable health informa-
18 tion has been, or is reasonably believed to have been,
19 accessed, acquired, or disclosed during such breach.

20 (c) APPLICATION OF REQUIREMENTS FOR TIMELI-
21 NESS, METHOD, AND CONTENT OF NOTIFICATIONS.—
22 Subsections (c), (d), (e), and (f) of section 402 shall apply
23 to a notification required under subsection (a) and a ven-
24 dor of personal health records, an entity described in sub-
25 section (a) and a third party service provider described

1 in subsection (b), with respect to a breach of security
2 under subsection (a) of unsecured PHR identifiable health
3 information in such records maintained or offered by such
4 vendor, in a manner specified by the Federal Trade Com-
5 mission.

6 (d) NOTIFICATION OF THE SECRETARY.—Upon re-
7 ceipt of a notification of a breach of security under sub-
8 section (a)(2), the Federal Trade Commission shall notify
9 the Secretary of such breach.

10 (e) ENFORCEMENT.—A violation of subsection (a) or
11 (b) shall be treated as an unfair and deceptive act or prac-
12 tice in violation of a regulation under section 18(a)(1)(B)
13 of the Federal Trade Commission Act (15 U.S.C.
14 57a(a)(1)(B)) regarding unfair or deceptive acts or prac-
15 tices.

16 (f) DEFINITIONS.—For purposes of this section:

17 (1) BREACH OF SECURITY.—The term “breach
18 of security” means, with respect to unsecured PHR
19 identifiable health information of an individual in a
20 personal health record, acquisition of such informa-
21 tion without the authorization of the individual.

22 (2) PHR IDENTIFIABLE HEALTH INFORMA-
23 TION.—The term “PHR identifiable health informa-
24 tion” means individually identifiable health informa-
25 tion, as defined in section 1171(6) of the Social Se-

1 security Act (42 U.S.C. 1320d(6)), and includes, with
2 respect to an individual, information—

3 (A) that is provided by or on behalf of the
4 individual; and

5 (B) that identifies the individual or with
6 respect to which there is a reasonable basis to
7 believe that the information can be used to
8 identify the individual.

9 (3) UNSECURED PHR IDENTIFIABLE HEALTH
10 INFORMATION.—

11 (A) IN GENERAL.—Subject to subpara-
12 graph (B), the term “unsecured PHR identifi-
13 able health information” means PHR identifi-
14 able health information that is not protected
15 through the use of a technology or methodology
16 specified by the Secretary in the guidance
17 issued under section 4402(h)(2).

18 (B) EXCEPTION IN CASE TIMELY GUID-
19 ANCE NOT ISSUED.—In the case that the Sec-
20 retary does not issue guidance under section
21 4402(h)(2) by the date specified in such sec-
22 tion, for purposes of this section, the term “un-
23 secured PHR identifiable health information”
24 shall mean PHR identifiable health information
25 that is not secured by a technology standard

1 that renders protected health information unus-
2 able, unreadable, or indecipherable to unauthor-
3 ized individuals and that is developed or en-
4 dorsed by a standards developing organization
5 that is accredited by the American National
6 Standards Institute.

7 (g) REGULATIONS; EFFECTIVE DATE; SUNSET.—

8 (1) REGULATIONS; EFFECTIVE DATE.—To
9 carry out this section, the Secretary of Health and
10 Human Services shall promulgate interim final regu-
11 lations by not later than the date that is 180 days
12 after the date of the enactment of this section. The
13 provisions of this section shall apply to breaches of
14 security that are discovered on or after the date that
15 is 30 days after the date of publication of such in-
16 terim final regulations.

17 (2) SUNSET.—The provisions of this section
18 shall not apply to breaches of security occurring on
19 or after the earlier of the following the dates:

20 (A) The date on which a standard relating
21 to requirements for entities that are not covered
22 entities that includes requirements relating to
23 breach notification has been promulgated by the
24 Secretary.

1 (B) The date on which a standard relating
2 to requirements for entities that are not covered
3 entities that includes requirements relating to
4 breach notification has been promulgated by the
5 Federal Trade Commission and has taken ef-
6 fect.

7 **SEC. 4408. BUSINESS ASSOCIATE CONTRACTS REQUIRED**
8 **FOR CERTAIN ENTITIES.**

9 Each organization, with respect to a covered entity,
10 that provides data transmission of protected health infor-
11 mation to such entity (or its business associate) and that
12 requires access on a routine basis to such protected health
13 information, such as a Health Information Exchange Or-
14 ganization, Regional Health Information Organization, E-
15 prescribing Gateway, or each vendor that contracts with
16 a covered entity to allow that covered entity to offer a per-
17 sonal health record to patients as part of its electronic
18 health record, is required to enter into a written contract
19 (or other written arrangement) described in section
20 164.502(e)(2) of title 45, Code of Federal Regulations and
21 a written contract (or other arrangement) described in
22 section 164.308(b) of such title, with such entity and shall
23 be treated as a business associate of the covered entity
24 for purposes of the provisions of this subtitle and subparts
25 C and E of part 164 of title 45, Code of Federal Regula-

1 tions, as such provisions are in effect as of the date of
2 enactment of this title.

3 **SEC. 4409. CLARIFICATION OF APPLICATION OF WRONGFUL**
4 **DISCLOSURES CRIMINAL PENALTIES.**

5 Section 1177(a) of the Social Security Act (42 U.S.C.
6 1320d–6(a)) is amended by adding at the end the fol-
7 lowing new sentence: “For purposes of the previous sen-
8 tence, a person (including an employee or other individual)
9 shall be considered to have obtained or disclosed individ-
10 ually identifiable health information in violation of this
11 part if the information is maintained by a covered entity
12 (as defined in the HIPAA privacy regulation described in
13 section 1180(b)(3)) and the individual obtained or dis-
14 closed such information without authorization.”.

15 **SEC. 4410. IMPROVED ENFORCEMENT.**

16 (a) IN GENERAL.—Section 1176 of the Social Secu-
17 rity Act (42 U.S.C. 1320d–5) is amended—

18 (1) in subsection (b)(1), by striking “the act
19 constitutes an offense punishable under section
20 1177” and inserting “a penalty has been imposed
21 under section 1177 with respect to such act”; and

22 (2) by adding at the end the following new sub-
23 section:

24 “(c) NONCOMPLIANCE DUE TO WILLFUL NE-
25 GLECT.—

1 “(1) IN GENERAL.—A violation of a provision
2 of this part due to willful neglect is a violation for
3 which the Secretary is required to impose a penalty
4 under subsection (a)(1).

5 “(2) REQUIRED INVESTIGATION.—For purposes
6 of paragraph (1), the Secretary shall formally inves-
7 tigate any complaint of a violation of a provision of
8 this part if a preliminary investigation of the facts
9 of the complaint indicate such a possible violation
10 due to willful neglect.”.

11 (b) EFFECTIVE DATE; REGULATIONS.—

12 (1) The amendments made by subsection (a)
13 shall apply to penalties imposed on or after the date
14 that is 24 months after the date of the enactment
15 of this title.

16 (2) Not later than 18 months after the date of
17 the enactment of this title, the Secretary of Health
18 and Human Services shall promulgate regulations to
19 implement such amendments.

20 (c) DISTRIBUTION OF CERTAIN CIVIL MONETARY
21 PENALTIES COLLECTED.—

22 (1) IN GENERAL.—Subject to the regulation
23 promulgated pursuant to paragraph (3), any civil
24 monetary penalty or monetary settlement collected
25 with respect to an offense punishable under this sub-

1 title or section 1176 of the Social Security Act (42
2 U.S.C. 1320d–5) insofar as such section relates to
3 privacy or security shall be transferred to the Office
4 of Civil Rights of the Department of Health and
5 Human Services to be used for purposes of enforcing
6 the provisions of this subtitle and subparts C and E
7 of part 164 of title 45, Code of Federal Regulations,
8 as such provisions are in effect as of the date of en-
9 actment of this Act.

10 (2) GAO REPORT.—Not later than 18 months
11 after the date of the enactment of this title, the
12 Comptroller General shall submit to the Secretary a
13 report including recommendations for a methodology
14 under which an individual who is harmed by an act
15 that constitutes an offense referred to in paragraph
16 (1) may receive a percentage of any civil monetary
17 penalty or monetary settlement collected with re-
18 spect to such offense.

19 (3) ESTABLISHMENT OF METHODOLOGY TO
20 DISTRIBUTE PERCENTAGE OF CMPS COLLECTED TO
21 HARMED INDIVIDUALS.—Not later than 3 years
22 after the date of the enactment of this title, the Sec-
23 retary shall establish by regulation and based on the
24 recommendations submitted under paragraph (2), a
25 methodology under which an individual who is

1 harmed by an act that constitutes an offense re-
2 ferred to in paragraph (1) may receive a percentage
3 of any civil monetary penalty or monetary settlement
4 collected with respect to such offense.

5 (4) APPLICATION OF METHODOLOGY.—The
6 methodology under paragraph (3) shall be applied
7 with respect to civil monetary penalties or monetary
8 settlements imposed on or after the effective date of
9 the regulation.

10 (d) TIERED INCREASE IN AMOUNT OF CIVIL MONE-
11 TARY PENALTIES.—

12 (1) IN GENERAL.—Section 1176(a)(1) of the
13 Social Security Act (42 U.S.C. 1320d–5(a)(1)) is
14 amended by striking “who violates a provision of
15 this part a penalty of not more than” and all that
16 follows and inserting the following: “who violates a
17 provision of this part—

18 “(A) in the case of a violation of such pro-
19 vision in which it is established that the person
20 did not know (and by exercising reasonable dili-
21 gence would not have known) that such person
22 violated such provision, a penalty for each such
23 violation of an amount that is at least the
24 amount described in paragraph (3)(A) but not

1 to exceed the amount described in paragraph
2 (3)(D);

3 “(B) in the case of a violation of such pro-
4 vision in which it is established that the viola-
5 tion was due to reasonable cause and not to
6 willful neglect, a penalty for each such violation
7 of an amount that is at least the amount de-
8 scribed in paragraph (3)(B) but not to exceed
9 the amount described in paragraph (3)(D); and

10 “(C) in the case of a violation of such pro-
11 vision in which it is established that the viola-
12 tion was due to willful neglect—

13 “(i) if the violation is corrected as de-
14 scribed in subsection (b)(3)(A), a penalty
15 in an amount that is at least the amount
16 described in paragraph (3)(C) but not to
17 exceed the amount described in paragraph
18 (3)(D); and

19 “(ii) if the violation is not corrected
20 as described in such subsection, a penalty
21 in an amount that is at least the amount
22 described in paragraph (3)(D).

23 In determining the amount of a penalty under
24 this section for a violation, the Secretary shall
25 base such determination on the nature and ex-

1 tent of the violation and the nature and extent
2 of the harm resulting from such violation.”.

