

1 **DIVISION B—TAX, UNEMPLOY-**
2 **MENT, HEALTH, STATE FIS-**
3 **CAL RELIEF, AND OTHER**
4 **PROVISIONS**

5 **TITLE I—TAX PROVISIONS**

6 **SEC. 1000. SHORT TITLE, ETC.**

7 (a) **SHORT TITLE.**—This title may be cited as the
8 “American Recovery and Reinvestment Tax Act of 2009”.

9 (b) **REFERENCE.**—Except as otherwise expressly pro-
10 vided, whenever in this title an amendment or repeal is
11 expressed in terms of an amendment to, or repeal of, a
12 section or other provision, the reference shall be consid-
13 ered to be made to a section or other provision of the In-
14 ternal Revenue Code of 1986.

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

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1 **Subtitle A—Tax Relief for**
 2 **Individuals and Families**

3 **PART I—GENERAL TAX RELIEF**

4 **SEC. 1001. MAKING WORK PAY CREDIT.**

5 (a) IN GENERAL.—Subpart C of part IV of sub-
 6 chapter A of chapter 1 is amended by inserting after sec-
 7 tion 36 the following new section:

8 **“SEC. 36A. MAKING WORK PAY CREDIT.**

9 “(a) ALLOWANCE OF CREDIT.—In the case of an eli-
 10 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) \$400 (\$800 in the case of a joint return).

6 “(b) LIMITATION BASED ON MODIFIED ADJUSTED
7 GROSS INCOME.—

8 “(1) IN GENERAL.—The amount allowable as a
9 credit under subsection (a) (determined without re-
10 gard to this paragraph and subsection (c)) for the
11 taxable year shall be reduced (but not below zero) by
12 2 percent of so much of the taxpayer’s modified ad-
13 justed gross income as exceeds \$75,000 (\$150,000
14 in the case of a joint return).

15 “(2) MODIFIED ADJUSTED GROSS INCOME.—
16 For purposes of subparagraph (A), the term ‘modi-
17 fied adjusted gross income’ means the adjusted
18 gross income of the taxpayer for the taxable year in-
19 creased by any amount excluded from gross income
20 under section 911, 931, or 933.

21 “(c) REDUCTION FOR CERTAIN OTHER PAY-
22 MENTS.—The credit allowed under subsection (a) for any
23 taxable year shall be reduced by the amount of any pay-
24 ments received by the taxpayer during such taxable year
25 under section 2201, and any credit allowed to the taxpayer

1 under section 2202, of the American Recovery and Rein-
2 vestment Tax Act of 2009.

3 “(d) DEFINITIONS AND SPECIAL RULES.—For pur-
4 poses of this section—

5 “(1) ELIGIBLE INDIVIDUAL.—

6 “(A) IN GENERAL.—The term ‘eligible in-
7 dividual’ means any individual other than—

8 “(i) any nonresident alien individual,

9 “(ii) any individual with respect to
10 whom a deduction under section 151 is al-
11 lowable to another taxpayer for a taxable
12 year beginning in the calendar year in
13 which the individual’s taxable year begins,
14 and

15 “(iii) an estate or trust.

16 “(B) IDENTIFICATION NUMBER REQUIRE-
17 MENT.—Such term shall not include any indi-
18 vidual who does not include on the return of tax
19 for the taxable year—

20 “(i) such individual’s social security
21 account number, and

22 “(ii) in the case of a joint return, the
23 social security account number of one of
24 the taxpayers on such return.

1 For purposes of the preceding sentence, the so-
2 cial security account number shall not include a
3 TIN issued by the Internal Revenue Service.

4 “(2) EARNED INCOME.—The term ‘earned in-
5 come’ has the meaning given such term by section
6 32(c)(2), except that such term shall not include net
7 earnings from self-employment which are not taken
8 into account in computing taxable income. For pur-
9 poses of the preceding sentence, any amount ex-
10 cluded from gross income by reason of section 112
11 shall be treated as earned income which is taken
12 into account in computing taxable income for the
13 taxable year.

14 “(e) TERMINATION.—This section shall not apply to
15 taxable years beginning after December 31, 2010.”.

16 (b) TREATMENT OF POSSESSIONS.—

17 (1) PAYMENTS TO POSSESSIONS.—

18 (A) MIRROR CODE POSSESSION.—The Sec-
19 retary of the Treasury shall pay to each posses-
20 sion of the United States with a mirror code
21 tax system amounts equal to the loss to that
22 possession by reason of the amendments made
23 by this section with respect to taxable years be-
24 ginning in 2009 and 2010. Such amounts shall
25 be determined by the Secretary of the Treasury

1 based on information provided by the govern-
2 ment of the respective possession.

3 (B) OTHER POSSESSIONS.—The Secretary
4 of the Treasury shall pay to each possession of
5 the United States which does not have a mirror
6 code tax system amounts estimated by the Sec-
7 retary of the Treasury as being equal to the ag-
8 gregate benefits that would have been provided
9 to residents of such possession by reason of the
10 amendments made by this section for taxable
11 years beginning in 2009 and 2010 if a mirror
12 code tax system had been in effect in such pos-
13 session. The preceding sentence shall not apply
14 with respect to any possession of the United
15 States unless such possession has a plan, which
16 has been approved by the Secretary of the
17 Treasury, under which such possession will
18 promptly distribute such payments to the resi-
19 dents of such possession.

20 (2) COORDINATION WITH CREDIT ALLOWED
21 AGAINST UNITED STATES INCOME TAXES.—No cred-
22 it shall be allowed against United States income
23 taxes for any taxable year under section 36A of the
24 Internal Revenue Code of 1986 (as added by this
25 section) to any person—

1 (A) to whom a credit is allowed against
2 taxes imposed by the possession by reason of
3 the amendments made by this section for such
4 taxable year, or

5 (B) who is eligible for a payment under a
6 plan described in paragraph (1)(B) with respect
7 to such taxable year.

8 (3) DEFINITIONS AND SPECIAL RULES.—

9 (A) POSSESSION OF THE UNITED
10 STATES.—For purposes of this subsection, the
11 term “possession of the United States” includes
12 the Commonwealth of Puerto Rico and the
13 Commonwealth of the Northern Mariana Is-
14 lands.

15 (B) MIRROR CODE TAX SYSTEM.—For pur-
16 poses of this subsection, the term “mirror code
17 tax system” means, with respect to any posses-
18 sion of the United States, the income tax sys-
19 tem of such possession if the income tax liabil-
20 ity of the residents of such possession under
21 such system is determined by reference to the
22 income tax laws of the United States as if such
23 possession were the United States.

24 (C) TREATMENT OF PAYMENTS.—For pur-
25 poses of section 1324(b)(2) of title 31, United

1 States Code, the payments under this sub-
2 section shall be treated in the same manner as
3 a refund due from the credit allowed under sec-
4 tion 36A of the Internal Revenue Code of 1986
5 (as added by this section).

6 (c) REFUNDS DISREGARDED IN THE ADMINISTRA-
7 TION OF FEDERAL PROGRAMS AND FEDERALLY AS-
8 SISTED PROGRAMS.—Any credit or refund allowed or
9 made to any individual by reason of section 36A of the
10 Internal Revenue Code of 1986 (as added by this section)
11 or by reason of subsection (b) of this section shall not be
12 taken into account as income and shall not be taken into
13 account as resources for the month of receipt and the fol-
14 lowing 2 months, for purposes of determining the eligi-
15 bility of such individual or any other individual for benefits
16 or assistance, or the amount or extent of benefits or assist-
17 ance, under any Federal program or under any State or
18 local program financed in whole or in part with Federal
19 funds.

20 (d) AUTHORITY RELATING TO CLERICAL ERRORS.—
21 Section 6213(g)(2) is amended by striking “and” at the
22 end of subparagraph (L)(ii), by striking the period at the
23 end of subparagraph (M) and inserting “, and”, and by
24 adding at the end the following new subparagraph:

1 “(3) SPECIAL RULES FOR 2009 AND 2010.—In
2 the case of any taxable year beginning in 2009 or
3 2010—

4 “(A) INCREASED CREDIT PERCENTAGE
5 FOR 3 OR MORE QUALIFYING CHILDREN.—In
6 the case of a taxpayer with 3 or more qualifying
7 children, the credit percentage is 45 percent.

8 “(B) REDUCTION OF MARRIAGE PEN-
9 ALTY.—

10 “(i) IN GENERAL.—The dollar amount
11 in effect under paragraph (2)(B) shall be
12 \$5,000.

13 “(ii) INFLATION ADJUSTMENT.—In
14 the case of any taxable year beginning in
15 2010, the \$5,000 amount in clause (i)
16 shall be increased by an amount equal to—

17 “(I) such dollar amount, multi-
18 plied by

19 “(II) the cost of living adjust-
20 ment determined under section 1(f)(3)
21 for the calendar year in which the tax-
22 able year begins determined by sub-
23 stituting ‘calendar year 2008’ for ‘cal-
24 endar year 1992’ in subparagraph (B)
25 thereof.

1 “(iii) ROUNDING.—Subparagraph (A)
2 of subsection (j)(2) shall apply after taking
3 into account any increase under clause
4 (ii).”.

5 (b) EFFECTIVE DATE.—The amendments made by
6 this section shall apply to taxable years beginning after
7 December 31, 2008.

8 **SEC. 1003. TEMPORARY INCREASE OF REFUNDABLE POR-**
9 **TION OF CHILD CREDIT.**

10 (a) IN GENERAL.—Paragraph (4) of section 24(d) is
11 amended to read as follows:

12 “(4) SPECIAL RULE FOR 2009 AND 2010.—Not-
13 withstanding paragraph (3), in the case of any tax-
14 able year beginning in 2009 or 2010, the dollar
15 amount in effect for such taxable year under para-
16 graph (1)(B)(i) shall be \$3,000.”.

17 (b) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to taxable years beginning after
19 December 31, 2008.

20 **SEC. 1004. AMERICAN OPPORTUNITY TAX CREDIT.**

21 (a) IN GENERAL.—Section 25A (relating to Hope
22 scholarship credit) is amended by redesignating subsection
23 (i) as subsection (j) and by inserting after subsection (h)
24 the following new subsection:

1 “(i) AMERICAN OPPORTUNITY TAX CREDIT.—In the
2 case of any taxable year beginning in 2009 or 2010—

3 “(1) INCREASE IN CREDIT.—The Hope Scholar-
4 ship Credit shall be an amount equal to the sum
5 of—

6 “(A) 100 percent of so much of the quali-
7 fied tuition and related expenses paid by the
8 taxpayer during the taxable year (for education
9 furnished to the eligible student during any
10 academic period beginning in such taxable year)
11 as does not exceed \$2,000, plus

12 “(B) 25 percent of such expenses so paid
13 as exceeds \$2,000 but does not exceed \$4,000.

14 “(2) CREDIT ALLOWED FOR FIRST 4 YEARS OF
15 POST-SECONDARY EDUCATION.—Subparagraphs (A)
16 and (C) of subsection (b)(2) shall be applied by sub-
17 stituting ‘4’ for ‘2’.

18 “(3) QUALIFIED TUITION AND RELATED EX-
19 PENSES TO INCLUDE REQUIRED COURSE MATE-
20 RIALS.—Subsection (f)(1)(A) shall be applied by
21 substituting ‘tuition, fees, and course materials’ for
22 ‘tuition and fees’.

23 “(4) INCREASE IN AGI LIMITS FOR HOPE
24 SCHOLARSHIP CREDIT.—In lieu of applying sub-
25 section (d) with respect to the Hope Scholarship

1 Credit, such credit (determined without regard to
2 this paragraph) shall be reduced (but not below
3 zero) by the amount which bears the same ratio to
4 such credit (as so determined) as—

5 “(A) the excess of—

6 “(i) the taxpayer’s modified adjusted
7 gross income (as defined in subsection
8 (d)(3)) for such taxable year, over

9 “(ii) \$80,000 (\$160,000 in the case of
10 a joint return), bears to

11 “(B) \$10,000 (\$20,000 in the case of a
12 joint return).

13 “(5) CREDIT ALLOWED AGAINST ALTERNATIVE
14 MINIMUM TAX.—In the case of a taxable year to
15 which section 26(a)(2) does not apply, so much of
16 the credit allowed under subsection (a) as is attrib-
17 utable to the Hope Scholarship Credit shall not ex-
18 ceed the excess of—

19 “(A) the sum of the regular tax liability
20 (as defined in section 26(b)) plus the tax im-
21 posed by section 55, over

22 “(B) the sum of the credits allowable
23 under this subpart (other than this subsection
24 and sections 23, 25D, and 30D) and section 27
25 for the taxable year.

1 Any reference in this section or section 24, 25, 26,
2 25B, 904, or 1400C to a credit allowable under this
3 subsection shall be treated as a reference to so much
4 of the credit allowable under subsection (a) as is at-
5 tributable to the Hope Scholarship Credit.

6 “(6) PORTION OF CREDIT MADE REFUND-
7 ABLE.—40 percent of so much of the credit allowed
8 under subsection (a) as is attributable to the Hope
9 Scholarship Credit (determined after application of
10 paragraph (4) and without regard to this paragraph
11 and section 26(a)(2) or paragraph (5), as the case
12 may be) shall be treated as a credit allowable under
13 subpart C (and not allowed under subsection (a)).
14 The preceding sentence shall not apply to any tax-
15 payer for any taxable year if such taxpayer is a child
16 to whom subsection (g) of section 1 applies for such
17 taxable year.

18 “(7) COORDINATION WITH MIDWESTERN DIS-
19 ASTER AREA BENEFITS.—In the case of a taxpayer
20 with respect to whom section 702(a)(1)(B) of the
21 Heartland Disaster Tax Relief Act of 2008 applies
22 for any taxable year, such taxpayer may elect to
23 waive the application of this subsection to such tax-
24 payer for such taxable year.”.

25 (b) CONFORMING AMENDMENTS.—

1 (1) Section 24(b)(3)(B) is amended by inserting
2 “25A(i),” after “23,”.

3 (2) Section 25(e)(1)(C)(ii) is amended by in-
4 serting “25A(i),” after “24,”.

5 (3) Section 26(a)(1) is amended by inserting
6 “25A(i),” after “24,”.

7 (4) Section 25B(g)(2) is amended by inserting
8 “25A(i),” after “23,”.

9 (5) Section 904(i) is amended by inserting
10 “25A(i),” after “24,”.

11 (6) Section 1400C(d)(2) is amended by insert-
12 ing “25A(i),” after “24,”.

13 (7) Section 6211(b)(4)(A) is amended by insert-
14 ing “25A by reason of subsection (i)(6) thereof,”
15 after “24(d),”.

16 (8) Section 1324(b)(2) of title 31, United
17 States Code, is amended by inserting “25A,” before
18 “35”.

19 (c) TREATMENT OF POSSESSIONS.—

20 (1) PAYMENTS TO POSSESSIONS.—

21 (A) MIRROR CODE POSSESSION.—The Sec-
22 retary of the Treasury shall pay to each posses-
23 sion of the United States with a mirror code
24 tax system amounts equal to the loss to that
25 possession by reason of the application of sec-

1 tion 25A(i)(6) of the Internal Revenue Code of
2 1986 (as added by this section) with respect to
3 taxable years beginning in 2009 and 2010.
4 Such amounts shall be determined by the Sec-
5 retary of the Treasury based on information
6 provided by the government of the respective
7 possession.

8 (B) OTHER POSSESSIONS.—The Secretary
9 of the Treasury shall pay to each possession of
10 the United States which does not have a mirror
11 code tax system amounts estimated by the Sec-
12 retary of the Treasury as being equal to the ag-
13 gregate benefits that would have been provided
14 to residents of such possession by reason of the
15 application of section 25A(i)(6) of such Code
16 (as so added) for taxable years beginning in
17 2009 and 2010 if a mirror code tax system had
18 been in effect in such possession. The preceding
19 sentence shall not apply with respect to any
20 possession of the United States unless such pos-
21 session has a plan, which has been approved by
22 the Secretary of the Treasury, under which
23 such possession will promptly distribute such
24 payments to the residents of such possession.

1 (2) COORDINATION WITH CREDIT ALLOWED
2 AGAINST UNITED STATES INCOME TAXES.—Section
3 25A(i)(6) of such Code (as added by this section)
4 shall not apply to a bona fide resident of any posses-
5 sion of the United States.

6 (3) DEFINITIONS AND SPECIAL RULES.—

7 (A) POSSESSION OF THE UNITED
8 STATES.—For purposes of this subsection, the
9 term “possession of the United States” includes
10 the Commonwealth of Puerto Rico and the
11 Commonwealth of the Northern Mariana Is-
12 lands.

13 (B) MIRROR CODE TAX SYSTEM.—For pur-
14 poses of this subsection, the term “mirror code
15 tax system” means, with respect to any posses-
16 sion of the United States, the income tax sys-
17 tem of such possession if the income tax liabil-
18 ity of the residents of such possession under
19 such system is determined by reference to the
20 income tax laws of the United States as if such
21 possession were the United States.

22 (C) TREATMENT OF PAYMENTS.—For pur-
23 poses of section 1324(b)(2) of title 31, United
24 States Code, the payments under this sub-
25 section shall be treated in the same manner as

1 a refund due from the credit allowed under sec-
2 tion 25A of the Internal Revenue Code of 1986
3 by reason of subsection (i)(6) of such section
4 (as added by this section).

5 (d) EFFECTIVE DATE.—The amendments made by
6 this section shall apply to taxable years beginning after
7 December 31, 2008.

8 (e) APPLICATION OF EGTRRA SUNSET.—The
9 amendment made by subsection (b)(1) shall be subject to
10 title IX of the Economic Growth and Tax Relief Reconcili-
11 ation Act of 2001 in the same manner as the provision
12 of such Act to which such amendment relates.

13 (f) TREASURY STUDIES REGARDING EDUCATION IN-
14 CENTIVES.—

15 (1) STUDY REGARDING COORDINATION WITH
16 NON-TAX STUDENT FINANCIAL ASSISTANCE.—The
17 Secretary of the Treasury and the Secretary of Edu-
18 cation, or their delegates, shall—

19 (A) study how to coordinate the credit al-
20 lowed under section 25A of the Internal Rev-
21 enue Code of 1986 with the Federal Pell Grant
22 program under section 401 of the Higher Edu-
23 cation Act of 1965 to maximize their effective-
24 ness at promoting college affordability, and

1 (B) examine ways to expedite the delivery
2 of the tax credit.

3 (2) STUDY REGARDING INCLUSION OF COMMU-
4 NITY SERVICE REQUIREMENTS.—The Secretary of
5 the Treasury and the Secretary of Education, or
6 their delegates, shall study the feasibility of requir-
7 ing including community service as a condition of
8 taking their tuition and related expenses into ac-
9 count under section 25A of the Internal Revenue
10 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 **SEC. 1005. COMPUTER TECHNOLOGY AND EQUIPMENT AL-**
17 **LOWED AS A QUALIFIED HIGHER EDUCATION**
18 **EXPENSE FOR SECTION 529 ACCOUNTS IN**
19 **2009 AND 2010.**

20 (a) IN GENERAL.—Section 529(e)(3)(A) is amended
21 by striking “and” at the end of clause (i), by striking the
22 period at the end of clause (ii), and by adding at the end
23 the following:

24 “(iii) expenses paid or incurred in
25 2009 or 2010 for the purchase of any com-

1 (b) INCREASE.—

2 (1) IN GENERAL.—Section 36(b) is amended by
3 striking “\$7,500” each place it appears and insert-
4 ing “\$8,000”.

5 (2) CONFORMING AMENDMENT.—Section
6 36(b)(1)(B) is amended by striking “\$3,750” and
7 inserting “\$4,000”.

8 (c) WAIVER OF RECAPTURE.—

9 (1) IN GENERAL.—Paragraph (4) of section
10 36(f) is amended by adding at the end the following
11 new subparagraph:

12 “(D) WAIVER OF RECAPTURE FOR PUR-
13 CHASES IN 2009.—In the case of any credit al-
14 lowed with respect to the purchase of a prin-
15 cipal residence after December 31, 2008, and
16 before December 1, 2009—

17 “(i) paragraph (1) shall not apply,
18 and

19 “(ii) paragraph (2) shall apply only if
20 the disposition or cessation described in
21 paragraph (2) with respect to such resi-
22 dence occurs during the 36-month period
23 beginning on the date of the purchase of
24 such residence by the taxpayer.”.

1 (2) CONFORMING AMENDMENT.—Subsection (g)
2 of section 36 is amended by striking “subsection
3 (c)” and inserting “subsections (c) and (f)(4)(D)”.

4 (d) COORDINATION WITH FIRST-TIME HOMEBUYER
5 CREDIT FOR DISTRICT OF COLUMBIA.—

6 (1) IN GENERAL.—Subsection (e) of section
7 1400C is amended by adding at the end the fol-
8 lowing new paragraph:

9 “(4) COORDINATION WITH NATIONAL FIRST-
10 TIME HOMEBUYERS CREDIT.—No credit shall be al-
11 lowed under this section to any taxpayer with re-
12 spect to the purchase of a residence after December
13 31, 2008, and before December 1, 2009, if a credit
14 under section 36 is allowable to such taxpayer (or
15 the taxpayer’s spouse) with respect to such pur-
16 chase.”.

17 (2) CONFORMING AMENDMENT.—Section 36(d)
18 is amended by striking paragraph (1).

19 (e) REMOVAL OF PROHIBITION ON FINANCING BY
20 MORTGAGE REVENUE BONDS.—Section 36(d), as amend-
21 ed by subsection (c)(2), is amended by striking paragraph
22 (2) and by redesignating paragraphs (3) and (4) as para-
23 graphs (1) and (2), respectively.

1 (f) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to residences purchased after De-
3 cember 31, 2008.

4 **SEC. 1007. SUSPENSION OF TAX ON PORTION OF UNEM-**
5 **EMPLOYMENT COMPENSATION.**

6 (a) IN GENERAL.—Section 85 of the Internal Rev-
7 enue Code of 1986 (relating to unemployment compensa-
8 tion) is amended by adding at the end the following new
9 subsection:

10 “(c) SPECIAL RULE FOR 2009.—In the case of any
11 taxable year beginning in 2009, gross income shall not in-
12 clude so much of the unemployment compensation received
13 by an individual as does not exceed \$2,400.”.

14 (b) EFFECTIVE DATE.—The amendment made by
15 this section shall apply to taxable years beginning after
16 December 31, 2008.

17 **SEC. 1008. ADDITIONAL DEDUCTION FOR STATE SALES TAX**
18 **AND EXCISE TAX ON THE PURCHASE OF CER-**
19 **TAIN MOTOR VEHICLES.**

20 (a) IN GENERAL.—Subsection (a) of section 164 is
21 amended by inserting after paragraph (5) the following
22 new paragraph:

23 “(6) Qualified motor vehicle taxes.”.

1 (b) QUALIFIED MOTOR VEHICLE TAXES.—Sub-
2 section (b) of section 164 is amended by adding at the
3 end the following new paragraph:

4 “(6) QUALIFIED MOTOR VEHICLE TAXES.—

5 “(A) IN GENERAL.—For purposes of this
6 section, the term ‘qualified motor vehicle taxes’
7 means any State or local sales or excise tax im-
8 posed on the purchase of a qualified motor vehi-
9 cle.

10 “(B) LIMITATION BASED ON VEHICLE
11 PRICE.—The amount of any State or local sales
12 or excise tax imposed on the purchase of a
13 qualified motor vehicle taken into account
14 under subparagraph (A) shall not exceed the
15 portion of such tax attributable to so much of
16 the purchase price as does not exceed \$49,500.

17 “(C) INCOME LIMITATION.—The amount
18 otherwise taken into account under subpara-
19 graph (A) (after the application of subpara-
20 graph (B)) for any taxable year shall be re-
21 duced (but not below zero) by the amount
22 which bears the same ratio to the amount which
23 is so treated as—

24 “(i) the excess (if any) of—

1 “(I) the taxpayer’s modified ad-
2 justed gross income for such taxable
3 year, over

4 “(II) \$125,000 (\$250,000 in the
5 case of a joint return), bears to

6 “(ii) \$10,000.

7 For purposes of the preceding sentence, the
8 term ‘modified adjusted gross income’ means
9 the adjusted gross income of the taxpayer for
10 the taxable year (determined without regard to
11 sections 911, 931, and 933).

12 “(D) QUALIFIED MOTOR VEHICLE.—For
13 purposes of this paragraph—

14 “(i) IN GENERAL.—The term ‘quali-
15 fied motor vehicle’ means—

16 “(I) a passenger automobile or
17 light truck which is treated as a
18 motor vehicle for purposes of title II
19 of the Clean Air Act, the gross vehicle
20 weight rating of which is not more
21 than 8,500 pounds, and the original
22 use of which commences with the tax-
23 payer,

24 “(II) a motorcycle the gross vehi-
25 cle weight rating of which is not more

1 than 8,500 pounds and the original
2 use of which commences with the tax-
3 payer, and

4 “(III) a motor home the original
5 use of which commences with the tax-
6 payer.

7 “(ii) OTHER TERMS.—The terms ‘mo-
8 torcycle’ and ‘motor home’ have the mean-
9 ings given such terms under section 571.3
10 of title 49, Code of Federal Regulations
11 (as in effect on the date of the enactment
12 of this paragraph).

13 “(E) QUALIFIED MOTOR VEHICLE TAXES
14 NOT INCLUDED IN COST OF ACQUIRED PROP-
15 erty.—The last sentence of subsection (a)
16 shall not apply to any qualified motor vehicle
17 taxes.

18 “(F) COORDINATION WITH GENERAL
19 SALES TAX.—This paragraph shall not apply in
20 the case of a taxpayer who makes an election
21 under paragraph (5) for the taxable year.

22 “(G) TERMINATION.—This paragraph
23 shall not apply to purchases after December 31,
24 2009.”.

25 (c) DEDUCTION ALLOWED TO NONITEMIZERS.—

1 (1) IN GENERAL.—Paragraph (1) of section
2 63(c) is amended by striking “and” at the end of
3 subparagraph (C), by striking the period at the end
4 of subparagraph (D) and inserting “, and”, and by
5 adding at the end the following new subparagraph:

6 “(E) the motor vehicle sales tax deduc-
7 tion.”.

8 (2) DEFINITION.—Section 63(c) is amended by
9 adding at the end the following new paragraph:

10 “(9) MOTOR VEHICLE SALES TAX DEDUC-
11 TION.—For purposes of paragraph (1), the term
12 ‘motor vehicle sales tax deduction’ means the
13 amount allowable as a deduction under section
14 164(a)(6). Such term shall not include any amount
15 taken into account under section 62(a).”.

16 (d) TREATMENT OF DEDUCTION UNDER ALTER-
17 NATIVE MINIMUM TAX.—The last sentence of section
18 56(b)(1)(E) is amended by striking “section 63(c)(1)(D)”
19 and inserting “subparagraphs (D) and (E) of section
20 63(c)(1)”.

21 (e) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to purchases on or after the date
23 of the enactment of this Act in taxable years ending after
24 such date.

1 **PART II—ALTERNATIVE MINIMUM TAX RELIEF**

2 **SEC. 1011. EXTENSION OF ALTERNATIVE MINIMUM TAX RE-**
3 **LIEF FOR NONREFUNDABLE PERSONAL**
4 **CREDITS.**

5 (a) IN GENERAL.—Paragraph (2) of section 26(a)
6 (relating to special rule for taxable years 2000 through
7 2008) is amended—

8 (1) by striking “or 2008” and inserting “2008,
9 or 2009”, and

10 (2) by striking “**2008**” in the heading thereof
11 and inserting “**2009**”.

12 (b) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to taxable years beginning after
14 December 31, 2008.

15 **SEC. 1012. EXTENSION OF INCREASED ALTERNATIVE MIN-**
16 **IMUM TAX EXEMPTION AMOUNT.**

17 (a) IN GENERAL.—Paragraph (1) of section 55(d)
18 (relating to exemption amount) is amended—

19 (1) by striking “(\$69,950 in the case of taxable
20 years beginning in 2008)” in subparagraph (A) and
21 inserting “(\$70,950 in the case of taxable years be-
22 ginning in 2009)”, and

23 (2) by striking “(\$46,200 in the case of taxable
24 years beginning in 2008)” in subparagraph (B) and
25 inserting “(\$46,700 in the case of taxable years be-
26 ginning in 2009)”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years beginning after
3 December 31, 2008.

4 **Subtitle B—Energy Incentives**

5 **PART I—RENEWABLE ENERGY INCENTIVES**

6 **SEC. 1101. EXTENSION OF CREDIT FOR ELECTRICITY PRO-** 7 **DUCED FROM CERTAIN RENEWABLE RE-** 8 **SOURCES.**

9 (a) IN GENERAL.—Subsection (d) of section 45 is
10 amended—

11 (1) by striking “2010” in paragraph (1) and in-
12 serting “2013”,

13 (2) by striking “2011” each place it appears in
14 paragraphs (2), (3), (4), (6), (7) and (9) and insert-
15 ing “2014”, and

16 (3) by striking “2012” in paragraph (11)(B)
17 and inserting “2014”.

18 (b) TECHNICAL AMENDMENT.—Paragraph (5) of
19 section 45(d) is amended by striking “and before” and
20 all that follows and inserting “ and before October 3,
21 2008.”.

22 (c) EFFECTIVE DATE.—

23 (1) IN GENERAL.—The amendments made by
24 subsection (a) shall apply to property placed in serv-
25 ice after the date of the enactment of this Act.

1 (2) TECHNICAL AMENDMENT.—The amendment
2 made by subsection (b) shall take effect as if in-
3 cluded in section 102 of the Energy Improvement
4 and Extension Act of 2008.

5 **SEC. 1102. ELECTION OF INVESTMENT CREDIT IN LIEU OF**
6 **PRODUCTION CREDIT.**

7 (a) IN GENERAL.—Subsection (a) of section 48 is
8 amended by adding at the end the following new para-
9 graph:

10 “(5) ELECTION TO TREAT QUALIFIED FACILI-
11 TIES AS ENERGY PROPERTY.—

12 “(A) IN GENERAL.—In the case of any
13 qualified property which is part of a qualified
14 investment credit facility—

15 “(i) such property shall be treated as
16 energy property for purposes of this sec-
17 tion, and

18 “(ii) the energy percentage with re-
19 spect to such property shall be 30 percent.

20 “(B) DENIAL OF PRODUCTION CREDIT.—
21 No credit shall be allowed under section 45 for
22 any taxable year with respect to any qualified
23 investment credit facility.

24 “(C) QUALIFIED INVESTMENT CREDIT FA-
25 CILITY.—For purposes of this paragraph, the

1 term ‘qualified investment credit facility’ means
2 any of the following facilities if no credit has
3 been allowed under section 45 with respect to
4 such facility and the taxpayer makes an irrev-
5 ocable election to have this paragraph apply to
6 such facility:

7 “(i) WIND FACILITIES.—Any qualified
8 facility (within the meaning of section 45)
9 described in paragraph (1) of section 45(d)
10 if such facility is placed in service in 2009,
11 2010, 2011, or 2012.

12 “(ii) OTHER FACILITIES.—Any quali-
13 fied facility (within the meaning of section
14 45) described in paragraph (2), (3), (4),
15 (6), (7), (9), or (11) of section 45(d) if
16 such facility is placed in service in 2009,
17 2010, 2011, 2012, or 2013.

18 “(D) QUALIFIED PROPERTY.—For pur-
19 poses of this paragraph, the term ‘qualified
20 property’ means property—

21 “(i) which is—

22 “(I) tangible personal property,

23 or

24 “(II) other tangible property (not
25 including a building or its structural

1 components), but only if such prop-
2 erty is used as an integral part of the
3 qualified investment credit facility,
4 and

5 “(ii) with respect to which deprecia-
6 tion (or amortization in lieu of deprecia-
7 tion) is allowable.”.

8 (b) **EFFECTIVE DATE.**—The amendments made by
9 this section shall apply to facilities placed in service after
10 December 31, 2008.

11 **SEC. 1103. REPEAL OF CERTAIN LIMITATIONS ON CREDIT**
12 **FOR RENEWABLE ENERGY PROPERTY.**

13 (a) **REPEAL OF LIMITATION ON CREDIT FOR QUALI-**
14 **FIED SMALL WIND ENERGY PROPERTY.**—Paragraph (4)
15 of section 48(c) is amended by striking subparagraph (B)
16 and by redesignating subparagraphs (C) and (D) as sub-
17 paragraphs (B) and (C).

18 (b) **REPEAL OF LIMITATION ON PROPERTY FI-**
19 **NANCED BY SUBSIDIZED ENERGY FINANCING.**—

20 (1) **IN GENERAL.**—Section 48(a)(4) is amended
21 by adding at the end the following new subpara-
22 graph:

23 “(D) **TERMINATION.**—This paragraph
24 shall not apply to periods after December 31,
25 2008, under rules similar to the rules of section

1 48(m) (as in effect on the day before the date
2 of the enactment of the Revenue Reconciliation
3 Act of 1990).”.

4 (2) CONFORMING AMENDMENTS.—

5 (A) Section 25C(e)(1) is amended by strik-
6 ing “(8), and (9)” and inserting “and (8)”.

7 (B) Section 25D(e) is amended by striking
8 paragraph (9).

9 (C) Section 48A(b)(2) is amended by in-
10 serting “(without regard to subparagraph (D)
11 thereof)” after “section 48(a)(4)”.

12 (D) Section 48B(b)(2) is amended by in-
13 serting “(without regard to subparagraph (D)
14 thereof)” after “section 48(a)(4)”.

15 (c) EFFECTIVE DATE.—

16 (1) IN GENERAL.—Except as provided in para-
17 graph (2), the amendment made by this section shall
18 apply to periods after December 31, 2008, under
19 rules similar to the rules of section 48(m) of the In-
20 ternal Revenue Code of 1986 (as in effect on the day
21 before the date of the enactment of the Revenue
22 Reconciliation Act of 1990).

23 (2) CONFORMING AMENDMENTS.—The amend-
24 ments made by subparagraphs (A) and (B) of sub-

1 section (b)(2) shall apply to taxable years beginning
2 after December 31, 2008.

3 **SEC. 1104. COORDINATION WITH RENEWABLE ENERGY**
4 **GRANTS.**

5 Section 48 is amended by adding at the end the fol-
6 lowing new subsection:

7 “(d) COORDINATION WITH DEPARTMENT OF TREAS-
8 URY GRANTS.—In the case of any property with respect
9 to which the Secretary makes a grant under section 1603
10 of the American Recovery and Reinvestment Tax Act of
11 2009—

12 “(1) DENIAL OF PRODUCTION AND INVEST-
13 MENT CREDITS.—No credit shall be determined
14 under this section or section 45 with respect to such
15 property for the taxable year in which such grant is
16 made or any subsequent taxable year.

