

111TH CONGRESS  
1ST SESSION

# H. R. 1

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## 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:

DIVISION A—APPROPRIATION PROVISIONS

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 GLING FAMILIES  
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 TITLE IV—HEALTH INFORMATION TECHNOLOGY  
 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 tenta-  
16 tive 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 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(e)(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 redesi-  
22 gnating 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           development, 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) 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 Coor-  
24 dinator that the entity will establish a Loan Fund  
25 in accordance with subsection (c);

1           “(4) provides assurances to the National Coor-  
2           dinator 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           gage 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.*

111<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1

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## 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.