3 (2) TIERS OF PENALTIES DESCRIBED.—Section
4 1176(a) of such Act (42 U.S.C. 1320d–5(a)) is fur-
5 ther amended by adding at the end the following
6 new paragraph:

7 “(3) TIERS OF PENALTIES DESCRIBED.—For
8 purposes of paragraph (1), with respect to a viola-
9 tion by a person of a provision of this part—

10 “(A) the amount described in this subpara-
11 graph is \$100 for each such violation, except
12 that the total amount imposed on the person
13 for all such violations of an identical require-
14 ment or prohibition during a calendar year may
15 not exceed \$25,000;

16 “(B) the amount described in this subpara-
17 graph is \$1,000 for each such violation, except
18 that the total amount imposed on the person
19 for all such violations of an identical require-
20 ment or prohibition during a calendar year may
21 not exceed \$100,000;

22 “(C) the amount described in this subpara-
23 graph is \$10,000 for each such violation, except
24 that the total amount imposed on the person
25 for all such violations of an identical require-

1 ment or prohibition during a calendar year may
2 not exceed \$250,000; and

3 “(D) the amount described in this sub-
4 paragraph is \$50,000 for each such violation,
5 except that the total amount imposed on the
6 person for all such violations of an identical re-
7 quirement or prohibition during a calendar year
8 may not exceed \$1,500,000.”.

9 (3) CONFORMING AMENDMENTS.—Section
10 1176(b) of such Act (42 U.S.C. 1320d–5(b)) is
11 amended—

12 (A) by striking paragraph (2) and redesignig-
13 nating paragraphs (3) and (4) as paragraphs
14 (2) and (3), respectively; and

15 (B) in paragraph (2), as so redesignated—

16 (i) in subparagraph (A), by striking
17 “in subparagraph (B), a penalty may not
18 be imposed under subsection (a) if” and all
19 that follows through “the failure to comply
20 is corrected” and inserting “in subpara-
21 graph (B) or subsection (a)(1)(C), a pen-
22 alty may not be imposed under subsection
23 (a) if the failure to comply is corrected”;
24 and

1 (ii) in subparagraph (B), by striking
2 “(A)(ii)” and inserting “(A)” each place it
3 appears.

4 (4) EFFECTIVE DATE.—The amendments made
5 by this subsection shall apply to violations occurring
6 after the date of the enactment of this title.

7 (e) ENFORCEMENT THROUGH STATE ATTORNEYS
8 GENERAL.—

9 (1) IN GENERAL.—Section 1176 of the Social
10 Security Act (42 U.S.C. 1320d–5) is amended by
11 adding at the end the following new subsection:

12 “(c) ENFORCEMENT BY STATE ATTORNEYS GEN-
13 ERAL.—

14 “(1) CIVIL ACTION.—Except as provided in
15 subsection (b), in any case in which the attorney
16 general of a State has reason to believe that an in-
17 terest of one or more of the residents of that State
18 has been or is threatened or adversely affected by
19 any person who violates a provision of this part, the
20 attorney general of the State, as *parens patriae*, may
21 bring a civil action on behalf of such residents of the
22 State in a district court of the United States of ap-
23 propriate jurisdiction—

24 “(A) to enjoin further such violation by the
25 defendant; or

1 “(B) to obtain damages on behalf of such
2 residents of the State, in an amount equal to
3 the amount determined under paragraph (2).

4 “(2) STATUTORY DAMAGES.—

5 “(A) IN GENERAL.—For purposes of para-
6 graph (1)(B), the amount determined under
7 this paragraph is the amount calculated by mul-
8 tiplying the number of violations by up to \$100.
9 For purposes of the preceding sentence, in the
10 case of a continuing violation, the number of
11 violations shall be determined consistent with
12 the HIPAA privacy regulations (as defined in
13 section 1180(b)(3)) for violations of subsection
14 (a).

15 “(B) LIMITATION.—The total amount of
16 damages imposed on the person for all viola-
17 tions of an identical requirement or prohibition
18 during a calendar year may not exceed \$25,000.

19 “(C) REDUCTION OF DAMAGES.—In as-
20 sessing damages under subparagraph (A), the
21 court may consider the factors the Secretary
22 may consider in determining the amount of a
23 civil money penalty under subsection (a) under
24 the HIPAA privacy regulations.

1 “(3) ATTORNEY FEES.—In the case of any suc-
2 cessful action under paragraph (1), the court, in its
3 discretion, may award the costs of the action and
4 reasonable attorney fees to the State.

5 “(4) NOTICE TO SECRETARY.—The State shall
6 serve prior written notice of any action under para-
7 graph (1) upon the Secretary and provide the Sec-
8 retary with a copy of its complaint, except in any
9 case in which such prior notice is not feasible, in
10 which case the State shall serve such notice imme-
11 diately upon instituting such action. The Secretary
12 shall have the right—

13 “(A) to intervene in the action;

14 “(B) upon so intervening, to be heard on
15 all matters arising therein; and

16 “(C) to file petitions for appeal.

17 “(5) CONSTRUCTION.—For purposes of bring-
18 ing any civil action under paragraph (1), nothing in
19 this section shall be construed to prevent an attor-
20 ney general of a State from exercising the powers
21 conferred on the attorney general by the laws of that
22 State.

23 “(6) VENUE; SERVICE OF PROCESS.—

24 “(A) VENUE.—Any action brought under
25 paragraph (1) may be brought in the district

1 court of the United States that meets applicable
2 requirements relating to venue under section
3 1391 of title 28, United States Code.

4 “(B) SERVICE OF PROCESS.—In an action
5 brought under paragraph (1), process may be
6 served in any district in which the defendant—

7 “(i) is an inhabitant; or

8 “(ii) maintains a physical place of
9 business.

10 “(7) LIMITATION ON STATE ACTION WHILE
11 FEDERAL ACTION IS PENDING.—If the Secretary has
12 instituted an action against a person under sub-
13 section (a) with respect to a specific violation of this
14 part, no State attorney general may bring an action
15 under this subsection against the person with re-
16 spect to such violation during the pendency of that
17 action.

18 “(8) APPLICATION OF CMP STATUTE OF LIM-
19 TATION.—A civil action may not be instituted with
20 respect to a violation of this part unless an action
21 to impose a civil money penalty may be instituted
22 under subsection (a) with respect to such violation
23 consistent with the second sentence of section
24 1128A(c)(1).”.

1 (2) CONFORMING AMENDMENTS.—Subsection
2 (b) of such section, as amended by subsection (d)(3),
3 is amended—

4 (A) in paragraph (1), by striking “A pen-
5 alty may not be imposed under subsection (a)”
6 and inserting “No penalty may be imposed
7 under subsection (a) and no damages obtained
8 under subsection (c)”;

9 (B) in paragraph (2)(A)—

10 (i) in the matter before clause (i), by
11 striking “a penalty may not be imposed
12 under subsection (a)” and inserting “no
13 penalty may be imposed under subsection
14 (a) and no damages obtained under sub-
15 section (c)”;

16 (ii) in clause (ii), by inserting “or
17 damages” after “the penalty”;

18 (C) in paragraph (2)(B)(i), by striking
19 “The period” and inserting “With respect to
20 the imposition of a penalty by the Secretary
21 under subsection (a), the period”;

22 (D) in paragraph (3), by inserting “and
23 any damages under subsection (c)” after “any
24 penalty under subsection (a)”.

1 (3) EFFECTIVE DATE.—The amendments made
2 by this subsection shall apply to violations occurring
3 after the date of the enactment of this Act.

4 (f) ALLOWING CONTINUED USE OF CORRECTIVE AC-
5 TION.—Such section is further amended by adding at the
6 end the following new subsection:

7 “(d) ALLOWING CONTINUED USE OF CORRECTIVE
8 ACTION.—Nothing in this section shall be construed as
9 preventing the Office of Civil Rights of the Department
10 of Health and Human Services from continuing, in its dis-
11 cretion, to use corrective action without a penalty in cases
12 where the person did not know (and by exercising reason-
13 able diligence would not have known) of the violation in-
14 volved.”.

15 **SEC. 4411. AUDITS.**

16 The Secretary shall provide for periodic audits to en-
17 sure that covered entities and business associates that are
18 subject to the requirements of this subtitle and subparts
19 C and E of part 164 of title 45, Code of Federal Regula-
20 tions, as such provisions are in effect as of the date of
21 enactment of this Act, comply with such requirements.

1 **SEC. 4412. SPECIAL RULE FOR INFORMATION TO REDUCE**
2 **MEDICATION ERRORS AND IMPROVE PA-**
3 **TIENT SAFETY.**

4 Nothing under this subtitle shall prevent a phar-
5 macist from communicating with patients in order to re-
6 duce medication errors and improve patient safety pro-
7 vided there is no remuneration other than for the treat-
8 ment of the individual and payment for such treatment
9 of the individual as defined in 45 CFR 164.501. The
10 Secretary may by regulation authorize a pharmacy to re-
11 ceive remuneration that does not exceed their reasonable
12 out-of-pocket costs for such communications if the Sec-
13 retary determines that allowing this remuneration im-
14 proves patient care and protects protected health informa-
15 tion.

16 **PART II—RELATIONSHIP TO OTHER LAWS; REGU-**
17 **LATORY REFERENCES; EFFECTIVE DATE; RE-**
18 **PORTS**

19 **SEC. 4421. RELATIONSHIP TO OTHER LAWS.**

20 (a) APPLICATION OF HIPAA STATE PREEMPTION.—
21 Section 1178 of the Social Security Act (42 U.S.C.
22 1320d-7) shall apply to a provision or requirement under
23 this subtitle in the same manner that such section applies
24 to a provision or requirement under part C of title XI of
25 such Act or a standard or implementation specification

1 adopted or established under sections 1172 through 1174
2 of such Act.

3 (b) HEALTH INSURANCE PORTABILITY AND AC-
4 COUNTABILITY ACT.—The standards governing the pri-
5 vacy and security of individually identifiable health infor-
6 mation promulgated by the Secretary under sections
7 262(a) and 264 of the Health Insurance Portability and
8 Accountability Act of 1996 shall remain in effect to the
9 extent that they are consistent with this subtitle. The Sec-
10 retary shall by rule amend such Federal regulations as re-
11 quired to make such regulations consistent with this sub-
12 title.

13 **SEC. 4422. REGULATORY REFERENCES.**

14 Each reference in this subtitle to a provision of the
15 Code of Federal Regulations refers to such provision as
16 in effect on the date of the enactment of this title (or to
17 the most recent update of such provision).

18 **SEC. 4423. EFFECTIVE DATE.**

19 Except as otherwise specifically provided, the provi-
20 sions of part I shall take effect on the date that is 12
21 months after the date of the enactment of this title.