17 “(2) RECAPTURE OF CREDITS FOR PROGRESS
18 EXPENDITURES MADE BEFORE GRANT.—If a credit
19 was determined under this section with respect to
20 such property for any taxable year ending before
21 such grant is made—

22 “(A) the tax imposed under subtitle A on
23 the taxpayer for the taxable year in which such
24 grant is made shall be increased by so much of
25 such credit as was allowed under section 38,

1 “(B) the general business carryforwards
2 under section 39 shall be adjusted so as to re-
3 capture the portion of such credit which was
4 not so allowed, and

5 “(C) the amount of such grant shall be de-
6 termined without regard to any reduction in the
7 basis of such property by reason of such credit.

8 “(3) TREATMENT OF GRANTS.—Any such grant
9 shall—

10 “(A) not be includible in the gross income
11 of the taxpayer, but

12 “(B) shall be taken into account in deter-
13 mining the basis of the property to which such
14 grant relates, except that the basis of such
15 property shall be reduced under section 50(c) in
16 the same manner as a credit allowed under sub-
17 section (a).”.

18 **PART II—INCREASED ALLOCATIONS OF NEW**
19 **CLEAN RENEWABLE ENERGY BONDS AND**
20 **QUALIFIED ENERGY CONSERVATION BONDS**
21 **SEC. 1111. INCREASED LIMITATION ON ISSUANCE OF NEW**
22 **CLEAN RENEWABLE ENERGY BONDS.**

23 Subsection (c) of section 54C is amended by adding
24 at the end the following new paragraph:

1 “(4) ADDITIONAL LIMITATION.—The national
2 new clean renewable energy bond limitation shall be
3 increased by \$1,600,000,000. Such increase shall be
4 allocated by the Secretary consistent with the rules
5 of paragraphs (2) and (3).”.

6 **SEC. 1112. INCREASED LIMITATION ON ISSUANCE OF**
7 **QUALIFIED ENERGY CONSERVATION BONDS.**

8 (a) IN GENERAL.—Section 54D(d) is amended by
9 striking “\$800,000,000” and inserting “\$3,200,000,000”.

10 (b) CLARIFICATION WITH RESPECT TO GREEN COM-
11 MUNITY PROGRAMS.—

12 (1) IN GENERAL.—Clause (ii) of section
13 54D(f)(1)(A) is amended by inserting “(including
14 the use of loans, grants, or other repayment mecha-
15 nisms to implement such programs)” after “green
16 community programs”.

17 (2) SPECIAL RULES FOR BONDS FOR IMPLE-
18 MENTING GREEN COMMUNITY PROGRAMS.—Sub-
19 section (e) of section 54D is amended by adding at
20 the end the following new paragraph:

21 “(4) SPECIAL RULES FOR BONDS TO IMPLE-
22 MENT GREEN COMMUNITY PROGRAMS.—In the case
23 of any bond issued for the purpose of providing
24 loans, grants, or other repayment mechanisms for
25 capital expenditures to implement green community

1 programs, such bond shall not be treated as a pri-
2 vate activity bond for purposes of paragraph (3).”.

3 **PART III—ENERGY CONSERVATION INCENTIVES**

4 **SEC. 1121. EXTENSION AND MODIFICATION OF CREDIT FOR**
5 **NONBUSINESS ENERGY PROPERTY.**

6 (a) IN GENERAL.—Section 25C is amended by strik-
7 ing subsections (a) and (b) and inserting the following new
8 subsections:

9 “(a) ALLOWANCE OF CREDIT.—In the case of an in-
10 dividual, there shall be allowed as a credit against the tax
11 imposed by this chapter for the taxable year an amount
12 equal to 30 percent of the sum of—

13 “(1) the amount paid or incurred by the tax-
14 payer during such taxable year for qualified energy
15 efficiency improvements, and

16 “(2) the amount of the residential energy prop-
17 erty expenditures paid or incurred by the taxpayer
18 during such taxable year.

19 “(b) LIMITATION.—The aggregate amount of the
20 credits allowed under this section for taxable years begin-
21 ning in 2009 and 2010 with respect to any taxpayer shall
22 not exceed \$1,500.”.

23 (b) MODIFICATIONS OF STANDARDS FOR ENERGY-
24 EFFICIENT BUILDING PROPERTY.—

1 (1) ELECTRIC HEAT PUMPS.—Subparagraph
2 (B) of section 25C(d)(3) is amended to read as fol-
3 lows:

4 “(B) an electric heat pump which achieves
5 the highest efficiency tier established by the
6 Consortium for Energy Efficiency, as in effect
7 on January 1, 2009.”.

8 (2) CENTRAL AIR CONDITIONERS.—Subpara-
9 graph (C) of section 25C(d)(3) is amended by strik-
10 ing “2006” and inserting “2009”.

11 (3) WATER HEATERS.—Subparagraph (D) of
12 section 25C(d)(3) is amended to read as follows:

13 “(D) a natural gas, propane, or oil water
14 heater which has either an energy factor of at
15 least 0.82 or a thermal efficiency of at least 90
16 percent.”.

17 (4) WOOD STOVES.—Subparagraph (E) of sec-
18 tion 25C(d)(3) is amended by inserting “, as meas-
19 ured using a lower heating value” after “75 per-
20 cent”.

21 (c) MODIFICATIONS OF STANDARDS FOR OIL FUR-
22 NACES AND HOT WATER BOILERS.—

23 (1) IN GENERAL.—Paragraph (4) of section
24 25C(d) is amended to read as follows:

1 “(4) QUALIFIED NATURAL GAS, PROPANE, AND
2 OIL FURNACES AND HOT WATER BOILERS.—

3 “(A) QUALIFIED NATURAL GAS FUR-
4 NACE.—The term ‘qualified natural gas fur-
5 nace’ means any natural gas furnace which
6 achieves an annual fuel utilization efficiency
7 rate of not less than 95.

8 “(B) QUALIFIED NATURAL GAS HOT
9 WATER BOILER.—The term ‘qualified natural
10 gas hot water boiler’ means any natural gas hot
11 water boiler which achieves an annual fuel utili-
12 zation efficiency rate of not less than 90.

13 “(C) QUALIFIED PROPANE FURNACE.—
14 The term ‘qualified propane furnace’ means any
15 propane furnace which achieves an annual fuel
16 utilization efficiency rate of not less than 95.

17 “(D) QUALIFIED PROPANE HOT WATER
18 BOILER.—The term ‘qualified propane hot
19 water boiler’ means any propane hot water boil-
20 er which achieves an annual fuel utilization effi-
21 ciency rate of not less than 90.

22 “(E) QUALIFIED OIL FURNACES.—The
23 term ‘qualified oil furnace’ means any oil fur-
24 nace which achieves an annual fuel utilization
25 efficiency rate of not less than 90.

1 “(F) QUALIFIED OIL HOT WATER BOIL-
2 ER.—The term ‘qualified oil hot water boiler’
3 means any oil hot water boiler which achieves
4 an annual fuel utilization efficiency rate of not
5 less than 90.”.

6 (2) CONFORMING AMENDMENT.—Clause (ii) of
7 section 25C(d)(2)(A) is amended to read as follows:

8 “(ii) any qualified natural gas fur-
9 nace, qualified propane furnace, qualified
10 oil furnace, qualified natural gas hot water
11 boiler, qualified propane hot water boiler,
12 or qualified oil hot water boiler, or”.

13 (d) MODIFICATIONS OF STANDARDS FOR QUALIFIED
14 ENERGY EFFICIENCY IMPROVEMENTS.—

15 (1) QUALIFICATIONS FOR EXTERIOR WINDOWS,
16 DOORS, AND SKYLIGHTS.—Subsection (c) of section
17 25C is amended by adding at the end the following
18 new paragraph:

19 “(4) QUALIFICATIONS FOR EXTERIOR WIN-
20 DOWS, DOORS, AND SKYLIGHTS.—Such term shall
21 not include any component described in subpara-
22 graph (B) or (C) of paragraph (2) unless such com-
23 ponent is equal to or below a U factor of 0.30 and
24 SHGC of 0.30.”.

1 (2) ADDITIONAL QUALIFICATION FOR INSULA-
2 TION.—Subparagraph (A) of section 25C(e)(2) is
3 amended by inserting “and meets the prescriptive
4 criteria for such material or system established by
5 the 2009 International Energy Conservation Code,
6 as such Code (including supplements) is in effect on
7 the date of the enactment of the American Recovery
8 and Reinvestment Tax Act of 2009” after “such
9 dwelling unit”.

10 (e) EXTENSION.—Section 25C(g)(2) is amended by
11 striking “December 31, 2009” and inserting “December
12 31, 2010”.

13 (f) EFFECTIVE DATES.—

14 (1) IN GENERAL.—Except as provided in para-
15 graph (2), the amendments made by this section
16 shall apply to taxable years beginning after Decem-
17 ber 31, 2008.

18 (2) EFFICIENCY STANDARDS.—The amend-
19 ments made by paragraphs (1), (2), and (3) of sub-
20 section (b) and subsections (c) and (d) shall apply
21 to property placed in service after the date of the en-
22 actment of this Act.

1 **SEC. 1122. MODIFICATION OF CREDIT FOR RESIDENTIAL**
2 **ENERGY EFFICIENT PROPERTY.**

3 (a) REMOVAL OF CREDIT LIMITATION FOR PROP-
4 erty PLACED IN SERVICE.—

5 (1) IN GENERAL.—Paragraph (1) of section
6 25D(b) is amended to read as follows:

7 “(1) MAXIMUM CREDIT FOR FUEL CELLS.—In
8 the case of any qualified fuel cell property expendi-
9 ture, the credit allowed under subsection (a) (deter-
10 mined without regard to subsection (c)) for any tax-
11 able year shall not exceed \$500 with respect to each
12 half kilowatt of capacity of the qualified fuel cell
13 property (as defined in section 48(c)(1)) to which
14 such expenditure relates.”.

15 (2) CONFORMING AMENDMENT.—Paragraph (4)
16 of section 25D(e) is amended—

17 (A) by striking all that precedes subpara-
18 graph (B) and inserting the following:

19 “(4) FUEL CELL EXPENDITURE LIMITATIONS
20 IN CASE OF JOINT OCCUPANCY.—In the case of any
21 dwelling unit with respect to which qualified fuel cell
22 property expenditures are made and which is jointly
23 occupied and used during any calendar year as a
24 residence by two or more individuals, the following
25 rules shall apply:

1 “(A) MAXIMUM EXPENDITURES FOR FUEL
2 CELLS.—The maximum amount of such ex-
3 penditures which may be taken into account
4 under subsection (a) by all such individuals
5 with respect to such dwelling unit during such
6 calendar year shall be \$1,667 in the case of
7 each half kilowatt of capacity of qualified fuel
8 cell property (as defined in section 48(c)(1))
9 with respect to which such expenditures re-
10 late.”, and

11 (B) by striking subparagraph (C).

12 (b) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to taxable years beginning after
14 December 31, 2008.

15 **SEC. 1123. 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)(1)
13 shall 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 IV—MODIFICATION OF CREDIT FOR**
19 **CARBON DIOXIDE SEQUESTRATION**
20 **SEC. 1131. APPLICATION OF MONITORING REQUIREMENTS**
21 **TO CARBON DIOXIDE USED AS A TERTIARY**
22 **INJECTANT.**

23 (a) IN GENERAL.—Section 45Q(a)(2) is amended by
24 striking “and” at the end of subparagraph (A), by striking
25 the period at the end of subparagraph (B) and inserting

1 “, and”, and by adding at the end the following new sub-
2 paragraph:

3 “(C) disposed of by the taxpayer in secure
4 geological storage.”.

5 (b) CONFORMING AMENDMENTS.—

6 (1) Section 45Q(d)(2) is amended—

7 (A) by striking “subsection (a)(1)(B)” and
8 inserting “paragraph (1)(B) or (2)(C) of sub-
9 section (a)”,

10 (B) by striking “and unminable coal
11 seems” and inserting “, oil and gas reservoirs,
12 and unminable coal seams”, and

13 (C) by inserting “the Secretary of Energy,
14 and the Secretary of the Interior,” after “Envi-
15 ronmental Protection Agency”.

16 (2) Section 45Q(a)(1)(B) is amended by insert-
17 ing “and not used by the taxpayer as described in
18 paragraph (2)(B)” after “storage”.

19 (3) Section 45Q(e) is amended by striking
20 “captured and disposed of or used as a tertiary
21 injectant” and inserting “taken into account in ac-
22 cordance with subsection (a)”.

23 (c) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to carbon dioxide captured after
25 the date of the enactment of this Act.

1 amount determined under this paragraph is \$417,
2 plus \$417 for each kilowatt hour of capacity in ex-
3 cess of 5 kilowatt hours. The amount determined
4 under this paragraph shall not exceed \$5,000.

5 “(c) APPLICATION WITH OTHER CREDITS.—

6 “(1) BUSINESS CREDIT TREATED AS PART OF
7 GENERAL BUSINESS CREDIT.—So much of the credit
8 which would be allowed under subsection (a) for any
9 taxable year (determined without regard to this sub-
10 section) that is attributable to property of a char-
11 acter subject to an allowance for depreciation shall
12 be treated as a credit listed in section 38(b) for such
13 taxable year (and not allowed under subsection (a)).

14 “(2) PERSONAL CREDIT.—

15 “(A) IN GENERAL.—For purposes of this
16 title, the credit allowed under subsection (a) for
17 any taxable year (determined after application
18 of paragraph (1)) shall be treated as a credit
19 allowable under subpart A for such taxable
20 year.

21 “(B) LIMITATION BASED ON AMOUNT OF
22 TAX.—In the case of a taxable year to which
23 section 26(a)(2) does not apply, the credit al-
24 lowed under subsection (a) for any taxable year

1 (determined after application of paragraph (1))
2 shall not exceed the excess of—

3 “(i) the sum of the regular tax liabil-
4 ity (as defined in section 26(b)) plus the
5 tax imposed by section 55, over

6 “(ii) the sum of the credits allowable
7 under subpart A (other than this section
8 and sections 23 and 25D) and section 27
9 for the taxable year.

10 “(d) NEW QUALIFIED PLUG-IN ELECTRIC DRIVE
11 MOTOR VEHICLE.—For purposes of this section—

12 “(1) IN GENERAL.—The term ‘new qualified
13 plug-in electric drive motor vehicle’ means a motor
14 vehicle—

15 “(A) the original use of which commences
16 with the taxpayer,

17 “(B) which is acquired for use or lease by
18 the taxpayer and not for resale,

19 “(C) which is made by a manufacturer,

20 “(D) which is treated as a motor vehicle
21 for purposes of title II of the Clean Air Act,

22 “(E) which has a gross vehicle weight rat-
23 ing of less than 14,000 pounds, and

1 “(F) which is propelled to a significant ex-
2 tent by an electric motor which draws electricity
3 from a battery which—

4 “(i) has a capacity of not less than 4
5 kilowatt hours, and

6 “(ii) is capable of being recharged
7 from an external source of electricity.

8 “(2) MOTOR VEHICLE.—The term ‘motor vehi-
9 cle’ means any vehicle which is manufactured pri-
10 marily for use on public streets, roads, and highways
11 (not including a vehicle operated exclusively on a rail
12 or rails) and which has at least 4 wheels.

13 “(3) MANUFACTURER.—The term ‘manufac-
14 turer’ has the meaning given such term in regula-
15 tions prescribed by the Administrator of the Envi-
16 ronmental Protection Agency for purposes of the ad-
17 ministration of title II of the Clean Air Act (42
18 U.S.C. 7521 et seq.).

19 “(4) BATTERY CAPACITY.—The term ‘capacity’
20 means, with respect to any battery, the quantity of
21 electricity which the battery is capable of storing, ex-
22 pressed in kilowatt hours, as measured from a 100
23 percent state of charge to a 0 percent state of
24 charge.

1 “(e) LIMITATION ON NUMBER OF NEW QUALIFIED
2 PLUG-IN ELECTRIC DRIVE MOTOR VEHICLES ELIGIBLE
3 FOR CREDIT.—

4 “(1) IN GENERAL.—In the case of a new quali-
5 fied plug-in electric drive motor vehicle sold during
6 the phaseout period, only the applicable percentage
7 of the credit otherwise allowable under subsection
8 (a) shall be allowed.

9 “(2) PHASEOUT PERIOD.—For purposes of this
10 subsection, the phaseout period is the period begin-
11 ning with the second calendar quarter following the
12 calendar quarter which includes the first date on
13 which the number of new qualified plug-in electric
14 drive motor vehicles manufactured by the manufac-
15 turer of the vehicle referred to in paragraph (1) sold
16 for use in the United States after December 31,
17 2009, is at least 200,000.

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

20 “(A) 50 percent for the first 2 calendar
21 quarters of the phaseout period,

22 “(B) 25 percent for the 3d and 4th cal-
23 endar quarters of the phaseout period, and

24 “(C) 0 percent for each calendar quarter
25 thereafter.

1 “(4) CONTROLLED GROUPS.—Rules similar to
2 the rules of section 30B(f)(4) shall apply for pur-
3 poses of this subsection.

4 “(f) SPECIAL RULES.—

5 “(1) BASIS REDUCTION.—For purposes of this
6 subtitle, the basis of any property for which a credit
7 is allowable under subsection (a) shall be reduced by
8 the amount of such credit so allowed.

9 “(2) NO DOUBLE BENEFIT.—The amount of
10 any deduction or other credit allowable under this
11 chapter for a new qualified plug-in electric drive
12 motor vehicle shall be reduced by the amount of
13 credit allowed under subsection (a) for such vehicle.

14 “(3) PROPERTY USED BY TAX-EXEMPT ENTI-
15 TY.—In the case of a vehicle the use of which is de-
16 scribed in paragraph (3) or (4) of section 50(b) and
17 which is not subject to a lease, the person who sold
18 such vehicle to the person or entity using such vehi-
19 cle shall be treated as the taxpayer that placed such
20 vehicle in service, but only if such person clearly dis-
21 closes to such person or entity in a document the
22 amount of any credit allowable under subsection (a)
23 with respect to such vehicle (determined without re-
24 gard to subsection (c)).

1 “(4) PROPERTY USED OUTSIDE UNITED STATES
2 NOT QUALIFIED.—No credit shall be allowable under
3 subsection (a) with respect to any property referred
4 to in section 50(b)(1).

5 “(5) RECAPTURE.—The Secretary shall, by reg-
6 ulations, provide for recapturing the benefit of any
7 credit allowable under subsection (a) with respect to
8 any property which ceases to be property eligible for
9 such credit.

10 “(6) ELECTION NOT TO TAKE CREDIT.—No
11 credit shall be allowed under subsection (a) for any
12 vehicle if the taxpayer elects to not have this section
13 apply to such vehicle.

14 “(7) INTERACTION WITH AIR QUALITY AND
15 MOTOR VEHICLE SAFETY STANDARDS.—A motor ve-
16 hicle shall not be considered eligible for a credit
17 under this section unless such vehicle is in compli-
18 ance with—

19 “(A) the applicable provisions of the Clean
20 Air Act for the applicable make and model year
21 of the vehicle (or applicable air quality provi-
22 sions of State law in the case of a State which
23 has adopted such provision under a waiver
24 under section 209(b) of the Clean Air Act), and

1 for the taxable year an amount equal to 10 percent of the
2 cost of any qualified plug-in electric vehicle placed in serv-
3 ice by the taxpayer during the taxable year.

4 “(b) PER VEHICLE DOLLAR LIMITATION.—The
5 amount of the credit allowed under subsection (a) with
6 respect to any vehicle shall not exceed \$2,500.

7 “(c) APPLICATION WITH OTHER CREDITS.—

8 “(1) BUSINESS CREDIT TREATED AS PART OF
9 GENERAL BUSINESS CREDIT.—So much of the credit
10 which would be allowed under subsection (a) for any
11 taxable year (determined without regard to this sub-
12 section) that is attributable to property of a char-
13 acter subject to an allowance for depreciation shall
14 be treated as a credit listed in section 38(b) for such
15 taxable year (and not allowed under subsection (a)).

16 “(2) PERSONAL CREDIT.—

17 “(A) IN GENERAL.—For purposes of this
18 title, the credit allowed under subsection (a) for
19 any taxable year (determined after application
20 of paragraph (1)) shall be treated as a credit
21 allowable under subpart A for such taxable
22 year.

23 “(B) LIMITATION BASED ON AMOUNT OF
24 TAX.—In the case of a taxable year to which
25 section 26(a)(2) does not apply, the credit al-

1 lowed under subsection (a) for any taxable year
2 (determined after application of paragraph (1))
3 shall not exceed the excess of—

4 “(i) the sum of the regular tax liabil-
5 ity (as defined in section 26(b)) plus the
6 tax imposed by section 55, over

7 “(ii) the sum of the credits allowable
8 under subpart A (other than this section
9 and sections 23, 25D, and 30D) and sec-
10 tion 27 for the taxable year.

11 “(d) QUALIFIED PLUG-IN ELECTRIC VEHICLE.—For
12 purposes of this section—

13 “(1) IN GENERAL.—The term ‘qualified plug-in
14 electric vehicle’ means a specified vehicle—

15 “(A) the original use of which commences
16 with the taxpayer,

17 “(B) which is acquired for use or lease by
18 the taxpayer and not for resale,

19 “(C) which is made by a manufacturer,

20 “(D) which is manufactured primarily for
21 use on public streets, roads, and highways,

22 “(E) which has a gross vehicle weight rat-
23 ing of less than 14,000 pounds, and

1 “(F) which is propelled to a significant ex-
2 tent by an electric motor which draws electricity
3 from a battery which—

4 “(i) has a capacity of not less than 4
5 kilowatt hours (2.5 kilowatt hours in the
6 case of a vehicle with 2 or 3 wheels), and

7 “(ii) is capable of being recharged
8 from an external source of electricity.

9 “(2) SPECIFIED VEHICLE.—The term ‘specified
10 vehicle’ means any vehicle which—

11 “(A) is a low speed vehicle within the
12 meaning of section 571.3 of title 49, Code of
13 Federal Regulations (as in effect on the date of
14 the enactment of the American Recovery and
15 Reinvestment Tax Act of 2009), or

16 “(B) has 2 or 3 wheels.

17 “(3) MANUFACTURER.—The term ‘manufac-
18 turer’ has the meaning given such term in regula-
19 tions prescribed by the Administrator of the Envi-
20 ronmental Protection Agency for purposes of the ad-
21 ministration of title II of the Clean Air Act (42
22 U.S.C. 7521 et seq.).

23 “(4) BATTERY CAPACITY.—The term ‘capacity’
24 means, with respect to any battery, the quantity of
25 electricity which the battery is capable of storing, ex-

1 pressed in kilowatt hours, as measured from a 100
2 percent state of charge to a 0 percent state of
3 charge.

4 “(e) SPECIAL RULES.—

5 “(1) BASIS REDUCTION.—For purposes of this
6 subtitle, the basis of any property for which a credit
7 is allowable under subsection (a) shall be reduced by
8 the amount of such credit so allowed.

9 “(2) NO DOUBLE BENEFIT.—The amount of
10 any deduction or other credit allowable under this
11 chapter for a new qualified plug-in electric drive
12 motor vehicle shall be reduced by the amount of
13 credit allowable under subsection (a) for such vehi-
14 cle.

15 “(3) PROPERTY USED BY TAX-EXEMPT ENTI-
16 TY.—In the case of a vehicle the use of which is de-
17 scribed in paragraph (3) or (4) of section 50(b) and
18 which is not subject to a lease, the person who sold
19 such vehicle to the person or entity using such vehi-
20 cle shall be treated as the taxpayer that placed such
21 vehicle in service, but only if such person clearly dis-
22 closes to such person or entity in a document the
23 amount of any credit allowable under subsection (a)
24 with respect to such vehicle (determined without re-
25 gard to subsection (c)).

1 “(4) PROPERTY USED OUTSIDE UNITED STATES
2 NOT QUALIFIED.—No credit shall be allowable under
3 subsection (a) with respect to any property referred
4 to in section 50(b)(1).

5 “(5) RECAPTURE.—The Secretary shall, by reg-
6 ulations, provide for recapturing the benefit of any
7 credit allowable under subsection (a) with respect to
8 any property which ceases to be property eligible for
9 such credit.

10 “(6) ELECTION NOT TO TAKE CREDIT.—No
11 credit shall be allowed under subsection (a) for any
12 vehicle if the taxpayer elects to not have this section
13 apply to such vehicle.

14 “(f) TERMINATION.—This section shall not apply to
15 any vehicle acquired after December 31, 2011.”.

16 (b) CONFORMING AMENDMENTS.—

17 (1)(A) Section 24(b)(3)(B) is amended by in-
18 serting “30,” after “25D,”.

19 (B) Section 25(e)(1)(C)(ii) is amended by in-
20 serting “30,” after “25D,”.

21 (C) Section 25B(g)(2) is amended by inserting
22 “30,” after “25D,”.

23 (D) Section 26(a)(1) is amended by inserting
24 “30,” after “25D,”.

1 (E) Section 904(i) is amended by striking “and
2 25B” and inserting “25B, 30, and 30D”.

3 (F) Section 1400C(d)(2) is amended by striking
4 “and 25D” and inserting “25D, and 30”.

5 (2) Paragraph (1) of section 30B(h) is amend-
6 ed to read as follows:

7 “(1) MOTOR VEHICLE.—The term ‘motor vehi-
8 cle’ means any vehicle which is manufactured pri-
9 marily for use on public streets, roads, and highways
10 (not including a vehicle operated exclusively on a rail
11 or rails) and which has at least 4 wheels.”.

12 (3) Section 30C(d)(2)(A) is amended by strik-
13 ing “, 30,”.

14 (4)(A) Section 53(d)(1)(B) is amended by strik-
15 ing clause (iii) and redesignating clause (iv) as
16 clause (iii).

17 (B) Subclause (II) of section 53(d)(1)(B)(iii),
18 as so redesignated, is amended by striking “in-
19 creased in the manner provided in clause (iii)”.

20 (5) Section 55(c)(3) is amended by striking
21 “30(b)(3),”.

22 (6) Section 1016(a)(25) is amended by striking
23 “section 30(d)(1)” and inserting “section 30(e)(1)”.

24 (7) Section 6501(m) is amended by striking
25 “section 30(d)(4)” and inserting “section 30(e)(6)”.

1 (8) The item in the table of sections for subpart
2 B of part IV of subchapter A of chapter 1 is amend-
3 ed to read as follows:

“Sec. 30. Certain plug-in electric vehicles.”.

4 (c) **EFFECTIVE DATE.**—The amendments made by
5 this section shall apply to vehicles acquired after the date
6 of the enactment of this Act.

7 (d) **TRANSITIONAL RULE.**—In the case of a vehicle
8 acquired after the date of the enactment of this Act and
9 before January 1, 2010, no credit shall be allowed under
10 section 30 of the Internal Revenue Code of 1986, as added
11 by this section, if credit is allowable under section 30D
12 of such Code with respect to such vehicle.

13 (e) **APPLICATION OF EGTRRA SUNSET.**—The
14 amendment made by subsection (b)(1)(A) shall be subject
15 to title IX of the Economic Growth and Tax Relief Rec-
16 onciliation Act of 2001 in the same manner as the provi-
17 sion of such Act to which such amendment relates.

18 **SEC. 1143. CONVERSION KITS.**

19 (a) **IN GENERAL.**—Section 30B (relating to alter-
20 native motor vehicle credit) is amended by redesignating
21 subsections (i) and (j) as subsections (j) and (k), respec-
22 tively, and by inserting after subsection (h) the following
23 new subsection:

24 “(i) **PLUG-IN CONVERSION CREDIT.**—

1 “(1) IN GENERAL.—For purposes of subsection
2 (a), the plug-in conversion credit determined under
3 this subsection with respect to any motor vehicle
4 which is converted to a qualified plug-in electric
5 drive motor vehicle is 10 percent of so much of the
6 cost of the converting such vehicle as does not ex-
7 ceed \$40,000.

8 “(2) QUALIFIED PLUG-IN ELECTRIC DRIVE
9 MOTOR VEHICLE.—For purposes of this subsection,
10 the term ‘qualified plug-in electric drive motor vehi-
11 cle’ means any new qualified plug-in electric drive
12 motor vehicle (as defined in section 30D, determined
13 without regard to whether such vehicle is made by
14 a manufacturer or whether the original use of such
15 vehicle commences with the taxpayer).

16 “(3) CREDIT ALLOWED IN ADDITION TO OTHER
17 CREDITS.—The credit allowed under this subsection
18 shall be allowed with respect to a motor vehicle not-
19 withstanding whether a credit has been allowed with
20 respect to such motor vehicle under this section
21 (other than this subsection) in any preceding taxable
22 year.

23 “(4) TERMINATION.—This subsection shall not
24 apply to conversions made after December 31,
25 2011.”.

1 (b) CREDIT TREATED AS PART OF ALTERNATIVE
2 MOTOR VEHICLE CREDIT.—Section 30B(a) is amended
3 by striking “and” at the end of paragraph (3), by striking
4 the period at the end of paragraph (4) and inserting “,
5 and”, and by adding at the end the following new para-
6 graph:

7 “(5) the plug-in conversion credit determined
8 under subsection (i).”.

9 (c) NO RECAPTURE FOR VEHICLES CONVERTED TO
10 QUALIFIED PLUG-IN ELECTRIC DRIVE MOTOR VEHI-
11 CLES.—Paragraph (8) of section 30B(h) is amended by
12 adding at the end the following: “, except that no benefit
13 shall be recaptured if such property ceases to be eligible
14 for such credit by reason of conversion to a qualified plug-
15 in electric drive motor vehicle.”.

16 (d) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to property placed in service after
18 the date of the enactment of this Act.

19 **SEC. 1144. TREATMENT OF ALTERNATIVE MOTOR VEHICLE**
20 **CREDIT AS A PERSONAL CREDIT ALLOWED**
21 **AGAINST AMT.**

22 (a) IN GENERAL.—Paragraph (2) of section 30B(g)
23 is amended to read as follows:

24 “(2) PERSONAL CREDIT.—

1 “(A) IN GENERAL.—For purposes of this
2 title, the credit allowed under subsection (a) for
3 any taxable year (determined after application
4 of paragraph (1)) shall be treated as a credit
5 allowable under subpart A for such taxable
6 year.

7 “(B) LIMITATION BASED ON AMOUNT OF
8 TAX.—In the case of a taxable year to which
9 section 26(a)(2) does not apply, the credit al-
10 lowed under subsection (a) for any taxable year
11 (determined after application of paragraph (1))
12 shall not exceed the excess of—

13 “(i) the sum of the regular tax liabil-
14 ity (as defined in section 26(b)) plus the
15 tax imposed by section 55, over

16 “(ii) the sum of the credits allowable
17 under subpart A (other than this section
18 and sections 23, 25D, 30, and 30D) and
19 section 27 for the taxable year.”.

20 (b) CONFORMING AMENDMENTS.—

21 (1)(A) Section 24(b)(3)(B), as amended by this
22 Act, is amended by inserting “30B,” after “30,”.

23 (B) Section 25(e)(1)(C)(ii), as amended by this
24 Act, is amended by inserting “30B,” after “30,”.

1 (C) Section 25B(g)(2), as amended by this Act,
2 is amended by inserting “30B,” after “30,”.

3 (D) Section 26(a)(1), as amended by this Act,
4 is amended by inserting “30B,” after “30,”.

5 (E) Section 904(i), as amended by this Act, is
6 amended by inserting “30B,” after “30”.

7 (F) Section 1400C(d)(2), as amended by this
8 Act, is amended by striking “and 30” and inserting
9 “30, and 30B”.

10 (2) Section 30C(d)(2)(A), as amended by this
11 Act, is amended by striking “sections 27 and 30B”
12 and inserting “section 27”.

13 (3) Section 55(c)(3) is amended by striking
14 “30B(g)(2),”.

15 (c) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to taxable years beginning after
17 December 31, 2008.

18 (d) APPLICATION OF EGTRRA SUNSET.—The
19 amendment made by subsection (b)(1)(A) shall be subject
20 to title IX of the Economic Growth and Tax Relief Rec-
21 onciliation Act of 2001 in the same manner as the provi-
22 sion of such Act to which such amendment relates.

1 **PART VI—PARITY FOR TRANSPORTATION**
2 **FRINGE BENEFITS**
3 **SEC. 1151. INCREASED EXCLUSION AMOUNT FOR COM-**
4 **MUTER TRANSIT BENEFITS AND TRANSIT**
5 **PASSES.**

6 (a) **IN GENERAL.**—Paragraph (2) of section 132(f)
7 is amended by adding at the end the following flush sen-
8 tence:

9 “**In the case of any month beginning on or after the**
10 **date of the enactment of this sentence and before**
11 **January 1, 2011, subparagraph (A) shall be applied**
12 **as if the dollar amount therein were the same as the**
13 **dollar amount in effect for such month under sub-**
14 **paragraph (B).”.**

15 (b) **EFFECTIVE DATE.**—The amendment made by
16 this section shall apply to months beginning on or after
17 the date of the enactment of this section.

18 **Subtitle C—Tax Incentives for**
19 **Business**

20 **PART I—TEMPORARY INVESTMENT INCENTIVES**
21 **SEC. 1201. SPECIAL ALLOWANCE FOR CERTAIN PROPERTY**
22 **ACQUIRED DURING 2009.**

23 (a) **EXTENSION OF SPECIAL ALLOWANCE.**—

24 (1) **IN GENERAL.**—Paragraph (2) of section
25 168(k) is amended—

1 (A) by striking “January 1, 2010” and in-
2 serting “January 1, 2011”, and

3 (B) by striking “January 1, 2009” each
4 place it appears and inserting “January 1,
5 2010”.

6 (2) CONFORMING AMENDMENTS.—

7 (A) The heading for subsection (k) of sec-
8 tion 168 is amended by striking “JANUARY 1,
9 2009” and inserting “JANUARY 1, 2010”.

10 (B) The heading for clause (ii) of section
11 168(k)(2)(B) is amended by striking “PRE-JAN-
12 UARY 1, 2009” and inserting “PRE-JANUARY 1,
13 2010”.

14 (C) Subparagraph (B) of section 168(l)(5)
15 is amended by striking “January 1, 2009” and
16 inserting “January 1, 2010”.

17 (D) Subparagraph (C) of section 168(n)(2)
18 is amended by striking “January 1, 2009” and
19 inserting “January 1, 2010”.

20 (E) Subparagraph (B) of section
21 1400N(d)(3) is amended by striking “January
22 1, 2009” and inserting “January 1, 2010”.