22 **SEC. 4424. STUDIES, REPORTS, GUIDANCE.**

23 (a) REPORT ON COMPLIANCE.—

24 (1) IN GENERAL.—For the first year beginning
25 after the date of the enactment of this Act and an-

1 nually thereafter, the Secretary shall prepare and
2 submit to the Committee on Health, Education,
3 Labor, and Pensions of the Senate and the Com-
4 mittee on Ways and Means and the Committee on
5 Energy and Commerce of the House of Representa-
6 tives a report concerning complaints of alleged viola-
7 tions of law, including the provisions of this subtitle
8 as well as the provisions of subparts C and E of part
9 164 of title 45, Code of Federal Regulations, (as
10 such provisions are in effect as of the date of enact-
11 ment of this Act) relating to privacy and security of
12 health information that are received by the Secretary
13 during the year for which the report is being pre-
14 pared. Each such report shall include, with respect
15 to such complaints received during the year—

16 (A) the number of such complaints;

17 (B) the number of such complaints re-
18 solved informally, a summary of the types of
19 such complaints so resolved, and the number of
20 covered entities that received technical assist-
21 ance from the Secretary during such year in
22 order to achieve compliance with such provi-
23 sions and the types of such technical assistance
24 provided;

1 (C) the number of such complaints that
2 have resulted in the imposition of civil monetary
3 penalties or have been resolved through mone-
4 tary settlements, including the nature of the
5 complaints involved and the amount paid in
6 each penalty or settlement;

7 (D) the number of compliance reviews con-
8 ducted and the outcome of each such review;

9 (E) the number of subpoenas or inquiries
10 issued;

11 (F) the Secretary's plan for improving
12 compliance with and enforcement of such provi-
13 sions for the following year; and

14 (G) the number of audits performed and a
15 summary of audit findings pursuant to section
16 4411.

17 (2) AVAILABILITY TO PUBLIC.—Each report
18 under paragraph (1) shall be made available to the
19 public on the Internet website of the Department of
20 Health and Human Services.

21 (b) STUDY AND REPORT ON APPLICATION OF PRI-
22 VACY AND SECURITY REQUIREMENTS TO NON-HIPAA
23 COVERED ENTITIES.—

24 (1) STUDY.—Not later than one year after the
25 date of the enactment of this title, the Secretary, in

1 consultation with the Federal Trade Commission,
2 shall conduct a study, and submit a report under
3 paragraph (2), on privacy and security requirements
4 for entities that are not covered entities or business
5 associates as of the date of the enactment of this
6 title, including—

7 (A) requirements relating to security, pri-
8 vacy, and notification in the case of a breach of
9 security or privacy (including the applicability
10 of an exemption to notification in the case of
11 individually identifiable health information that
12 has been rendered unusable, unreadable, or in-
13 decipherable through technologies or methodolo-
14 gies recognized by appropriate professional or-
15 ganization or standard setting bodies to provide
16 effective security for the information) that
17 should be applied to—

18 (i) vendors of personal health records;

19 (ii) entities that offer products or
20 services through the website of a vendor of
21 personal health records;

22 (iii) entities that are not covered enti-
23 ties and that offer products or services
24 through the websites of covered entities

1 that offer individuals personal health
2 records;

3 (iv) entities that are not covered enti-
4 ties and that access information in a per-
5 sonal health record or send information to
6 a personal health record; and

7 (v) third party service providers used
8 by a vendor or entity described in clause
9 (i), (ii), (iii), or (iv) to assist in providing
10 personal health record products or services;

11 (B) a determination of which Federal gov-
12 ernment agency is best equipped to enforce
13 such requirements recommended to be applied
14 to such vendors, entities, and service providers
15 under subparagraph (A); and

16 (C) a timeframe for implementing regula-
17 tions based on such findings.

18 (2) REPORT.—The Secretary shall submit to
19 the Committee on Finance, the Committee on
20 Health, Education, Labor, and Pensions, and the
21 Committee on Commerce of the Senate and the
22 Committee on Ways and Means and the Committee
23 on Energy and Commerce of the House of Rep-
24 resentatives a report on the findings of the study
25 under paragraph (1) and shall include in such report

1 recommendations on the privacy and security re-
2 quirements described in such paragraph.

3 (c) GUIDANCE ON IMPLEMENTATION SPECIFICATION
4 TO DE-IDENTIFY PROTECTED HEALTH INFORMATION.—
5 Not later than 12 months after the date of the enactment
6 of this title, the Secretary shall, in consultation with stake-
7 holders, issue guidance on how best to implement the re-
8 quirements for the de-identification of protected health in-
9 formation under section 164.514(b) of title 45, Code of
10 Federal Regulations.

11 (d) GAO REPORT ON TREATMENT DISCLOSURES.—
12 Not later than one year after the date of the enactment
13 of this title, the Comptroller General of the United States
14 shall submit to the Committee on Health, Education,
15 Labor, and Pensions of the Senate and the Committee on
16 Ways and Means and the Committee on Energy and Com-
17 merce of the House of Representatives a report on the
18 best practices related to the disclosure among health care
19 providers of protected health information of an individual
20 for purposes of treatment of such individual. Such report
21 shall include an examination of the best practices imple-
22 mented by States and by other entities, such as health
23 information exchanges and regional health information or-
24 ganizations, an examination of the extent to which such
25 best practices are successful with respect to the quality

1 of the resulting health care provided to the individual and
2 with respect to the ability of the health care provider to
3 manage such best practices, and an examination of the
4 use of electronic informed consent for disclosing protected
5 health information for treatment, payment, and health
6 care operations.

7 **Subtitle E—Miscellaneous**
8 **Medicare Provisions**

9 **SEC. 4501. MORATORIA ON CERTAIN MEDICARE REGULA-**
10 **TIONS.**

11 (a) DELAY IN PHASE OUT OF MEDICARE HOSPICE
12 BUDGET NEUTRALITY ADJUSTMENT FACTOR DURING
13 FISCAL YEAR 2009.—Notwithstanding any other provi-
14 sion of law, including the final rule published on August
15 8, 2008, 73 Federal Register 46464 et seq., relating to
16 Medicare Program; Hospice Wage Index for Fiscal Year
17 2009, the Secretary of Health and Human Services shall
18 not phase out or eliminate the budget neutrality adjust-
19 ment factor in the Medicare hospice wage index before Oc-
20 tober 1, 2009, and the Secretary shall recompute and
21 apply the final Medicare hospice wage index for fiscal year
22 2009 as if there had been no reduction in the budget neu-
23 trality adjustment factor.

1 (b) NON-APPLICATION OF PHASED-OUT INDIRECT
2 MEDICAL EDUCATION (IME) ADJUSTMENT FACTOR FOR
3 FISCAL YEAR 2009.—

4 (1) IN GENERAL.—Section 412.322 of title 42,
5 Code of Federal Regulations, shall be applied with-
6 out regard to paragraph (c) of such section, and the
7 Secretary of Health and Human Services shall re-
8 compute payments for discharges occurring on or
9 after October 1, 2008, as if such paragraph had
10 never been in effect.

11 (2) NO EFFECT ON SUBSEQUENT YEARS.—
12 Nothing in paragraph (1) shall be construed as hav-
13 ing any effect on the application of paragraph (d) of
14 section 412.322 of title 42, Code of Federal Regula-
15 tions.

16 (c) FUNDING FOR IMPLEMENTATION.—In addition to
17 funds otherwise available, for purposes of implementing
18 the provisions of subsections (a) and (b), including costs
19 incurred in reprocessing claims in carrying out such provi-
20 sions, the Secretary of Health and Human Services shall
21 provide for the transfer from the Federal Hospital Insur-
22 ance Trust Fund established under section 1817 of the
23 Social Security Act (42 U.S.C. 1395i) to the Centers for
24 Medicare & Medicaid Services Program Management Ac-
25 count of \$2,000,000 for fiscal year 2009.

1 **SEC. 4502. LONG-TERM CARE HOSPITAL TECHNICAL COR-**
2 **RECTIONS.**

3 (a) PAYMENT.—Subsection (c) of section 114 of the
4 Medicare, Medicaid, and SCHIP Extension Act of 2007
5 (Public Law 110–173) is amended—

6 (1) in paragraph (1)—

7 (A) by amending the heading to read as
8 follows: “DELAY IN APPLICATION OF 25 PER-
9 CENT PATIENT THRESHOLD PAYMENT ADJUST-
10 MENT”;

11 (B) by striking “the date of the enactment
12 of this Act” and inserting “July 1, 2007,”; and

13 (C) in subparagraph (A), by inserting “or
14 to a long-term care hospital, or satellite facility,
15 that as of December 29, 2007, was co-located
16 with an entity that is a provider-based, off-cam-
17 pus location of a subsection (d) hospital which
18 did not provide services payable under section
19 1886(d) of the Social Security Act at the off-
20 campus location” after “freestanding long-term
21 care hospitals”; and

22 (2) in paragraph (2)—

23 (A) in subparagraph (B)(ii), by inserting
24 “or that is described in section 412.22(h)(3)(i)
25 of such title” before the period; and

1 (B) in subparagraph (C), by striking “the
2 date of the enactment of this Act” and insert-
3 ing “October 1, 2007 (or July 1, 2007, in the
4 case of a satellite facility described in section
5 412.22(h)(3)(i) of title 42, Code of Federal
6 Regulations)”.

7 (b) MORATORIUM.—Subsection (d)(3)(A) of such sec-
8 tion is amended by striking “if the hospital or facility”
9 and inserting “if the hospital or facility obtained a certifi-
10 cate of need for an increase in beds that is in a State
11 for which such certificate of need is required and that was
12 issued on or after April 1, 2005, and before December
13 29, 2007, or if the hospital or facility”.

14 (c) EFFECTIVE DATE.—The amendments made by
15 this section shall be effective and apply as if included in
16 the enactment of the Medicare, Medicaid, and SCHIP Ex-
17 tension Act of 2007 (Public Law 110–173).

18 **TITLE V—MEDICAID**

19 **PROVISIONS**

20 **SEC. 5000. TABLE OF CONTENTS OF TITLE.**

21 The table of contents of this title is as follows:

- Sec. 5000. Table of contents of title.
- Sec. 5001. Temporary increase of Medicaid FMAP.
- Sec. 5002. Moratoria on certain regulations.
- Sec. 5003. Transitional Medicaid assistance (TMA).
- Sec. 5004. Protections for Indians under Medicaid and CHIP.
- Sec. 5005. Consultation on Medicaid and CHIP.
- Sec. 5006. Temporary increase in DSH allotments during recession.

1 **SEC. 5001. TEMPORARY INCREASE OF MEDICAID FMAP.**

2 (a) PERMITTING MAINTENANCE OF FMAP.—Subject
3 to subsections (e), (f), and (g), if the FMAP determined
4 without regard to this section for a State for—

5 (1) fiscal year 2009 is less than the FMAP as
6 so determined for fiscal year 2008, the FMAP for
7 the State for fiscal year 2008 shall be substituted
8 for the State’s FMAP for fiscal year 2009, before
9 the application of this section;

10 (2) fiscal year 2010 is less than the FMAP as
11 so determined for fiscal year 2008 or fiscal year
12 2009 (after the application of paragraph (1)), the
13 greater of such FMAP for the State for fiscal year
14 2008 or fiscal year 2009 shall be substituted for the
15 State’s FMAP for fiscal year 2010, before the appli-
16 cation of this section; and

17 (3) fiscal year 2011 is less than the FMAP as
18 so determined for fiscal year 2008, fiscal year 2009
19 (after the application of paragraph (1)), or fiscal
20 year 2010 (after the application of paragraph (2)),
21 the greatest of such FMAP for the State for fiscal
22 year 2008, fiscal year 2009, or fiscal year 2010 shall
23 be substituted for the State’s FMAP for fiscal year
24 2011, before the application of this section, but only
25 for the first calendar quarter in fiscal year 2011.

26 (b) GENERAL 4.9 PERCENTAGE POINT INCREASE.—

1 (1) IN GENERAL.—Subject to subsections (e),
2 (f), and (g) and paragraph (2), for each State for
3 calendar quarters during the recession adjustment
4 period (as defined in subsection (h)(2)), the FMAP
5 (after the application of subsection (a)) shall be in-
6 creased (without regard to any limitation otherwise
7 specified in section 1905(b) of the Social Security
8 Act) by 4.9 percentage points.

9 (2) SPECIAL ELECTION FOR TERRITORIES.—In
10 the case of a State that is not one of the 50 States
11 or the District of Columbia, paragraph (1) shall only
12 apply if the State makes a one-time election, in a
13 form and manner specified by the Secretary and for
14 the entire recession adjustment period, to apply the
15 increase in FMAP under paragraph (1) and a 10
16 percent increase under subsection (d) instead of ap-
17 plying a 20 percent increase under subsection (d).

18 (c) ADDITIONAL ADJUSTMENT TO REFLECT IN-
19 CREASE IN UNEMPLOYMENT.—

20 (1) IN GENERAL.—Subject to subsections (e),
21 (f), and (g), in the case of a State that is a high
22 unemployment State (as defined in paragraph (2))
23 for a calendar quarter during the recession adjust-
24 ment period, the FMAP (taking into account the ap-
25 plication of subsections (a) and (b)) for such quarter

1 shall be further increased by the high unemployment
2 percentage point adjustment specified in paragraph
3 (3) for the State for the quarter.

4 (2) HIGH UNEMPLOYMENT STATE.—

5 (A) IN GENERAL.—In this subsection, sub-
6 ject to subparagraph (B), the term “high unem-
7 ployment State” means, with respect to a cal-
8 endar quarter in the recession adjustment pe-
9 riod, a State that is 1 of the 50 States or the
10 District of Columbia and for which the State
11 unemployment increase percentage (as com-
12 puted under paragraph (5)) for the quarter is
13 not less than 1.5 percentage points.

14 (B) MAINTENANCE OF STATUS.—If a
15 State is a high unemployment State for a cal-
16 endar quarter, it shall remain a high unemploy-
17 ment State for each subsequent calendar quar-
18 ter ending before July 1, 2010.

19 (3) HIGH UNEMPLOYMENT PERCENTAGE POINT
20 ADJUSTMENT.—

21 (A) IN GENERAL.—The high unemploy-
22 ment percentage point adjustment specified in
23 this paragraph for a high unemployment State
24 for a quarter is equal to the product of—

1 (i) the SMAP for such State and
2 quarter (determined after the application
3 of subsection (a) and before the application
4 of subsection (b)); and

5 (ii) subject to subparagraph (B), the
6 State unemployment reduction factor spec-
7 ified in paragraph (4) for the State and
8 quarter.

9 (B) MAINTENANCE OF ADJUSTMENT
10 LEVEL FOR CERTAIN QUARTERS.—In no case
11 shall the State unemployment reduction factor
12 applied under subparagraph (A)(ii) for a State
13 for a quarter (beginning on or after January 1,
14 2009, and ending before July 1, 2010) be less
15 than the State unemployment reduction factor
16 applied to the State for the previous quarter
17 (taking into account the application of this sub-
18 paragraph).

19 (4) STATE UNEMPLOYMENT REDUCTION FAC-
20 TOR.—In the case of a high unemployment State for
21 which the State unemployment increase percentage
22 (as computed under paragraph (5)) with respect to
23 a calendar quarter is—

24 (A) not less than 1.5, but is less than 2.5,
25 percentage points, the State unemployment re-

1 duction factor for the State and quarter is 6
2 percent;

3 (B) not less than 2.5, but is less than 3.5,
4 percentage points, the State unemployment re-
5 duction factor for the State and quarter is 12
6 percent; or

7 (C) not less than 3.5 percentage points,
8 the State unemployment reduction factor for
9 the State and quarter is 14 percent.

10 (5) COMPUTATION OF STATE UNEMPLOYMENT
11 INCREASE PERCENTAGE.—

12 (A) IN GENERAL.—In this subsection, the
13 “State unemployment increase percentage” for
14 a State for a calendar quarter is equal to the
15 number of percentage points (if any) by
16 which—

17 (i) the average monthly unemployment
18 rate for the State for months in the most
19 recent previous 3-consecutive-month period
20 for which data are available, subject to
21 subparagraph (C); exceeds

22 (ii) the lowest average monthly unem-
23 ployment rate for the State for any 3-con-
24 secutive-month period preceding the period

1 described in clause (i) and beginning on or
2 after January 1, 2006.

3 (B) AVERAGE MONTHLY UNEMPLOYMENT
4 RATE DEFINED.—In this paragraph, the term
5 “average monthly unemployment rate” means
6 the average of the monthly number unemployed,
7 divided by the average of the monthly civilian
8 labor force, seasonally adjusted, as determined
9 based on the most recent monthly publications
10 of the Bureau of Labor Statistics of the De-
11 partment of Labor.

12 (C) SPECIAL RULE.—With respect to—

13 (i) the first 2 calendar quarters of the
14 recession adjustment period, the most re-
15 cent previous 3-consecutive-month period
16 described in subparagraph (A)(i) shall be
17 the 3-consecutive-month period beginning
18 with October 2008; and

19 (ii) the last 2 calendar quarters of the
20 recession adjustment period, the most re-
21 cent previous 3-consecutive-month period
22 described in such subparagraph shall be
23 the 3-consecutive-month period beginning
24 with December 2009.

1 (d) INCREASE IN CAP ON MEDICAID PAYMENTS TO
2 TERRITORIES.—Subject to subsections (f) and (g) , with
3 respect to entire fiscal years occurring during the recess-
4 sion adjustment period and with respect to fiscal years
5 only a portion of which occurs during such period (and
6 in proportion to the portion of the fiscal year that occurs
7 during such period), the amounts otherwise determined for
8 Puerto Rico, the Virgin Islands, Guam, the Northern Mar-
9 iana Islands, and American Samoa under subsections (f)
10 and (g) of section 1108 of the Social Security Act (42
11 U.S.C. 1308) shall each be increased by 20 percent (or,
12 in the case of an election under subsection (b)(2), 10 per-
13 cent).

14 (e) SCOPE OF APPLICATION.—The increases in the
15 FMAP for a State under this section shall apply for pur-
16 poses of title XIX of the Social Security Act and—

17 (1) the increases applied under subsections (a),
18 (b), and (c) shall not apply with respect—

19 (A) to payments under parts A, B, and D
20 of title IV or title XXI of such Act (42 U.S.C.
21 601 et seq. and 1397aa et seq.);

22 (B) to payments under title XIX of such
23 Act that are based on the enhanced FMAP de-
24 scribed in section 2105(b) of such Act (42
25 U.S.C. 1397ee(b)); and

1 (C) to payments for disproportionate share
2 hospital (DSH) payment adjustments under
3 section 1923 of such Act (42 U.S.C. 1396r-4);
4 and

5 (2) the increase provided under subsection (c)
6 shall not apply with respect to payments under part
7 E of title IV of such Act.

8 (f) STATE INELIGIBILITY AND LIMITATION.—

9 (1) IN GENERAL.—Subject to paragraphs (2)
10 and (3), a State is not eligible for an increase in its
11 FMAP under subsection (a), (b), or (c), or an in-
12 crease in a cap amount under subsection (d), if eligi-
13 bility standards, methodologies, or procedures under
14 its State plan under title XIX of the Social Security
15 Act (including any waiver under such title or under
16 section 1115 of such Act (42 U.S.C. 1315)) are
17 more restrictive than the eligibility standards, meth-
18 odologies, or procedures, respectively, under such
19 plan (or waiver) as in effect on July 1, 2008.

20 (2) STATE REINSTATEMENT OF ELIGIBILITY
21 PERMITTED.—Subject to paragraph (3), a State that
22 has restricted eligibility standards, methodologies, or
23 procedures under its State plan under title XIX of
24 the Social Security Act (including any waiver under
25 such title or under section 1115 of such Act (42

1 U.S.C. 1315)) after July 1, 2008, is no longer ineli-
2 gible under paragraph (1) beginning with the first
3 calendar quarter in which the State has reinstated
4 eligibility standards, methodologies, or procedures
5 that are no more restrictive than the eligibility
6 standards, methodologies, or procedures, respec-
7 tively, under such plan (or waiver) as in effect on
8 July 1, 2008.

9 (3) SPECIAL RULES.—A State shall not be in-
10 eligible under paragraph (1)—

11 (A) for the calendar quarters before July
12 1, 2009, on the basis of a restriction that was
13 applied after July 1, 2008, and before the date
14 of the enactment of this Act, if the State, prior
15 to July 1, 2009, reinstated eligibility standards,
16 methodologies, or procedures that are no more
17 restrictive than the eligibility standards, meth-
18 odologies, or procedures, respectively, under
19 such plan (or waiver) as in effect on July 1,
20 2008; or

21 (B) on the basis of a restriction that was
22 effective under State law as of July 1, 2008,
23 and would have been in effect as of such date,
24 but for a delay (of not longer than 1 calendar
25 quarter) in the approval of a request for a new

1 waiver under section 1115 of such Act with re-
2 spect to such restriction.

3 (4) STATE'S APPLICATION TOWARD RAINY DAY
4 FUND.—A State is not eligible for an increase in its
5 FMAP under subsection (b) or (c), or an increase in
6 a cap amount under subsection (d), if any amounts
7 attributable (directly or indirectly) to such increase
8 are deposited or credited into any reserve or rainy
9 day fund of the State.

10 (5) RULE OF CONSTRUCTION.—Nothing in
11 paragraph (1) or (2) shall be construed as affecting
12 a State's flexibility with respect to benefits offered
13 under the State Medicaid program under title XIX
14 of the Social Security Act (42 U.S.C. 1396 et seq.)
15 (including any waiver under such title or under sec-
16 tion 1115 of such Act (42 U.S.C. 1315)).

17 (6) NO WAIVER AUTHORITY.—The Secretary
18 may not waive the application of this subsection or
19 subsection (g) under section 1115 of the Social Se-
20 curity Act or otherwise.

21 (g) REQUIREMENT FOR CERTAIN STATES.—In the
22 case of a State that requires political subdivisions within
23 the State to contribute toward the non-Federal share of
24 expenditures under the State Medicaid plan required
25 under section 1902(a)(2) of the Social Security Act (42

1 U.S.C. 1396a(a)(2)), the State is not eligible for an in-
2 crease in its FMAP under subsection (a), (b), or (c), or
3 an increase in a cap amount under subsection (d), if it
4 requires that such political subdivisions pay a greater per-
5 centage of the non-Federal share of such expenditures for
6 quarters during the recession adjustment period, than the
7 percentage that would have been required by the State
8 under such plan on September 30, 2008, prior to applica-
9 tion of this section.