23 (3) TECHNICAL AMENDMENTS.—

24 (A) Subparagraph (D) of section 168(k)(4)
25 is amended—

1 (i) by striking “and” at the end of
2 clause (i),

3 (ii) by redesignating clause (ii) as
4 clause (iii), and

5 (iii) by inserting after clause (i) the
6 following new clause:

7 “(ii) ‘April 1, 2008’ shall be sub-
8 stituted for ‘January 1, 2008’ in subpara-
9 graph (A)(iii)(I) thereof, and”.

10 (B) Subparagraph (A) of section
11 6211(b)(4) is amended by inserting
12 “168(k)(4),” after “53(e),”.

13 (b) EXTENSION OF ELECTION TO ACCELERATE THE
14 AMT AND RESEARCH CREDITS IN LIEU OF BONUS DE-
15 PRECIATION.—

16 (1) IN GENERAL.—Section 168(k)(4) (relating
17 to election to accelerate the AMT and research cred-
18 its in lieu of bonus depreciation) is amended—

19 (A) by striking “2009” and inserting
20 “2010” in subparagraph (D)(iii) (as redesi-
21 gnated by subsection (a)(3)), and

22 (B) by adding at the end the following new
23 subparagraph:

24 “(H) SPECIAL RULES FOR EXTENSION
25 PROPERTY.—

1 taxable year ending after December
2 31, 2008, and each subsequent tax-
3 able year, and

4 “(II) if the taxpayer makes the
5 election under subclause (I), this
6 paragraph shall only apply to eligible
7 qualified property which is extension
8 property.

9 “(iii) EXTENSION PROPERTY.—For
10 purposes of this subparagraph, the term
11 ‘extension property’ means property which
12 is eligible qualified property solely by rea-
13 son of the extension of the application of
14 the special allowance under paragraph (1)
15 pursuant to the amendments made by sec-
16 tion 1201(a) of the American Recovery and
17 Reinvestment Tax Act of 2009 (and the
18 application of such extension to this para-
19 graph pursuant to the amendment made
20 by section 1201(b)(1) of such Act).”.

21 (2) TECHNICAL AMENDMENT.—Section
22 6211(b)(4)(A) is amended by inserting “168(k)(4),”
23 after “53(e).”.

24 (c) EFFECTIVE DATES.—

1 (1) IN GENERAL.—Except as provided in para-
2 graph (2), the amendments made by this section
3 shall apply to property placed in service after De-
4 cember 31, 2008, in taxable years ending after such
5 date.

6 (2) TECHNICAL AMENDMENTS.—The amend-
7 ments made by subsections (a)(3) and (b)(2) shall
8 apply to taxable years ending after March 31, 2008.

9 **SEC. 1202. TEMPORARY INCREASE IN LIMITATIONS ON EX-**
10 **PENSING OF CERTAIN DEPRECIABLE BUSI-**
11 **NESS ASSETS.**

12 (a) IN GENERAL.—Paragraph (7) of section 179(b)
13 is amended—

14 (1) by striking “2008” and inserting “2008, or
15 2009”, and

16 (2) by striking “2008” in the heading thereof
17 and inserting “2008, AND 2009”.

18 (b) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to taxable years beginning after
20 December 31, 2008.

21 **PART II—SMALL BUSINESS PROVISIONS**

22 **SEC. 1211. 5-YEAR CARRYBACK OF OPERATING LOSSES OF**
23 **SMALL BUSINESSES.**

24 (a) IN GENERAL.—Subparagraph (H) of section
25 172(b)(1) is amended to read as follows:

1 “(H) CARRYBACK FOR 2008 NET OPER-
2 ATING LOSSES OF SMALL BUSINESSES.—

3 “(i) IN GENERAL.—If an eligible small
4 business elects the application of this sub-
5 paragraph with respect to an applicable
6 2008 net operating loss—

7 “(I) subparagraph (A)(i) shall be
8 applied by substituting any whole
9 number elected by the taxpayer which
10 is more than 2 and less than 6 for ‘2’,

11 “(II) subparagraph (E)(ii) shall
12 be applied by substituting the whole
13 number which is one less than the
14 whole number substituted under sub-
15 clause (I) for ‘2’, and

16 “(III) subparagraph (F) shall not
17 apply.

18 “(ii) APPLICABLE 2008 NET OPER-
19 ATING LOSS.—For purposes of this sub-
20 paragraph, the term ‘applicable 2008 net
21 operating loss’ means—

22 “(I) the taxpayer’s net operating
23 loss for any taxable year ending in
24 2008, or

1 “(II) if the taxpayer elects to
2 have this subclause apply in lieu of
3 subclause (I), the taxpayer’s net oper-
4 ating loss for any taxable year begin-
5 ning in 2008.

6 “(iii) ELECTION.—Any election under
7 this subparagraph shall be made in such
8 manner as may be prescribed by the Sec-
9 retary, and shall be made by the due date
10 (including extension of time) for filing the
11 taxpayer’s return for the taxable year of
12 the net operating loss. Any such election,
13 once made, shall be irrevocable. Any elec-
14 tion under this subparagraph may be made
15 only with respect to 1 taxable year.

16 “(iv) ELIGIBLE SMALL BUSINESS.—
17 For purposes of this subparagraph, the
18 term ‘eligible small business’ has the
19 meaning given such term by subparagraph
20 (F)(iii), except that in applying such sub-
21 paragraph, section 448(c) shall be applied
22 by substituting ‘\$15,000,000’ for
23 ‘\$5,000,000’ each place it appears.”.

1 (b) CONFORMING AMENDMENT.—Section 172 is
2 amended by striking subsection (k) and by redesignating
3 subsection (l) as subsection (k).

4 (c) ANTI-ABUSE RULES.—The Secretary of Treasury
5 or the Secretary’s designee shall prescribe such rules as
6 are necessary to prevent the abuse of the purposes of the
7 amendments made by this section, including anti-stuffing
8 rules, anti-churning rules (including rules relating to sale-
9 leasebacks), and rules similar to the rules under section
10 1091 of the Internal Revenue Code of 1986 relating to
11 losses from wash sales.

12 (d) 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) TRANSITIONAL RULE.—In the case of a net
19 operating loss for a taxable year ending before the
20 date of the enactment of this Act—

21 (A) any election made under section
22 172(b)(3) of the Internal Revenue Code of
23 1986 with respect to such loss may (notwith-
24 standing such section) be revoked before the ap-
25 plicable date,

1 (B) any election made under section
2 172(b)(1)(H) of such Code with respect to such
3 loss shall (notwithstanding such section) be
4 treated as timely made if made before the appli-
5 cable date, and

6 (C) any application under section 6411(a)
7 of such Code with respect to such loss shall be
8 treated as timely filed if filed before the appli-
9 cable date.

10 For purposes of this paragraph, the term “applica-
11 ble date” means the date which is 60 days after the
12 date of the enactment of this Act.

13 **SEC. 1212. DECREASED REQUIRED ESTIMATED TAX PAY-**
14 **MENTS IN 2009 FOR CERTAIN SMALL BUSI-**
15 **NESSES.**

16 Paragraph (1) of section 6654(d) is amended by add-
17 ing at the end the following new subparagraph:

18 “(D) SPECIAL RULE FOR 2009.—

19 “(i) IN GENERAL.—Notwithstanding
20 subparagraph (C), in the case of any tax-
21 able year beginning in 2009, clause (ii) of
22 subparagraph (B) shall be applied to any
23 qualified individual by substituting ‘90 per-
24 cent’ for ‘100 percent’.

1 “(ii) QUALIFIED INDIVIDUAL.—For
2 purposes of this subparagraph, the term
3 ‘qualified individual’ means any individual
4 if—

5 “(I) the adjusted gross income
6 shown on the return of such indi-
7 vidual for the preceding taxable year
8 is less than \$500,000, and

9 “(II) such individual certifies
10 that more than 50 percent of the
11 gross income shown on the return of
12 such individual for the preceding tax-
13 able year was income from a small
14 business.

15 A certification under subclause (II) shall
16 be in such form and manner and filed at
17 such time as the Secretary may by regula-
18 tions prescribe.

19 “(iii) INCOME FROM A SMALL BUSI-
20 NESS.—For purposes of clause (ii), income
21 from a small business means, with respect
22 to any individual, income from a trade or
23 business the average number of employees
24 of which was less than 500 employees for

1 the calendar year ending with or within the
2 preceding taxable year of the individual.

3 “(iv) SEPARATE RETURNS.—In the
4 case of a married individual (within the
5 meaning of section 7703) who files a sepa-
6 rate return for the taxable year for which
7 the amount of the installment is being de-
8 termined, clause (ii)(I) shall be applied by
9 substituting ‘\$250,000’ for ‘\$500,000’.

10 “(v) ESTATES AND TRUSTS.—In the
11 case of an estate or trust, adjusted gross
12 income shall be determined as provided in
13 section 67(e).”.

14 **PART III—INCENTIVES FOR NEW JOBS**

15 **SEC. 1221. INCENTIVES TO HIRE UNEMPLOYED VETERANS**
16 **AND DISCONNECTED YOUTH.**

17 (a) IN GENERAL.—Subsection (d) of section 51 is
18 amended by adding at the end the following new para-
19 graph:

20 “(14) CREDIT ALLOWED FOR UNEMPLOYED
21 VETERANS AND DISCONNECTED YOUTH HIRED IN
22 2009 OR 2010.—

23 “(A) IN GENERAL.—Any unemployed vet-
24 eran or disconnected youth who begins work for
25 the employer during 2009 or 2010 shall be

1 treated as a member of a targeted group for
2 purposes of this subpart.

3 “(B) DEFINITIONS.—For purposes of this
4 paragraph—

5 “(i) UNEMPLOYED VETERAN.—The
6 term ‘unemployed veteran’ means any vet-
7 eran (as defined in paragraph (3)(B), de-
8 termined without regard to clause (ii)
9 thereof) who is certified by the designated
10 local agency as—

11 “(I) having been discharged or
12 released from active duty in the
13 Armed Forces at any time during the
14 5-year period ending on the hiring
15 date, and

16 “(II) being in receipt of unem-
17 ployment compensation under State or
18 Federal law for not less than 4 weeks
19 during the 1-year period ending on
20 the hiring date.

21 “(ii) DISCONNECTED YOUTH.—The
22 term ‘disconnected youth’ means any indi-
23 vidual who is certified by the designated
24 local agency—

1 “(I) as having attained age 16
2 but not age 25 on the hiring date,

3 “(II) as not regularly attending
4 any secondary, technical, or post-sec-
5 ondary school during the 6-month pe-
6 riod preceding the hiring date,

7 “(III) as not regularly employed
8 during such 6-month period, and

9 “(IV) as not readily employable
10 by reason of lacking a sufficient num-
11 ber of basic skills.”.

12 (b) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to individuals who begin work for
14 the employer after December 31, 2008.

15 **PART IV—RULES RELATING TO DEBT**

16 **INSTRUMENTS**

17 **SEC. 1231. DEFERRAL AND RATABLE INCLUSION OF IN-** 18 **COME ARISING FROM BUSINESS INDEBTED-** 19 **NESS DISCHARGED BY THE REACQUISITION** 20 **OF A DEBT INSTRUMENT.**

21 (a) IN GENERAL.—Section 108 (relating to income
22 from discharge of indebtedness) is amended by adding at
23 the end the following new subsection:

24 “(i) DEFERRAL AND RATABLE INCLUSION OF IN-
25 COME ARISING FROM BUSINESS INDEBTEDNESS DIS-

1 CHARGED BY THE REACQUISITION OF A DEBT INSTRU-
2 MENT.—

3 “(1) IN GENERAL.—At the election of the tax-
4 payer, income from the discharge of indebtedness in
5 connection with the reacquisition after December 31,
6 2008, and before January 1, 2011, of an applicable
7 debt instrument shall be includible in gross income
8 ratably over the 5-taxable-year period beginning
9 with—

10 “(A) in the case of a reacquisition occur-
11 ring in 2009, the fifth taxable year following
12 the taxable year in which the reacquisition oc-
13 curs, and

14 “(B) in the case of a reacquisition occur-
15 ring in 2010, the fourth taxable year following
16 the taxable year in which the reacquisition oc-
17 curs.

18 “(2) DEFERRAL OF DEDUCTION FOR ORIGINAL
19 ISSUE DISCOUNT IN DEBT FOR DEBT EXCHANGES.—

20 “(A) IN GENERAL.—If, as part of a reac-
21 quisition to which paragraph (1) applies, any
22 debt instrument is issued for the applicable
23 debt instrument being reacquired (or is treated
24 as so issued under subsection (e)(4) and the
25 regulations thereunder) and there is any origi-

1 nal issue discount determined under subpart A
2 of part V of subchapter P of this chapter with
3 respect to the debt instrument so issued—

4 “(i) except as provided in clause (ii),
5 no deduction otherwise allowable under
6 this chapter shall be allowed to the issuer
7 of such debt instrument with respect to the
8 portion of such original issue discount
9 which—

10 “(I) accrues before the 1st tax-
11 able year in the 5-taxable-year period
12 in which income from the discharge of
13 indebtedness attributable to the reac-
14 quisition of the debt instrument is in-
15 cludible under paragraph (1), and

16 “(II) does not exceed the income
17 from the discharge of indebtedness
18 with respect to the debt instrument
19 being reacquired, and

20 “(ii) the aggregate amount of deduc-
21 tions disallowed under clause (i) shall be
22 allowed as a deduction ratably over the 5-
23 taxable-year period described in clause
24 (i)(I).

1 If the amount of the original issue discount ac-
2 cruing before such 1st taxable year exceeds the
3 income from the discharge of indebtedness with
4 respect to the applicable debt instrument being
5 reacquired, the deductions shall be disallowed in
6 the order in which the original issue discount is
7 accrued.

8 “(B) DEEMED DEBT FOR DEBT EX-
9 CHANGES.—For purposes of subparagraph (A),
10 if any debt instrument is issued by an issuer
11 and the proceeds of such debt instrument are
12 used directly or indirectly by the issuer to reac-
13 quire an applicable debt instrument of the
14 issuer, the debt instrument so issued shall be
15 treated as issued for the debt instrument being
16 reacquired. If only a portion of the proceeds
17 from a debt instrument are so used, the rules
18 of subparagraph (A) shall apply to the portion
19 of any original issue discount on the newly
20 issued debt instrument which is equal to the
21 portion of the proceeds from such instrument
22 used to reacquire the outstanding instrument.

23 “(3) APPLICABLE DEBT INSTRUMENT.—For
24 purposes of this subsection—

1 “(A) APPLICABLE DEBT INSTRUMENT.—

2 The term ‘applicable debt instrument’ means
3 any debt instrument which was issued by—

4 “(i) a C corporation, or

5 “(ii) any other person in connection
6 with the conduct of a trade or business by
7 such person.

8 “(B) DEBT INSTRUMENT.—The term ‘debt
9 instrument’ means a bond, debenture, note, cer-
10 tificate, or any other instrument or contractual
11 arrangement constituting indebtedness (within
12 the meaning of section 1275(a)(1)).

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

15 “(A) IN GENERAL.—The term ‘reacqui-
16 sition’ means, with respect to any applicable debt
17 instrument, any acquisition of the debt instru-
18 ment by—

19 “(i) the debtor which issued (or is
20 otherwise the obligor under) the debt in-
21 strument, or

22 “(ii) a related person to such debtor.

23 “(B) ACQUISITION.—The term ‘acqui-
24 sition’ shall, with respect to any applicable debt
25 instrument, include an acquisition of the debt

1 instrument for cash, the exchange of the debt
2 instrument for another debt instrument (includ-
3 ing an exchange resulting from a modification
4 of the debt instrument), the exchange of the
5 debt instrument for corporate stock or a part-
6 nership interest, and the contribution of the
7 debt instrument to capital. Such term shall also
8 include the complete forgiveness of the indebt-
9 edness by the holder of the debt instrument.

10 “(5) OTHER DEFINITIONS AND RULES.—For
11 purposes of this subsection—

12 “(A) RELATED PERSON.—The determina-
13 tion of whether a person is related to another
14 person shall be made in the same manner as
15 under subsection (e)(4).

16 “(B) ELECTION.—

17 “(i) IN GENERAL.—An election under
18 this subsection with respect to any applica-
19 ble debt instrument shall be made by in-
20 cluding with the return of tax imposed by
21 chapter 1 for the taxable year in which the
22 reacquisition of the debt instrument occurs
23 a statement which—

24 “(I) clearly identifies such instru-
25 ment, and

1 “(II) includes the amount of in-
2 come to which paragraph (1) applies
3 and such other information as the
4 Secretary may prescribe.

5 “(ii) ELECTION IRREVOCABLE.—Such
6 election, once made, is irrevocable.

7 “(iii) PASS-THRU ENTITIES.—In the
8 case of a partnership, S corporation, or
9 other pass-thru entity, the election under
10 this subsection shall be made by the part-
11 nership, the S corporation, or other entity
12 involved.

13 “(C) COORDINATION WITH OTHER EXCLU-
14 SIONS.—If a taxpayer elects to have this sub-
15 section apply to an applicable debt instrument,
16 subparagraphs (A), (B), (C), and (D) of sub-
17 section (a)(1) shall not apply to the income
18 from the discharge of such indebtedness for the
19 taxable year of the election or any subsequent
20 taxable year.

21 “(D) ACCELERATION OF DEFERRED
22 ITEMS.—

23 “(i) IN GENERAL.—In the case of the
24 death of the taxpayer, the liquidation or
25 sale of substantially all the assets of the

1 taxpayer (including in a title 11 or similar
2 case), the cessation of business by the tax-
3 payer, or similar circumstances, any item
4 of income or deduction which is deferred
5 under this subsection (and has not pre-
6 viously been taken into account) shall be
7 taken into account in the taxable year in
8 which such event occurs (or in the case of
9 a title 11 or similar case, the day before
10 the petition is filed).

11 “(ii) SPECIAL RULE FOR PASS-THRU
12 ENTITIES.—The rule of clause (i) shall
13 also apply in the case of the sale or ex-
14 change or redemption of an interest in a
15 partnership, S corporation, or other pass-
16 thru entity by a partner, shareholder, or
17 other person holding an ownership interest
18 in such entity.

19 “(6) SPECIAL RULE FOR PARTNERSHIPS.—In
20 the case of a partnership, any income deferred under
21 this subsection shall be allocated to the partners in
22 the partnership immediately before the discharge in
23 the manner such amounts would have been included
24 in the distributive shares of such partners under sec-
25 tion 704 if such income were recognized at such

1 time. Any decrease in a partner's share of partner-
2 ship liabilities as a result of such discharge shall not
3 be taken into account for purposes of section 752 at
4 the time of the discharge to the extent it would
5 cause the partner to recognize gain under section
6 731. Any decrease in partnership liabilities deferred
7 under the preceding sentence shall be taken into ac-
8 count by such partner at the same time, and to the
9 extent remaining in the same amount, as income de-
10 ferred under this subsection is recognized.

11 “(7) SECRETARIAL AUTHORITY.—The Secretary
12 may prescribe such regulations, rules, or other guid-
13 ance as may be necessary or appropriate for pur-
14 poses of applying this subsection, including—

15 “(A) extending the application of the rules
16 of paragraph (5)(D) to other circumstances
17 where appropriate,

18 “(B) requiring reporting of the election
19 (and such other information as the Secretary
20 may require) on returns of tax for subsequent
21 taxable years, and

22 “(C) rules for the application of this sub-
23 section to partnerships, S corporations, and
24 other pass-thru entities, including for the allo-
25 cation of deferred deductions.”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to discharges in taxable years end-
3 ing after December 31, 2008.

4 **SEC. 1232. MODIFICATIONS OF RULES FOR ORIGINAL ISSUE**
5 **DISCOUNT ON CERTAIN HIGH YIELD OBLIGA-**
6 **TIONS.**

7 (a) SUSPENSION OF SPECIAL RULES.—Section
8 163(e)(5) (relating to special rules for original issue dis-
9 count on certain high yield obligations) is amended by re-
10 designating subparagraph (F) as subparagraph (G) and
11 by inserting after subparagraph (E) the following new
12 subparagraph:

13 “(F) SUSPENSION OF APPLICATION OF
14 PARAGRAPH.—

15 “(i) TEMPORARY SUSPENSION.—This
16 paragraph shall not apply to any applicable
17 high yield discount obligation issued during
18 the period beginning on September 1,
19 2008, and ending on December 31, 2009,
20 in exchange (including an exchange result-
21 ing from a modification of the debt instru-
22 ment) for an obligation which is not an ap-
23 plicable high yield discount obligation and
24 the issuer (or obligor) of which is the same
25 as the issuer (or obligor) of such applicable

1 high yield discount obligation. The pre-
2 ceding sentence shall not apply to any obli-
3 gation the interest on which is interest de-
4 scribed in section 871(h)(4) (without re-
5 gard to subparagraph (D) thereof) or to
6 any obligation issued to a related person
7 (within the meaning of section 108(e)(4)).

8 “(ii) SUCCESSIVE APPLICATION.—Any
9 obligation to which clause (i) applies shall
10 not be treated as an applicable high yield
11 discount obligation for purposes of apply-
12 ing this subparagraph to any other obliga-
13 tion issued in exchange for such obligation.

14 “(iii) SECRETARIAL AUTHORITY TO
15 SUSPEND APPLICATION.—The Secretary
16 may apply this paragraph with respect to
17 debt instruments issued in periods fol-
18 lowing the period described in clause (i) if
19 the Secretary determines that such appli-
20 cation is appropriate in light of distressed
21 conditions in the debt capital markets.”.

22 (b) INTEREST RATE USED IN DETERMINING HIGH
23 YIELD OBLIGATIONS.—The last sentence of section
24 163(i)(1) is amended—

25 (1) by inserting “(i)” after “regulation”, and

1 (2) by inserting “, or (ii) permit, on a tem-
2 porary basis, a rate to be used with respect to any
3 debt instrument which is higher than the applicable
4 Federal rate if the Secretary determines that such
5 rate is appropriate in light of distressed conditions
6 in the debt capital markets” before the period at the
7 end.

8 (c) EFFECTIVE DATE.—

9 (1) SUSPENSION.—The amendments made by
10 subsection (a) shall apply to obligations issued after
11 August 31, 2008, in taxable years ending after such
12 date.

13 (2) INTEREST RATE AUTHORITY.—The amend-
14 ments made by subsection (b) shall apply to obliga-
15 tions issued after December 31, 2009, in taxable
16 years ending after such date.

17 **PART V—QUALIFIED SMALL BUSINESS STOCK**

18 **SEC. 1241. SPECIAL RULES APPLICABLE TO QUALIFIED**

19 **SMALL BUSINESS STOCK FOR 2009 AND 2010.**

20 (a) IN GENERAL.—Section 1202(a) is amended by
21 adding at the end the following new paragraph:

22 “(3) SPECIAL RULES FOR 2009 AND 2010.—In
23 the case of qualified small business stock acquired
24 after the date of the enactment of this paragraph
25 and before January 1, 2011—

1 “(A) paragraph (1) shall be applied by
2 substituting ‘75 percent’ for ‘50 percent’, and

3 “(B) paragraph (2) shall not apply.”.

4 (b) EFFECTIVE DATE.—The amendment made by
5 this section shall apply to stock acquired after the date
6 of the enactment of this Act.

7 **PART VI—S CORPORATIONS**

8 **SEC. 1251. TEMPORARY REDUCTION IN RECOGNITION PE-**
9 **RIOD FOR BUILT-IN GAINS TAX.**

10 (a) IN GENERAL.—Paragraph (7) of section 1374(d)
11 (relating to definitions and special rules) is amended to
12 read as follows:

13 “(7) RECOGNITION PERIOD.—

14 “(A) IN GENERAL.—The term ‘recognition
15 period’ means the 10-year period beginning
16 with the 1st day of the 1st taxable year for
17 which the corporation was an S corporation.

18 “(B) SPECIAL RULE FOR 2009 AND 2010.—

19 In the case of any taxable year beginning in
20 2009 or 2010, no tax shall be imposed on the
21 net recognized built-in gain of an S corporation
22 if the 7th taxable year in the recognition period
23 preceded such taxable year. The preceding sen-
24 tence shall be applied separately with respect to
25 any asset to which paragraph (8) applies.

1 “(C) SPECIAL RULE FOR DISTRIBUTIONS
2 TO SHAREHOLDERS.—For purposes of applying
3 this section to any amount includible in income
4 by reason of distributions to shareholders pur-
5 suant to section 593(e)—

6 “(i) subparagraph (A) shall be applied
7 without regard to the phrase ‘10-year’, and

8 “(ii) subparagraph (B) shall not
9 apply.”.

10 (b) EFFECTIVE DATE.—The amendment made by
11 this section shall apply to taxable years beginning after
12 December 31, 2008.

13 **PART VII—RULES RELATING TO OWNERSHIP**
14 **CHANGES**

15 **SEC. 1261. CLARIFICATION OF REGULATIONS RELATED TO**
16 **LIMITATIONS ON CERTAIN BUILT-IN LOSSES**
17 **FOLLOWING AN OWNERSHIP CHANGE.**

18 (a) FINDINGS.—Congress finds as follows:

19 (1) The delegation of authority to the Secretary
20 of the Treasury under section 382(m) of the Inter-
21 nal Revenue Code of 1986 does not authorize the
22 Secretary to provide exemptions or special rules that
23 are restricted to particular industries or classes of
24 taxpayers.

1 (2) Internal Revenue Service Notice 2008–83 is
2 inconsistent with the congressional intent in enact-
3 ing such section 382(m).

4 (3) The legal authority to prescribe Internal
5 Revenue Service Notice 2008–83 is doubtful.

6 (4) However, as taxpayers should generally be
7 able to rely on guidance issued by the Secretary of
8 the Treasury legislation is necessary to clarify the
9 force and effect of Internal Revenue Service Notice
10 2008–83 and restore the proper application under
11 the Internal Revenue Code of 1986 of the limitation
12 on built-in losses following an ownership change of
13 a bank.

14 (b) DETERMINATION OF FORCE AND EFFECT OF IN-
15 TERNAL REVENUE SERVICE NOTICE 2008–83 EXEMPT-
16 ING BANKS FROM LIMITATION ON CERTAIN BUILT-IN
17 LOSSES FOLLOWING OWNERSHIP CHANGE.—

18 (1) IN GENERAL.—Internal Revenue Service
19 Notice 2008–83—

20 (A) shall be deemed to have the force and
21 effect of law with respect to any ownership
22 change (as defined in section 382(g) of the In-
23 ternal Revenue Code of 1986) occurring on or
24 before January 16, 2009, and

1 (B) shall have no force or effect with re-
2 spect to any ownership change after such date.

3 (2) BINDING CONTRACTS.—Notwithstanding
4 paragraph (1), Internal Revenue Service Notice
5 2008–83 shall have the force and effect of law with
6 respect to any ownership change (as so defined)
7 which occurs after January 16, 2009, if such
8 change—

9 (A) is pursuant to a written binding con-
10 tract entered into on or before such date, or

11 (B) is pursuant to a written agreement en-
12 tered into on or before such date and such
13 agreement was described on or before such date
14 in a public announcement or in a filing with the
15 Securities and Exchange Commission required
16 by reason of such ownership change.

17 **SEC. 1262. TREATMENT OF CERTAIN OWNERSHIP CHANGES**
18 **FOR PURPOSES OF LIMITATIONS ON NET OP-**
19 **ERATING LOSS CARRYFORWARDS AND CER-**
20 **TAIN BUILT-IN LOSSES.**

21 (a) IN GENERAL.—Section 382 is amended by adding
22 at the end the following new subsection:

23 “(n) SPECIAL RULE FOR CERTAIN OWNERSHIP
24 CHANGES.—

1 “(1) IN GENERAL.—The limitation contained in
2 subsection (a) shall not apply in the case of an own-
3 ership change which is pursuant to a restructuring
4 plan of a taxpayer which—

5 “(A) is required under a loan agreement or
6 a commitment for a line of credit entered into
7 with the Department of the Treasury under the
8 Emergency Economic Stabilization Act of 2008,
9 and

10 “(B) is intended to result in a rationaliza-
11 tion of the costs, capitalization, and capacity
12 with respect to the manufacturing workforce of,
13 and suppliers to, the taxpayer and its subsidi-
14 aries.

15 “(2) SUBSEQUENT ACQUISITIONS.—Paragraph
16 (1) shall not apply in the case of any subsequent
17 ownership change unless such ownership change is
18 described in such paragraph.

19 “(3) LIMITATION BASED ON CONTROL IN COR-
20 PORATION.—

21 “(A) IN GENERAL.—Paragraph (1) shall
22 not apply in the case of any ownership change
23 if, immediately after such ownership change,
24 any person (other than a voluntary employees’
25 beneficiary association under section 501(c)(9))

1 owns stock of the new loss corporation pos-
2 sessing 50 percent or more of the total com-
3 bined voting power of all classes of stock enti-
4 tled to vote, or of the total value of the stock
5 of such corporation.

6 “(B) TREATMENT OF RELATED PER-
7 SONS.—

8 “(i) IN GENERAL.—Related persons
9 shall be treated as a single person for pur-
10 poses of this paragraph.

11 “(ii) RELATED PERSONS.—For pur-
12 poses of clause (i), a person shall be treat-
13 ed as related to another person if—

14 “(I) such person bears a relation-
15 ship to such other person described in
16 section 267(b) or 707(b), or

17 “(II) such persons are members
18 of a group of persons acting in con-
19 cert.”.

20 (b) EFFECTIVE DATE.—The amendment made by
21 this section shall apply to ownership changes after the
22 date of the enactment of this Act.

1 **Subtitle D—Manufacturing**
2 **Recovery Provisions**

3 **SEC. 1301. TEMPORARY EXPANSION OF AVAILABILITY OF**
4 **INDUSTRIAL DEVELOPMENT BONDS TO FA-**
5 **CILITIES MANUFACTURING INTANGIBLE**
6 **PROPERTY.**

7 (a) IN GENERAL.—Subparagraph (C) of section
8 144(a)(12) is amended—

9 (1) by striking “For purposes of this para-

10 graph, the term” and inserting “For purposes of

11 this paragraph—

12 “(i) IN GENERAL.—The term”, and

13 (2) by striking the last sentence and inserting

14 the following new clauses:

15 “(ii) CERTAIN FACILITIES IN-

16 CLUDED.—Such term includes facilities

17 which are directly related and ancillary to

18 a manufacturing facility (determined with-

19 out regard to this clause) if—

20 “(I) such facilities are located on

21 the same site as the manufacturing

22 facility, and

23 “(II) not more than 25 percent

24 of the net proceeds of the issue are

25 used to provide such facilities.

1 “(iii) SPECIAL RULES FOR BONDS
2 ISSUED IN 2009 AND 2010.—In the case of
3 any issue made after the date of enactment
4 of this clause and before January 1, 2011,
5 clause (ii) shall not apply and the net pro-
6 ceeds from a bond shall be considered to
7 be used to provide a manufacturing facility
8 if such proceeds are used to provide—

9 “(I) a facility which is used in
10 the creation or production of intan-
11 gible property which is described in
12 section 197(d)(1)(C)(iii), or

13 “(II) a facility which is function-
14 ally related and subordinate to a man-
15 ufacturing facility (determined with-
16 out regard to this subclause) if such
17 facility is located on the same site as
18 the manufacturing facility.”.

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

22 **SEC. 1302. CREDIT FOR INVESTMENT IN ADVANCED EN-**
23 **ERGY FACILITIES.**

24 (a) IN GENERAL.—Section 46 (relating to amount of
25 credit) is amended by striking “and” at the end of para-

1 graph (3), by striking the period at the end of paragraph
2 (4), and by adding at the end the following new para-
3 graph:

4 “(5) the qualifying advanced energy project
5 credit.”.

6 (b) AMOUNT OF CREDIT.—Subpart E of part IV of
7 subchapter A of chapter 1 (relating to rules for computing
8 investment credit) is amended by inserting after section
9 48B the following new section:

10 **“SEC. 48C. QUALIFYING ADVANCED ENERGY PROJECT**
11 **CREDIT.**

12 “(a) IN GENERAL.—For purposes of section 46, the
13 qualifying advanced energy project credit for any taxable
14 year is an amount equal to 30 percent of the qualified
15 investment for such taxable year with respect to any quali-
16 fying advanced energy project of the taxpayer.

17 “(b) QUALIFIED INVESTMENT.—

18 “(1) IN GENERAL.—For purposes of subsection
19 (a), the qualified investment for any taxable year is
20 the basis of eligible property placed in service by the
21 taxpayer during such taxable year which is part of
22 a qualifying advanced energy project.

23 “(2) CERTAIN QUALIFIED PROGRESS EXPENDI-
24 TURES RULES MADE APPLICABLE.—Rules similar to
25 the rules of subsections (c)(4) and (d) of section 46

1 (as in effect on the day before the enactment of the
2 Revenue Reconciliation Act of 1990) shall apply for
3 purposes of this section.

4 “(3) LIMITATION.—The amount which is treat-
5 ed for all taxable years with respect to any quali-
6 fying advanced energy project shall not exceed the
7 amount designated by the Secretary as eligible for
8 the credit under this section.

9 “(c) DEFINITIONS.—

10 “(1) QUALIFYING ADVANCED ENERGY
11 PROJECT.—

12 “(A) IN GENERAL.—The term ‘qualifying
13 advanced energy project’ means a project—

14 “(i) which re-equips, expands, or es-
15 tablishes a manufacturing facility for the
16 production of—

17 “(I) property designed to be used
18 to produce energy from the sun, wind,
19 geothermal deposits (within the mean-
20 ing of section 613(e)(2)), or other re-
21 newable resources,

22 “(II) fuel cells, microturbines, or
23 an energy storage system for use with
24 electric or hybrid-electric motor vehi-
25 cles,

1 “(III) electric grids to support
2 the transmission of intermittent
3 sources of renewable energy, including
4 storage of such energy,

5 “(IV) property designed to cap-
6 ture and sequester carbon dioxide
7 emissions,

8 “(V) property designed to refine
9 or blend renewable fuels or to produce
10 energy conservation technologies (in-
11 cluding energy-conserving lighting
12 technologies and smart grid tech-
13 nologies),

14 “(VI) new qualified plug-in elec-
15 tric drive motor vehicles (as defined
16 by section 30D), qualified plug-in
17 electric vehicles (as defined by section
18 30(d)), or components which are de-
19 signed specifically for use with such
20 vehicles, including electric motors,
21 generators, and power control units,
22 or

23 “(VII) other advanced energy
24 property designed to reduce green-

1 house gas emissions as may be deter-
2 mined by the Secretary, and

3 “(ii) any portion of the qualified in-
4 vestment of which is certified by the Sec-
5 retary under subsection (d) as eligible for
6 a credit under this section.

7 “(B) EXCEPTION.—Such term shall not in-
8 clude any portion of a project for the produc-
9 tion of any property which is used in the refin-
10 ing or blending of any transportation fuel
11 (other than renewable fuels).

12 “(2) ELIGIBLE PROPERTY.—The term ‘eligible
13 property’ means any property—

14 “(A) which is necessary for the production
15 of property described in paragraph (1)(A)(i),

16 “(B) which is—

17 “(i) tangible personal property, or

18 “(ii) other tangible property (not in-
19 cluding a building or its structural compo-
20 nents), but only if such property is used as
21 an integral part of the qualified investment
22 credit facility, and

23 “(C) with respect to which depreciation (or
24 amortization in lieu of depreciation) is allow-
25 able.

1 “(d) QUALIFYING ADVANCED ENERGY PROJECT
2 PROGRAM.—

3 “(1) ESTABLISHMENT.—

4 “(A) IN GENERAL.—Not later than 180
5 days after the date of enactment of this section,
6 the Secretary, in consultation with the Sec-
7 retary of Energy, shall establish a qualifying
8 advanced energy project program to consider
9 and award certifications for qualified invest-
10 ments eligible for credits under this section to
11 qualifying advanced energy project sponsors.

12 “(B) LIMITATION.—The total amount of
13 credits that may be allocated under the pro-
14 gram shall not exceed \$2,300,000,000.

15 “(2) CERTIFICATION.—

16 “(A) APPLICATION PERIOD.—Each appli-
17 cant for certification under this paragraph shall
18 submit an application containing such informa-
19 tion as the Secretary may require during the 2-
20 year period beginning on the date the Secretary
21 establishes the program under paragraph (1).

22 “(B) TIME TO MEET CRITERIA FOR CER-
23 TIFICATION.—Each applicant for certification
24 shall have 1 year from the date of acceptance
25 by the Secretary of the application during

1 which to provide to the Secretary evidence that
2 the requirements of the certification have been
3 met.

4 “(C) PERIOD OF ISSUANCE.—An applicant
5 which receives a certification shall have 3 years
6 from the date of issuance of the certification in
7 order to place the project in service and if such
8 project is not placed in service by that time pe-
9 riod, then the certification shall no longer be
10 valid.

11 “(3) SELECTION CRITERIA.—In determining
12 which qualifying advanced energy projects to certify
13 under this section, the Secretary—

14 “(A) shall take into consideration only
15 those projects where there is a reasonable ex-
16 pectation of commercial viability, and

17 “(B) shall take into consideration which
18 projects—

19 “(i) will provide the greatest domestic
20 job creation (both direct and indirect) dur-
21 ing the credit period,

22 “(ii) will provide the greatest net im-
23 pact in avoiding or reducing air pollutants
24 or anthropogenic emissions of greenhouse
25 gases,

1 “(iii) have the greatest potential for
2 technological innovation and commercial
3 deployment,

4 “(iv) have the lowest levelized cost of
5 generated or stored energy, or of measured
6 reduction in energy consumption or green-
7 house gas emission (based on costs of the
8 full supply chain), and

9 “(v) have the shortest project time
10 from certification to completion.

11 “(4) REVIEW AND REDISTRIBUTION.—

12 “(A) REVIEW.—Not later than 4 years
13 after the date of enactment of this section, the
14 Secretary shall review the credits allocated
15 under this section as of such date.

16 “(B) REDISTRIBUTION.—The Secretary
17 may reallocate credits awarded under this sec-
18 tion if the Secretary determines that—

19 “(i) there is an insufficient quantity
20 of qualifying applications for certification
21 pending at the time of the review, or

22 “(ii) any certification made pursuant
23 to paragraph (2) has been revoked pursu-
24 ant to paragraph (2)(B) because the
25 project subject to the certification has been

1 delayed as a result of third party opposi-
2 tion or litigation to the proposed project.

3 “(C) REALLOCATION.—If the Secretary de-
4 termines that credits under this section are
5 available for reallocation pursuant to the re-
6 quirements set forth in paragraph (2), the Sec-
7 retary is authorized to conduct an additional
8 program for applications for certification.

9 “(5) DISCLOSURE OF ALLOCATIONS.—The Sec-
10 retary shall, upon making a certification under this
11 subsection, publicly disclose the identity of the appli-
12 cant and the amount of the credit with respect to
13 such applicant.

14 “(e) DENIAL OF DOUBLE BENEFIT.—A credit shall
15 not be allowed under this section for any qualified invest-
16 ment for which a credit is allowed under section 48, 48A,
17 or 48B.”.

18 (c) CONFORMING AMENDMENTS.—

19 (1) Section 49(a)(1)(C) is amended by striking
20 “and” at the end of clause (iii), by striking the pe-
21 riod at the end of clause (iv) and inserting “, and”,
22 and by adding after clause (iv) the following new
23 clause:

1 “(v) the basis of any property which
2 is part of a qualifying advanced energy
3 project under section 48C.”.

4 (2) The table of sections for subpart E of part
5 IV of subchapter A of chapter 1 is amended by in-
6 serting after the item relating to section 48B the fol-
7 lowing new item:

“48C. Qualifying advanced energy project credit.”.

8 (d) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to periods after the date of the
10 enactment of this Act, under rules similar to the rules of
11 section 48(m) of the Internal Revenue Code of 1986 (as
12 in effect on the day before the date of the enactment of
13 the Revenue Reconciliation Act of 1990).

14 **Subtitle E—Economic Recovery** 15 **Tools**

16 **SEC. 1401. RECOVERY ZONE BONDS.**

17 (a) IN GENERAL.—Subchapter Y of chapter 1 is
18 amended by adding at the end the following new part:

19 **“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.

20 **“SEC. 1400U-1. ALLOCATION OF RECOVERY ZONE BONDS.**

21 “(a) ALLOCATIONS.—

22 “(1) IN GENERAL.—

1 “(A) GENERAL ALLOCATION.—The Sec-
2 retary shall allocate the national recovery zone
3 economic development bond limitation and the
4 national recovery zone facility bond limitation
5 among the States in the proportion that each
6 such State’s 2008 State employment decline
7 bears to the aggregate of the 2008 State em-
8 ployment declines for all of the States.

9 “(B) MINIMUM ALLOCATION.—The Sec-
10 retary shall adjust the allocations under sub-
11 paragraph (A) for any calendar year for each
12 State to the extent necessary to ensure that no
13 State receives less than 0.9 percent of the na-
14 tional recovery zone economic development bond
15 limitation and 0.9 percent of the national recov-
16 ery zone facility bond limitation.

17 “(2) 2008 STATE EMPLOYMENT DECLINE.—For
18 purposes of this subsection, the term ‘2008 State
19 employment decline’ means, with respect to any
20 State, the excess (if any) of—

21 “(A) the number of individuals employed
22 in such State determined for December 2007,
23 over

24 “(B) the number of individuals employed
25 in such State determined for December 2008.

1 “(3) ALLOCATIONS BY STATES.—

2 “(A) IN GENERAL.—Each State with re-
3 spect to which an allocation is made under
4 paragraph (1) shall reallocate such allocation
5 among the counties and large municipalities in
6 such State in the proportion to each such coun-
7 ty’s or municipality’s 2008 employment decline
8 bears to the aggregate of the 2008 employment
9 declines for all the counties and municipalities
10 in such State. A county or municipality may
11 waive any portion of an allocation made under
12 this subparagraph.

13 “(B) LARGE MUNICIPALITIES.—For pur-
14 poses of subparagraph (A), the term ‘large mu-
15 nicipality’ means a municipality with a popu-
16 lation of more than 100,000.

17 “(C) DETERMINATION OF LOCAL EMPLOY-
18 MENT DECLINES.—For purposes of this para-
19 graph, the employment decline of any munici-
20 pality or county shall be determined in the
21 same manner as determining the State employ-
22 ment decline under paragraph (2), except that
23 in the case of a municipality any portion of
24 which is in a county, such portion shall be

1 treated as part of such municipality and not
2 part of such county.

3 “(4) NATIONAL LIMITATIONS.—

4 “(A) RECOVERY ZONE ECONOMIC DEVEL-
5 OPMENT BONDS.—There is a national recovery
6 zone economic development bond limitation of
7 \$10,000,000,000.

8 “(B) RECOVERY ZONE FACILITY BONDS.—
9 There is a national recovery zone facility bond
10 limitation of \$15,000,000,000.

11 “(b) RECOVERY ZONE.—For purposes of this part,
12 the term ‘recovery zone’ means—

13 “(1) any area designated by the issuer as hav-
14 ing significant poverty, unemployment, rate of home
15 foreclosures, or general distress,

16 “(2) any area designated by the issuer as eco-
17 nomically distressed by reason of the closure or re-
18 alignment of a military installation pursuant to the
19 Defense Base Closure and Realignment Act of 1990,
20 and

21 “(3) any area for which a designation as an em-
22 powerment zone or renewal community is in effect.

1 **“SEC. 1400U-2. RECOVERY ZONE ECONOMIC DEVELOPMENT**
2 **BONDS.**

3 “(a) IN GENERAL.—In the case of a recovery zone
4 economic development bond—

5 “(1) such bond shall be treated as a qualified
6 bond for purposes of section 6431, and

7 “(2) subsection (b) of such section shall be ap-
8 plied by substituting ‘45 percent’ for ‘35 percent’.

9 “(b) RECOVERY ZONE ECONOMIC DEVELOPMENT
10 BOND.—

11 “(1) IN GENERAL.—For purposes of this sec-
12 tion, the term ‘recovery zone economic development
13 bond’ means any build America bond (as defined in
14 section 54AA(d)) issued before January 1, 2011, as
15 part of issue if—

16 “(A) 100 percent of the excess of—

17 “(i) the available project proceeds (as
18 defined in section 54A) of such issue, over

19 “(ii) the amounts in a reasonably re-
20 quired reserve (within the meaning of sec-
21 tion 150(a)(3)) with respect to such issue,

22 are to be used for one or more qualified eco-
23 nomic development purposes, and

24 “(B) the issuer designates such bond for
25 purposes of this section.

1 “(2) LIMITATION ON AMOUNT OF BONDS DES-
2 IGNATED.—The maximum aggregate face amount of
3 bonds which may be designated by any issuer under
4 paragraph (1) shall not exceed the amount of the re-
5 covery zone economic development bond limitation
6 allocated to such issuer under section 1400U–1.

7 “(c) QUALIFIED ECONOMIC DEVELOPMENT PUR-
8 POSE.—For purposes of this section, the term ‘qualified
9 economic development purpose’ means expenditures for
10 purposes of promoting development or other economic ac-
11 tivity in a recovery zone, including—

12 “(1) capital expenditures paid or incurred with
13 respect to property located in such zone,

14 “(2) expenditures for public infrastructure and
15 construction of public facilities, and

16 “(3) expenditures for job training and edu-
17 cational programs.

18 **“SEC. 1400U–3. RECOVERY ZONE FACILITY BONDS.**

19 “(a) IN GENERAL.—For purposes of part IV of sub-
20 chapter B (relating to tax exemption requirements for
21 State and local bonds), the term ‘exempt facility bond’ in-
22 cludes any recovery zone facility bond.

23 “(b) RECOVERY ZONE FACILITY BOND.—

1 “(1) IN GENERAL.—For purposes of this sec-
2 tion, the term ‘recovery zone facility bond’ means
3 any bond issued as part of an issue if—

4 “(A) 95 percent or more of the net pro-
5 ceeds (as defined in section 150(a)(3)) of such
6 issue are to be used for recovery zone property,

7 “(B) such bond is issued before January 1,
8 2011, and

9 “(C) the issuer designates such bond for
10 purposes of this section.

11 “(2) LIMITATION ON AMOUNT OF BONDS DES-
12 IGNATED.—The maximum aggregate face amount of
13 bonds which may be designated by any issuer under
14 paragraph (1) shall not exceed the amount of recov-
15 ery zone facility bond limitation allocated to such
16 issuer under section 1400U-1.

17 “(c) RECOVERY ZONE PROPERTY.—For purposes of
18 this section—

19 “(1) IN GENERAL.—The term ‘recovery zone
20 property’ means any property to which section 168
21 applies (or would apply but for section 179) if—

22 “(A) such property was constructed, recon-
23 structed, renovated, or acquired by purchase (as
24 defined in section 179(d)(2)) by the taxpayer

1 after the date on which the designation of the
2 recovery zone took effect,

3 “(B) the original use of which in the recov-
4 ery zone commences with the taxpayer, and

5 “(C) substantially all of the use of which
6 is in the recovery zone and is in the active con-
7 duct of a qualified business by the taxpayer in
8 such zone.

9 “(2) QUALIFIED BUSINESS.—The term ‘quali-
10 fied business’ means any trade or business except
11 that—

12 “(A) the rental to others of real property
13 located in a recovery zone shall be treated as a
14 qualified business only if the property is not
15 residential rental property (as defined in section
16 168(e)(2)), and

17 “(B) such term shall not include any trade
18 or business consisting of the operation of any
19 facility described in section 144(c)(6)(B).

20 “(3) SPECIAL RULES FOR SUBSTANTIAL REN-
21 OVATIONS AND SALE-LEASEBACK.—Rules similar to
22 the rules of subsections (a)(2) and (b) of section
23 1397D shall apply for purposes of this subsection.

24 “(d) NONAPPLICATION OF CERTAIN RULES.—Sec-
25 tions 146 (relating to volume cap) and 147(d) (relating

1 to acquisition of existing property not permitted) shall not
2 apply to any recovery zone facility bond.”.

3 (b) CLERICAL AMENDMENT.—The table of parts for
4 subchapter Y of chapter 1 of such Code is amended by
5 adding at the end the following new item:

“PART III. RECOVERY ZONE BONDS.”.

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

9 **SEC. 1402. TRIBAL ECONOMIC DEVELOPMENT BONDS.**

10 (a) IN GENERAL.—Section 7871 is amended by add-
11 ing at the end the following new subsection:

12 “(f) TRIBAL ECONOMIC DEVELOPMENT BONDS.—

13 “(1) ALLOCATION OF LIMITATION.—

14 “(A) IN GENERAL.—The Secretary shall
15 allocate the national tribal economic develop-
16 ment bond limitation among the Indian tribal
17 governments in such manner as the Secretary,
18 in consultation with the Secretary of the Inte-
19 rior, determines appropriate.

20 “(B) NATIONAL LIMITATION.—There is a
21 national tribal economic development bond limi-
22 tation of \$2,000,000,000.

23 “(2) BONDS TREATED AS EXEMPT FROM
24 TAX.—In the case of a tribal economic development
25 bond—

1 “(A) notwithstanding subsection (c), such
2 bond shall be treated for purposes of this title
3 in the same manner as if such bond were issued
4 by a State,

5 “(B) the Indian tribal government issuing
6 such bond and any instrumentality of such In-
7 dian tribal government shall be treated as a
8 State for purposes of section 141, and

9 “(C) section 146 shall not apply.

10 “(3) TRIBAL ECONOMIC DEVELOPMENT
11 BOND.—

12 “(A) IN GENERAL.—For purposes of this
13 section, the term ‘tribal economic development
14 bond’ means any bond issued by an Indian trib-
15 al government—

16 “(i) the interest on which would be ex-
17 empt from tax under section 103 if issued
18 by a State or local government, and

19 “(ii) which is designated by the In-
20 dian tribal government as a tribal eco-
21 nomic development bond for purposes of
22 this subsection.

23 “(B) EXCEPTIONS.—Such term shall not
24 include any bond issued as part of an issue if

1 any portion of the proceeds of such issue are
2 used to finance—

3 “(i) any portion of a building in which
4 class II or class III gaming (as defined in
5 section 4 of the Indian Gaming Regulatory
6 Act) is conducted or housed or any other
7 property actually used in the conduct of
8 such gaming, or

9 “(ii) any facility located outside the
10 Indian reservation (as defined in section
11 168(j)(6)).

12 “(C) LIMITATION ON AMOUNT OF BONDS
13 DESIGNATED.—The maximum aggregate face
14 amount of bonds which may be designated by
15 any Indian tribal government under subpara-
16 graph (A) shall not exceed the amount of na-
17 tional tribal economic development bond limita-
18 tion allocated to such government under para-
19 graph (1).”.

20 (b) STUDY.—The Secretary of the Treasury, or the
21 Secretary’s delegate, shall conduct a study of the effects
22 of the amendment made by subsection (a). Not later than
23 1 year after the date of the enactment of this Act, the
24 Secretary of the Treasury, or the Secretary’s delegate,
25 shall report to Congress on the results of the study con-

1 ducted under this paragraph, including the Secretary's
2 recommendations regarding such amendment.

3 (c) EFFECTIVE DATE.—The amendment made by
4 subsection (a) shall apply to obligations issued after the
5 date of the enactment of this Act.

6 **SEC. 1403. INCREASE IN NEW MARKETS TAX CREDIT.**

7 (a) IN GENERAL.—Section 45D(f)(1) is amended—

8 (1) by striking “and” at the end of subpara-
9 graph (C),

10 (2) by striking “, 2007, 2008, and 2009.” in
11 subparagraph (D), and inserting “and 2007,” and

12 (3) by adding at the end the following new sub-
13 paragraphs:

14 “(E) \$5,000,000,000 for 2008, and

15 “(F) \$5,000,000,000 for 2009.”.

16 (b) SPECIAL RULE FOR ALLOCATION OF INCREASED
17 2008 LIMITATION.—The amount of the increase in the
18 new markets tax credit limitation for calendar year 2008
19 by reason of the amendments made by subsection (a) shall
20 be allocated in accordance with section 45D(f)(2) of the
21 Internal Revenue Code of 1986 to qualified community de-
22 velopment entities (as defined in section 45D(c) of such
23 Code) which—

24 (1) submitted an allocation application with re-
25 spect to calendar year 2008, and

1 (2)(A) did not receive an allocation for such cal-
2 endar year, or

3 (B) received an allocation for such calendar
4 year in an amount less than the amount requested
5 in the allocation application.

6 **SEC. 1404. COORDINATION OF LOW-INCOME HOUSING**
7 **CREDIT AND LOW-INCOME HOUSING GRANTS.**

8 Subsection (i) of section 42 is amended by adding at
9 the end the following new paragraph:

10 “(9) COORDINATION WITH LOW-INCOME HOUS-
11 ING GRANTS.—

12 “(A) REDUCTION IN STATE HOUSING
13 CREDIT CEILING FOR LOW-INCOME HOUSING
14 GRANTS RECEIVED IN 2009.—For purposes of
15 this section, the amounts described in clauses
16 (i) through (iv) of subsection (h)(3)(C) with re-
17 spect to any State for 2009 shall each be re-
18 duced by so much of such amount as is taken
19 into account in determining the amount of any
20 grant to such State under section 1602 of the
21 American Recovery and Reinvestment Tax Act
22 of 2009.

23 “(B) SPECIAL RULE FOR BASIS.—Basis of
24 a qualified low-income building shall not be re-

1 duced by the amount of any grant described in
2 subparagraph (A).”.

3 **Subtitle F—Infrastructure**
4 **Financing Tools**

5 **PART I—IMPROVED MARKETABILITY FOR TAX-**
6 **EXEMPT BONDS**

7 **SEC. 1501. DE MINIMIS SAFE HARBOR EXCEPTION FOR TAX-**
8 **EXEMPT INTEREST EXPENSE OF FINANCIAL**
9 **INSTITUTIONS.**

10 (a) IN GENERAL.—Subsection (b) of section 265 is
11 amended by adding at the end the following new para-
12 graph:

13 “(7) DE MINIMIS EXCEPTION FOR BONDS
14 ISSUED DURING 2009 OR 2010.—

15 “(A) IN GENERAL.—In applying paragraph
16 (2)(A), there shall not be taken into account
17 tax-exempt obligations issued during 2009 or
18 2010.

19 “(B) LIMITATION.—The amount of tax-ex-
20 empt obligations not taken into account by rea-
21 son of subparagraph (A) shall not exceed 2 per-
22 cent of the amount determined under para-
23 graph (2)(B).

24 “(C) REFUNDINGS.—For purposes of this
25 paragraph, a refunding bond (whether a current

1 or advance refunding) shall be treated as issued
2 on the date of the issuance of the refunded
3 bond (or in the case of a series of refundings,
4 the original bond).”.

5 (b) TREATMENT AS FINANCIAL INSTITUTION PREF-
6 ERENCE ITEM.—Clause (iv) of section 291(e)(1)(B) is
7 amended by adding at the end the following: “That por-
8 tion of any obligation not taken into account under para-
9 graph (2)(A) of section 265(b) by reason of paragraph (7)
10 of such section shall be treated for purposes of this section
11 as having been acquired on August 7, 1986.”.

12 (c) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to obligations issued after Decem-
14 ber 31, 2008.

15 **SEC. 1502. MODIFICATION OF SMALL ISSUER EXCEPTION**
16 **TO TAX-EXEMPT INTEREST EXPENSE ALLOCA-**
17 **TION RULES FOR FINANCIAL INSTITUTIONS.**

18 (a) IN GENERAL.—Paragraph (3) of section 265(b)
19 (relating to exception for certain tax-exempt obligations)
20 is amended by adding at the end the following new sub-
21 paragraph:

22 “(G) SPECIAL RULES FOR OBLIGATIONS
23 ISSUED DURING 2009 AND 2010.—

24 “(i) INCREASE IN LIMITATION.—In
25 the case of obligations issued during 2009

1 or 2010, subparagraphs (C)(i), (D)(i), and
2 (D)(iii)(II) shall each be applied by sub-
3 stituting ‘\$30,000,000’ for ‘\$10,000,000’.

4 “(ii) QUALIFIED 501(C)(3) BONDS
5 TREATED AS ISSUED BY EXEMPT ORGANI-
6 ZATION.—In the case of a qualified
7 501(c)(3) bond (as defined in section 145)
8 issued during 2009 or 2010, this para-
9 graph shall be applied by treating the
10 501(c)(3) organization for whose benefit
11 such bond was issued as the issuer.

12 “(iii) SPECIAL RULE FOR QUALIFIED
13 FINANCINGS.—In the case of a qualified fi-
14 nancing issue issued during 2009 or
15 2010—

16 “(I) subparagraph (F) shall not
17 apply, and

18 “(II) any obligation issued as a
19 part of such issue shall be treated as
20 a qualified tax-exempt obligation if
21 the requirements of this paragraph
22 are met with respect to each qualified
23 portion of the issue (determined by
24 treating each qualified portion as a
25 separate issue which is issued by the

1 qualified borrower with respect to
2 which such portion relates).

3 “(iv) QUALIFIED FINANCING ISSUE.—
4 For purposes of this subparagraph, the
5 term ‘qualified financing issue’ means any
6 composite, pooled, or other conduit financ-
7 ing issue the proceeds of which are used
8 directly or indirectly to make or finance
9 loans to 1 or more ultimate borrowers each
10 of whom is a qualified borrower.

11 “(v) QUALIFIED PORTION.—For pur-
12 poses of this subparagraph, the term
13 ‘qualified portion’ means that portion of
14 the proceeds which are used with respect
15 to each qualified borrower under the issue.

16 “(vi) QUALIFIED BORROWER.—For
17 purposes of this subparagraph, the term
18 ‘qualified borrower’ means a borrower
19 which is a State or political subdivision
20 thereof or an organization described in sec-
21 tion 501(c)(3) and exempt from taxation
22 under section 501(a).”.

23 (b) EFFECTIVE DATE.—The amendment made by
24 this section shall apply to obligations issued after Decem-
25 ber 31, 2008.

1 **SEC. 1503. TEMPORARY MODIFICATION OF ALTERNATIVE**
2 **MINIMUM TAX LIMITATIONS ON TAX-EXEMPT**
3 **BONDS.**

4 (a) INTEREST ON PRIVATE ACTIVITY BONDS ISSUED
5 DURING 2009 AND 2010 NOT TREATED AS TAX PREF-
6 ERENCE ITEM.—Subparagraph (C) of section 57(a)(5) is
7 amended by adding at the end a new clause:

8 “(vi) EXCEPTION FOR BONDS ISSUED
9 IN 2009 AND 2010.—

10 “(I) IN GENERAL.—For purposes
11 of clause (i), the term ‘private activity
12 bond’ shall not include any bond
13 issued after December 31, 2008, and
14 before January 1, 2011.

15 “(II) TREATMENT OF REFUND-
16 ING BONDS.—For purposes of sub-
17 clause (I), a refunding bond (whether
18 a current or advance refunding) shall
19 be treated as issued on the date of the
20 issuance of the refunded bond (or in
21 the case of a series of refundings, the
22 original bond).

23 “(III) EXCEPTION FOR CERTAIN
24 REFUNDING BONDS.—Subclause (II)
25 shall not apply to any refunding bond
26 which is issued to refund any bond

1 which was issued after December 31,
2 2003, and before January 1, 2009.”.

3 (b) NO ADJUSTMENT TO ADJUSTED CURRENT
4 EARNINGS FOR INTEREST ON TAX-EXEMPT BONDS
5 ISSUED DURING 2009 AND 2010.—Subparagraph (B) of
6 section 56(g)(4) is amended by adding at the end the fol-
7 lowing new clause:

8 “(iv) TAX EXEMPT INTEREST ON
9 BONDS ISSUED IN 2009 AND 2010.—

10 “(I) IN GENERAL.—Clause (i)
11 shall not apply in the case of any in-
12 terest on a bond issued after Decem-
13 ber 31, 2008, and before January 1,
14 2011.

15 “(II) TREATMENT OF REFUND-
16 ING BONDS.—For purposes of sub-
17 clause (I), a refunding bond (whether
18 a current or advance refunding) shall
19 be treated as issued on the date of the
20 issuance of the refunded bond (or in
21 the case of a series of refundings, the
22 original bond).

23 “(III) EXCEPTION FOR CERTAIN
24 REFUNDING BONDS.—Subclause (II)
25 shall not apply to any refunding bond

1 which is issued to refund any bond
2 which was issued after December 31,
3 2003, and before January 1, 2009.”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to obligations issued after Decem-
6 ber 31, 2008.

7 **SEC. 1504. MODIFICATION TO HIGH SPEED INTERCITY RAIL**
8 **FACILITY BONDS.**

9 (a) IN GENERAL.—Paragraph (1) of section 142(i)
10 is amended by striking “operate at speeds in excess of”
11 and inserting “be capable of attaining a maximum speed
12 in excess of”.

13 (b) EFFECTIVE DATE.—The amendment made by
14 this section shall apply to obligations issued after the date
15 of the enactment of this Act.

16 **PART II—DELAY IN APPLICATION OF WITH-**
17 **HOLDING TAX ON GOVERNMENT CONTRAC-**
18 **TORS**

19 **SEC. 1511. DELAY IN APPLICATION OF WITHHOLDING TAX**
20 **ON GOVERNMENT CONTRACTORS.**

21 Subsection (b) of section 511 of the Tax Increase
22 Prevention and Reconciliation Act of 2005 is amended by
23 striking “December 31, 2010” and inserting “December
24 31, 2011”.

1 **PART III—TAX CREDIT BONDS FOR SCHOOLS**

2 **SEC. 1521. QUALIFIED SCHOOL CONSTRUCTION BONDS.**

3 (a) IN GENERAL.—Subpart I of part IV of sub-
4 chapter A of chapter 1 is amended by adding at the end
5 the following new section:

6 **“SEC. 54F. QUALIFIED SCHOOL CONSTRUCTION BONDS.**

7 “(a) QUALIFIED SCHOOL CONSTRUCTION BOND.—
8 For purposes of this subchapter, the term ‘qualified school
9 construction bond’ means any bond issued as part of an
10 issue if—

11 “(1) 100 percent of the available project pro-
12 ceeds of such issue are to be used for the construc-
13 tion, rehabilitation, or repair of a public school facil-
14 ity or for the acquisition of land on which such a fa-
15 cility is to be constructed with part of the proceeds
16 of such issue,

17 “(2) the bond is issued by a State or local gov-
18 ernment within the jurisdiction of which such school
19 is located, and

20 “(3) the issuer designates such bond for pur-
21 poses of this section.

22 “(b) LIMITATION ON AMOUNT OF BONDS DES-
23 IGNATED.—The maximum aggregate face amount of
24 bonds issued during any calendar year which may be des-
25 ignated under subsection (a) by any issuer shall not exceed

1 the limitation amount allocated under subsection (d) for
2 such calendar year to such issuer.

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 (e), zero
10 after 2010.

11 “(d) ALLOCATION OF LIMITATION.—

12 “(1) ALLOCATION AMONG STATES.—Except as
13 provided in paragraph (2)(C), the limitation applica-
14 ble under subsection (c) for any calendar year shall
15 be allocated by the Secretary among the States in
16 proportion to the respective amounts each such
17 State is eligible to receive under section 1124 of the
18 Elementary and Secondary Education Act of 1965
19 (20 U.S.C. 6333) for the most recent fiscal year
20 ending before such calendar year. The limitation
21 amount allocated to a State under the preceding
22 sentence shall be allocated by the State to issuers
23 within such State.

24 “(2) 40 PERCENT OF LIMITATION ALLOCATED
25 AMONG LARGEST SCHOOL DISTRICTS.—

1 “(A) IN GENERAL.—40 percent of the limi-
2 tation applicable under subsection (c) for any
3 calendar year shall be allocated under subpara-
4 graph (B) by the Secretary among local edu-
5 cational agencies which are large local edu-
6 cational agencies for such year.

7 “(B) ALLOCATION FORMULA.—The
8 amount to be allocated under subparagraph (A)
9 for any calendar year shall be allocated among
10 large local educational agencies in proportion to
11 the respective amounts each such agency re-
12 ceived under section 1124 of the Elementary
13 and Secondary Education Act of 1965 (20
14 U.S.C. 6333) for the most recent fiscal year
15 ending before such calendar year.

16 “(C) REDUCTION IN STATE ALLOCA-
17 TION.—The allocation to any State under para-
18 graph (1) shall be reduced by the aggregate
19 amount of the allocations under this paragraph
20 to large local educational agencies within such
21 State.

22 “(D) ALLOCATION OF UNUSED LIMITATION
23 TO STATE.—The amount allocated under this
24 paragraph to a large local educational agency
25 for any calendar year may be reallocated by

1 such agency to the State in which such agency
2 is located for such calendar year. Any amount
3 reallocated to a State under the preceding sen-
4 tence may be allocated as provided in para-
5 graph (1).

6 “(E) LARGE LOCAL EDUCATIONAL AGEN-
7 CY.—For purposes of this paragraph, the term
8 ‘large local educational agency’ means, with re-
9 spect to a calendar year, any local educational
10 agency if such agency is—

11 “(i) among the 100 local educational
12 agencies with the largest numbers of chil-
13 dren aged 5 through 17 from families liv-
14 ing below the poverty level, as determined
15 by the Secretary using the most recent
16 data available from the Department of
17 Commerce that are satisfactory to the Sec-
18 retary, or

19 “(ii) 1 of not more than 25 local edu-
20 cational agencies (other than those de-
21 scribed in clause (i)) that the Secretary of
22 Education determines (based on the most
23 recent data available satisfactory to the
24 Secretary) are in particular need of assist-
25 ance, based on a low level of resources for

1 school construction, a high level of enroll-
2 ment growth, or such other factors as the
3 Secretary deems appropriate.

4 “(3) ALLOCATIONS TO CERTAIN POSSES-
5 SIONS.—The amount to be allocated under para-
6 graph (1) to any possession of the United States
7 other than Puerto Rico shall be the amount which
8 would have been allocated if all allocations under
9 paragraph (1) were made on the basis of respective
10 populations of individuals below the poverty line (as
11 defined by the Office of Management and Budget).
12 In making other allocations, the amount to be allo-
13 cated under paragraph (1) shall be reduced by the
14 aggregate amount allocated under this paragraph to
15 possessions of the United States.

16 “(4) ALLOCATIONS FOR INDIAN SCHOOLS.—In
17 addition to the amounts otherwise allocated under
18 this subsection, \$200,000,000 for calendar year
19 2009, and \$200,000,000 for calendar year 2010,
20 shall be allocated by the Secretary of the Interior for
21 purposes of the construction, rehabilitation, and re-
22 pair of schools funded by the Bureau of Indian Af-
23 fairs. In the case of amounts allocated under the
24 preceding sentence, Indian tribal governments (as

1 defined in section 7701(a)(40)) shall be treated as
2 qualified issuers for purposes of this subchapter.

3 “(e) CARRYOVER OF UNUSED LIMITATION.—If for
4 any calendar year—

5 “(1) the amount allocated under subsection (d)
6 to any State, exceeds

7 “(2) the amount of bonds issued during such
8 year which are designated under subsection (a) pur-
9 suant to such allocation,

10 the limitation amount under such subsection for such
11 State for the following calendar year shall be increased
12 by the amount of such excess. A similar rule shall apply
13 to the amounts allocated under subsection (d)(4).”.

14 (b) CONFORMING AMENDMENTS.—

15 (1) Paragraph (1) of section 54A(d) is amended
16 by striking “or” at the end of subparagraph (C), by
17 inserting “or” at the end of subparagraph (D), and
18 by inserting after subparagraph (D) the following
19 new subparagraph:

20 “(E) a qualified school construction
21 bond,”.

22 (2) Subparagraph (C) of section 54A(d)(2) is
23 amended by striking “and” at the end of clause (iii),
24 by striking the period at the end of clause (iv) and

1 inserting “, and”, and by adding at the end the fol-
2 lowing new clause:

3 “(v) in the case of a qualified school
4 construction bond, a purpose specified in
5 section 54F(a)(1).”.

6 (3) The table of sections for subpart I of part
7 IV of subchapter A of chapter 1 is amended by add-
8 ing at the end the following new item:

“Sec. 54F. Qualified school construction bonds.”.

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

12 **SEC. 1522. EXTENSION AND EXPANSION OF QUALIFIED**
13 **ZONE ACADEMY BONDS.**

14 (a) IN GENERAL.—Section 54E(c)(1) is amended by
15 striking “and 2009” and inserting “and \$1,400,000,000
16 for 2009 and 2010”.

17 (b) EFFECTIVE DATE.—The amendment made by
18 this section shall apply to obligations issued after Decem-
19 ber 31, 2008.

20 **PART IV—BUILD AMERICA BONDS**

21 **SEC. 1531. BUILD AMERICA BONDS.**

22 (a) IN GENERAL.—Part IV of subchapter A of chap-
23 ter 1 is amended by adding at the end the following new
24 subpart:

1 **“Subpart J—Build America Bonds**

“Sec. 54AA. Build America bonds.