10 (h) DEFINITIONS.—In this section, except as other-
11 wise provided:

12 (1) FMAP.—The term “FMAP” means the
13 Federal medical assistance percentage, as defined in
14 section 1905(b) of the Social Security Act (42
15 U.S.C. 1396d(b)), as determined without regard to
16 this section except as otherwise specified.

17 (2) RECESSION ADJUSTMENT PERIOD.—The
18 term “recession adjustment period” means the pe-
19 riod beginning on October 1, 2008, and ending on
20 December 31, 2010.

21 (3) SECRETARY.—The term “Secretary” means
22 the Secretary of Health and Human Services.

23 (4) SMAP.—The term “SMAP” means, for a
24 State, 100 percent minus the Federal medical assist-
25 ance percentage.

1 (5) STATE.—The term “State” has the mean-
2 ing given such term in section 1101(a)(1) of the So-
3 cial Security Act (42 U.S.C. 1301(a)(1)) for pur-
4 poses of title XIX of the Social Security Act (42
5 U.S.C. 1396 et seq.).

6 (i) SUNSET.—This section shall not apply to items
7 and services furnished after the end of the recession ad-
8 justment period.

9 **SEC. 5002. MORATORIA ON CERTAIN REGULATIONS.**

10 (a) EXTENSION OF MORATORIA ON CERTAIN MED-
11 ICAID REGULATIONS.—The following sections are each
12 amended by striking “April 1, 2009” and inserting “July
13 1, 2009”:

14 (1) Section 7002(a)(1) of the U.S. Troop Read-
15 iness, Veterans’ Care, Katrina Recovery, and Iraq
16 Accountability Appropriations Act, 2007 (Public
17 Law 110–28), as amended by section 7001(a)(1) of
18 the Supplemental Appropriations Act, 2008 (Public
19 Law 110–252).

20 (2) Section 206 of the Medicare, Medicaid, and
21 SCHIP Extension Act of 2007 (Public Law 110–
22 173), as amended by section 7001(a)(2) of the Sup-
23 plemental Appropriations Act, 2008 (Public Law
24 110–252).

1 (3) Section 7001(a)(3)(A) of the Supplemental
2 Appropriations Act, 2008 (Public Law 110–252).

3 (b) **ADDITIONAL MEDICAID MORATORIUM.**—Not-
4 withstanding any other provision of law, with respect to
5 expenditures for services furnished during the period be-
6 ginning on December 8, 2008 and ending on June 30,
7 2009, the Secretary of Health and Human Services shall
8 not take any action (through promulgation of regulation,
9 issuance of regulatory guidance, use of Federal payment
10 audit procedures, or other administrative action, policy, or
11 practice, including a Medical Assistance Manual trans-
12 mittal or letter to State Medicaid directors) to implement
13 the final regulation relating to clarification of the defini-
14 tion of outpatient hospital facility services under the Med-
15 icaid program published on November 7, 2008 (73 Federal
16 Register 66187).

17 **SEC. 5003. TRANSITIONAL MEDICAID ASSISTANCE (TMA).**

18 (a) **18-MONTH EXTENSION.**—

19 (1) **IN GENERAL.**—Sections 1902(e)(1)(B) and
20 1925(f) of the Social Security Act (42 U.S.C.
21 1396a(e)(1)(B), 1396r–6(f)) are each amended by
22 striking “September 30, 2003” and inserting “De-
23 cember 31, 2010”.

24 (2) **EFFECTIVE DATE.**—The amendments made
25 by this subsection shall take effect on July 1, 2009.

1 (b) STATE OPTION OF INITIAL 12-MONTH ELIGI-
2 BILITY.—Section 1925 of the Social Security Act (42
3 U.S.C. 1396r–6) is amended—

4 (1) in subsection (a)(1), by inserting “but sub-
5 ject to paragraph (5)” after “Notwithstanding any
6 other provision of this title”;

7 (2) by adding at the end of subsection (a) the
8 following:

9 “(5) OPTION OF 12-MONTH INITIAL ELIGIBILITY
10 PERIOD.—A State may elect to treat any reference
11 in this subsection to a 6-month period (or 6 months)
12 as a reference to a 12-month period (or 12 months).
13 In the case of such an election, subsection (b) shall
14 not apply.”; and

15 (3) in subsection (b)(1), by inserting “but sub-
16 ject to subsection (a)(5)” after “Notwithstanding
17 any other provision of this title”.

18 (c) REMOVAL OF REQUIREMENT FOR PREVIOUS RE-
19 CEIPT OF MEDICAL ASSISTANCE.—Section 1925(a)(1) of
20 such Act (42 U.S.C. 1396r–6(a)(1)), as amended by sub-
21 section (b)(1), is further amended—

22 (1) by inserting “subparagraph (B) and” before
23 “paragraph (5)”;

24 (2) by redesignating the matter after “RE-
25 QUIREMENT.—” as a subparagraph (A) with the

1 heading “IN GENERAL.—” and with the same inden-
2 tation as subparagraph (B) (as added by paragraph
3 (3)); and

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

5 “(B) STATE OPTION TO WAIVE REQUIRE-
6 MENT FOR 3 MONTHS BEFORE RECEIPT OF
7 MEDICAL ASSISTANCE.—A State may, at its op-
8 tion, elect also to apply subparagraph (A) in
9 the case of a family that was receiving such aid
10 for fewer than three months or that had applied
11 for and was eligible for such aid for fewer than
12 3 months during the 6 immediately preceding
13 months described in such subparagraph.”.

14 (d) CMS REPORT ON ENROLLMENT AND PARTICIPA-
15 TION RATES UNDER TMA.—Section 1925 of such Act (42
16 U.S.C. 1396r–6), as amended by this section, is further
17 amended by adding at the end the following new sub-
18 section:

19 “(g) COLLECTION AND REPORTING OF PARTICIPA-
20 TION INFORMATION.—

21 “(1) COLLECTION OF INFORMATION FROM
22 STATES.—Each State shall collect and submit to the
23 Secretary (and make publicly available), in a format
24 specified by the Secretary, information on average
25 monthly enrollment and average monthly participa-

1 tion rates for adults and children under this section
2 and of the number and percentage of children who
3 become ineligible for medical assistance under this
4 section whose medical assistance is continued under
5 another eligibility category or who are enrolled under
6 the State's child health plan under title XXI. Such
7 information shall be submitted at the same time and
8 frequency in which other enrollment information
9 under this title is submitted to the Secretary.

10 “(2) ANNUAL REPORTS TO CONGRESS.—Using
11 the information submitted under paragraph (1), the
12 Secretary shall submit to Congress annual reports
13 concerning enrollment and participation rates de-
14 scribed in such paragraph.”.

15 (e) EFFECTIVE DATE.—The amendments made by
16 subsections (b) through (d) shall take effect on July 1,
17 2009.

18 **SEC. 5004. PROTECTIONS FOR INDIANS UNDER MEDICAID**

19 **AND CHIP.**

20 (a) PREMIUMS AND COST SHARING PROTECTION
21 UNDER MEDICAID.—

22 (1) IN GENERAL.—Section 1916 of the Social
23 Security Act (42 U.S.C. 1396o) is amended—

1 (A) in subsection (a), in the matter pre-
2 ceding paragraph (1), by striking “and (i)” and
3 inserting “, (i), and (j)”; and

4 (B) by adding at the end the following new
5 subsection:

6 “(j) NO PREMIUMS OR COST SHARING FOR INDIANS
7 FURNISHED ITEMS OR SERVICES DIRECTLY BY INDIAN
8 HEALTH PROGRAMS OR THROUGH REFERRAL UNDER
9 CONTRACT HEALTH SERVICES.—

10 “(1) NO COST SHARING FOR ITEMS OR SERV-
11 ICES FURNISHED TO INDIANS THROUGH INDIAN
12 HEALTH PROGRAMS.—

13 “(A) IN GENERAL.—No enrollment fee,
14 premium, or similar charge, and no deduction,
15 copayment, cost sharing, or similar charge shall
16 be imposed against an Indian who is furnished
17 an item or service directly by the Indian Health
18 Service, an Indian Tribe, Tribal Organization,
19 or Urban Indian Organization or through refer-
20 ral under contract health services for which
21 payment may be made under this title.

22 “(B) NO REDUCTION IN AMOUNT OF PAY-
23 MENT TO INDIAN HEALTH PROVIDERS.—Pay-
24 ment due under this title to the Indian Health
25 Service, an Indian Tribe, Tribal Organization,

1 or Urban Indian Organization, or a health care
2 provider through referral under contract health
3 services for the furnishing of an item or service
4 to an Indian who is eligible for assistance under
5 such title, may not be reduced by the amount
6 of any enrollment fee, premium, or similar
7 charge, or any deduction, copayment, cost shar-
8 ing, or similar charge that would be due from
9 the Indian but for the operation of subpara-
10 graph (A).

11 “(2) RULE OF CONSTRUCTION.—Nothing in
12 this subsection shall be construed as restricting the
13 application of any other limitations on the imposi-
14 tion of premiums or cost sharing that may apply to
15 an individual receiving medical assistance under this
16 title who is an Indian.”.

17 (2) CONFORMING AMENDMENT.—Section
18 1916A(b)(3) of such Act (42 U.S.C. 1396o–1(b)(3))
19 is amended—

20 (A) in subparagraph (A), by adding at the
21 end the following new clause:

22 “(vi) An Indian who is furnished an
23 item or service directly by the Indian
24 Health Service, an Indian Tribe, Tribal
25 Organization or Urban Indian Organiza-

1 tion or through referral under contract
2 health services.”; and

3 (B) in subparagraph (B), by adding at the
4 end the following new clause:

5 “(ix) Items and services furnished to
6 an Indian directly by the Indian Health
7 Service, an Indian Tribe, Tribal Organiza-
8 tion or Urban Indian Organization or
9 through referral under contract health
10 services.”.

11 (3) EFFECTIVE DATE.—The amendments made
12 by this subsection shall take effect on October 1,
13 2009.

14 (b) TREATMENT OF CERTAIN PROPERTY FROM RE-
15 SOURCES FOR MEDICAID AND CHIP ELIGIBILITY.—

16 (1) MEDICAID.—Section 1902 of the Social Se-
17 curity Act (42 U.S.C. 1396a), as amended by sec-
18 tion 3003(a) of the Health Insurance Assistance for
19 the Unemployed Act of 2009, is amended by adding
20 at the end the following new subsection:

21 “(ee) Notwithstanding any other requirement of this
22 title or any other provision of Federal or State law, a State
23 shall disregard the following property from resources for
24 purposes of determining the eligibility of an individual who
25 is an Indian for medical assistance under this title:

1 “(1) Property, including real property and im-
2 provements, that is held in trust, subject to Federal
3 restrictions, or otherwise under the supervision of
4 the Secretary of the Interior, located on a reserva-
5 tion, including any federally recognized Indian
6 Tribe’s reservation, pueblo, or colony, including
7 former reservations in Oklahoma, Alaska Native re-
8 gions established by the Alaska Native Claims Set-
9 tlement Act, and Indian allotments on or near a res-
10 ervation as designated and approved by the Bureau
11 of Indian Affairs of the Department of the Interior.

12 “(2) For any federally recognized Tribe not de-
13 scribed in paragraph (1), property located within the
14 most recent boundaries of a prior Federal reserva-
15 tion.

16 “(3) Ownership interests in rents, leases, royalti-
17 es, or usage rights related to natural resources (in-
18 cluding extraction of natural resources or harvesting
19 of timber, other plants and plant products, animals,
20 fish, and shellfish) resulting from the exercise of fed-
21 erally protected rights.

22 “(4) Ownership interests in or usage rights to
23 items not covered by paragraphs (1) through (3)
24 that have unique religious, spiritual, traditional, or
25 cultural significance or rights that support subsist-

1 ence or a traditional lifestyle according to applicable
2 tribal law or custom.”.

3 (2) APPLICATION TO CHIP.—Section 2107(e)(1)
4 of such Act (42 U.S.C. 1397gg(e)(1)) is amended by
5 adding at the end the following new subparagraph:

6 “(E) Section 1902(ff) (relating to dis-
7 regard of certain property for purposes of mak-
8 ing eligibility determinations).”.

9 (c) CONTINUATION OF CURRENT LAW PROTECTIONS
10 OF CERTAIN INDIAN PROPERTY FROM MEDICAID ESTATE
11 RECOVERY.—Section 1917(b)(3) of the Social Security
12 Act (42 U.S.C. 1396p(b)(3)) is amended—

13 (1) by inserting “(A)” after “(3)”; and

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

16 “(B) The standards specified by the Sec-
17 retary under subparagraph (A) shall require
18 that the procedures established by the State
19 agency under subparagraph (A) exempt income,
20 resources, and property that are exempt from
21 the application of this subsection as of April 1,
22 2003, under manual instructions issued to carry
23 out this subsection (as in effect on such date)
24 because of the Federal responsibility for Indian
25 Tribes and Alaska Native Villages. Nothing in

1 (A) in paragraph (70), by striking “and”
2 at the end;

3 (B) in paragraph (71), by striking the pe-
4 riod at the end and inserting “; and”; and

5 (C) by inserting after paragraph (71), the
6 following new paragraph:

7 “(72) in the case of any State in which 1 or
8 more Indian Health Programs or Urban Indian Or-
9 ganizations furnishes health care services, provide
10 for a process under which the State seeks advice on
11 a regular, ongoing basis from designees of such In-
12 dian Health Programs and Urban Indian Organiza-
13 tions on matters relating to the application of this
14 title that are likely to have a direct effect on such
15 Indian Health Programs and Urban Indian Organi-
16 zations and that—

17 “(A) shall include solicitation of advice
18 prior to submission of any plan amendments,
19 waiver requests, and proposals for demonstra-
20 tion projects likely to have a direct effect on In-
21 dians, Indian Health Programs, or Urban In-
22 dian Organizations; and

23 “(B) may include appointment of an advi-
24 sory committee and of a designee of such In-
25 dian Health Programs and Urban Indian Orga-

1 nizations to the medical care advisory com-
2 mittee advising the State on its State plan
3 under this title.”.

4 (2) APPLICATION TO CHIP.—Section 2107(e)(1)
5 of such Act (42 U.S.C. 1397gg(e)(1)), as amended
6 by section 5004(b), is amended by adding at the end
7 the following new subparagraph:

8 “(F) Section 1902(a)(72) (relating to re-
9 quiring certain States to seek advice from des-
10 ignees of Indian Health Programs and Urban
11 Indian Organizations).”.

12 (c) RULE OF CONSTRUCTION.—Nothing in the
13 amendments made by this section shall be construed as
14 superseding existing advisory committees, working groups,
15 guidance, or other advisory procedures established by the
16 Secretary of Health and Human Services or by any State
17 with respect to the provision of health care to Indians.

18 **SEC. 5006. TEMPORARY INCREASE IN DSH ALLOTMENTS**

19 **DURING RECESSION.**

20 Section 1923(f)(3) of the Social Security Act (42
21 U.S.C. 1396r-4(f)(3)) is amended—

22 (1) in subparagraph (A), by striking “para-
23 graph (6)” and inserting “paragraph (6) and sub-
24 paragraph (E)”; and

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

3 “(E) TEMPORARY INCREASE IN ALLOT-
4 MENTS DURING RECESSION.—

5 “(i) IN GENERAL.—Subject to clause
6 (ii), the DSH allotment for any State—

7 “(I) for fiscal year 2009 is equal
8 to 102.5 percent of the DSH allot-
9 ment that would be determined under
10 this paragraph for the State for fiscal
11 year 2009 without application of this
12 subparagraph, notwithstanding sub-
13 paragraph (B);

14 “(II) for fiscal year 2010 is equal
15 to 102.5 percent of the DSH allot-
16 ment for the State for fiscal year
17 2009, as determined under subclause
18 (I); and

19 “(III) for each succeeding fiscal
20 year is equal to the DSH allotment
21 for the State under this paragraph de-
22 termined without applying subclauses
23 (I) and (II).

24 “(ii) APPLICATION.—Clause (i) shall
25 not apply to a State for a year in the case

1 that the DSH allotment for such State for
2 such year under this paragraph determined
3 without applying clause (i) would grow
4 higher than the DSH allotment specified
5 under clause (i) for the State for such
6 year.”.

7 **TITLE VI—BROADBAND** 8 **COMMUNICATIONS**

9 **SEC. 6001. INVENTORY OF BROADBAND SERVICE CAPA-** 10 **BILITY AND AVAILABILITY.**

11 (a) **ESTABLISHMENT.**—To provide a comprehensive
12 nationwide inventory of existing broadband service capa-
13 bility and availability, the National Telecommunications
14 and Information Administration (“NTIA”) shall develop
15 and maintain a broadband inventory map of the United
16 States that identifies and depicts the geographic extent
17 to which broadband service capability is deployed and
18 available from a commercial provider or public provider
19 throughout each State.

20 (b) **PUBLIC AVAILABILITY AND INTERACTIVITY.**—
21 Not later than 2 years after the date of enactment of this
22 Act, the NTIA shall make the broadband inventory map
23 developed and maintained pursuant to this section acces-
24 sible by the public on a World Wide Web site of the NTIA
25 in a form that is interactive and searchable.

1 **SEC. 6002. WIRELESS AND BROADBAND DEPLOYMENT**
2 **GRANT PROGRAMS.**

3 (a) GRANTS AUTHORIZED.—

4 (1) IN GENERAL.—The National Telecommuni-
5 cations and Information Administration (“NTIA”)
6 is authorized to carry out a program to award
7 grants to eligible entities for the non-recurring costs
8 associated with the deployment of broadband infra-
9 structure in rural, suburban, and urban areas, in ac-
10 cordance with the requirements of this section.

11 (2) PROGRAM WEBSITE.—The NTIA shall de-
12 velop and maintain a website to make publicly avail-
13 able information about the program described in
14 paragraph (1), including—

15 (A) each prioritization report submitted by
16 a State under subsection (b);

17 (B) a list of eligible entities that have ap-
18 plied for a grant under this section, and the
19 area or areas the entity proposes to serve; and

20 (C) the status of each such application,
21 whether approved, denied, or pending.

22 (b) STATE PRIORITIES.—

23 (1) PRIORITIES REPORT SUBMISSION.—Not
24 later than 75 days after the date of enactment of
25 this section, each State intending to participate in
26 the program under this section shall submit to the

1 NTIA a report indicating the geographic areas of
2 the State which—

3 (A) for the purposes of determining the
4 need for Wireless Deployment Grants under
5 subsection (c), the State considers to have the
6 greatest priority for—

7 (i) wireless voice service in unserved
8 areas; and

9 (ii) advanced wireless broadband serv-
10 ice in underserved areas; and

11 (B) for the purposes of determining the
12 need for Broadband Deployment Grants under
13 subsection (d), the State considers to have the
14 greatest priority for—

15 (i) basic broadband service in
16 unserved areas; and

17 (ii) advanced broadband service in un-
18 derserved areas.

19 (2) LIMITATION.—The unserved and under-
20 served areas identified by a State in the report re-
21 quired by this subsection shall not represent, in the
22 aggregate, more than 20 percent of the population
23 of such State.

24 (c) WIRELESS DEPLOYMENT GRANTS.—

1 (1) AUTHORIZED ACTIVITY.—The NTIA shall
2 award Wireless Deployment Grants in accordance
3 with this subsection from amounts authorized for
4 Wireless Deployment Grants by this subtitle to eligi-
5 ble entities to deploy necessary infrastructure for the
6 provision of wireless voice service or advanced wire-
7 less broadband service to end users in designated
8 areas.

9 (2) GRANT DISTRIBUTION.—The NTIA shall
10 seek to distribute grants, to the extent possible, so
11 that 25 percent of the grants awarded under this
12 subsection shall be awarded to eligible entities for
13 providing wireless voice service to unserved areas
14 and 75 percent of grants awarded under this sub-
15 section shall be awarded to eligible entities for pro-
16 viding advanced wireless broadband service to under-
17 served areas.

18 (d) BROADBAND DEPLOYMENT GRANTS.—

19 (1) AUTHORIZED ACTIVITY.—The NTIA shall
20 award Broadband Deployment Grants in accordance
21 with this subsection from amounts authorized for
22 Broadband Deployment Grants by this subtitle to el-
23 igible entities to deploy necessary infrastructure for
24 the provision of basic broadband service or advanced
25 broadband service to end users in designated areas.

1 (2) GRANT DISTRIBUTION.—The NTIA shall
2 seek to distribute grants, to the extent possible, so
3 that 25 percent of the grants awarded under this
4 subsection shall be awarded to eligible entities for
5 providing basic broadband service to unserved areas
6 and 75 percent of grants awarded under this sub-
7 section shall be awarded to eligible entities for pro-
8 viding advanced broadband service to underserved
9 areas.

10 (e) GRANT REQUIREMENTS.—The NTIA shall—

11 (1) adopt rules to protect against unjust enrich-
12 ment; and

13 (2) ensure that grant recipients—

14 (A) meet buildout requirements;

15 (B) maximize use of the supported infra-
16 structure by the public;

17 (C) operate basic and advanced broadband
18 service networks on an open access basis;

19 (D) operate advanced wireless broadband
20 service on a wireless open access basis; and

21 (E) adhere to the principles contained in
22 the Federal Communications Commission’s
23 broadband policy statement (FCC 05–151,
24 adopted August 5, 2005).

25 (f) APPLICATIONS.—

1 (1) SUBMISSION.—To be considered for a grant
2 awarded under subsection (e) or (d), an eligible enti-
3 ty shall submit to the NTIA an application at such
4 time, in such manner, and containing such informa-
5 tion and assurances as the NTIA may require. Such
6 an application shall include—

7 (A) a cost-study estimate for serving the
8 particular geographic area to be served by the
9 entity;

10 (B) a proposed build-out schedule to resi-
11 dential households and small businesses in the
12 area;

13 (C) for applicants for Wireless Deployment
14 Grants under subsection (e), a build-out sched-
15 ule for geographic coverage of such areas; and

16 (D) any other requirements the NTIA
17 deems necessary.