2 **“SEC. 54AA. BUILD AMERICA BONDS.**

3 “(a) IN GENERAL.—If a taxpayer holds a build
4 America bond on one or more interest payment dates of
5 the bond during any taxable year, there shall be allowed
6 as a credit against the tax imposed by this chapter for
7 the taxable year an amount equal to the sum of the credits
8 determined under subsection (b) with respect to such
9 dates.

10 “(b) AMOUNT OF CREDIT.—The amount of the credit
11 determined under this subsection with respect to any in-
12 terest payment date for a build America bond is 35 per-
13 cent of the amount of interest payable by the issuer with
14 respect to such date .

15 “(c) LIMITATION BASED ON AMOUNT OF TAX.—

16 “(1) IN GENERAL.—The credit allowed under
17 subsection (a) for any taxable year shall not exceed
18 the excess of—

19 “(A) the sum of the regular tax liability
20 (as defined in section 26(b)) plus the tax im-
21 posed by section 55, over

22 “(B) the sum of the credits allowable
23 under this part (other than subpart C and this
24 subpart).

1 “(2) CARRYOVER OF UNUSED CREDIT.—If the
2 credit allowable under subsection (a) exceeds the
3 limitation imposed by paragraph (1) for such taxable
4 year, such excess shall be carried to the succeeding
5 taxable year and added to the credit allowable under
6 subsection (a) for such taxable year (determined be-
7 fore the application of paragraph (1) for such suc-
8 ceeding taxable year).

9 “(d) BUILD AMERICA BOND.—

10 “(1) IN GENERAL.—For purposes of this sec-
11 tion, the term ‘build America bond’ means any obli-
12 gation (other than a private activity bond) if—

13 “(A) the interest on such obligation would
14 (but for this section) be excludable from gross
15 income under section 103,

16 “(B) such obligation is issued before Janu-
17 ary 1, 2011, and

18 “(C) the issuer makes an irrevocable elec-
19 tion to have this section apply.

20 “(2) APPLICABLE RULES.—For purposes of ap-
21 plying paragraph (1)—

22 “(A) for purposes of section 149(b), a
23 build America bond shall not be treated as fed-
24 erally guaranteed by reason of the credit al-
25 lowed under subsection (a) or section 6431,

1 “(B) for purposes of section 148, the yield
2 on a build America bond shall be determined
3 without regard to the credit allowed under sub-
4 section (a), and

5 “(C) a bond shall not be treated as a build
6 America bond if the issue price has more than
7 a de minimis amount (determined under rules
8 similar to the rules of section 1273(a)(3)) of
9 premium over the stated principal amount of
10 the bond.

11 “(e) INTEREST PAYMENT DATE.—For purposes of
12 this section, the term ‘interest payment date’ means any
13 date on which the holder of record of the build America
14 bond is entitled to a payment of interest under such bond.

15 “(f) SPECIAL RULES.—

16 “(1) INTEREST ON BUILD AMERICA BONDS IN-
17 CLUDIBLE IN GROSS INCOME FOR FEDERAL INCOME
18 TAX PURPOSES.—For purposes of this title, interest
19 on any build America bond shall be includible in
20 gross income.

21 “(2) APPLICATION OF CERTAIN RULES.—Rules
22 similar to the rules of subsections (f), (g), (h), and
23 (i) of section 54A shall apply for purposes of the
24 credit allowed under subsection (a).

1 “(g) SPECIAL RULE FOR QUALIFIED BONDS ISSUED
2 BEFORE 2011.—In the case of a qualified bond issued be-
3 fore January 1, 2011—

4 “(1) ISSUER ALLOWED REFUNDABLE CRED-
5 IT.—In lieu of any credit allowed under this section
6 with respect to such bond, the issuer of such bond
7 shall be allowed a credit as provided in section 6431.

8 “(2) QUALIFIED BOND.—For purposes of this
9 subsection, the term ‘qualified bond’ means any
10 build America bond issued as part of an issue if—

11 “(A) 100 percent of the excess of—

12 “(i) the available project proceeds (as
13 defined in section 54A) of such issue, over

14 “(ii) the amounts in a reasonably re-
15 quired reserve (within the meaning of sec-
16 tion 150(a)(3)) with respect to such issue,

17 are to be used for capital expenditures, and

18 “(B) the issuer makes an irrevocable elec-
19 tion to have this subsection apply.

20 “(h) REGULATIONS.—The Secretary may prescribe
21 such regulations and other guidance as may be necessary
22 or appropriate to carry out this section and section
23 6431.”.

1 (b) CREDIT FOR QUALIFIED BONDS ISSUED BEFORE
2 2011.—Subchapter B of chapter 65 is amended by adding
3 at the end the following new section:

4 **“SEC. 6431. CREDIT FOR QUALIFIED BONDS ALLOWED TO**
5 **ISSUER.**

6 “(a) IN GENERAL.—In the case of a qualified bond
7 issued before January 1, 2011, the issuer of such bond
8 shall be allowed a credit with respect to each interest pay-
9 ment under such bond which shall be payable by the Sec-
10 retary as provided in subsection (b).

11 “(b) PAYMENT OF CREDIT.—The Secretary shall pay
12 (contemporaneously with each interest payment date
13 under such bond) to the issuer of such bond (or to any
14 person who makes such interest payments on behalf of the
15 issuer) 35 percent of the interest payable under such bond
16 on such date.

17 “(c) APPLICATION OF ARBITRAGE RULES.—For pur-
18 poses of section 148, the yield on a qualified bond shall
19 be reduced by the credit allowed under this section.

20 “(d) INTEREST PAYMENT DATE.—For purposes of
21 this subsection, the term ‘interest payment date’ means
22 each date on which interest is payable by the issuer under
23 the terms of the bond.

1 “(e) QUALIFIED BOND.—For purposes of this sub-
2 section, the term ‘qualified bond’ has the meaning given
3 such term in section 54AA(g).”.

4 (c) CONFORMING AMENDMENTS.—

5 (1) Section 1324(b)(2) of title 31, United
6 States Code, is amended by striking “or 6428” and
7 inserting “6428, or 6431.”.

8 (2) Section 54A(c)(1)(B) is amended by strik-
9 ing “subpart C” and inserting “subparts C and J”.

10 (3) Sections 54(c)(2), 1397E(c)(2), and
11 1400N(l)(3)(B) are each amended by striking “and
12 I” and inserting “, I, and J”.

13 (4) Section 6211(b)(4)(A) is amended by strik-
14 ing “and 6428” and inserting “6428, and 6431”.

15 (5) Section 6401(b)(1) is amended by striking
16 “and I” and inserting “I, and J”.

17 (6) The table of subparts for part IV of sub-
18 chapter A of chapter 1 is amended by adding at the
19 end the following new item:

 “SUBPART J. BUILD AMERICA BONDS.”.

20 (7) The table of section for subchapter B of
21 chapter 65 is amended by adding at the end the fol-
22 lowing new item:

 “Sec. 6431. Credit for qualified bonds allowed to issuer.”.

23 (d) TRANSITIONAL COORDINATION WITH STATE
24 LAW.—Except as otherwise provided by a State after the

1 date of the enactment of this Act, the interest on any build
2 America bond (as defined in section 54AA of the Internal
3 Revenue Code of 1986, as added by this section) and the
4 amount of any credit determined under such section with
5 respect to such bond shall be treated for purposes of the
6 income tax laws of such State as being exempt from Fed-
7 eral income tax.

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

11 **PART V—REGULATED INVESTMENT COMPANIES**
12 **ALLOWED TO PASS-THRU TAX CREDIT BOND**
13 **CREDITS**

14 **SEC. 1541. REGULATED INVESTMENT COMPANIES AL-**
15 **LOWED TO PASS-THRU TAX CREDIT BOND**
16 **CREDITS.**

17 (a) IN GENERAL.—Part I of subchapter M of chapter
18 1 is amended by inserting after section 853 the following
19 new section:

20 **“SEC. 853A. CREDITS FROM TAX CREDIT BONDS ALLOWED**
21 **TO SHAREHOLDERS.**

22 “(a) GENERAL RULE.—A regulated investment
23 company—

1 “(1) which holds (directly or indirectly) one or
2 more tax credit bonds on one or more applicable
3 dates during the taxable year, and

4 “(2) which meets the requirements of section
5 852(a) for the taxable year,

6 may elect the application of this section with respect to
7 credits allowable to the investment company during such
8 taxable year with respect to such bonds.

9 “(b) EFFECT OF ELECTION.—If the election provided
10 in subsection (a) is in effect for any taxable year—

11 “(1) the regulated investment company shall
12 not be allowed any credits to which subsection (a)
13 applies for such taxable year,

14 “(2) the regulated investment company shall—

15 “(A) include in gross income (as interest)
16 for such taxable year an amount equal to the
17 amount that such investment company would
18 have included in gross income with respect to
19 such credits if this section did not apply, and

20 “(B) increase the amount of the dividends
21 paid deduction for such taxable year by the
22 amount of such income, and

23 “(3) each shareholder of such investment com-
24 pany shall—

1 “(A) include in gross income an amount
2 equal to such shareholder’s proportionate share
3 of the interest income attributable to such cred-
4 its, and

5 “(B) be allowed the shareholder’s propor-
6 tionate share of such credits against the tax im-
7 posed by this chapter.

8 “(c) NOTICE TO SHAREHOLDERS.—For purposes of
9 subsection (b)(3), the shareholder’s proportionate share
10 of—

11 “(1) credits described in subsection (a), and

12 “(2) gross income in respect of such credits,
13 shall not exceed the amounts so designated by the regu-
14 lated investment company in a written notice mailed to
15 its shareholders not later than 60 days after the close of
16 its taxable year.

17 “(d) MANNER OF MAKING ELECTION AND NOTI-
18 FYING SHAREHOLDERS.—The election provided in sub-
19 section (a) and the notice to shareholders required by sub-
20 section (c) shall be made in such manner as the Secretary
21 may prescribe.

22 “(e) DEFINITIONS AND SPECIAL RULES.—

23 “(1) DEFINITIONS.—For purposes of this
24 subsection—

1 “(A) TAX CREDIT BOND.—The term ‘tax
2 credit bond’ means—

3 “(i) a qualified tax credit bond (as de-
4 fined in section 54A(d)),

5 “(ii) a build America bond (as defined
6 in section 54AA(d)), and

7 “(iii) any bond for which a credit is
8 allowable under subpart H of part IV of
9 subchapter A of this chapter.

10 “(B) APPLICABLE DATE.—The term ‘ap-
11 plicable date’ means—

12 “(i) in the case of a qualified tax
13 credit bond or a bond described in sub-
14 paragraph (A)(iii), any credit allowance
15 date (as defined in section 54A(e)(1)), and

16 “(ii) in the case of a build America
17 bond (as defined in section 54AA(d)), any
18 interest payment date (as defined in sec-
19 tion 54AA(e)).

20 “(2) STRIPPED TAX CREDIT BONDS.—If the
21 ownership of a tax credit bond is separated from the
22 credit with respect to such bond, subsection (a) shall
23 be applied by reference to the instruments evidenc-
24 ing the entitlement to the credit rather than the tax
25 credit bond.

1 “(f) REGULATIONS, ETC.—The Secretary shall pre-
2 scribe such regulations or other guidance as may be nec-
3 essary or appropriate to carry out the purposes of this
4 section, including methods for determining a shareholder’s
5 proportionate share of credits.”.

6 (b) CONFORMING AMENDMENTS.—

7 (1) Section 54(l) is amended by striking para-
8 graph (4) and by redesignating paragraphs (5) and
9 (6) as paragraphs (4) and (5), respectively.

10 (2) Section 54A(h) is amended to read as fol-
11 lows:

12 “(h) BONDS HELD BY REAL ESTATE INVESTMENT
13 TRUSTS.—If any qualified tax credit bond is held by a
14 real estate investment trust, the credit determined under
15 subsection (a) shall be allowed to beneficiaries of such
16 trust (and any gross income included under subsection (f)
17 with respect to such credit shall be distributed to such
18 beneficiaries) under procedures prescribed by the Sec-
19 retary.”.

20 (3) The table of sections for part I of sub-
21 chapter M of chapter 1 is amended by inserting
22 after the item relating to section 853 the following
23 new item:

“Sec. 853A. Credits from tax credit bonds allowed to shareholders.”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years ending after the
3 date of the enactment of this Act.

4 **Subtitle G—Other Provisions**

5 **SEC. 1601. 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 new clean renewable energy bond (as
12 defined in section 54C of the Internal Revenue Code
13 of 1986) issued after the date of the enactment of
14 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 **SEC. 1602. GRANTS TO STATES FOR LOW-INCOME HOUSING**
5 **PROJECTS IN LIEU OF LOW-INCOME HOUS-**
6 **ING CREDIT ALLOCATIONS FOR 2009.**

7 (a) IN GENERAL.—The Secretary of the Treasury
8 shall make a grant to the housing credit agency of each
9 State in an amount equal to such State’s low-income hous-
10 ing grant election amount.

11 (b) LOW-INCOME HOUSING GRANT ELECTION
12 AMOUNT.—For purposes of this section, the term “low-
13 income housing grant election amount” means, with re-
14 spect to any State, such amount as the State may elect
15 which does not exceed 85 percent of the product of—

16 (1) the sum of—

17 (A) 100 percent of the State housing credit
18 ceiling for 2009 which is attributable to
19 amounts described in clauses (i) and (iii) of sec-
20 tion 42(h)(3)(C) of the Internal Revenue Code
21 of 1986, and

22 (B) 40 percent of the State housing credit
23 ceiling for 2009 which is attributable to
24 amounts described in clauses (ii) and (iv) of
25 such section, multiplied by

1 (2) 10.

2 (c) SUBAWARDS FOR LOW-INCOME BUILDINGS.—

3 (1) IN GENERAL.—A State housing credit agen-
4 cy receiving a grant under this section shall use such
5 grant to make subawards to finance the construction
6 or acquisition and rehabilitation of qualified low-in-
7 come buildings. A subaward under this section may
8 be made to finance a qualified low-income building
9 with or without an allocation under section 42 of the
10 Internal Revenue Code of 1986, except that a State
11 housing credit agency may make subawards to fi-
12 nance qualified low-income buildings without an allo-
13 cation only if it makes a determination that such use
14 will increase the total funds available to the State to
15 build and rehabilitate affordable housing. In com-
16 plying with such determination requirement, a State
17 housing credit agency shall establish a process in
18 which applicants that are allocated credits are re-
19 quired to demonstrate good faith efforts to obtain
20 investment commitments for such credits before the
21 agency makes such subawards.

22 (2) SUBAWARDS SUBJECT TO SAME REQUIRE-
23 MENTS AS LOW-INCOME HOUSING CREDIT ALLOCA-
24 TIONS.—Any such subaward with respect to any
25 qualified low-income building shall be made in the

1 same manner and shall be subject to the same limi-
2 tations (including rent, income, and use restrictions
3 on such building) as an allocation of housing credit
4 dollar amount allocated by such State housing credit
5 agency under section 42 of the Internal Revenue
6 Code of 1986, except that such subawards shall not
7 be limited by, or otherwise affect (except as provided
8 in subsection (h)(3)(J) of such section), the State
9 housing credit ceiling applicable to such agency.

10 (3) COMPLIANCE AND ASSET MANAGEMENT.—

11 The State housing credit agency shall perform asset
12 management functions to ensure compliance with
13 section 42 of the Internal Revenue Code of 1986
14 and the long-term viability of buildings funded by
15 any subaward under this section. The State housing
16 credit agency may collect reasonable fees from a
17 subaward recipient to cover expenses associated with
18 the performance of its duties under this paragraph.
19 The State housing credit agency may retain an
20 agent or other private contractor to satisfy the re-
21 quirements of this paragraph.

22 (4) RECAPTURE.—The State housing credit
23 agency shall impose conditions or restrictions, in-
24 cluding a requirement providing for recapture, on
25 any subaward under this section so as to assure that

1 the building with respect to which such subaward is
2 made remains a qualified low-income building during
3 the compliance period. Any such recapture shall be
4 payable to the Secretary of the Treasury for deposit
5 in the general fund of the Treasury and may be en-
6 forced by means of liens or such other methods as
7 the Secretary of the Treasury determines appro-
8 priate.

9 (d) RETURN OF UNUSED GRANT FUNDS.—Any grant
10 funds not used to make subawards under this section be-
11 fore January 1, 2011, shall be returned to the Secretary
12 of the Treasury on such date. Any subawards returned
13 to the State housing credit agency on or after such date
14 shall be promptly returned to the Secretary of the Treas-
15 ury. Any amounts returned to the Secretary of the Treas-
16 ury under this subsection shall be deposited in the general
17 fund of the Treasury.

18 (e) DEFINITIONS.—Any term used in this section
19 which is also used in section 42 of the Internal Revenue
20 Code of 1986 shall have the same meaning for purposes
21 of this section as when used in such section 42. Any ref-
22 erence in this section to the Secretary of the Treasury
23 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 **SEC. 1603. GRANTS FOR SPECIFIED ENERGY PROPERTY IN**
5 **LIEU OF TAX CREDITS.**

6 (a) IN GENERAL.—Upon application, the Secretary
7 of the Treasury shall, subject to the requirements of this
8 section, provide a grant to each person who places in serv-
9 ice specified energy property to reimburse such person for
10 a portion of the expense of such property as provided in
11 subsection (b). No grant shall be made under this section
12 with respect to any property unless such property—

13 (1) is placed in service during 2009 or 2010, or

14 (2) is placed in service after 2010 and before
15 the credit termination date with respect to such
16 property, but only if the construction of such prop-
17 erty began during 2009 or 2010.

18 (b) GRANT AMOUNT.—

19 (1) IN GENERAL.—The amount of the grant
20 under subsection (a) with respect to any specified
21 energy property shall be the applicable percentage of
22 the basis of such property.

23 (2) APPLICABLE PERCENTAGE.—For purposes
24 of paragraph (1), the term “applicable percentage”
25 means—

1 (A) 30 percent in the case of any property
2 described in paragraphs (1) through (4) of sub-
3 section (d), and

4 (B) 10 percent in the case of any other
5 property.

6 (3) DOLLAR LIMITATIONS.—In the case of
7 property described in paragraph (2), (6), or (7) of
8 subsection (d), the amount of any grant under this
9 section with respect to such property shall not ex-
10 ceed the limitation described in section 48(c)(1)(B),
11 48(c)(2)(B), or 48(c)(3)(B) of the Internal Revenue
12 Code of 1986, respectively, with respect to such
13 property.

14 (c) TIME FOR PAYMENT OF GRANT.—The Secretary
15 of the Treasury shall make payment of any grant under
16 subsection (a) during the 60-day period beginning on the
17 later of—

18 (1) the date of the application for such grant,

19 or

20 (2) the date the specified energy property for
21 which the grant is being made is placed in service.

22 (d) SPECIFIED ENERGY PROPERTY.—For purposes
23 of this section, the term “specified energy property”
24 means any of the following:

1 (1) QUALIFIED FACILITIES.—Any qualified
2 property (as defined in section 48(a)(5)(D) of the
3 Internal Revenue Code of 1986) which is part of a
4 qualified facility (within the meaning of section 45
5 of such Code) described in paragraph (1), (2), (3),
6 (4), (6), (7), (9), or (11) of section 45(d) of such
7 Code.

8 (2) QUALIFIED FUEL CELL PROPERTY.—Any
9 qualified fuel cell property (as defined in section
10 48(c)(1) of such Code).

11 (3) SOLAR PROPERTY.—Any property described
12 in clause (i) or (ii) of section 48(a)(3)(A) of such
13 Code.

14 (4) QUALIFIED SMALL WIND ENERGY PROP-
15 erty.—Any qualified small wind energy property
16 (as defined in section 48(c)(4) of such Code).

17 (5) GEOTHERMAL PROPERTY.—Any property
18 described in clause (iii) of section 48(a)(3)(A) of
19 such Code.

20 (6) QUALIFIED MICROTURBINE PROPERTY.—
21 Any qualified microturbine property (as defined in
22 section 48(c)(2) of such Code).

23 (7) COMBINED HEAT AND POWER SYSTEM
24 PROPERTY.—Any combined heat and power system

1 property (as defined in section 48(c)(3) of such
2 Code).

3 (8) GEOTHERMAL HEAT PUMP PROPERTY.—

4 Any property described in clause (vii) of section
5 48(a)(3)(A) of such Code.

6 Such term shall not include any property unless deprecia-
7 tion (or amortization in lieu of depreciation) is allowable
8 with respect to such property.

9 (e) CREDIT TERMINATION DATE.—For purposes of
10 this section, the term “credit termination date” means—

11 (1) in the case of any specified energy property
12 which is part of a facility described in paragraph (1)
13 of section 45(d) of the Internal Revenue Code of
14 1986, January 1, 2013,

15 (2) in the case of any specified energy property
16 which is part of a facility described in paragraph
17 (2), (3), (4), (6), (7), (9), or (11) of section 45(d)
18 of such Code, January 1, 2014, and

19 (3) in the case of any specified energy property
20 described in section 48 of such Code, January 1,
21 2017.

22 In the case of any property which is described in para-
23 graph (3) and also in another paragraph of this sub-
24 section, paragraph (3) shall apply with respect to such
25 property.

1 (f) APPLICATION OF CERTAIN RULES.—In making
2 grants under this section, the Secretary of the Treasury
3 shall apply rules similar to the rules of section 50 of the
4 Internal Revenue Code of 1986. In applying such rules,
5 if the property is disposed of, or otherwise ceases to be
6 specified energy property, the Secretary of the Treasury
7 shall provide for the recapture of the appropriate percent-
8 age of the grant amount in such manner as the Secretary
9 of the Treasury determines appropriate.

10 (g) EXCEPTION FOR CERTAIN NON-TAXPAYERS.—
11 The Secretary of the Treasury shall not make any grant
12 under this section to—

13 (1) any Federal, State, or local government (or
14 any political subdivision, agency, or instrumentality
15 thereof),

16 (2) any organization described in section 501(c)
17 of the Internal Revenue Code of 1986 and exempt
18 from tax under section 501(a) of such Code,

19 (3) any entity referred to in paragraph (4) of
20 section 54(j) of such Code, or

21 (4) any partnership or other pass-thru entity
22 any partner (or other holder of an equity or profits
23 interest) of which is described in paragraph (1), (2)
24 or (3).

1 (h) DEFINITIONS.—Terms used in this section which
2 are also used in section 45 or 48 of the Internal Revenue
3 Code of 1986 shall have the same meaning for purposes
4 of this section as when used in such section 45 or 48.
5 Any reference in this section to the Secretary of the Treas-
6 ury shall be treated as including the Secretary’s delegate.

7 (i) APPROPRIATIONS.—There is hereby appropriated
8 to the Secretary of the Treasury such sums as may be
9 necessary to carry out this section.

10 (j) TERMINATION.—The Secretary of the Treasury
11 shall not make any grant to any person under this section
12 unless the application of such person for such grant is re-
13 ceived before October 1, 2011.

14 **SEC. 1604. INCREASE IN PUBLIC DEBT LIMIT.**

15 Subsection (b) of section 3101 of title 31, United
16 States Code, is amended by striking out the dollar limita-
17 tion contained in such subsection and inserting
18 “\$12,104,000,000,000”.

1 **Subtitle H—Prohibition on Collec-**
2 **tion of Certain Payments Made**
3 **Under the Continued Dumping**
4 **and Subsidy Offset Act of 2000**

5 **SEC. 1701. PROHIBITION ON COLLECTION OF CERTAIN PAY-**
6 **MENTS MADE UNDER THE CONTINUED DUMP-**
7 **ING AND SUBSIDY OFFSET ACT OF 2000.**

8 (a) IN GENERAL.—Notwithstanding any other provi-
9 sion of law, neither the Secretary of Homeland Security
10 nor any other person may—

11 (1) require repayment of, or attempt in any
12 other way to recoup, any payments described in sub-
13 section (b); or

14 (2) offset any past, current, or future distribu-
15 tions of antidumping or countervailing duties as-
16 sessed with respect to imports from countries that
17 are not parties to the North American Free Trade
18 Agreement in an attempt to recoup any payments
19 described in subsection (b).

20 (b) PAYMENTS DESCRIBED.—Payments described in
21 this subsection are payments of antidumping or counter-
22 vailing duties made pursuant to the Continued Dumping
23 and Subsidy Offset Act of 2000 (section 754 of the Tariff
24 Act of 1930 (19 U.S.C. 1675e; repealed by subtitle F of

1 title VII of the Deficit Reduction Act of 2005 (Public Law
2 109–171; 120 Stat. 154))) that were—

3 (1) assessed and paid on imports of goods from
4 countries that are parties to the North American
5 Free Trade Agreement; and

6 (2) distributed on or after January 1, 2001,
7 and before January 1, 2006.

8 (c) PAYMENT OF FUNDS COLLECTED OR WITH-
9 HELD.—Not later than the date that is 60 days after the
10 date of the enactment of this Act, the Secretary of Home-
11 land Security shall—

12 (1) refund any repayments, or any other
13 recoupment, of payments described in subsection (b);
14 and

15 (2) fully distribute any antidumping or counter-
16 vailing duties that the U.S. Customs and Border
17 Protection is withholding as an offset as described in
18 subsection (a)(2).

19 (d) LIMITATION.—Nothing in this section shall be
20 construed to prevent the Secretary of Homeland Security,
21 or any other person, from requiring repayment of, or at-
22 tempting to otherwise recoup, any payments described in
23 subsection (b) as a result of—

24 (1) a finding of false statements or other mis-
25 conduct by a recipient of such a payment; or

1 (2) the reliquidation of an entry with respect to
2 which such a payment was made.

3 **Subtitle I—Trade Adjustment**
4 **Assistance**

5 **SEC. 1800. SHORT TITLE.**

6 This subtitle may be cited as the “Trade and
7 Globalization Adjustment Assistance Act of 2009”.

8 **PART I—TRADE ADJUSTMENT ASSISTANCE FOR**
9 **WORKERS**

10 **Subpart A—Trade Adjustment Assistance for Service**
11 **Sector Workers**

12 **SEC. 1801. EXTENSION OF TRADE ADJUSTMENT ASSIST-**
13 **ANCE TO SERVICE SECTOR AND PUBLIC**
14 **AGENCY WORKERS; SHIFTS IN PRODUCTION.**

15 (a) DEFINITIONS.—Section 247 of the Trade Act of
16 1974 (19 U.S.C. 2319) is amended—

17 (1) in paragraph (1)—

18 (A) by striking “or appropriate subdivision
19 of a firm”; and

20 (B) by striking “or subdivision”;

21 (2) in paragraph (2), by striking “employ-
22 ment—” and all that follows and inserting “employ-
23 ment, has been totally or partially separated from
24 such employment.”;

1 (3) by inserting after paragraph (2) the fol-
2 lowing:

3 “(3) Subject to section 222(d)(5), the term
4 ‘firm’ means—

5 “(A) a firm, including an agricultural firm,
6 service sector firm, or public agency; or

7 “(B) an appropriate subdivision thereof.”;

8 (4) by inserting after paragraph (6) the fol-
9 lowing:

10 “(7) The term ‘public agency’ means a depart-
11 ment or agency of a State or local government or of
12 the Federal Government, or a subdivision thereof.”;

13 (5) in paragraph (11), by striking “, or in a
14 subdivision of which,”; and

15 (6) by adding at the end the following:

16 “(18) The term ‘service sector firm’ means a
17 firm engaged in the business of supplying services.”.

18 (b) GROUP ELIGIBILITY REQUIREMENTS.—Section
19 222 of the Trade Act of 1974 (19 U.S.C. 2272) is
20 amended—

21 (1) in subsection (a)(2)—

22 (A) by amending subparagraph (A)(ii) to
23 read as follows:

1 “(ii)(I) imports of articles or services like or di-
2 rectly competitive with articles produced or services
3 supplied by such firm have increased;

4 “(II) imports of articles like or directly competi-
5 tive with articles—

6 “(aa) into which one or more component
7 parts produced by such firm are directly incor-
8 porated, or

9 “(bb) which are produced directly using
10 services supplied by such firm,
11 have increased; or

12 “(III) imports of articles directly incorporating
13 one or more component parts produced outside the
14 United States that are like or directly competitive
15 with imports of articles incorporating one or more
16 component parts produced by such firm have in-
17 creased; and”; and

18 (B) by amending subparagraph (B) to read
19 as follows:

20 “(B)(i)(I) there has been a shift by such work-
21 ers’ firm to a foreign country in the production of
22 articles or the supply of services like or directly com-
23 petitive with articles which are produced or services
24 which are supplied by such firm; or

1 “(II) such workers’ firm has acquired from a
2 foreign country articles or services that are like or
3 directly competitive with articles which are produced
4 or services which are supplied by such firm; and

5 “(ii) the shift described in clause (i)(I) or the
6 acquisition of articles or services described in clause
7 (i)(II) contributed importantly to such workers’ sep-
8 aration or threat of separation.”;

9 (2) by redesignating subsections (b) and (c) as
10 subsections (c) and (d), respectively; and

11 (3) by inserting after subsection (a) the fol-
12 lowing:

13 “(b) ADVERSELY AFFECTED WORKERS IN PUBLIC
14 AGENCIES.—A group of workers in a public agency shall
15 be certified by the Secretary as eligible to apply for adjust-
16 ment assistance under this chapter pursuant to a petition
17 filed under section 221 if the Secretary determines that—

18 “(1) a significant number or proportion of the
19 workers in the public agency have become totally or
20 partially separated, or are threatened to become to-
21 tally or partially separated;

22 “(2) the public agency has acquired from a for-
23 eign country services like or directly competitive with
24 services which are supplied by such agency; and

1 “(3) the acquisition of services described in
2 paragraph (2) contributed importantly to such work-
3 ers’ separation or threat of separation.”.

4 (c) BASIS FOR SECRETARY’S DETERMINATIONS.—
5 Section 222 of the Trade Act of 1974 (19 U.S.C. 2272),
6 as amended, is further amended by adding at the end the
7 following:

8 “(e) BASIS FOR SECRETARY’S DETERMINATIONS.—

9 “(1) IN GENERAL.—The Secretary shall, in de-
10 termining whether to certify a group of workers
11 under section 223, obtain from the workers’ firm, or
12 a customer of the workers’ firm, information the
13 Secretary determines to be necessary to make the
14 certification, through questionnaires and in such
15 other manner as the Secretary determines appro-
16 priate.

17 “(2) ADDITIONAL INFORMATION.—The Sec-
18 retary may seek additional information to determine
19 whether to certify a group of workers under sub-
20 section (a), (b), or (c)—

21 “(A) by contacting—

22 “(i) officials or employees of the work-
23 ers’ firm;

24 “(ii) officials of customers of the
25 workers’ firm;

1 “(iii) officials of certified or recog-
2 nized unions or other duly authorized rep-
3 resentatives of the group of workers; or

4 “(iv) one-stop operators or one-stop
5 partners (as defined in section 101 of the
6 Workforce Investment Act of 1998 (29
7 U.S.C. 2801)); or

8 “(B) by using other available sources of in-
9 formation.

10 “(3) VERIFICATION OF INFORMATION.—

11 “(A) CERTIFICATION.—The Secretary shall
12 require a firm or customer to certify—

13 “(i) all information obtained under
14 paragraph (1) from the firm or customer
15 (as the case may be) through question-
16 naires; and

17 “(ii) all other information obtained
18 under paragraph (1) from the firm or cus-
19 tomer (as the case may be) on which the
20 Secretary relies in making a determination
21 under section 223, unless the Secretary
22 has a reasonable basis for determining that
23 such information is accurate and complete
24 without being certified.

1 “(B) USE OF SUBPOENAS.—The Secretary
2 shall require the workers’ firm or a customer of
3 the workers’ firm to provide information re-
4 quested by the Secretary under paragraph (1)
5 by subpoena pursuant to section 249 if the firm
6 or customer (as the case may be) fails to pro-
7 vide the information within 20 days after the
8 date of the Secretary’s request, unless the firm
9 or customer (as the case may be) demonstrates
10 to the satisfaction of the Secretary that the
11 firm or customer (as the case may be) will pro-
12 vide the information within a reasonable period
13 of time.

14 “(C) PROTECTION OF CONFIDENTIAL IN-
15 FORMATION.—The Secretary may not release
16 information obtained under paragraph (1) that
17 the Secretary considers to be confidential busi-
18 ness information unless the firm or customer
19 (as the case may be) submitting the confidential
20 business information had notice, at the time of
21 submission, that the information would be re-
22 leased by the Secretary, or the firm or customer
23 (as the case may be) subsequently consents to
24 the release of the information. Nothing in this
25 subparagraph shall be construed to prohibit the

1 Secretary from providing such confidential busi-
2 ness information to a court in camera or to an-
3 other party under a protective order issued by
4 a court.”.

5 (d) PENALTIES.—Section 244 of the Trade Act of
6 1974 (19 U.S.C. 2316) is amended to read as follows:

7 **“SEC. 244. PENALTIES.**

8 “Any person who—

9 “(1) makes a false statement of a material fact
10 knowing it to be false, or knowingly fails to disclose
11 a material fact, for the purpose of obtaining or in-
12 creasing for that person or for any other person any
13 payment authorized to be furnished under this chap-
14 ter or pursuant to an agreement under section 239,
15 or

16 “(2) makes a false statement of a material fact
17 knowing it to be false, or knowingly fails to disclose
18 a material fact, when providing information to the
19 Secretary during an investigation of a petition under
20 section 221,

21 shall be imprisoned for not more than one year, or fined
22 under title 18, United States Code, or both.”.

23 (e) CONFORMING AMENDMENTS.—

24 (1) Section 221(a) of the Trade Act of 1974
25 (19 U.S.C. 2271(a)) is amended—

- 1 (A) in paragraph (1)—
- 2 (i) in the matter preceding subpara-
- 3 graph (A)—
- 4 (I) by striking “Secretary” and
- 5 inserting “Secretary of Labor”; and
- 6 (II) by striking “or subdivision”
- 7 and inserting “(as defined in section
- 8 247)”; and
- 9 (ii) in subparagraph (A), by striking
- 10 “(including workers in an agricultural firm
- 11 or subdivision of any agricultural firm)”;
- 12 (B) in paragraph (2)(A), by striking
- 13 “rapid response assistance” and inserting
- 14 “rapid response activities”; and
- 15 (C) in paragraph (3), by inserting “and on
- 16 the website of the Department of Labor” after
- 17 “Federal Register”.
- 18 (2) Section 222 of the Trade Act of 1974 (19
- 19 U.S.C. 2272), as amended, is further amended—
- 20 (A) by striking “(including workers in any
- 21 agricultural firm or subdivision of an agricul-
- 22 tural firm)” each place it appears;
- 23 (B) in subsection (a)—

1 (i) in paragraph (1), by striking “, or
2 an appropriate subdivision of the firm,”;
3 and

4 (ii) in paragraph (2), by striking “or
5 subdivision” each place it appears;

6 (C) in subsection (c) (as redesignated)—

7 (i) in paragraph (2)—

8 (I) by striking “(or subdivision)”
9 each place it appears;

10 (II) by inserting “or service”
11 after “the article”; and

12 (III) by striking “(c) (3)” and in-
13 serting “(d) (3)”; and

14 (ii) in paragraph (3), by striking “(or
15 subdivision)” each place it appears; and

16 (D) in subsection (d) (as redesignated)—

17 (i) by striking “For purposes” and in-
18 serting “DEFINITIONS.—For purposes”;

19 (ii) in paragraph (2), by striking “, or
20 appropriate subdivision of a firm,” each
21 place it appears;

22 (iii) by amending paragraph (3) to
23 read as follows:

24 “(3) DOWNSTREAM PRODUCER.—

1 “(A) IN GENERAL.—The term ‘down-
2 stream producer’ means a firm that performs
3 additional, value-added production processes or
4 services directly for another firm for articles or
5 services with respect to which a group of work-
6 ers in such other firm has been certified under
7 subsection (a).

8 “(B) VALUE-ADDED PRODUCTION PROC-
9 ESSES OR SERVICES.—For purposes of subpara-
10 graph (A), value-added production processes or
11 services include final assembly, finishing, test-
12 ing, packaging, or maintenance or transpor-
13 tation services.”;

14 (iv) in paragraph (4)—

15 (I) by striking “(or subdivision)”;

16 and

17 (II) by inserting “, or services,
18 used in the production of articles or in
19 the supply of services, as the case may
20 be,” after “for articles”; and

21 (v) by adding at the end the following:

22 “(5) REFERENCE TO FIRM.—For purposes of
23 subsection (a), the term ‘firm’ does not include a
24 public agency.”.

1 (3) Section 231(a)(2) of the Trade Act of 1974
2 (19 U.S.C. 2291(a)(2)) is amended—

3 (A) in the matter preceding subparagraph
4 (A), by striking “or subdivision of a firm”; and
5 (B) in subparagraph (C), by striking “or
6 subdivision”.

7 **SEC. 1802. SEPARATE BASIS FOR CERTIFICATION.**

8 Section 222 of the Trade Act of 1974 (19 U.S.C.
9 2272), as amended, is further amended by adding at the
10 end the following:

11 “(f) FIRMS IDENTIFIED BY THE INTERNATIONAL
12 TRADE COMMISSION.—Notwithstanding any other provi-
13 sion of this chapter, a group of workers covered by a peti-
14 tion filed under section 221 shall be certified under sub-
15 section (a) as eligible to apply for adjustment assistance
16 under this chapter if—

17 “(1) the workers’ firm is publicly identified by
18 name by the International Trade Commission as a
19 member of a domestic industry in an investigation
20 resulting in—

21 “(A) an affirmative determination of seri-
22 ous injury or threat thereof under section
23 202(b)(1);

1 “(B) an affirmative determination of mar-
2 ket disruption or threat thereof under section
3 421(b)(1); or

4 “(C) an affirmative final determination of
5 material injury or threat thereof under section
6 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act
7 of 1930 (19 U.S.C. 1671d(b)(1)(A) and
8 1673d(b)(1)(A));

9 “(2) the petition is filed during the one-year pe-
10 riod beginning on the date on which—

11 “(A) a summary of the report submitted to
12 the President by the International Trade Com-
13 mission under section 202(f)(1) with respect to
14 the affirmative determination described in para-
15 graph (1)(A) is published in the Federal Reg-
16 ister under section 202(f)(3); or

17 “(B) notice of an affirmative determination
18 described in subparagraph (B) or (C) of para-
19 graph (1) is published in the Federal Register;
20 and

21 “(3) the workers have become totally or par-
22 tially separated from the workers’ firm within—

23 “(A) the one-year period described in para-
24 graph (2); or

1 “(B) notwithstanding section 223(b), the
2 one-year period preceding the one-year period
3 described in paragraph (2).”.

4 **SEC. 1803. DETERMINATIONS BY SECRETARY OF LABOR.**

5 Section 223 of the Trade Act of 1974 (19 U.S.C.
6 2273) is amended—

7 (1) in subsection (b), by striking “or appro-
8 priate subdivision of the firm before his application”
9 and all that follows and inserting “before the work-
10 er’s application under section 231 occurred more
11 than one year before the date of the petition on
12 which such certification was granted.”;

13 (2) in subsection (c), by striking “together with
14 his reasons” and inserting “and on the website of
15 the Department of Labor, together with the Sec-
16 retary’s reasons”;

17 (3) in subsection (d)—

18 (A) by striking “or subdivision of the
19 firm” and all that follows through “he shall”
20 and inserting “, that total or partial separations
21 from such firm are no longer attributable to the
22 conditions specified in section 222, the Sec-
23 retary shall”; and

24 (B) by striking “together with his reasons”
25 and inserting “and on the website of the De-

1 partment of Labor, together with the Sec-
2 retary's reasons"; and

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

4 “(e) STANDARDS FOR INVESTIGATIONS AND DETER-
5 MINATIONS.—

6 “(1) IN GENERAL.—The Secretary shall estab-
7 lish standards, including data requirements, for in-
8 vestigations of petitions filed under section 221 and
9 criteria for making determinations under subsection
10 (a).

11 “(2) CONSULTATIONS.—Not less than 90 days
12 before issuing a final rule with respect to the stand-
13 ards required under paragraph (1), the Secretary
14 shall consult with the Committee on Finance of the
15 Senate and the Committee on Ways and Means of
16 the House of Representatives with respect to such
17 rule.”.

18 **SEC. 1804. MONITORING AND REPORTING RELATING TO**
19 **SERVICE SECTOR.**

20 (a) IN GENERAL.—Section 282 of the Trade Act of
21 1974 (19 U.S.C. 2393) is amended—

22 (1) in the heading, by striking “**SYSTEM**” and
23 inserting “**AND DATA COLLECTION**”;

24 (2) in the first sentence—

1 (A) by striking “The Secretary” and in-
2 serting “(a) MONITORING PROGRAMS.—The
3 Secretary”;

4 (B) by inserting “and services” after “im-
5 ports of articles”;

6 (C) by inserting “and domestic supply of
7 services” after “domestic production”;

8 (D) by inserting “or supplying services”
9 after “producing articles”; and

10 (E) by inserting “, or supply of services,”
11 after “changes in production”; and

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

13 “(b) COLLECTION OF DATA AND REPORTS ON SERV-
14 ICE SECTOR.—

15 “(1) SECRETARY OF LABOR.—Not later than
16 90 days after the date of the enactment of this sub-
17 section, the Secretary of Labor shall implement a
18 system to collect data on adversely affected workers
19 employed in the service sector that includes the
20 number of workers by State and industry, and by
21 the cause of the dislocation of each worker, as iden-
22 tified in the certification.

23 “(2) SECRETARY OF COMMERCE.—Not later
24 than 1 year after such date of enactment, the Sec-
25 retary of Commerce shall, in consultation with the

1 Secretary of Labor, conduct a study and submit to
2 the Committee on Finance of the Senate and the
3 Committee on Ways and Means of the House of
4 Representatives a report on ways to improve the
5 timeliness and coverage of data on trade in services,
6 including methods to identify increased imports due
7 to the relocation of United States firms to foreign
8 countries, and increased imports due to United
9 States firms acquiring services from firms in foreign
10 countries.”.

11 (b) CLERICAL AMENDMENT.—The table of contents
12 of the Trade Act of 1974 is amended by striking the item
13 relating to section 282 and inserting the following:

“Sec. 282. Trade monitoring and data collection.”.

14 (c) EFFECTIVE DATE.—The amendments made by
15 this section shall take effect on the date of the enactment
16 of this Act.

17 **Subpart B—Industry Notifications Following Certain**
18 **Affirmative Determinations**

19 **SEC. 1811. NOTIFICATIONS FOLLOWING CERTAIN AFFIRMA-**
20 **TIVE DETERMINATIONS.**

21 (a) IN GENERAL.—Section 224 of the Trade Act of
22 1974 (19 U.S.C. 2274) is amended—

23 (1) by amending the heading to read as follows:

1 **“SEC. 224. STUDY AND NOTIFICATIONS REGARDING CER-**
2 **TAIN AFFIRMATIVE DETERMINATIONS; IN-**
3 **DUSTRY NOTIFICATION OF ASSISTANCE.”;**

4 (2) in subsection (a), by striking “Whenever”
5 and inserting “STUDY OF DOMESTIC INDUSTRY.—
6 Whenever”;

7 (3) in subsection (b)—

8 (A) by striking “The report” and inserting
9 “REPORT BY THE SECRETARY.—The report”;
10 and

11 (B) by inserting “and on the website of the
12 Department of Labor” after “Federal Reg-
13 ister”; and

14 (4) by adding at the end the following:

15 “(c) NOTIFICATIONS FOLLOWING AFFIRMATIVE
16 GLOBAL SAFEGUARD DETERMINATIONS.—Upon making
17 an affirmative determination under section 202(b)(1), the
18 Commission shall promptly notify the Secretary of Labor
19 and the Secretary of Commerce and, in the case of a deter-
20 mination with respect to an agricultural commodity, the
21 Secretary of Agriculture, of the determination.

22 “(d) NOTIFICATIONS FOLLOWING AFFIRMATIVE BI-
23 LATERAL OR PLURILATERAL SAFEGUARD DETERMINA-
24 TIONS.—

25 “(1) NOTIFICATIONS OF DETERMINATIONS OF
26 MARKET DISRUPTION.—Upon making an affirmative

1 determination under section 421(b)(1), the Commis-
2 sion shall promptly notify the Secretary of Labor
3 and the Secretary of Commerce and, in the case of
4 a determination with respect to an agricultural com-
5 modity, the Secretary of Agriculture, of the deter-
6 mination.

7 “(2) NOTIFICATIONS REGARDING TRADE
8 AGREEMENT SAFEGUARDS.—Upon making an af-
9 firmative determination in a proceeding initiated
10 under an applicable safeguard provision (other than
11 a provision described in paragraph (3)) that is en-
12 acted to implement a trade agreement to which the
13 United States is a party, the Commission shall
14 promptly notify the Secretary of Labor and the Sec-
15 retary of Commerce and, in the case of a determina-
16 tion with respect to an agricultural commodity, the
17 Secretary of Agriculture, of the determination.

18 “(3) NOTIFICATIONS REGARDING TEXTILE AND
19 APPAREL SAFEGUARDS.—Upon making an affirma-
20 tive determination in a proceeding initiated under
21 any safeguard provision relating to textile and ap-
22 parel articles that is enacted to implement a trade
23 agreement to which the United States is a party, the
24 President shall promptly notify the Secretary of

1 Labor and the Secretary of Commerce of the deter-
2 mination.

3 “(e) NOTIFICATIONS FOLLOWING CERTAIN AFFIRM-
4 ATIVE DETERMINATIONS UNDER TITLE VII OF THE TAR-
5 IFF ACT OF 1930.—Upon making an affirmative deter-
6 mination under section 705(b)(1)(A) or 735(b)(1)(A) of
7 the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and
8 1673d(b)(1)(A)), the Commission shall promptly notify
9 the Secretary of Labor and the Secretary of Commerce
10 and, in the case of a determination with respect to an agri-
11 cultural commodity, the Secretary of Agriculture, of the
12 determination.

13 “(f) INDUSTRY NOTIFICATION OF ASSISTANCE.—
14 Upon receiving a notification of a determination under
15 subsection (c), (d), or (e) with respect to a domestic
16 industry—

17 “(1) the Secretary of Labor shall—

18 “(A) notify the representatives of the do-
19 mestic industry affected by the determination,
20 firms publicly identified by name during the
21 course of the proceeding relating to the deter-
22 mination, and any certified or recognized union
23 or, to the extent practicable, other duly author-
24 ized representative of workers employed by such
25 representatives of the domestic industry, of—

1 “(iii) the availability of assistance in
2 filing such petitions; and

3 “(B) upon request, provide any assistance
4 that is necessary to file a petition under section
5 251; and

6 “(3) in the case of an affirmative determination
7 based upon imports of an agricultural commodity,
8 the Secretary of Agriculture shall—

9 “(A) notify representatives of the domestic
10 industry affected by the determination and any
11 agricultural commodity producers publicly iden-
12 tified by name during the course of the pro-
13 ceeding relating to the determination of—

14 “(i) the benefits available under chap-
15 ter 6;

16 “(ii) the manner in which to file a pe-
17 tition and apply for such benefits; and

18 “(iii) the availability of assistance in
19 filing such petitions; and

20 “(B) upon request, provide any assistance
21 that is necessary to file a petition under section
22 292.

23 “(g) REPRESENTATIVES OF THE DOMESTIC INDUS-
24 TRY.—For purposes of subsection (f), the term ‘represent-

1 atives of the domestic industry’ means the persons that
2 petitioned for relief in connection with—

3 “(1) a proceeding under section 202 or 421 of
4 this Act;

5 “(2) a proceeding under section 702(b) or
6 732(b) of the Tariff Act of 1930 (19 U.S.C.
7 1671d(b) and 1673d(b)); or

8 “(3) any safeguard investigation described in
9 subsection (d)(2) or (d)(3).”.

10 (b) CLERICAL AMENDMENT.—The table of contents
11 of the Trade Act of 1974 is amended by striking the item
12 relating to section 224 and inserting the following:

“Sec. 224. Study and notifications regarding certain affirmative determina-
tions; industry notification of assistance.”.

13 **SEC. 1812. NOTIFICATION TO SECRETARY OF COMMERCE.**

14 Section 225 of the Trade Act of 1974 (19 U.S.C.
15 2275) is amended by adding at the end the following:

16 “(c) Upon issuing a certification under section 223,
17 the Secretary shall notify the Secretary of Commerce of
18 the identity of each firm covered by the certification.”.

19 **Subpart C—Program Benefits**

20 **SEC. 1821. QUALIFYING REQUIREMENTS FOR WORKERS.**

21 (a) IN GENERAL.—Section 231(a)(5)(A)(ii) of the
22 Trade Act of 1974 (19 U.S.C. 2291 (a)(5)(A)(ii)) is
23 amended—

1 (1) by striking subclauses (I) and (II) and in-
2 serting the following:

3 “(I) in the case of a worker whose
4 most recent total separation from adversely
5 affected employment that meets the re-
6 quirements of paragraphs (1) and (2) oc-
7 curs after the date on which the Secretary
8 issues a certification covering the worker,
9 the last day of the 26th week after such
10 total separation,

11 “(II) in the case of a worker whose
12 most recent total separation from adversely
13 affected employment that meets the re-
14 quirements of paragraphs (1) and (2) oc-
15 curs before the date on which the Sec-
16 retary issues a certification covering the
17 worker, the last day of the 26th week after
18 the date of such certification,”;

19 (2) in subclause (III)—

20 (A) by striking “later of the dates specified
21 in subclause (I) or (II)” and inserting “date
22 specified in subclause (I) or (II), as the case
23 may be”; and

24 (B) by striking “or” at the end;

1 (3) by redesignating subclause (IV) as sub-
2 clause (V); and

3 (4) by inserting after subclause (III) the fol-
4 lowing:

5 “(IV) in the case of a worker who
6 fails to enroll by the date required by sub-
7 clause (I), (II), or (III), as the case may
8 be, due to the failure to provide the worker
9 with timely information regarding the date
10 specified in such subclause, the last day of
11 a period determined by the Secretary, or”.

12 (b) WAIVERS OF TRAINING REQUIREMENTS.—Sec-
13 tion 231(c) of the Trade Act of 1974 (19 U.S.C. 2291(c))
14 is amended—

15 (1) in paragraph (1)(B)—

16 (A) by striking “The worker possesses”
17 and inserting the following:

18 “(i) IN GENERAL.—The worker pos-
19 sesses”; and

20 (B) by adding at the end the following:

21 “(ii) MARKETABLE SKILLS DE-
22 FINED.—For purposes of clause (i), the
23 term ‘marketable skills’ may include the
24 possession of a postgraduate degree from
25 an institution of higher education (as de-

1 fined in section 102 of the Higher Edu-
2 cation Act of 1965 (20 U.S.C. 1002)) or
3 an equivalent institution, or the possession
4 of an equivalent postgraduate certification
5 in a specialized field.”;

6 (2) in paragraph (2)(A), by striking “A waiver”
7 and inserting “Except as provided in paragraph
8 (3)(B), a waiver”; and

9 (3) in paragraph (3)—

10 (A) in subparagraph (A), by striking “Pur-
11 suant to an agreement under section 239, the
12 Secretary may authorize a” and inserting “An
13 agreement under section 239 shall authorize a”;

14 (B) by redesignating subparagraph (B) as
15 subparagraph (C); and

16 (C) by inserting after subparagraph (A)
17 the following:

18 “(B) REVIEW OF WAIVERS.—An agree-
19 ment under section 239 shall require a cooper-
20 ating State to review each waiver issued by the
21 State under subparagraph (A), (B), (D), (E),
22 or (F) of paragraph (1)—

23 “(i) 3 months after the date on which
24 the State issues the waiver; and

25 “(ii) on a monthly basis thereafter.”.

1 (c) CONFORMING AMENDMENTS.—

2 (1) Section 231 of the Trade Act of 1974 (19
3 U.S.C. 2291), as amended, is further amended—

4 (A) in subsection (a), in the matter pre-
5 ceding paragraph (1), by striking “more than
6 60 days” and all that follows through “section
7 221” and inserting “on or after the date of
8 such certification”; and

9 (B) in subsection (b)—

10 (i) by striking paragraph (2); and

11 (ii) in paragraph (1)—

12 (I) by striking “(1)”;

13 (II) by redesignating subpara-
14 graphs (A) and (B) as paragraphs (1)
15 and (2), respectively;

16 (III) by redesignating clauses (i)
17 and (ii) as subparagraphs (A) and
18 (B), respectively; and

19 (IV) by redesignating subclauses
20 (I) and (II) as clauses (i) and (ii), re-
21 spectively.

22 (2) Section 233 of the Trade Act of 1974 (19
23 U.S.C. 2293) is amended—

24 (A) by striking subsection (b); and

1 (B) by redesignating subsections (c)
2 through (g) as subsections (b) through (f), re-
3 spectively.

4 **SEC. 1822. WEEKLY AMOUNTS.**

5 Section 232 of the Trade Act of 1974 (19 U.S.C.
6 2292) is amended—

7 (1) in subsection (a)—

8 (A) by striking “subsections (b) and (c)”
9 and inserting “subsections (b), (c), and (d)”;

10 (B) by striking “total unemployment” the
11 first place it appears and inserting “unemploy-
12 ment”; and

13 (C) in paragraph (2), by inserting before
14 the period the following: “, except that in the
15 case of an adversely affected worker who is par-
16 ticipating in training under this chapter, such
17 income shall not include earnings from work for
18 such week that are equal to or less than the
19 most recent weekly benefit amount of the unem-
20 ployment insurance payable to the worker for a
21 week of total unemployment preceding the
22 worker’s first exhaustion of unemployment in-
23 surance (as determined for purposes of section
24 231(a)(3)(B))”; and

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

1 “(d) ELECTION OF TRADE READJUSTMENT ALLOW-
2 ANCE OR UNEMPLOYMENT INSURANCE.—Notwith-
3 standing section 231(a)(3)(B), an adversely affected work-
4 er may elect to receive a trade readjustment allowance in-
5 stead of unemployment insurance during any week with
6 respect to which the worker—

7 “(1) is entitled to receive unemployment insur-
8 ance as a result of the establishment by the worker
9 of a new benefit year under State law, based in
10 whole or in part upon part-time or short-term em-
11 ployment in which the worker engaged after the
12 worker’s most recent total separation from adversely
13 affected employment; and

14 “(2) is otherwise entitled to a trade readjust-
15 ment allowance.”.

16 **SEC. 1823. LIMITATIONS ON TRADE READJUSTMENT AL-**
17 **LOWANCES; ALLOWANCES FOR EXTENDED**
18 **TRAINING AND BREAKS IN TRAINING.**

19 Section 233(a) of the Trade Act of 1974 (19 U.S.C.
20 2293(a)) is amended—

21 (1) in paragraph (2), by inserting “under para-
22 graph (1)” after “trade readjustment allowance”;
23 and

24 (2) in paragraph (3)—

1 (A) in the matter preceding subparagraph

2 (A)—

3 (i) by striking “training approved for
4 him” and inserting “a training program
5 approved for the worker”;

6 (ii) by striking “52 additional weeks”
7 and inserting “78 additional weeks”; and

8 (iii) by striking “52-week” and insert-
9 ing “91-week”; and

10 (B) in the matter following subparagraph

11 (B), by striking “52-week” and inserting “91-
12 week”.

13 **SEC. 1824. SPECIAL RULES FOR CALCULATION OF ELIGI-**
14 **BILITY PERIOD.**

15 Section 233 of the Trade Act of 1974 (19 U.S.C.
16 2293), as amended, is further amended by adding at the
17 end the following:

18 “(g) SPECIAL RULE FOR CALCULATING SEPARA-
19 TION.—Notwithstanding any other provision of this chap-
20 ter, any period during which a judicial or administrative
21 appeal is pending with respect to the denial by the Sec-
22 retary of a petition under section 223 shall not be counted
23 for purposes of calculating the period of separation under
24 subsection (a)(2).

1 “(h) SPECIAL RULE FOR JUSTIFIABLE CAUSE.—If
2 the Secretary determines that there is justifiable cause,
3 the Secretary may extend the period during which trade
4 readjustment allowances are payable to an adversely af-
5 fected worker under paragraphs (2) and (3) of subsection
6 (a) (but not the maximum amounts of such allowances
7 that are payable under this section).

8 “(i) SPECIAL RULE WITH RESPECT TO MILITARY
9 SERVICE.—

10 “(1) IN GENERAL.—Notwithstanding any other
11 provision of this chapter, the Secretary may waive
12 any requirement of this chapter that the Secretary
13 determines is necessary to ensure that an adversely
14 affected worker who is a member of a reserve com-
15 ponent of the Armed Forces and serves a period of
16 duty described in paragraph (2) is eligible to receive
17 a trade readjustment allowance, training, and other
18 benefits under this chapter in the same manner and
19 to the same extent as if the worker had not served
20 the period of duty.

21 “(2) PERIOD OF DUTY DESCRIBED.—An ad-
22 versely affected worker serves a period of duty de-
23 scribed in this paragraph if, before completing train-
24 ing under section 236, the worker—

1 “(A) serves on active duty for a period of
2 more than 30 days under a call or order to ac-
3 tive duty of more than 30 days; or

4 “(B) in the case of a member of the Army
5 National Guard of the United States or Air Na-
6 tional Guard of the United States, performs
7 full-time National Guard duty under section
8 502(f) of title 32, United States Code, for 30
9 consecutive days or more when authorized by
10 the President or the Secretary of Defense for
11 the purpose of responding to a national emer-
12 gency declared by the President and supported
13 by Federal funds.”.

14 **SEC. 1825. APPLICATION OF STATE LAWS AND REGULA-**
15 **TIONS ON GOOD CAUSE FOR WAIVER OF TIME**
16 **LIMITS OR LATE FILING OF CLAIMS.**

17 Section 234 of the Trade Act of 1974 (19 U.S.C.
18 2294) is amended—

19 (1) by striking “Except where inconsistent” and
20 inserting “(a) IN GENERAL.—Except where incon-
21 sistent”; and

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

23 “(b) SPECIAL RULE WITH RESPECT TO STATE LAWS
24 AND REGULATIONS ON GOOD CAUSE FOR WAIVER OF
25 TIME LIMITS OR LATE FILING OF CLAIMS.—Any law,

1 regulation, policy, or practice of a cooperating State that
2 allows for a waiver for good cause of any time limitation
3 relating to the administration of the State unemployment
4 insurance law shall, in the administration of the program
5 under this chapter by the State, apply to any time limita-
6 tion with respect to an application for a trade readjust-
7 ment allowance or enrollment in training under this chap-
8 ter.”.

9 **SEC. 1826. EMPLOYMENT AND CASE MANAGEMENT SERV-**
10 **ICES.**

11 (a) IN GENERAL.—Section 235 of the Trade Act of
12 1974 (19 U.S.C. 2295) is amended to read as follows:

13 **“SEC. 235. EMPLOYMENT AND CASE MANAGEMENT SERV-**
14 **ICES.**

15 “The Secretary shall make available, directly or
16 through agreements with States under section 239, to ad-
17 versely affected workers and adversely affected incumbent
18 workers covered by a certification under subchapter A of
19 this chapter the following employment and case manage-
20 ment services:

21 “(1) Comprehensive and specialized assessment
22 of skill levels and service needs, including through—

23 “(A) diagnostic testing and use of other
24 assessment tools; and

1 “(B) in-depth interviewing and evaluation
2 to identify employment barriers and appropriate
3 employment goals.

4 “(2) Development of an individual employment
5 plan to identify employment goals and objectives,
6 and appropriate training to achieve those goals and
7 objectives.

8 “(3) Information on training available in local
9 and regional areas, information on individual coun-
10 seling to determine which training is suitable train-
11 ing, and information on how to apply for such train-
12 ing.

13 “(4) Information on how to apply for financial
14 aid, including referring workers to educational op-
15 portunity centers described in section 402F of the
16 Higher Education Act of 1965 (20 U.S.C. 1070a-
17 16), where applicable, and notifying workers that the
18 workers may request financial aid administrators at
19 institutions of higher education (as defined in sec-
20 tion 102 of such Act (20 U.S.C. 1002)) to use the
21 administrators’ discretion under section 479A of
22 such Act (20 U.S.C. 1087tt) to use current year in-
23 come data, rather than preceding year income data,
24 for determining the amount of need of the workers

1 for Federal financial assistance under title IV of
2 such Act (20 U.S.C. 1070 et seq.).

3 “(5) Short-term prevocational services, includ-
4 ing development of learning skills, communications
5 skills, interviewing skills, punctuality, personal main-
6 tenance skills, and professional conduct to prepare
7 individuals for employment or training.

8 “(6) Individual career counseling, including job
9 search and placement counseling, during the period
10 in which the individual is receiving a trade adjust-
11 ment allowance or training under this chapter, and
12 after receiving such training for purposes of job
13 placement.

14 “(7) Provision of employment statistics infor-
15 mation, including the provision of accurate informa-
16 tion relating to local, regional, and national labor
17 market areas, including—

18 “(A) job vacancy listings in such labor
19 market areas;

20 “(B) information on jobs skills necessary
21 to obtain jobs identified in job vacancy listings
22 described in subparagraph (A);

23 “(C) information relating to local occupa-
24 tions that are in demand and earnings potential
25 of such occupations; and

1 year a payment in an amount that is equal to 15
2 percent of the amount of such funds.

3 “(2) USE OF FUNDS.—A State that receives a
4 payment under paragraph (1) shall—

5 “(A) use not more than $\frac{2}{3}$ of such pay-
6 ment for the administration of the trade adjust-
7 ment assistance for workers program under this
8 chapter, including for—

9 “(i) processing waivers of training re-
10 quirements under section 231;

11 “(ii) collecting, validating, and report-
12 ing data required under this chapter; and

13 “(iii) providing reemployment trade
14 adjustment assistance under section 246;
15 and

16 “(B) use not less than $\frac{1}{3}$ of such payment
17 for employment and case management services
18 under section 235.

19 “(b) ADDITIONAL FUNDING FOR EMPLOYMENT AND
20 CASE MANAGEMENT SERVICES.—

21 “(1) IN GENERAL.—In addition to any funds
22 made available to a State to carry out section 236
23 and the payment under subsection (a)(1) for a fiscal
24 year, the Secretary shall provide to the State for the
25 fiscal year a payment in the amount of \$350,000.

1 “(B)(i) The Secretary shall, as soon as practicable
2 after the beginning of each fiscal year, make an initial dis-
3 tribution of the funds made available to carry out this sec-
4 tion, in accordance with the requirements of subparagraph
5 (C).

6 “(ii) The Secretary shall ensure that not less than
7 90 percent of the funds made available to carry out this
8 section for a fiscal year are distributed to the States by
9 not later than July 15 of that fiscal year.

10 “(C)(i) In making the initial distribution of funds
11 pursuant to subparagraph (B)(i) for a fiscal year, the Sec-
12 retary shall hold in reserve 35 percent of the funds made
13 available to carry out this section for that fiscal year for
14 additional distributions during the remainder of the fiscal
15 year.

16 “(ii) Subject to clause (iii), in determining how to ap-
17 portion the initial distribution of funds pursuant to sub-
18 paragraph (B)(i) in a fiscal year, the Secretary shall take
19 into account, with respect to each State—

20 “(I) the trend in the number of workers covered
21 by certifications of eligibility under this chapter dur-
22 ing the most recent 4 consecutive calendar quarters
23 for which data are available;

24 “(II) the trend in the number of workers par-
25 ticipating in training under this section during the

1 most recent 4 consecutive calendar quarters for
2 which data are available;

3 “(III) the number of workers estimated to be
4 participating in training under this section during
5 the fiscal year;

6 “(IV) the amount of funding estimated to be
7 necessary to provide training approved under this
8 section to such workers during the fiscal year; and

9 “(V) such other factors as the Secretary con-
10 siders appropriate relating to the provision of train-
11 ing under this section.

12 “(iii) In no case may the amount of the initial dis-
13 tribution to a State pursuant to subparagraph (B)(i) in
14 a fiscal year be less than 25 percent of the initial distribu-
15 tion to the State in the preceding fiscal year.

16 “(D) The Secretary shall establish procedures for the
17 distribution of the funds that remain available for the fis-
18 cal year after the initial distribution required under sub-
19 paragraph (B)(i). Such procedures may include the dis-
20 tribution of funds pursuant to requests submitted by
21 States in need of such funds.

22 “(E) If, during a fiscal year, the Secretary estimates
23 that the amount of funds necessary to pay the costs of
24 training approved under this section will exceed the dollar
25 amount limitation specified in subparagraph (A), the Sec-

1 retary shall decide how the amount of funds made avail-
2 able to carry out this section that have not been distrib-
3 uted at the time of the estimate will be apportioned among
4 the States for the remainder of the fiscal year.”.

5 (b) DETERMINATIONS REGARDING TRAINING.—Sec-
6 tion 236(a)(9) of the Trade Act of 1974 (19 U.S.C.
7 2296(a)(9)) is amended—

8 (1) by striking “The Secretary” and inserting
9 “(A) Subject to subparagraph (B), the Secretary”;
10 and

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

12 “(B)(i) In determining under paragraph (1)(E)
13 whether a worker is qualified to undertake and complete
14 training, the Secretary may approve training for a period
15 longer than the worker’s period of eligibility for trade re-
16 adjustment allowances under part I if the worker dem-
17 onstrates a financial ability to complete the training after
18 the expiration of the worker’s period of eligibility for such
19 trade readjustment allowances.

20 “(ii) In determining the reasonable cost of training
21 under paragraph (1)(F) with respect to a worker, the Sec-
22 retary may consider whether other public or private funds
23 are reasonably available to the worker, except that the
24 Secretary may not require a worker to obtain such funds

1 as a condition of approval of training under paragraph
2 (1).”.

3 (c) REGULATIONS.—Section 236 of the Trade Act of
4 1974 (19 U.S.C. 2296) is amended by adding at the end
5 the following:

6 “(g) REGULATIONS WITH RESPECT TO APPORTION-
7 MENT OF TRAINING FUNDS TO STATES.—

8 “(1) IN GENERAL.—Not later than 1 year after
9 the date of the enactment of this subsection, the
10 Secretary shall issue such regulations as may be nec-
11 essary to carry out the provisions of subsection
12 (a)(2).

13 “(2) CONSULTATIONS.—The Secretary shall
14 consult with the Committee on Finance of the Sen-
15 ate and the Committee on Ways and Means of the
16 House of Representatives not less than 90 days be-
17 fore issuing any regulation pursuant to paragraph
18 (1).”.

19 (d) EFFECTIVE DATE.—This section and the amend-
20 ments made by this section shall take effect upon the expi-
21 ration of the 90-day period beginning on the date of the
22 enactment of this Act, except that—

23 (1) subparagraph (A) of section 236(a)(2) of
24 the Trade Act of 1974, as amended by subsection

1 (a) of this section, shall take effect on the date of
2 the enactment of this Act; and

3 (2) subparagraphs (B), (C), and (D) of such
4 section 236(a)(2) shall take effect on October 1,
5 2009.

6 **SEC. 1829. PREREQUISITE EDUCATION; APPROVED TRAIN-**
7 **ING PROGRAMS.**

8 (a) IN GENERAL.—Section 236(a)(5) of the Trade
9 Act of 1974 (19 U.S.C. 2296(a)(5)) is amended—

10 (1) in subparagraph (A)—

11 (A) by striking “and” at the end of clause
12 (i);

13 (B) by adding “and” at the end of clause
14 (ii); and

15 (C) by inserting after clause (ii) the fol-
16 lowing:

17 “(iii) apprenticeship programs registered
18 under the Act of August 16, 1937 (commonly
19 known as the ‘National Apprenticeship Act’; 50
20 Stat. 664, chapter 663; 29 U.S.C. 50 et seq.),”;

21 (2) by redesignating subparagraphs (E) and
22 (F) as subparagraphs (F) and (G), respectively;

23 (3) by inserting after subparagraph (D) the fol-
24 lowing:

1 “(E) any program of prerequisite education or
2 coursework required to enroll in training that may
3 be approved under this section,”;

4 (4) in subparagraph (F)(ii), as redesignated by
5 paragraph (2), by striking “and” at the end;

6 (5) in subparagraph (G), as redesignated by
7 paragraph (2), by striking the period at the end and
8 inserting “, and”; and

9 (6) by adding at the end the following:

10 “(H) any training program or coursework at an
11 accredited institution of higher education (described
12 in section 102 of the Higher Education Act of 1965
13 (20 U.S.C. 1002)), including a training program or
14 coursework for the purpose of—

15 “(i) obtaining a degree or certification; or

16 “(ii) completing a degree or certification
17 that the worker had previously begun at an ac-
18 credited institution of higher education.

19 The Secretary may not limit approval of a training pro-
20 gram under paragraph (1) to a program provided pursu-
21 ant to title I of the Workforce Investment Act of 1998
22 (29 U.S.C. 2801 et seq.).”.