18 (2) SELECTION.—

19 (A) NOTIFICATION.—The NTIA shall no-
20 tify each eligible entity that has submitted a
21 complete application whether the entity has
22 been approved or denied for a grant under this
23 section in a timely fashion.

1 (B) GRANT DISTRIBUTION CONSIDER-
2 ATIONS.—In awarding grants under this sec-
3 tion, the NTIA shall, to the extent practical—

4 (i) award not less than one grant in
5 each State;

6 (ii) give substantial weight to whether
7 an application is from an eligible entity to
8 deploy infrastructure in an area that is an
9 area—

10 (I) identified by a State in a re-
11 port submitted under subsection (b);

12 or

13 (II) in which the NTIA deter-
14 mines there will be a significant
15 amount of public safety or emergency
16 response use of the infrastructure;

17 (iii) consider whether an application
18 from an eligible entity to deploy infrastruc-
19 ture in an area—

20 (I) will, if approved, increase the
21 affordability of, or subscribership to,
22 service to the greatest population of
23 underserved users in the area;

24 (II) will, if approved, enhance
25 service for health care delivery, edu-

1 cation, or children to the greatest pop-
2 ulation of underserved users in the
3 area;

4 (III) contains concrete plans for
5 enhancing computer ownership or
6 computer literacy in the area;

7 (IV) is from a recipient of more
8 than 20 percent matching grants from
9 State, local, or private entities for
10 service in the area and the extent of
11 such commitment;

12 (V) will, if approved, result in
13 unjust enrichment because the eligible
14 entity has applied for, or intends to
15 apply for, support for the non-recur-
16 ring costs through another Federal
17 program for service in the area; and

18 (VI) will, if approved, signifi-
19 cantly improve interoperable
20 broadband communications systems
21 available for use by public safety and
22 emergency response; and

23 (iv) consider whether the eligible enti-
24 ty is a socially and economically disadvan-
25 taged small business concern, as defined

1 under section 8(a) of the Small Business
2 Act (15 U.S.C. 637).

3 (g) COORDINATION AND CONSULTATION.—The
4 NTIA shall coordinate with the Federal Communications
5 Commission and shall consult with other appropriate Fed-
6 eral agencies in implementing this section.

7 (h) REPORT REQUIRED.—The NTIA shall submit an
8 annual report to the Committee on Energy and Commerce
9 of the House of Representatives and the Committee on
10 Commerce, Science, and Transportation of the Senate for
11 5 years assessing the impact of the grants funded under
12 this section on the basis of the objectives and criteria de-
13 scribed in subsection (f)(2)(B)(iii).

14 (i) RULEMAKING AUTHORITY.—The NTIA shall have
15 the authority to prescribe such rules as necessary to carry
16 out the purposes of this section.

17 (j) DEFINITIONS.—For the purpose of this section—

18 (1) the term “advanced broadband service”
19 means a service delivering data to the end user
20 transmitted at a speed of at least 45 megabits per
21 second downstream and at least 15 megabits per
22 second upstream;

23 (2) the term “advanced wireless broadband
24 service” means a wireless service delivering to the
25 end user data transmitted at a speed of at least 3

1 megabits per second downstream and at least 1
2 megabit per second upstream over an end-to-end
3 internet protocol wireless network;

4 (3) the term “basic broadband service” means
5 a service delivering data to the end user transmitted
6 at a speed of at least 5 megabits per second down-
7 stream and at least 1 megabit per second upstream;

8 (4) the term “eligible entity” means—

9 (A) a provider of wireless voice service, ad-
10 vanced wireless broadband service, basic
11 broadband service, or advanced broadband serv-
12 ice, including a satellite carrier that provides
13 any such service;

14 (B) a State or unit of local government, or
15 agency or instrumentality thereof, that is or in-
16 tends to be a provider of any such service; and

17 (C) any other entity, including construc-
18 tion companies, tower companies, backhaul
19 companies, or other service providers, that the
20 NTLA authorizes by rule to participate in the
21 programs under this section, if such other enti-
22 ty is required to provide access to the supported
23 infrastructure on a neutral, reasonable basis to
24 maximize use;

1 (5) the term “interoperable broadband commu-
2 nications systems” means communications systems
3 which enable public safety agencies to share infor-
4 mation among local, State, Federal, and tribal public
5 safety agencies in the same area using voice or data
6 signals via advanced wireless broadband service;

7 (6) the term “open access” shall be defined by
8 the Federal Communications Commission not later
9 than 45 days after the date of enactment of this sec-
10 tion;

11 (7) the term “State” includes the District of
12 Columbia and the territories and possessions;

13 (8) the term “underserved area” shall be de-
14 fined by the Federal Communications Commission
15 not later than 45 days after the date of enactment
16 of this section;

17 (9) the term “unserved area” shall be defined
18 by the Federal Communications Commission not
19 later than 45 days after the date of enactment of
20 this section;

21 (10) the term “wireless open access” shall be
22 defined by the Federal Communications Commission
23 not later than 45 days after the date of enactment
24 of this section; and

1 (11) the term “wireless voice service” means
2 the provision of two-way, real-time, voice commu-
3 nications using a mobile service.

4 (k) REVIEW OF DEFINITIONS.—Not later than 3
5 months after the date the NTIA makes a broadband in-
6 ventory map of the United States accessible to the public
7 pursuant to section 6001(b), the Federal Communications
8 Commission shall review the definitions of “underserved
9 area” and “unserved area”, as defined by the Commission
10 within 45 days after the date of enactment of this Act
11 (as required by paragraphs (8) and (9) of subsection (j)),
12 and shall revise such definitions based on the data used
13 by the NTIA to develop and maintain such map.

14 **SEC. 6003. NATIONAL BROADBAND PLAN.**

15 (a) REPORT REQUIRED.—Not later than 1 year after
16 the date of enactment of this section, the Federal Commu-
17 nications Commission shall submit to the Committee on
18 Energy and Commerce of the House of Representatives
19 and the Committee on Commerce, Science, and Transpor-
20 tation of the Senate, a report containing a national
21 broadband plan.

22 (b) CONTENTS OF PLAN.—The national broadband
23 plan required by this section shall seek to ensure that all
24 people of the United States have access to broadband ca-

1 pability and shall establish benchmarks for meeting that
2 goal. The plan shall also include—

3 (1) an analysis of the most effective and effi-
4 cient mechanisms for ensuring broadband access by
5 all people of the United States;

6 (2) a detailed strategy for achieving afford-
7 ability of such service and maximum utilization of
8 broadband infrastructure and service by the public;
9 and

10 (3) a plan for use of broadband infrastructure
11 and services in advancing consumer welfare, civic
12 participation, public safety and homeland security,
13 community development, health care delivery, energy
14 independence and efficiency, education, worker train-
15 ing, private sector investment, entrepreneurial activ-
16 ity, job creation and economic growth, and other na-
17 tional purposes.

18 **TITLE VII—ENERGY**

19 **SEC. 7001. TECHNICAL CORRECTIONS TO THE ENERGY** 20 **INDEPENDENCE AND SECURITY ACT OF 2007.**

21 (a) Section 543(a) of the Energy Independence and
22 Security Act of 2007 (42 U.S.C. 17153(a)) is amended—

23 (1) by redesignating paragraphs (2) through
24 (4) as paragraphs (3) through (5), respectively; and

1 (2) by striking paragraph (1) and inserting the
2 following:

3 “(1) 34 percent to eligible units of local govern-
4 ment–alternative 1, in accordance with subsection
5 (b);

6 “(2) 34 percent to eligible units of local govern-
7 ment–alternative 2, in accordance with subsection
8 (b);”.

9 (b) Section 543(b) of the Energy Independence and
10 Security Act of 2007 (42 U.S.C. 17153(b)) is amended
11 by striking “subsection (a)(1)” and inserting “subsection
12 (a)(1) or (2)”.

13 (c) Section 548(a)(1) of the Energy Independence
14 and Security Act of 2007 (42 U.S.C. 17158(a)(1)) is
15 amended by striking “; provided” and all that follows
16 through “541(3)(B)”.

17 **SEC. 7002. AMENDMENTS TO TITLE XIII OF THE ENERGY**
18 **INDEPENDENCE AND SECURITY ACT OF 2007.**

19 Title XIII of the Energy Independence and Security
20 Act of 2007 (42 U.S.C. 17381 and following) is amended
21 as follows:

22 (1) By amending subparagraph (A) of section
23 1304(b)(3) to read as follows:

24 “(A) IN GENERAL.—In carrying out the
25 initiative, the Secretary shall provide financial

1 support to smart grid demonstration projects in
2 urban, suburban, and rural areas, including
3 areas where electric system assets are controlled
4 by tax-exempt entities and areas where electric
5 system assets are controlled by investor-owned
6 utilities.”.

7 (2) By amending subparagraph (C) of section
8 1304(b)(3) to read as follows:

9 “(C) FEDERAL SHARE OF COST OF TECH-
10 NOLOGY INVESTMENTS.—The Secretary shall
11 provide to an electric utility described in sub-
12 paragraph (B) or to other parties financial as-
13 sistance for use in paying an amount equal to
14 not more than 50 percent of the cost of quali-
15 fying advanced grid technology investments
16 made by the electric utility or other party to
17 carry out a demonstration project.”.

18 (3) By inserting after section 1304(b)(3)(D)
19 the following new subparagraphs:

20 “(E) AVAILABILITY OF DATA.—The Sec-
21 retary shall establish and maintain a smart grid
22 information clearinghouse in a timely manner
23 which will make data from smart grid dem-
24 onstration projects and other sources available
25 to the public. As a condition of receiving finan-

1 cial assistance under this subsection, a utility or
2 other participant in a smart grid demonstration
3 project shall provide such information as the
4 Secretary may require to become available
5 through the smart grid information clearing-
6 house in the form and within the timeframes as
7 directed by the Secretary. The Secretary shall
8 assure that business proprietary information
9 and individual customer information is not in-
10 cluded in the information made available
11 through the clearinghouse.

12 “(F) OPEN PROTOCOLS AND STAND-
13 ARDS.—The Secretary shall require as a condi-
14 tion of receiving funding under this subsection
15 that demonstration projects utilize Internet-
16 based or other open protocols and standards if
17 available and appropriate.”.

18 (4) By amending paragraph (2) of section
19 1304(e) to read as follows:

20 “(2) to carry out subsection (b), such sums as
21 may be necessary.”.

22 (5) By amending subsection (a) of section 1306
23 by striking “reimbursement of one-fifth (20 per-
24 cent)” and inserting “grants of up to one-half (50
25 percent)”.

1 (6) By striking the last sentence of subsection
2 (b)(9) of section 1306.

3 (7) By striking “are eligible for” in subsection
4 (c)(1) of section 1306 and inserting “utilize”.

5 (8) By amending subsection (e) of section 1306
6 to read as follows:

7 “(e) PROCEDURES AND RULES.—The Secretary
8 shall—

9 “(1) establish within 60 days after the enact-
10 ment of the American Recovery and Reinvestment
11 Act of 2009 procedures by which applicants can ob-
12 tain grants of not more than one-half of their docu-
13 mented costs;

14 “(2) require as a condition of receiving a grant
15 under this section that grant recipients utilize Inter-
16 net-based or other open protocols and standards if
17 available and appropriate;

18 “(3) establish procedures to ensure that there is
19 no duplication or multiple payment or recovery for
20 the same investment or costs, that the grant goes to
21 the party making the actual expenditures for quali-
22 fying smart grid investments, and that the grants
23 made have significant effect in encouraging and fa-
24 cilitating the development of a smart grid;

1 “(4) maintain public records of grants made,
2 recipients, and qualifying smart grid investments
3 which have received grants;

4 “(5) establish procedures to provide advance
5 payment of moneys up to the full amount of the
6 grant award; and

7 “(6) have and exercise the discretion to deny
8 grants for investments that do not qualify in the
9 reasonable judgment of the Secretary.”.

10 **SEC. 7003. RENEWABLE ENERGY AND ELECTRIC POWER**
11 **TRANSMISSION LOAN GUARANTEE PROGRAM.**

12 (a) AMENDMENT.—Title XVII of the Energy Policy
13 Act of 2005 (42 U.S.C. 16511 et seq.) is amended by add-
14 ing the following at the end:

15 **“SEC. 1705. TEMPORARY PROGRAM FOR RAPID DEPLOY-**
16 **MENT OF RENEWABLE ENERGY AND ELEC-**
17 **TRIC POWER TRANSMISSION PROJECTS.**

18 “(a) IN GENERAL.—Notwithstanding section 1703,
19 the Secretary may make guarantees under this section
20 only for commercial technology projects under subsection
21 (b) that will commence construction not later than Sep-
22 tember 30, 2011.

23 “(b) CATEGORIES.—Projects from only the following
24 categories shall be eligible for support under this section:

1 “(1) Renewable energy systems, including incre-
2 mental hydropower, that generate electricity.

3 “(2) Electric power transmission systems, in-
4 cluding upgrading and reconductoring projects.

5 “(3) Leading edge biofuel projects that will use
6 technologies performing at the pilot or demonstra-
7 tion scale that the Secretary determines are likely to
8 become commercial technologies and will produce
9 transportation fuels that substantially reduce life-
10 cycle greenhouse gas emissions compared to other
11 transportation fuels.

12 “(c) FACTORS RELATING TO ELECTRIC POWER
13 TRANSMISSION SYSTEMS.—In determining to make guar-
14 antees to projects described in subsection (b)(2), the Sec-
15 retary shall consider the following factors:

16 “(1) The viability of the project without guar-
17 antees.

18 “(2) The availability of other Federal and State
19 incentives.

20 “(3) The importance of the project in meeting
21 reliability needs.

22 “(4) The effect of the project in meeting a
23 State or region’s environment (including climate
24 change) and energy goals.

1 “(d) WAGE RATE REQUIREMENTS.—The Secretary
2 shall require that each recipient of support under this sec-
3 tion provide reasonable assurance that all laborers and
4 mechanics employed in the performance of the project for
5 which the assistance is provided, including those employed
6 by contractors or subcontractors, will be paid wages at
7 rates not less than those prevailing on similar work in the
8 locality as determined by the Secretary of Labor in accord-
9 ance with subchapter IV of chapter 31 of part A of subtitle
10 II of title 40, United States Code (commonly referred to
11 as the ‘Davis-Bacon Act’).

12 “(e) LIMITATION.—Funding under this section for
13 projects described in subsection (b)(3) shall not exceed
14 \$500,000,000.

15 “(f) SUNSET.—The authority to enter into guaran-
16 tees under this section shall expire on September 30,
17 2011.”.

18 (b) TABLE OF CONTENTS AMENDMENT.—The table
19 of contents for the Energy Policy Act of 2005 is amended
20 by inserting after the item relating to section 1704 the
21 following new item:

“Sec. 1705. Temporary program for rapid deployment of renewable energy and
electric power transmission projects.”.

1 **SEC. 7004. WEATHERIZATION ASSISTANCE PROGRAM**
2 **AMENDMENTS.**

3 (a) INCOME LEVEL.—Section 412(7) of the Energy
4 Conservation and Production Act (42 U.S.C. 6862(7)) is
5 amended by striking “150 percent” both places it appears
6 and inserting “200 percent”.

7 (b) ASSISTANCE LEVEL PER DWELLING UNIT.—
8 Section 415(c)(1) of the Energy Conservation and Produc-
9 tion Act (42 U.S.C. 6865(c)(1)) is amended by striking
10 “\$2,500” and inserting “\$5,000”.

11 (c) EFFECTIVE USE OF FUNDS.—In providing funds
12 made available by this Act for the Weatherization Assist-
13 ance Program, the Secretary may encourage States to give
14 priority to using such funds for the most cost-effective ef-
15 ficiency activities, which may include insulation of attics,
16 if, in the Secretary’s view, such use of funds would in-
17 crease the effectiveness of the program.

18 **SEC. 7005. RENEWABLE ELECTRICITY TRANSMISSION**
19 **STUDY.**

20 In completing the 2009 National Electric Trans-
21 mission Congestion Study, the Secretary of Energy shall
22 include—

23 (1) an analysis of the significant potential
24 sources of renewable energy that are constrained in
25 accessing appropriate market areas by lack of ade-
26 quate transmission capacity;

1 (2) an analysis of the reasons for failure to de-
2 velop the adequate transmission capacity;

3 (3) recommendations for achieving adequate
4 transmission capacity;

5 (4) an analysis of the extent to which legal
6 challenges filed at the State and Federal level are
7 delaying the construction of transmission necessary
8 to access renewable energy; and

9 (5) an explanation of assumptions and projec-
10 tions made in the Study, including—

11 (A) assumptions and projections relating
12 to energy efficiency improvements in each load
13 center;

14 (B) assumptions and projections regarding
15 the location and type of projected new genera-
16 tion capacity; and

17 (C) assumptions and projections regarding
18 projected deployment of distributed generation
19 infrastructure.

20 **SEC. 7006. ADDITIONAL STATE ENERGY GRANTS.**

21 (a) IN GENERAL.—Amounts appropriated in para-
22 graph (6) under the heading “Department of Energy—
23 Energy Programs—Energy Efficiency and Renewable En-
24 ergy” in title V of division A of this Act shall be available
25 to the Secretary of Energy for making additional grants

1 under part D of title III of the Energy Policy and Con-
2 servation Act (42 U.S.C. 6321 et seq.). The Secretary
3 shall make grants under this section in excess of the base
4 allocation established for a State under regulations issued
5 pursuant to the authorization provided in section 365(f)
6 of such Act only if the governor of the recipient State noti-
7 fies the Secretary of Energy that the governor will seek,
8 to the extent of his or her authority, to ensure that each
9 of the following will occur:

10 (1) The applicable State regulatory authority
11 will implement the following regulatory policies for
12 each electric and gas utility with respect to which
13 the State regulatory authority has ratemaking au-
14 thority:

15 (A) Policies that ensure that a utility's re-
16 covery of prudent fixed costs of service is timely
17 and independent of its retail sales, without in
18 the process shifting prudent costs from variable
19 to fixed charges. This cost shifting constraint
20 shall not apply to rate designs adopted prior to
21 the date of enactment of this Act.

22 (B) Cost recovery for prudent investments
23 by utilities in energy efficiency.

1 (C) An earnings opportunity for utilities
2 associated with cost-effective energy efficiency
3 savings.

4 (2) The State, or the applicable units of local
5 government that have authority to adopt building
6 codes, will implement the following:

7 (A) A building energy code (or codes) for
8 residential buildings that meets or exceeds the
9 most recently published International Energy
10 Conservation Code, or achieves equivalent or
11 greater energy savings.

12 (B) A building energy code (or codes) for
13 commercial buildings throughout the State that
14 meets or exceeds the ANSI/ASHRAE/IESNA
15 Standard 90.1–2007, or achieves equivalent or
16 greater energy savings.

17 (C) A plan for the jurisdiction achieving
18 compliance with the building energy code or
19 codes described in subparagraphs (A) and (B)
20 within 8 years of the date of enactment of this
21 Act in at least 90 percent of new and renovated
22 residential and commercial building space. Such
23 plan shall include active training and enforce-
24 ment programs and measurement of the rate of
25 compliance each year.

1 (3) The State will to the extent practicable
2 prioritize the grants toward funding energy effi-
3 ciency and renewable energy programs, including—

4 (A) the expansion of existing energy effi-
5 ciency programs approved by the State or the
6 appropriate regulatory authority, including en-
7 ergy efficiency retrofits of buildings and indus-
8 trial facilities, that are funded—

9 (i) by the State; or

10 (ii) through rates under the oversight
11 of the applicable regulatory authority, to
12 the extent applicable;

13 (B) the expansion of existing programs,
14 approved by the State or the appropriate regu-
15 latory authority, to support renewable energy
16 projects and deployment activities, including
17 programs operated by entities which have the
18 authority and capability to manage and dis-
19 tribute grants, loans, performance incentives,
20 and other forms of financial assistance; and

21 (C) cooperation and joint activities between
22 States to advance more efficient and effective
23 use of this funding to support the priorities de-
24 scribed in this paragraph.

1 (b) STATE MATCH.—The State cost share require-
2 ment under the item relating to “DEPARTMENT OF
3 ENERGY; energy conservation” in title II of the Depart-
4 ment of the Interior and Related Agencies Appropriations
5 Act, 1985 (42 U.S.C. 6323a; 98 Stat. 1861) shall not
6 apply to assistance provided under this section.

7 (c) EQUIPMENT AND MATERIALS FOR ENERGY EFFI-
8 CIENCY MEASURES.—No limitation on the percentage of
9 funding that may be used for the purchase and installation
10 of equipment and materials for energy efficiency measures
11 under grants provided under part D of title III of the En-
12 ergy Policy and Conservation Act (42 U.S.C. 6321 et seq.)
13 shall apply to assistance provided under this section.

14 **SEC. 7007. INAPPLICABILITY OF LIMITATION.**

15 The limitations in section 399A(f)(2), (3), and (4)
16 of the Energy Policy and Conservation Act (42 U.S.C.
17 6371h–1(f)(2), (3), and (4)) shall not apply to grants
18 funded with appropriations provided by this Act, except
19 that such grant funds shall be available for not more than

- 1 an amount equal to 80 percent of the costs of the project
- 2 for which the grant is provided.

Passed the House of Representatives January 28,
2009.

Attest:

Clerk.

111TH CONGRESS
1ST SESSION

H. R. 1

AN ACT

Making supplemental appropriations for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and State and local fiscal stabilization, for the fiscal year ending September 30, 2009, and for other purposes.