23 (b) CONFORMING AMENDMENTS.—Section 233 of the
24 Trade Act of 1974 (19 U.S.C. 2293) is amended—

1 (1) in subsection (a)(2), by inserting “pre-
2 requisite education or” after “requires a program
3 of”; and

4 (2) in subsection (f) (as redesignated by section
5 1821(e) of this subtitle), by inserting “prerequisite
6 education or” after “includes a program of”.

7 (c) TECHNICAL CORRECTIONS.—Section 236 of the
8 Trade Act of 1974 (19 U.S.C. 2296) is amended—

9 (1) in subsection (a)—

10 (A) in paragraph (1), in the flush text, by
11 striking “his behalf” and inserting “the work-
12 er’s behalf”; and

13 (B) in paragraph (3), by striking “this
14 paragraph (1)” and inserting “paragraph (1)”;
15 and

16 (2) in subsection (b)(2), by striking “, and”
17 and inserting a period.

18 **SEC. 1830. PRE-LAYOFF AND PART-TIME TRAINING.**

19 (a) PRE-LAYOFF TRAINING.—

20 (1) IN GENERAL.—Section 236(a) of the Trade
21 Act of 1974 (19 U.S.C. 2296(a)) is amended—

22 (A) in paragraph (1), by inserting after
23 “determines” the following: “, with respect to
24 an adversely affected worker or an adversely af-
25 fected incumbent worker,”;

1 (B) in paragraph (4)—

2 (i) in subparagraphs (A) and (B), by
3 inserting “or an adversely affected incum-
4 bent worker” after “an adversely affected
5 worker” each place it appears; and

6 (ii) in subparagraph (C), by inserting
7 “or adversely affected incumbent worker”
8 after “adversely affected worker” each
9 place it appears;

10 (C) in paragraph (5), in the matter pre-
11 ceeding subparagraph (A), by striking “The
12 training programs” and inserting “Except as
13 provided in paragraph (10), the training pro-
14 grams”;

15 (D) in paragraph (6)(B), by inserting “or
16 adversely affected incumbent worker” after
17 “adversely affected worker”;

18 (E) in paragraph (7)(B), by inserting “or
19 adversely affected incumbent worker” after
20 “adversely affected worker”; and

21 (F) by inserting after paragraph (9) the
22 following:

23 “(10) In the case of an adversely affected incumbent
24 worker, the Secretary may not approve—

1 “(A) on-the-job training under paragraph
2 (5)(A)(i); or

3 “(B) customized training under paragraph
4 (5)(A)(ii), unless such training is for a position
5 other than the worker’s adversely affected employ-
6 ment.

7 “(11) If the Secretary determines that an adversely
8 affected incumbent worker for whom the Secretary ap-
9 proved training under this section is no longer threatened
10 with a total or partial separation, the Secretary shall ter-
11 minate the approval of such training.”.

12 (2) DEFINITIONS.—Section 247 of the Trade
13 Act of 1974 (19 U.S.C. 2319), as amended, is fur-
14 ther amended by adding at the end the following:

15 “(19) The term ‘adversely affected incumbent
16 worker’ means a worker who—

17 “(A) is a member of a group of workers
18 who have been certified as eligible to apply for
19 adjustment assistance under subchapter A;

20 “(B) has not been totally or partially sepa-
21 rated from adversely affected employment; and

22 “(C) the Secretary determines, on an indi-
23 vidual basis, is threatened with total or partial
24 separation.”.

1 (b) PART-TIME TRAINING.—Section 236 of the
2 Trade Act of 1974 (19 U.S.C. 2296), as amended, is fur-
3 ther amended by adding at the end the following:

4 “(h) PART-TIME TRAINING.—

5 “(1) IN GENERAL.—The Secretary may approve
6 full-time or part-time training for a worker under
7 subsection (a).

8 “(2) LIMITATION.—Notwithstanding paragraph
9 (1), a worker participating in part-time training ap-
10 proved under subsection (a) may not receive a trade
11 readjustment allowance under section 231.”.

12 **SEC. 1831. ON-THE-JOB TRAINING.**

13 (a) IN GENERAL.—Section 236(c) of the Trade Act
14 of 1974 (19 U.S.C. 2296(c)) is amended—

15 (1) by redesignating paragraphs (1) through
16 (10) as subparagraphs (A) through (J) and moving
17 such subparagraphs 2 ems to the right;

18 (2) by striking “(c) The Secretary shall” and
19 all that follows through “such costs,” and inserting
20 the following:

21 “(c) ON-THE-JOB TRAINING REQUIREMENTS.—

22 “(1) IN GENERAL.—The Secretary may approve
23 on-the-job training for any adversely affected worker
24 if—

1 “(A) the worker meets the requirements
2 for training to be approved under subsection
3 (a)(1);

4 “(B) the Secretary determines that on-the-
5 job training—

6 “(i) can reasonably be expected to
7 lead to suitable employment with the em-
8 ployer offering the on-the-job training;

9 “(ii) is compatible with the skills of
10 the worker;

11 “(iii) includes a curriculum through
12 which the worker will gain the knowledge
13 or skills to become proficient in the job for
14 which the worker is being trained; and

15 “(iv) can be measured by benchmarks
16 that indicate that the worker is gaining
17 such knowledge or skills; and

18 “(C) the State determines that the on-the-
19 job training program meets the requirements of
20 clauses (iii) and (iv) of subparagraph (B).

21 “(2) MONTHLY PAYMENTS.—The Secretary
22 shall pay the costs of on-the-job training approved
23 under paragraph (1) in monthly installments.

24 “(3) CONTRACTS FOR ON-THE-JOB TRAINING.—

1 “(A) IN GENERAL.—The Secretary shall
2 ensure, in entering into a contract with an em-
3 ployer to provide on-the-job training to a work-
4 er under this subsection, that the skill require-
5 ments of the job for which the worker is being
6 trained, the academic and occupational skill
7 level of the worker, and the work experience of
8 the worker are taken into consideration.

9 “(B) TERM OF CONTRACT.—Training
10 under any such contract shall be limited to the
11 period of time required for the worker receiving
12 on-the-job training to become proficient in the
13 job for which the worker is being trained, but
14 may not exceed 104 weeks in any case.

15 “(4) EXCLUSION OF CERTAIN EMPLOYERS.—
16 The Secretary shall not enter into a contract for on-
17 the-job training with an employer that exhibits a
18 pattern of failing to provide workers receiving on-
19 the-job training from the employer with—

20 “(A) continued, long-term employment as
21 regular employees; and

22 “(B) wages, benefits, and working condi-
23 tions that are equivalent to the wages, benefits,
24 and working conditions provided to regular em-
25 ployees who have worked a similar period of

1 time and are doing the same type of work as
2 workers receiving on-the-job training from the
3 employer.

4 “(5) LABOR STANDARDS.—The Secretary may
5 pay the costs of on-the-job training;” and

6 (3) in paragraph (5), as redesignated—

7 (A) in subparagraph (I), as redesignated
8 by paragraph (1) of this section, by striking
9 “paragraphs (1), (2), (3), (4), (5), and (6)”
10 and inserting “subparagraphs (A), (B), (C),
11 (D), (E), and (F)” and

12 (B) in subparagraph (J), as redesignated
13 by paragraph (1) of this section, by striking
14 “paragraph (8)” and inserting “subparagraph
15 (H)”.

16 (b) REPEAL OF PREFERENCE FOR TRAINING ON THE
17 JOB.—Section 236(a)(1) of the Trade Act of 1974 (19
18 U.S.C. 2296(a)(1)) is amended by striking the last sen-
19 tence.

20 **SEC. 1832. ELIGIBILITY FOR UNEMPLOYMENT INSURANCE**
21 **AND PROGRAM BENEFITS WHILE IN TRAIN-**
22 **ING.**

23 Section 236(d) of the Trade Act of 1974 (19 U.S.C.
24 2296(d)) is amended to read as follows:

1 “(d) ELIGIBILITY.—An adversely affected worker
2 may not be determined to be ineligible or disqualified for
3 unemployment insurance or program benefits under this
4 subchapter—

5 “(1) because the worker—

6 “(A) is enrolled in training approved under
7 subsection (a);

8 “(B) left work—

9 “(i) that was not suitable employment
10 in order to enroll in such training; or

11 “(ii) that the worker engaged in on a
12 temporary basis during a break in such
13 training or a delay in the commencement
14 of such training; or

15 “(C) left on-the-job training not later than
16 30 days after commencing such training be-
17 cause the training did not meet the require-
18 ments of subsection (c)(1)(B); or

19 “(2) because of the application to any such
20 week in training of the provisions of State law or
21 Federal unemployment insurance law relating to
22 availability for work, active search for work, or re-
23 fusal to accept work.”.

1 **SEC. 1833. JOB SEARCH AND RELOCATION ALLOWANCES.**

2 (a) **JOB SEARCH ALLOWANCES.**—Section 237 of the
3 Trade Act of 1974 (19 U.S.C. 2297) is amended—

4 (1) in subsection (a)(2)(C)(ii), by striking “,
5 unless the worker received a waiver under section
6 231(c)”; and

7 (2) in subsection (b)—

8 (A) in paragraph (1), by striking “90 per-
9 cent of the cost of” and inserting “all”; and

10 (B) in paragraph (2), by striking “\$1,250”
11 and inserting “\$1,500”.

12 (b) **RELOCATION ALLOWANCES.**—Section 238 of the
13 Trade Act of 1974 (19 U.S.C. 2298) is amended—

14 (1) in subsection (a)(2)(E)(ii), by striking “,
15 unless the worker received a waiver under section
16 231(c)”; and

17 (2) in subsection (b)—

18 (A) in paragraph (1), by striking “90 per-
19 cent of the” and inserting “all”; and

20 (B) in paragraph (2), by striking “\$1,250”
21 and inserting “\$1,500”.

1 (A) or (B) of paragraph (4) (as the
2 case may be)”; and

3 (II) by striking clauses (i) and
4 (ii) and inserting the following:

5 “(i) the wages received by the worker
6 at the time of separation; and

7 “(ii) the wages received by the worker
8 from reemployment.”;

9 (ii) in subparagraph (B)—

10 (I) by striking “for a period not
11 to exceed 2 years” and inserting “for
12 the eligibility period under subpara-
13 graph (A) or (B) of paragraph (4) (as
14 the case may be)”; and

15 (II) by striking “, as added by
16 section 201 of the Trade Act of
17 2002”; and

18 (iii) by adding at the end the fol-
19 lowing:

20 “(C) TRAINING AND OTHER SERVICES.—A
21 worker described in paragraph (3)(B) partici-
22 pating in the program established under para-
23 graph (1) is eligible to receive training approved
24 under section 236 and employment and case
25 management services under section 235.”; and

1 (C) by striking paragraphs (3) through (5)
2 and inserting the following:

3 “(3) ELIGIBILITY.—

4 “(A) IN GENERAL.—A group of workers
5 certified under subchapter A as eligible for ad-
6 justment assistance under subchapter A is eligi-
7 ble for benefits described in paragraph (2)
8 under the program established under paragraph
9 (1).

10 “(B) INDIVIDUAL ELIGIBILITY.—A worker
11 in a group of workers described in subpara-
12 graph (A) may elect to receive benefits de-
13 scribed in paragraph (2) under the program es-
14 tablished under paragraph (1) if the worker—

15 “(i) is at least 50 years of age;

16 “(ii) earns not more than \$55,000
17 each year in wages from reemployment;

18 “(iii)(I) is employed on a full-time
19 basis as defined by the law of the State in
20 which the worker is employed and is not
21 enrolled in a training program approved
22 under section 236; or

23 “(II) is employed at least 20 hours
24 per week and is enrolled in a training pro-
25 gram approved under section 236; and

1 “(iv) is not employed at the firm from
2 which the worker was separated.

3 “(4) ELIGIBILITY PERIOD FOR PAYMENTS.—

4 “(A) WORKER WHO HAS NOT RECEIVED
5 TRADE READJUSTMENT ALLOWANCE.—In the
6 case of a worker described in paragraph (3)(B)
7 who has not received a trade readjustment al-
8 lowance under part I of subchapter B pursuant
9 to the certification described in paragraph
10 (3)(A), the worker may receive benefits de-
11 scribed in paragraph (2) for a period not to ex-
12 ceed 2 years beginning on the earlier of—

13 “(i) the date on which the worker ex-
14 hausts all rights to unemployment insur-
15 ance based on the separation of the worker
16 from the adversely affected employment
17 that is the basis of the certification; or

18 “(ii) the date on which the worker ob-
19 tains reemployment described in paragraph
20 (3)(B).

21 “(B) WORKER WHO HAS RECEIVED TRADE
22 READJUSTMENT ALLOWANCE.—In the case of a
23 worker described in paragraph (3)(B) who has
24 received a trade readjustment allowance under
25 part I of subchapter B pursuant to the certifi-

1 cation described in paragraph (3)(A), the work-
2 er may receive benefits described in paragraph
3 (2) for a period of 104 weeks beginning on the
4 date on which the worker obtains reemployment
5 described in paragraph (3)(B), reduced by the
6 total number of weeks for which the worker re-
7 ceived such trade readjustment allowance.

8 “(5) TOTAL AMOUNT OF PAYMENTS.—

9 “(A) IN GENERAL.—The payments de-
10 scribed in paragraph (2)(A) made to a worker
11 may not exceed—

12 “(i) \$12,000 per worker during the
13 eligibility period under paragraph (4)(A);
14 or

15 “(ii) the amount described in subpara-
16 graph (B) per worker during the eligibility
17 period under paragraph (4)(B).

18 “(B) AMOUNT DESCRIBED.—The amount
19 described in this subparagraph is the amount
20 equal to the product of—

21 “(i) \$12,000, and

22 “(ii) the ratio of—

23 “(I) the total number of weeks in
24 the eligibility period under paragraph
25 (4)(B) with respect to the worker, to

1 “(II) 104 weeks.

2 “(6) CALCULATION OF AMOUNT OF PAYMENTS
3 FOR CERTAIN WORKERS.—

4 “(A) IN GENERAL.—In the case of a work-
5 er described in paragraph (3)(B)(iii)(II), para-
6 graph (2)(A) shall be applied by substituting
7 the percentage described in subparagraph (B)
8 for ‘50 percent’.

9 “(B) PERCENTAGE DESCRIBED.—The per-
10 centage described in this subparagraph is the
11 percentage—

12 “(i) equal to $\frac{1}{2}$ of the ratio of—

13 “(I) the number of weekly hours
14 of employment of the worker referred
15 to in paragraph (3)(B)(iii)(II), to

16 “(II) the number of weekly hours
17 of employment of the worker at the
18 time of separation, but

19 “(ii) in no case more than 50 percent.

20 “(7) LIMITATION ON OTHER BENEFITS.—A
21 worker described in paragraph (3)(B) may not re-
22 ceive a trade readjustment allowance under part I of
23 subchapter B pursuant to the certification described
24 in paragraph (3)(A) during any week for which the

1 worker receives a payment described in paragraph
2 (2)(A).”; and

3 (3) in subsection (b)(2), by striking “subsection
4 (a)(3)(B)” and inserting “subsection (a)(3)”.

5 (b) EXTENSION OF PROGRAM.—Section 246(b)(1) of
6 the Trade Act of 1974 (19 U.S.C. 2318(b)(1)) is amended
7 by striking “the date that is 5 years” and all that follows
8 through the end period and inserting “December 31,
9 2010.”.

10 (c) CLERICAL AMENDMENT.—The table of contents
11 of the Trade Act of 1974 is amended by striking the item
12 relating to section 246 and inserting the following:

“Sec. 246. Reemployment trade adjustment assistance program.”.

13 **Subpart E—Other Matters**

14 **SEC. 1851. OFFICE OF TRADE ADJUSTMENT ASSISTANCE.**

15 (a) IN GENERAL.—Subchapter C of chapter 2 of title
16 II of the Trade Act of 1974 (19 U.S.C. 2311 et seq.) is
17 amended by adding at the end the following:

18 **“SEC. 249A. OFFICE OF TRADE ADJUSTMENT ASSISTANCE.**

19 “(a) ESTABLISHMENT.—There is established in the
20 Department of Labor an office to be known as the Office
21 of Trade Adjustment Assistance (in this section referred
22 to as the ‘Office’).

23 “(b) HEAD OF OFFICE.—The head of the Office shall
24 be an administrator, who shall report directly to the Dep-
25 uty Assistant Secretary for Employment and Training.

1 “(c) PRINCIPAL FUNCTIONS.—The principal func-
2 tions of the administrator of the Office shall be—

3 “(1) to oversee and implement the administra-
4 tion of trade adjustment assistance program under
5 this chapter; and

6 “(2) to carry out functions delegated to the
7 Secretary of Labor under this chapter, including—

8 “(A) making determinations under section
9 223;

10 “(B) providing information under section
11 225 about trade adjustment assistance to work-
12 ers and assisting such workers to prepare peti-
13 tions or applications for program benefits;

14 “(C) providing assistance to employers of
15 groups of workers that have filed petitions
16 under section 221 in submitting information re-
17 quired by the Secretary relating to the peti-
18 tions;

19 “(D) ensuring workers covered by a certifi-
20 cation of eligibility under subchapter A receive
21 the employment and case management services
22 described in section 235;

23 “(E) ensuring that States fully comply
24 with agreements entered into under section
25 239;

1 “(F) advocating for workers applying for
2 benefits available under this chapter;

3 “(G) establishing and overseeing a hotline
4 that workers, employers, and other entities may
5 call to obtain information regarding eligibility
6 criteria, procedural requirements, and benefits
7 available under this chapter; and

8 “(H) carrying out such other duties with
9 respect to this chapter as the Secretary speci-
10 fies for purposes of this section.

11 “(d) ADMINISTRATION.—

12 “(1) DESIGNATION.—The administrator shall
13 designate an employee of the Department of Labor
14 with appropriate experience and expertise to carry
15 out the duties described in paragraph (2).

16 “(2) DUTIES.—The employee designated under
17 paragraph (1) shall—

18 “(A) receive complaints and requests for
19 assistance related to the trade adjustment as-
20 sistance program under this chapter;

21 “(B) resolve such complaints and requests
22 for assistance, in coordination with other em-
23 ployees of the Office;

1 “(C) compile basic information concerning
2 such complaints and requests for assistance;
3 and

4 “(D) carry out such other duties with re-
5 spect to this chapter as the Secretary specifies
6 for purposes of this section.”.

7 (b) CLERICAL AMENDMENT.—The table of contents
8 of the Trade Act of 1974 is amended by inserting after
9 the item relating to section 249 the following:

 “Sec. 249A. Office of Trade Adjustment Assistance.”.

10 **SEC. 1852. ACCOUNTABILITY OF STATE AGENCIES; COLLEC-**
11 **TION AND PUBLICATION OF PROGRAM DATA;**
12 **AGREEMENTS WITH STATES.**

13 (a) IN GENERAL.—Section 239(a) of the Trade Act
14 of 1974 (19 U.S.C. 2311(a)) is amended—

15 (1) by amending clause (2) to read as follows:

16 “(2) in accordance with subsection (f), shall make
17 available to adversely affected workers and adversely
18 affected incumbent workers covered by a certifi-
19 cation under subchapter A the employment and case
20 management services described in section 235,”; and

21 (2) by striking “will” each place it appears and
22 inserting “shall”.

23 (b) FORM AND MANNER OF DATA.—Section 239 of
24 the Trade Act of 1974 (19 U.S.C. 2311) is amended—

1 (1) by redesignating subsections (c) through (g)
2 as subsections (d) through (h), respectively; and

3 (2) by inserting after subsection (b) the fol-
4 lowing:

5 “(c) FORM AND MANNER OF DATA.—Each agree-
6 ment under this subchapter shall—

7 “(1) provide the Secretary with the authority to
8 collect any data the Secretary determines necessary
9 to meet the requirements of this chapter; and

10 “(2) specify the form and manner in which any
11 such data requested by the Secretary shall be re-
12 ported.”.

13 (c) STATE ACTIVITIES.—Section 239(g) of the Trade
14 Act of 1974 (as redesignated) is amended—

15 (1) in paragraph (3), by striking “and” at the
16 end;

17 (2) by amending paragraph (4) to read as fol-
18 lows:

19 “(4) perform outreach to, intake of, and ori-
20 entation for adversely affected workers and adversely
21 affected incumbent workers covered by a certifi-
22 cation under subchapter A with respect to assistance
23 and benefits available under this chapter, and”;

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

1 “(5) make employment and case management
2 services described in section 235 available to ad-
3 versely affected workers and adversely affected in-
4 cumbent workers covered by a certification under
5 subchapter A and, if funds provided to carry out this
6 chapter are insufficient to make such services avail-
7 able, make arrangements to make such services
8 available through other Federal programs.”.

9 (d) REPORTING REQUIREMENT.—Section 239(h) of
10 the Trade Act of 1974 (as redesignated) is amended by
11 striking “1998.” and inserting “1998 (29 U.S.C. 2822(b))
12 and a description of the State’s rapid response activities
13 under section 221(a)(2)(A).”.

14 (e) CONTROL MEASURES.—Section 239 of the Trade
15 Act of 1974 (19 U.S.C. 2311), as amended, is further
16 amended by adding at the end the following:

17 “(i) CONTROL MEASURES.—

18 “(1) IN GENERAL.—The Secretary shall require
19 each cooperating State and cooperating State agency
20 to implement effective control measures and to effec-
21 tively oversee the operation and administration of
22 the trade adjustment assistance program under this
23 chapter, including by means of monitoring the oper-
24 ation of control measures to improve the accuracy

1 and timeliness of the data being collected and re-
2 ported.

3 “(2) DEFINITION.—For purposes of paragraph
4 (1), the term ‘control measures’ means measures
5 that—

6 “(A) are internal to a system used by a
7 State to collect data; and

8 “(B) are designed to ensure the accuracy
9 and verifiability of such data.

10 “(j) DATA REPORTING.—

11 “(1) IN GENERAL.—Any agreement entered
12 into under this section shall require the cooperating
13 State or cooperating State agency to report to the
14 Secretary on a quarterly basis comprehensive per-
15 formance accountability data, to consist of—

16 “(A) the core indicators of performance de-
17 scribed in paragraph (2)(A);

18 “(B) the additional indicators of perform-
19 ance described in paragraph (2)(B), if any; and

20 “(C) a description of efforts made to im-
21 prove outcomes for workers under the trade ad-
22 justment assistance program.

23 “(2) CORE INDICATORS DESCRIBED.—

24 “(A) IN GENERAL.—The core indicators of
25 performance described in this paragraph are—

1 “(i) the percentage of workers receiv-
2 ing benefits under this chapter who are
3 employed during the second calendar quar-
4 ter following the calendar quarter in which
5 the workers cease receiving such benefits;

6 “(ii) the percentage of such workers
7 who are employed in each of the third and
8 fourth calendar quarters following the cal-
9 endar quarter in which the workers cease
10 receiving such benefits; and

11 “(iii) the earnings of such workers in
12 each of the third and fourth calendar quar-
13 ters following the calendar quarter in
14 which the workers cease receiving such
15 benefits.

16 “(B) ADDITIONAL INDICATORS.—The Sec-
17 retary and a cooperating State or cooperating
18 State agency may agree upon additional indica-
19 tors of performance for the trade adjustment
20 assistance program under this chapter, as ap-
21 propriate.

22 “(3) STANDARDS WITH RESPECT TO RELI-
23 ABILITY OF DATA.—In preparing the quarterly re-
24 port required by paragraph (1), each cooperating
25 State or cooperating State agency shall establish

1 procedures that are consistent with guidelines to be
2 issued by the Secretary to ensure that the data re-
3 ported are valid and reliable.”.

4 **SEC. 1853. VERIFICATION OF ELIGIBILITY FOR PROGRAM**
5 **BENEFITS.**

6 Section 239 of the Trade Act of 1974 (19 U.S.C.
7 2311), as amended, is further amended by adding at the
8 end the following:

9 “(k) VERIFICATION OF ELIGIBILITY FOR PROGRAM
10 BENEFITS.—

11 “(1) IN GENERAL.—An agreement under this
12 subchapter shall provide that the State shall periodi-
13 cally redetermine that a worker receiving benefits
14 under this subchapter who is not a citizen or na-
15 tional of the United States remains in a satisfactory
16 immigration status. Once satisfactory immigration
17 status has been initially verified through the immi-
18 gration status verification system described in sec-
19 tion 1137(d) of the Social Security Act (42 U.S.C.
20 1320b-7(d)) for purposes of establishing a worker’s
21 eligibility for unemployment compensation, the State
22 shall reverify the worker’s immigration status if the
23 documentation provided during initial verification
24 will expire during the period in which that worker is
25 potentially eligible to receive benefits under this sub-

1 chapter. The State shall conduct such redetermina-
2 tion in a timely manner, utilizing the immigration
3 status verification system described in section
4 1137(d) of the Social Security Act (42 U.S.C.
5 1320b-7(d)).

6 “(2) PROCEDURES.—The Secretary shall estab-
7 lish procedures to ensure the uniform application by
8 the States of the requirements of this subsection.”.

9 **SEC. 1854. COLLECTION OF DATA AND REPORTS; INFORMA-**
10 **TION TO WORKERS.**

11 (a) IN GENERAL.—Subchapter C of chapter 2 of title
12 II of the Trade Act of 1974 (19 U.S.C. 2311 et seq.),
13 as amended, is further amended by adding at the end the
14 following:

15 **“SEC. 249B. COLLECTION AND PUBLICATION OF DATA AND**
16 **REPORTS; INFORMATION TO WORKERS.**

17 “(a) IN GENERAL.—Not later than 180 days after
18 the date of the enactment of this section, the Secretary
19 shall implement a system to collect and report the data
20 described in subsection (b), as well as any other informa-
21 tion that the Secretary considers appropriate to effectively
22 carry out this chapter.

23 “(b) DATA TO BE INCLUDED.—The system required
24 under subsection (a) shall include collection of and report-
25 ing on the following data for each fiscal year:

1 “(1) DATA ON PETITIONS FILED, CERTIFIED,
2 AND DENIED.—

3 “(A) The number of petitions filed, cer-
4 tified, and denied under this chapter.

5 “(B) The number of workers covered by
6 petitions filed, certified, and denied.

7 “(C) The number of petitions, classified
8 by—

9 “(i) the basis for certification, includ-
10 ing increased imports, shifts in production,
11 and other bases of eligibility; and

12 “(ii) congressional district of the
13 United States.

14 “(D) The average time for processing such
15 petitions.

16 “(2) DATA ON BENEFITS RECEIVED.—

17 “(A) The number of workers receiving ben-
18 efits under this chapter.

19 “(B) The number of workers receiving
20 each type of benefit, including training, trade
21 readjustment allowances, employment and case
22 management services, and relocation and job
23 search allowances, and, to the extent feasible,
24 credits for health insurance costs under section
25 35 of the Internal Revenue Code of 1986.

231

1 “(C) The average time during which such
2 workers receive each such type of benefit.

3 “(3) DATA ON TRAINING.—

4 “(A) The number of workers enrolled in
5 training approved under section 236, classified
6 by major types of training, including classroom
7 training, training through distance learning, on-
8 the-job training, and customized training.

9 “(B) The number of workers enrolled in
10 full-time training and part-time training.

11 “(C) The average duration of training.

12 “(D) The number of training waivers
13 granted under section 231(c), classified by type
14 of waiver.

15 “(E) The number of workers who complete
16 training and the duration of such training.

17 “(F) The number of workers who do not
18 complete training.

19 “(4) DATA ON OUTCOMES.—

20 “(A) A summary of the quarterly reports
21 required under section 239(j).

22 “(B) The sectors in which workers are em-
23 ployed after receiving benefits under this chap-
24 ter.

1 “(5) DATA ON RAPID RESPONSE ACTIVITIES.—
2 Whether rapid response activities were provided with
3 respect to each petition filed under section 221.

4 “(c) CLASSIFICATION OF DATA.—To the extent pos-
5 sible, in collecting and reporting the data described in sub-
6 section (b), the Secretary shall classify the data by indus-
7 try, State, and national totals.

8 “(d) REPORT.—Not later than December 15 of each
9 year, the Secretary shall submit to the Committee on Fi-
10 nance of the Senate and the Committee on Ways and
11 Means of the House of Representatives a report that
12 includes—

13 “(1) a summary of the information collected
14 under this section for the preceding fiscal year;

15 “(2) information on the distribution of funds to
16 each State pursuant to section 236(a)(2); and

17 “(3) any recommendations of the Secretary
18 with respect to changes in eligibility requirements,
19 benefits, or training funding under this chapter
20 based on the data collected under this section.

21 “(e) AVAILABILITY OF DATA.—

22 “(1) IN GENERAL.—The Secretary shall make
23 available to the public, by publishing on the website
24 of the Department of Labor and by other means, as
25 appropriate—

1 “(A) the report required under subsection
2 (d);

3 “(B) the data collected under this section,
4 in a searchable format; and

5 “(C) a list of cooperating States and co-
6 operating State agencies that failed to submit
7 the data required by this section to the Sec-
8 retary in a timely manner.

9 “(2) UPDATES.—The Secretary shall update
10 the data under paragraph (1) on a quarterly basis.”.

11 (b) CLERICAL AMENDMENT.—The table of contents
12 of the Trade Act of 1974 is amended by inserting after
13 the item relating to section 249A the following:

 “Sec. 249B. Collection and publication of data and reports; information to
 workers.”.

14 (c) EFFECTIVE DATE.—The amendments made by
15 this section shall take effect on the date of the enactment
16 of this Act.

17 **SEC. 1855. FRAUD AND RECOVERY OF OVERPAYMENTS.**

18 Section 243(a)(1) of the Trade Act of 1974 (19
19 U.S.C. 2315(a)(1)) is amended—

20 (1) in the matter preceding subparagraph (A)—

21 (A) by striking “may waive” and inserting
22 “shall waive”; and

23 (B) by striking “, in accordance with
24 guidelines prescribed by the Secretary,”; and

1 (2) in subparagraph (B), by striking “would be
2 contrary to equity and good conscience” and insert-
3 ing “would cause a financial hardship for the indi-
4 vidual (or the individual’s household, if applicable)
5 when taking into consideration the income and re-
6 sources reasonably available to the individual (or
7 household) and other ordinary living expenses of the
8 individual (or household)”.

9 **SEC. 1856. SENSE OF CONGRESS ON APPLICATION OF**
10 **TRADE ADJUSTMENT ASSISTANCE.**

11 (a) IN GENERAL.—Chapter 5 of title II of the Trade
12 Act of 1974 (19 U.S.C. 2391 et seq.) is amended by add-
13 ing at the end the following:

14 **“SEC. 288. SENSE OF CONGRESS.**

15 “It is the sense of Congress that the Secretaries of
16 Labor, Commerce, and Agriculture should apply the provi-
17 sions of chapter 2 (relating to adjustment assistance for
18 workers), chapter 3 (relating to adjustment assistance for
19 firms), chapter 4 (relating to adjustment assistance for
20 communities), and chapter 6 (relating to adjustment as-
21 sistance for farmers), respectively, with the utmost regard
22 for the interests of workers, firms, communities, and farm-
23 ers petitioning for benefits under such chapters.”.

1 (b) CLERICAL AMENDMENT.—The table of contents
2 of the Trade Act of 1974 is amended by inserting after
3 the item relating to section 287 the following:

“Sec. 288. Sense of Congress.”.

4 **SEC. 1857. CONSULTATIONS IN PROMULGATION OF REGU-**
5 **LATIONS.**

6 Section 248 of the Trade Act of 1974 (19 U.S.C.
7 2320) is amended—

8 (1) by striking “The Secretary shall” and in-
9 serting the following:

10 “(a) IN GENERAL.—The Secretary shall”; and

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

12 “(b) CONSULTATIONS.—Not later than 90 days be-
13 fore issuing a regulation under subsection (a), the Sec-
14 retary shall consult with the Committee on Finance of the
15 Senate and the Committee on Ways and Means of the
16 House of Representatives with respect to the regulation.”.

17 **SEC. 1858. TECHNICAL CORRECTIONS.**

18 (a) DETERMINATIONS BY SECRETARY OF LABOR.—
19 Section 223(c) of the Trade Act of 1974 (19 U.S.C.
20 2273(c)) is amended by striking “his determination” and
21 inserting “a determination”.

22 (b) QUALIFYING REQUIREMENTS FOR WORKERS.—
23 Section 231(a) of the Trade Act of 1974 (19 U.S.C.
24 2291(a)) is amended—

25 (1) in paragraph (1)—

1 (A) in the matter preceding subparagraph
2 (A), by striking “his application” and inserting
3 “the worker’s application”; and

4 (B) in subparagraph (A), by striking “he
5 is covered” and inserting “the worker is cov-
6 ered”;

7 (2) in paragraph (2)—

8 (A) in subparagraph (A), by striking the
9 period and inserting a comma; and

10 (B) in subparagraph (D), by striking “5
11 U.S.C. 8521(a)(1)” and inserting “section
12 8521(a)(1) of title 5, United States Code”; and
13 (3) in paragraph (3)—

14 (A) by striking “he” each place it appears
15 and inserting “the worker”; and

16 (B) in subparagraph (C), by striking
17 “him” and inserting “the worker”.

18 (c) SUBPOENA POWER.—Section 249 of the Trade
19 Act of 1974 (19 U.S.C. 2321) is amended—

20 (1) in the section heading, by striking “**SUB-**
21 **PENA**” and inserting “**SUBPOENA**”;

22 (2) by striking “subpena” and inserting “sub-
23 poena” each place it appears; and

24 (3) in subsection (a), by striking “him” and in-
25 serting “the Secretary”.

1 (d) CLERICAL AMENDMENT.—The table of contents
2 of the Trade Act of 1974 is amended by striking the item
3 relating to section 249 and inserting the following:

“Sec. 249. Subpoena power.”.

4 **PART II—TRADE ADJUSTMENT ASSISTANCE FOR**
5 **FIRMS**

6 **SEC. 1861. EXPANSION TO SERVICE SECTOR FIRMS.**

7 (a) IN GENERAL.—Section 251 of the Trade Act of
8 1974 (19 U.S.C. 2341) is amended by inserting “or serv-
9 ice sector firm” after “agricultural firm” each place it ap-
10 pears.

11 (b) DEFINITION OF SERVICE SECTOR FIRM.—Sec-
12 tion 261 of the Trade Act of 1974 (19 U.S.C. 2351) is
13 amended—

14 (1) by striking “chapter,” and inserting “chap-
15 ter:”;

16 (2) by striking “the term ‘firm’ ” and inserting
17 the following:

18 “(1) FIRM.—The term ‘firm’ ”; and

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

20 “(2) SERVICE SECTOR FIRM.—The term ‘service
21 sector firm’ means a firm engaged in the business
22 of supplying services.”.

23 (c) CONFORMING AMENDMENTS.—

24 (1) Section 251(c)(1)(C) of the Trade Act of
25 1974 (19 U.S.C. 2341(c)(1)(C)) is amended—

1 (A) by inserting “or services” after “arti-
2 cles” the first place it appears; and

3 (B) by inserting “or services which are
4 supplied” after “produced”.

5 (2) Section 251(c)(2)(B)(ii) of such Act is
6 amended to read as follows:

7 “(ii) Any firm that engages in exploration or
8 drilling for oil or natural gas, or otherwise produces
9 oil or natural gas, shall be considered to be pro-
10 ducing articles directly competitive with imports of
11 oil and with imports of natural gas.”.

12 **SEC. 1862. MODIFICATION OF REQUIREMENTS FOR CER-**
13 **TIFICATION.**

14 Section 251(c)(1)(B) of the Trade Act of 1974 (19
15 U.S.C. 2341(c)(1)(B)) is amended to read as follows:

16 “(B) that—

17 “(i) sales or production, or both, of the
18 firm have decreased absolutely,

19 “(ii) sales or production, or both, of an ar-
20 ticle or service that accounted for not less than
21 25 percent of the total sales or production of
22 the firm during the 12-month period preceding
23 the most recent 12-month period for which data
24 are available have decreased absolutely,

1 “(iii) sales or production, or both, of the
2 firm during the most recent 12-month period
3 for which data are available have decreased
4 compared to—

5 “(I) the average annual sales or pro-
6 duction for the firm during the 24-month
7 period preceding that 12-month period, or

8 “(II) the average annual sales or pro-
9 duction for the firm during the 36-month
10 period preceding that 12-month period,
11 and

12 “(iv) sales or production, or both, of an ar-
13 ticle or service that accounted for not less than
14 25 percent of the total sales or production of
15 the firm during the most recent 12-month pe-
16 riod for which data are available have decreased
17 compared to—

18 “(I) the average annual sales or pro-
19 duction for the article or service during the
20 24-month period preceding that 12-month
21 period, or

22 “(II) the average annual sales or pro-
23 duction for the article or service during the
24 36-month period preceding that 12-month
25 period, and”.

1 **SEC. 1863. BASIS FOR DETERMINATIONS.**

2 Section 251 of the Trade Act of 1974 (19 U.S.C.
3 2341), as amended, is further amended by adding at the
4 end the following:

5 “(e) **BASIS FOR SECRETARY’S DETERMINATIONS.**—
6 For purposes of subsection (c)(1)(C), the Secretary may
7 determine that there are increased imports of like or di-
8 rectly competitive articles or services, if customers ac-
9 counting for a significant percentage of the decrease in
10 the sales or production of the firm certify to the Secretary
11 that such customers have increased their imports of such
12 articles or services from a foreign country, either abso-
13 lutely or relative to their acquisition of such articles or
14 services from suppliers located in the United States.

15 “(f) **NOTIFICATION TO FIRMS OF AVAILABILITY OF**
16 **BENEFITS.**—Upon receiving notice from the Secretary of
17 Labor under section 225 of the identity of a firm that
18 is covered by a certification issued under section 223, the
19 Secretary of Commerce shall notify the firm of the avail-
20 ability of adjustment assistance under this chapter.”.

21 **SEC. 1864. OVERSIGHT AND ADMINISTRATION; AUTHORIZA-**
22 **TION OF APPROPRIATIONS.**

23 (a) **IN GENERAL.**—Chapter 3 of title II of the Trade
24 Act of 1974 (19 U.S.C. 2341 et seq.) is amended—

25 (1) by striking sections 254, 255, 256, and 257;

1 (2) by redesignating sections 258, 259, 260,
2 261, 262, 264, and 265, as sections 256, 257, 258,
3 259, 260, 261, and 262, respectively; and

4 (3) by inserting after section 253 the following:

5 **“SEC. 254. OVERSIGHT AND ADMINISTRATION.**

6 “(a) IN GENERAL.—The Secretary shall, to such ex-
7 tent and in such amounts as are provided in appropria-
8 tions Acts, provide grants to intermediary organizations
9 (referred to in section 253(b)(1)) throughout the United
10 States pursuant to agreements with such intermediary or-
11 ganizations. Each such agreement shall require the inter-
12 mediary organization to provide benefits to firms certified
13 under section 251. The Secretary shall, to the maximum
14 extent practicable, provide by October 1, 2010, that con-
15 tracts entered into with intermediary organizations be for
16 a 12-month period and that all such contracts have the
17 same beginning date and the same ending date.

18 “(b) DISTRIBUTION OF FUNDS.—

19 “(1) IN GENERAL.—Not later than 90 days
20 after the date of the enactment of this subsection,
21 the Secretary shall develop a methodology for the
22 distribution of funds among the intermediary organi-
23 zations described in subsection (a).

24 “(2) PROMPT INITIAL DISTRIBUTION.—The
25 methodology described in paragraph (1) shall ensure

1 the prompt initial distribution of funds and establish
2 additional criteria governing the apportionment and
3 distribution of the remainder of such funds among
4 the intermediary organizations.

5 “(3) CRITERIA.—The methodology described in
6 paragraph (1) shall include criteria based on the
7 data in the annual report on the trade adjustment
8 assistance for firms program described in section
9 1866 of the Trade and Globalization Adjustment As-
10 sistance Act of 2009.

11 “(c) REQUIREMENTS FOR CONTRACTS.—An agree-
12 ment with an intermediary organization described in sub-
13 section (a) shall require the intermediary organization to
14 contract for the supply of services to carry out grants
15 under this chapter in accordance with terms and condi-
16 tions that are consistent with guidelines established by the
17 Secretary.

18 “(d) CONSULTATIONS.—

19 “(1) CONSULTATIONS REGARDING METHOD-
20 OLOGY.—The Secretary shall consult with the Com-
21 mittee on Finance of the Senate and the Committee
22 on Ways and Means of the House of
23 Representatives—

1 “(A) not less than 30 days before final-
2 izing the methodology described in subsection
3 (b); and

4 “(B) not less than 60 days before adopting
5 any changes to such methodology.

6 “(2) CONSULTATIONS REGARDING GUIDE-
7 LINES.—The Secretary shall consult with the Com-
8 mittee on Finance of the Senate and the Committee
9 on Ways and Means of the House of Representatives
10 not less than 60 days before finalizing the guidelines
11 described in subsection (c) or adopting any subse-
12 quent changes to such guidelines.

13 **“SEC. 255. AUTHORIZATION OF APPROPRIATIONS.**

14 “(a) IN GENERAL.—There are authorized to be ap-
15 propriated to the Secretary \$50,000,000 for each of the
16 fiscal years 2009 through 2010, and \$12,501,000 for the
17 period beginning October 1, 2010, and ending December
18 31, 2010, to carry out the provisions of this chapter.
19 Amounts appropriated pursuant to this subsection shall—

20 “(1) be available to provide adjustment assist-
21 ance to firms that file a petition for such assistance
22 pursuant to this chapter on or before December 31,
23 2010; and

24 “(2) otherwise remain available until expended.

1 “(b) PERSONNEL.—Of the amounts appropriated
2 pursuant to this section for each fiscal year, \$350,000
3 shall be available for full-time positions in the Department
4 of Commerce to administer the provisions of this chapter.
5 Of such funds the Secretary shall make available to the
6 Economic Development Administration such sums as may
7 be necessary to establish the position of Director of Ad-
8 justment Assistance for Firms and such other full-time po-
9 sitions as may be appropriate to administer the provisions
10 of this chapter.”.

11 (b) RESIDUAL AUTHORITY.—The Secretary of Com-
12 merce shall have the authority to modify, terminate, re-
13 solve, liquidate, or take any other action with respect to
14 a loan, guarantee, contract, or any other financial assist-
15 ance that was extended under section 254, 255, 256, or
16 257 of the Trade Act of 1974 (19 U.S.C. 2344, 2345,
17 2346, and 2347), as in effect on the day before the effec-
18 tive date set forth in section 1891.

19 (c) CONFORMING AMENDMENTS.—

20 (1) Section 256 of the Trade Act of 1974, as
21 redesignated by subsection (a) of this section, is
22 amended by striking subsection (d).

23 (2) Section 258 of the Trade Act of 1974, as
24 redesignated by subsection (a) of this section, is
25 amended—

1 (A) in the first sentence, by striking “and
2 financial”; and

3 (B) in the last sentence—

4 (i) by striking “sections 253 and 254”
5 and inserting “section 253”; and

6 (ii) by striking “title 28 of the United
7 States Code” and inserting “title 28,
8 United States Code”.

9 (d) CLERICAL AMENDMENTS.—The table of contents
10 of the Trade Act of 1974 is amended by striking the items
11 relating to sections 254, 255, 256, 257, 258, 259, 260,
12 261, 262, 264, and 265, and inserting the following:

“Sec. 254. Oversight and administration.

“Sec. 255. Authorization of appropriations.

“Sec. 256. Protective provisions.

“Sec. 257. Penalties.

“Sec. 258. Civil actions.

“Sec. 259. Definitions.

“Sec. 260. Regulations.

“Sec. 261. Study by Secretary of Commerce when International Trade Commis-
sion begins investigation; action where there is affirmative find-
ing.

“Sec. 262. Assistance to industries.”.

13 (e) EFFECTIVE DATE.—This section and the amend-
14 ments made by this section shall take effect upon the expi-
15 ration of the 90-day period beginning on the date of the
16 enactment of this Act, except that subsections (b) and (d)
17 of section 254 of the Trade Act of 1974 (as added by sub-
18 section (a) of this section) shall take effect on such date
19 of enactment.

1 **SEC. 1865. INCREASED PENALTIES FOR FALSE STATE-**
2 **MENTS.**

3 Section 257 of the Trade Act of 1974, as redesi-
4 gned by section 1864(a), is amended to read as follows:

5 **“SEC. 257. PENALTIES.**

6 “Any person who—

7 “(1) makes a false statement of a material fact
8 knowing it to be false, or knowingly fails to disclose
9 a material fact, or willfully overvalues any security,
10 for the purpose of influencing in any way a deter-
11 mination under this chapter, or for the purpose of
12 obtaining money, property, or anything of value
13 under this chapter, or

14 “(2) makes a false statement of a material fact
15 knowing it to be false, or knowingly fails to disclose
16 a material fact, when providing information to the
17 Secretary during an investigation of a petition under
18 this chapter,

19 shall be imprisoned for not more than 2 years, or fined
20 under title 18, United States Code, or both.”.

21 **SEC. 1866. ANNUAL REPORT ON TRADE ADJUSTMENT AS-**
22 **SISTANCE FOR FIRMS.**

23 (a) IN GENERAL.—Not later than December 15,
24 2009, and each year thereafter, the Secretary of Com-
25 merce shall prepare a report containing data regarding the
26 trade adjustment assistance for firms program provided

1 for in chapter 3 of title II of the Trade Act of 1974 (19
2 U.S.C. 2341 et seq.) for the preceding fiscal year. The
3 data shall include the following:

4 (1) The number of firms that inquired about
5 the program.

6 (2) The number of petitions filed under section
7 251.

8 (3) The number of petitions certified and de-
9 nied.

10 (4) The average time for processing petitions.

11 (5) The number of petitions filed and firms cer-
12 tified for each congressional district of the United
13 States.

14 (6) The number of firms that received assist-
15 ance in preparing their petitions.

16 (7) The number of firms that received assist-
17 ance developing business recovery plans.

18 (8) The number of business recovery plans ap-
19 proved and denied by the Secretary of Commerce.

20 (9) Sales, employment, and productivity at each
21 firm participating in the program at the time of cer-
22 tification.

23 (10) Sales, employment, and productivity at
24 each firm upon completion of the program and each
25 year for the 2-year period following completion.

1 (11) The financial assistance received by each
2 firm participating in the program.

3 (12) The financial contribution made by each
4 firm participating in the program.

5 (13) The types of technical assistance included
6 in the business recovery plans of firms participating
7 in the program.

8 (14) The number of firms leaving the program
9 before completing the project or projects in their
10 business recovery plans and the reason the project
11 was not completed.

12 (b) CLASSIFICATION OF DATA.—To the extent pos-
13 sible, in collecting and reporting the data described in sub-
14 section (a), the Secretary shall classify the data by inter-
15 mediary organization, State, and national totals.

16 (c) REPORT TO CONGRESS; PUBLICATION.—The Sec-
17 retary of Commerce shall—

18 (1) submit the report described in subsection
19 (a) to the Committee on Finance of the Senate and
20 the Committee on Ways and Means of the House of
21 Representatives; and

22 (2) publish the report in the Federal Register
23 and on the website of the Department of Commerce.

24 (d) PROTECTION OF CONFIDENTIAL INFORMA-
25 TION.—The Secretary of Commerce may not release infor-

1 mation described in subsection (a) that the Secretary con-
2 siders to be confidential business information unless the
3 person submitting the confidential business information
4 had notice, at the time of submission, that such informa-
5 tion would be released by the Secretary, or such person
6 subsequently consents to the release of the information.
7 Nothing in this subsection shall be construed to prohibit
8 the Secretary from providing such confidential business in-
9 formation to a court in camera or to another party under
10 a protective order issued by a court.

11 **SEC. 1867. TECHNICAL CORRECTIONS.**

12 (a) IN GENERAL.—Section 251 of the Trade Act of
13 1974 (19 U.S.C. 2341), as amended, is further
14 amended—

15 (1) in subsection (a), by striking “he has” and
16 inserting “the Secretary has”; and

17 (2) in subsection (d), by striking “60 days” and
18 inserting “40 days”.

19 (b) TECHNICAL ASSISTANCE.—Section 253(a)(3) of
20 the Trade Act of 1974 (19 U.S.C. 2343(a)(3)) is amended
21 by striking “of a certified firm” and inserting “to a cer-
22 tified firm”.

1 **PART III—TRADE ADJUSTMENT ASSISTANCE FOR**
2 **COMMUNITIES**

3 **SEC. 1871. PURPOSE.**

4 The purpose of the amendments made by this part
5 is to assist communities impacted by trade with economic
6 adjustment through the coordination of Federal, State,
7 and local resources, the creation of community-based de-
8 velopment strategies, and the development and provision
9 of programs that meet the training needs of workers cov-
10 ered by certifications under section 223.

11 **SEC. 1872. TRADE ADJUSTMENT ASSISTANCE FOR COMMU-**
12 **NITIES.**

13 (a) IN GENERAL.—Chapter 4 of title II of the Trade
14 Act of 1974 (19 U.S.C. 2371 et seq.) is amended to read
15 as follows:

16 **“CHAPTER 4—TRADE ADJUSTMENT**
17 **ASSISTANCE FOR COMMUNITIES**
18 **“Subchapter A—Trade Adjustment Assistance**
19 **for Communities**

20 **“SEC. 271. DEFINITIONS.**

21 “In this subchapter:

22 “(1) AGRICULTURAL COMMODITY PRODUCER.—
23 The term ‘agricultural commodity producer’ has the
24 meaning given that term in section 291.

25 “(2) COMMUNITY.—The term ‘community’
26 means a city, county, or other political subdivision of

1 a State or a consortium of political subdivisions of
2 a State.

3 “(3) COMMUNITY IMPACTED BY TRADE.—The
4 term ‘community impacted by trade’ means a com-
5 munity described in section 273(b)(2).

6 “(4) ELIGIBLE COMMUNITY.—The term ‘eligible
7 community’ means a community that the Secretary
8 has determined under section 273(b)(1) is eligible to
9 apply for assistance under this subchapter.

10 “(5) SECRETARY.—The term ‘Secretary’ means
11 the Secretary of Commerce.

12 **“SEC. 272. ESTABLISHMENT OF TRADE ADJUSTMENT AS-**
13 **SISTANCE FOR COMMUNITIES PROGRAM.**

14 “Not later than August 1, 2009, the Secretary shall
15 establish a trade adjustment assistance for communities
16 program at the Department of Commerce under which the
17 Secretary shall—

18 “(1) provide technical assistance under section
19 274 to communities impacted by trade to facilitate
20 the economic adjustment of those communities; and

21 “(2) award grants to communities impacted by
22 trade to carry out strategic plans developed under
23 section 276.

24 **“SEC. 273. ELIGIBILITY; NOTIFICATION.**

25 “(a) PETITION.—

1 “(1) IN GENERAL.—A community may submit
2 a petition to the Secretary for an affirmative deter-
3 mination under subsection (b)(1) that the commu-
4 nity is eligible to apply for assistance under this sub-
5 chapter if—

6 “(A) on or after August 1, 2009, one or
7 more certifications described in subsection
8 (b)(3) are made with respect to the community;
9 and

10 “(B) the community submits the petition
11 not later than 180 days after the date of the
12 most recent certification.

13 “(2) SPECIAL RULE WITH RESPECT TO CER-
14 TAIN COMMUNITIES.—In the case of a community
15 with respect to which one or more certifications de-
16 scribed in subsection (b)(3) were made on or after
17 January 1, 2007, and before August 1, 2009, the
18 community may submit not later than February 1,
19 2010, a petition to the Secretary for an affirmative
20 determination under subsection (b)(1).

21 “(b) AFFIRMATIVE DETERMINATION.—

22 “(1) IN GENERAL.—The Secretary shall make
23 an affirmative determination that a community is el-
24 igible to apply for assistance under this subchapter

1 if the Secretary determines that the community is a
2 community impacted by trade.

3 “(2) COMMUNITY IMPACTED BY TRADE.—A
4 community is a community impacted by trade if—

5 “(A) one or more certifications described
6 in paragraph (3) are made with respect to the
7 community; and

8 “(B) the Secretary determines that the
9 community is significantly affected by the
10 threat to, or the loss of, jobs associated with
11 any such certification.

12 “(3) CERTIFICATION DESCRIBED.—A certifi-
13 cation described in this paragraph is a
14 certification—

15 “(A) by the Secretary of Labor that a
16 group of workers in the community is eligible to
17 apply for assistance under section 223;

18 “(B) by the Secretary of Commerce that a
19 firm located in the community is eligible to
20 apply for adjustment assistance under section
21 251; or

22 “(C) by the Secretary of Agriculture that
23 a group of agricultural commodity producers in
24 the community is eligible to apply for adjust-
25 ment assistance under section 293.

1 “(c) NOTIFICATIONS.—

2 “(1) NOTIFICATION TO THE GOVERNOR.—The
3 Governor of a State shall be notified promptly—

4 “(A) by the Secretary of Labor, upon mak-
5 ing a determination that a group of workers in
6 the State is eligible for assistance under section
7 223;

8 “(B) by the Secretary of Commerce, upon
9 making a determination that a firm in the
10 State is eligible for assistance under section
11 251; and

12 “(C) by the Secretary of Agriculture, upon
13 making a determination that a group of agricul-
14 tural commodity producers in the State is eligi-
15 ble for assistance under section 293.

16 “(2) NOTIFICATION TO COMMUNITY.—Upon
17 making an affirmative determination under sub-
18 section (b)(1) that a community is eligible to apply
19 for assistance under this subchapter, the Secretary
20 shall promptly notify the community and the Gov-
21 ernor of the State in which the community is
22 located—

23 “(A) of the affirmative determination;

24 “(B) of the applicable provisions of this
25 subchapter; and

1 “(C) of the means for obtaining assistance
2 under this subchapter and other appropriate
3 economic assistance that may be available to
4 the community.

5 **“SEC. 274. TECHNICAL ASSISTANCE.**

6 “(a) IN GENERAL.—The Secretary shall provide com-
7 prehensive technical assistance to an eligible community
8 to assist the community to—

9 “(1) diversify and strengthen the economy in
10 the community;

11 “(2) identify significant impediments to eco-
12 nomic development that result from the impact of
13 trade on the community; and

14 “(3) develop a strategic plan under section 276
15 to address economic adjustment and workforce dis-
16 location in the community, including unemployment
17 among agricultural commodity producers.

18 “(b) COORDINATION OF FEDERAL RESPONSE.—The
19 Secretary shall coordinate the Federal response to an eligi-
20 ble community by—

21 “(1) identifying Federal, State, and local re-
22 sources that are available to assist the community in
23 responding to economic distress; and

24 “(2) assisting the community in accessing avail-
25 able Federal assistance and ensuring that such as-

1 sistance is provided in a targeted, integrated man-
2 ner.

3 “(c) INTERAGENCY COMMUNITY ASSISTANCE WORK-
4 ING GROUP.—

5 “(1) IN GENERAL.—The Secretary shall estab-
6 lish an interagency Community Assistance Working
7 Group, to be chaired by the Secretary or the Sec-
8 retary’s designee, which shall assist the Secretary
9 with the coordination of the Federal response pursu-
10 ant to subsection (b).

11 “(2) MEMBERSHIP.—The Working Group shall
12 consist of representatives of any Federal department
13 or agency with responsibility for providing economic
14 adjustment assistance, including the Department of
15 Agriculture, the Department of Defense, the Depart-
16 ment of Education, the Department of Labor, the
17 Department of Housing and Urban Development,
18 the Department of Health and Human Services, the
19 Small Business Administration, the Department of
20 the Treasury, and any other Federal, State, or re-
21 gional public department or agency the Secretary de-
22 termines to be appropriate.

23 **“SEC. 275. GRANTS FOR ELIGIBLE COMMUNITIES.**

24 “(a) IN GENERAL.—The Secretary may award a
25 grant under this section to an eligible community to assist

1 the community in carrying out any project or program
2 that is included in a strategic plan developed by the com-
3 munity under section 276.

4 “(b) APPLICATION.—

5 “(1) IN GENERAL.—An eligible community
6 seeking to receive a grant under this section shall
7 submit a grant application to the Secretary that
8 contains—

9 “(A) the strategic plan developed by the
10 community under section 276(a)(1)(A) and ap-
11 proved by the Secretary under section
12 276(a)(1)(B); and

13 “(B) a description of the project or pro-
14 gram included in the strategic plan with respect
15 to which the community seeks the grant.

16 “(2) COORDINATION AMONG GRANT PRO-
17 GRAMS.—If an entity in an eligible community is
18 seeking or plans to seek a Community College and
19 Career Training Grant under section 278 or a Sec-
20 tor Partnership Grant under section 279A while the
21 eligible community is seeking a grant under this sec-
22 tion, the eligible community shall include in the
23 grant application a description of how the eligible
24 community will integrate any projects or programs
25 carried out using a grant under this section with any

1 projects or programs that may be carried out using
2 such other grants.

3 “(c) LIMITATION.—An eligible community may not
4 be awarded more than \$5,000,000 under this section.

5 “(d) COST-SHARING.—

6 “(1) FEDERAL SHARE.—The Federal share of a
7 project or program for which a grant is awarded
8 under this section may not exceed 95 percent of the
9 cost of such project or program.

10 “(2) COMMUNITY SHARE.—The Secretary shall
11 require, as a condition of awarding a grant to an eli-
12 gible community under this section, that the eligible
13 community contribute not less than an amount equal
14 to 5 percent of the amount of the grant toward the
15 cost of the project or program for which the grant
16 is awarded.

17 “(e) GRANTS TO SMALL- AND MEDIUM-SIZED COM-
18 MUNITIES.—The Secretary shall give priority to grant ap-
19 plications submitted under this section by eligible commu-
20 nities that are small- and medium-sized communities.

21 “(f) ANNUAL REPORT.—Not later than December 15
22 in each of the calendar years 2009 through 2011, the Sec-
23 retary shall submit to the Committee on Finance of the
24 Senate and the Committee on Ways and Means of the
25 House of Representatives a report—

1 “(1) describing each grant awarded under this
2 section during the preceding fiscal year; and

3 “(2) assessing the impact on the eligible com-
4 munity of each such grant awarded in a fiscal year
5 before the fiscal year referred to in paragraph (1).

6 **“SEC. 276. STRATEGIC PLANS.**

7 “(a) IN GENERAL.—

8 “(1) DEVELOPMENT.—An eligible community
9 that intends to apply for a grant under section 275
10 shall—

11 “(A) develop a strategic plan for the com-
12 munity’s economic adjustment to the impact of
13 trade; and

14 “(B) submit the plan to the Secretary for
15 evaluation and approval.

16 “(2) INVOLVEMENT OF PRIVATE AND PUBLIC
17 ENTITIES.—

18 “(A) IN GENERAL.—To the extent prac-
19 ticable, an eligible community shall consult with
20 entities described in subparagraph (B) in devel-
21 oping a strategic plan under paragraph (1).

22 “(B) ENTITIES DESCRIBED.—Entities de-
23 scribed in this subparagraph are public and pri-
24 vate entities within the eligible community,
25 including—

1 “(i) local, county, or State govern-
2 ment agencies serving the community;

3 “(ii) firms, including small- and me-
4 dium-sized firms, within the community;

5 “(iii) local workforce investment
6 boards established under section 117 of the
7 Workforce Investment Act of 1998 (29
8 U.S.C. 2832);

9 “(iv) labor organizations, including
10 State labor federations and labor-manage-
11 ment initiatives, representing workers in
12 the community; and

13 “(v) educational institutions, local
14 educational agencies, or other training pro-
15 viders serving the community.

16 “(b) CONTENTS.—The strategic plan shall, at a min-
17 imum, contain the following:

18 “(1) A description and analysis of the capacity
19 of the eligible community to achieve economic ad-
20 justment to the impact of trade.

21 “(2) An analysis of the economic development
22 challenges and opportunities facing the community
23 as well as the strengths and weaknesses of the econ-
24 omy of the community.

1 “(3) An assessment of the commitment of the
2 eligible community to the strategic plan over the
3 long term and the participation and input of mem-
4 bers of the community affected by economic disloca-
5 tion.

6 “(4) A description of the role and the participa-
7 tion of the entities described in subsection (a)(2)(B)
8 in developing the strategic plan.

9 “(5) A description of the projects to be under-
10 taken by the eligible community under the strategic
11 plan.

12 “(6) A description of how the strategic plan
13 and the projects to be undertaken by the eligible
14 community will facilitate the community’s economic
15 adjustment.

16 “(7) A description of the educational and train-
17 ing programs available to workers in the eligible
18 community and the future employment needs of the
19 community.

20 “(8) An assessment of the cost of implementing
21 the strategic plan, the timing of funding required by
22 the eligible community to implement the strategic
23 plan, and the method of financing to be used to im-
24 plement the strategic plan.

1 “(9) A strategy for continuing the economic ad-
2 justment of the eligible community after the comple-
3 tion of the projects described in paragraph (5).

4 “(c) GRANTS TO DEVELOP STRATEGIC PLANS.—

5 “(1) IN GENERAL.—The Secretary, upon re-
6 ceipt of an application from an eligible community,
7 may award a grant to the community to assist the
8 community in developing a strategic plan under sub-
9 section (a)(1). A grant awarded under this para-
10 graph shall not exceed 75 percent of the cost of de-
11 veloping the strategic plan.

12 “(2) FUNDS TO BE USED.—Of the funds appro-
13 priated pursuant to section 277(c), the Secretary
14 may make available not more than \$25,000,000 for
15 each of the fiscal years 2009 and 2010, and
16 \$6,250,000 for the period beginning October 1,
17 2010, and ending December 31, 2010, to provide
18 grants to eligible communities under paragraph (1).

19 **“SEC. 277. GENERAL PROVISIONS.**

20 “(a) REGULATIONS.—

21 “(1) IN GENERAL.—The Secretary shall pre-
22 scribe such regulations as are necessary to carry out
23 the provisions of this subchapter, including—

1 “(A) establishing specific guidelines for the
2 submission and evaluation of strategic plans
3 under section 276;

4 “(B) establishing specific guidelines for the
5 submission and evaluation of grant applications
6 under section 275; and

7 “(C) administering the grant programs es-
8 tablished under sections 275 and 276.

9 “(2) CONSULTATIONS.—The Secretary shall
10 consult with the Committee on Finance of the Sen-
11 ate and the Committee on Ways and Means of the
12 House of Representatives not less than 90 days
13 prior to promulgating any final rule or regulation
14 pursuant to paragraph (1).

15 “(b) PERSONNEL.—The Secretary shall designate
16 such staff as may be necessary to carry out the respon-
17 sibilities described in this subchapter.

18 “(c) AUTHORIZATION OF APPROPRIATIONS.—

19 “(1) IN GENERAL.—There are authorized to be
20 appropriated to the Secretary \$150,000,000 for each
21 of the fiscal years 2009 and 2010, and \$37,500,000
22 for the period beginning October 1, 2010, and end-
23 ing December 31, 2010, to carry out this sub-
24 chapter.

1 “(2) AVAILABILITY.—Amounts appropriated
2 pursuant to this subchapter—

3 “(A) shall be available to provide adjust-
4 ment assistance to communities that have been
5 approved for assistance pursuant to this chap-
6 ter on or before December 31, 2010; and

7 “(B) shall otherwise remain available until
8 expended.

9 “(3) SUPPLEMENT NOT SUPPLANT.—Funds ap-
10 appropriated pursuant to this subchapter shall be used
11 to supplement and not supplant other Federal,
12 State, and local public funds expended to provide
13 economic development assistance for communities.

14 **“Subchapter B—Community College and**
15 **Career Training Grant Program**

16 **“SEC. 278. COMMUNITY COLLEGE AND CAREER TRAINING**
17 **GRANT PROGRAM.**

18 “(a) GRANTS AUTHORIZED.—

19 “(1) IN GENERAL.—Beginning August 1, 2009,
20 the Secretary may award Community College and
21 Career Training Grants to eligible institutions for
22 the purpose of developing, offering, or improving
23 educational or career training programs for workers
24 eligible for training under section 236.

1 “(2) LIMITATIONS.—An eligible institution may
2 not be awarded—

3 “(A) more than one grant under this sec-
4 tion; or

5 “(B) a grant under this section in excess
6 of \$1,000,000.

7 “(b) DEFINITIONS.—In this section:

8 “(1) ELIGIBLE INSTITUTION.—The term ‘eligi-
9 ble institution’ means an institution of higher edu-
10 cation (as defined in section 102 of the Higher Edu-
11 cation Act of 1965 (20 U.S.C. 1002)), but only with
12 respect to a program offered by the institution that
13 can be completed in not more than 2 years.

14 “(2) SECRETARY.—The term ‘Secretary’ means
15 the Secretary of Labor.

16 “(c) GRANT PROPOSALS.—

17 “(1) IN GENERAL.—An eligible institution seek-
18 ing to receive a grant under this section shall submit
19 a grant proposal to the Secretary at such time, in
20 such manner, and containing such information as
21 the Secretary may require.

22 “(2) GUIDELINES.—Not later than June 1,
23 2009, the Secretary shall—

24 “(A) promulgate guidelines for the submis-
25 sion of grant proposals under this section; and

1 “(B) publish and maintain such guidelines
2 on the website of the Department of Labor.

3 “(3) ASSISTANCE.—The Secretary shall offer
4 assistance in preparing a grant proposal to any eligi-
5 ble institution that requests such assistance.

6 “(4) GENERAL REQUIREMENTS FOR GRANT
7 PROPOSALS.—

8 “(A) IN GENERAL.—A grant proposal sub-
9 mitted to the Secretary under this section shall
10 include a detailed description of—

11 “(i) the specific project for which the
12 grant proposal is submitted, including the
13 manner in which the grant will be used to
14 develop, offer, or improve an educational
15 or career training program that is suited
16 to workers eligible for training under sec-
17 tion 236;

18 “(ii) the extent to which the project
19 for which the grant proposal is submitted
20 will meet the educational or career training
21 needs of workers in the community served
22 by the eligible institution who are eligible
23 for training under section 236;

24 “(iii) the extent to which the project
25 for which the grant proposal is submitted

1 fits within any overall strategic plan devel-
2 oped by an eligible community under sec-
3 tion 276;

4 “(iv) the extent to which the project
5 for which the grant proposal is submitted
6 relates to any project funded by a Sector
7 Partnership Grant awarded under section
8 279A; and

9 “(v) any previous experience of the el-
10 igible institution in providing educational
11 or career training programs to workers eli-
12 gible for training under section 236.

13 “(B) ABSENCE OF EXPERIENCE.—The ab-
14 sence of any previous experience in providing
15 educational or career training programs de-
16 scribed in subparagraph (A)(v) shall not auto-
17 matically disqualify an eligible institution from
18 receiving a grant under this section.

19 “(5) COMMUNITY OUTREACH REQUIRED.—In
20 order to be considered by the Secretary, a grant pro-
21 posal submitted by an eligible institution under this
22 section shall—

23 “(A) demonstrate that the eligible
24 institution—

1 “(i) the extent and outcome of the
2 outreach conducted under subparagraph
3 (A);

4 “(ii) the extent to which the project
5 for which the grant proposal is submitted
6 will contribute to meeting any short-
7 comings identified under subparagraph
8 (A)(i)(I) or any educational or career
9 training needs identified under subpara-
10 graph (A)(i)(II); and

11 “(iii) the extent to which employers,
12 including small- and medium-sized firms
13 within the community, have demonstrated
14 a commitment to employing workers who
15 would benefit from the project for which
16 the grant proposal is submitted.

17 “(d) CRITERIA FOR AWARD OF GRANTS.—

18 “(1) IN GENERAL.—Subject to the appropria-
19 tion of funds, the Secretary shall award a grant
20 under this section based on—

21 “(A) a determination of the merits of the
22 grant proposal submitted by the eligible institu-
23 tion to develop, offer, or improve educational or
24 career training programs to be made available

1 to workers eligible for training under section
2 236;

3 “(B) an evaluation of the likely employ-
4 ment opportunities available to workers who
5 complete an educational or career training pro-
6 gram that the eligible institution proposes to
7 develop, offer, or improve; and

8 “(C) an evaluation of prior demand for
9 training programs by workers eligible for train-
10 ing under section 236 in the community served
11 by the eligible institution, as well as the avail-
12 ability and capacity of existing training pro-
13 grams to meet future demand for training pro-
14 grams.

15 “(2) PRIORITY FOR CERTAIN COMMUNITIES.—
16 In awarding grants under this section, the Secretary
17 shall give priority to an eligible institution that
18 serves a community that the Secretary of Commerce
19 has determined under section 273 is eligible to apply
20 for assistance under subchapter A within the 5-year
21 period preceding the date on which the grant pro-
22 posal is submitted to the Secretary under this sec-
23 tion.

24 “(3) MATCHING REQUIREMENTS.—A grant
25 awarded under this section may not be used to sat-

1 isfy any private matching requirement under any
2 other provision of law.

3 “(e) ANNUAL REPORT.—Not later than December 15
4 in each of the calendar years 2009 through 2011, the Sec-
5 retary shall submit to the Committee on Finance of the
6 Senate and the Committee on Ways and Means of the
7 House of Representatives a report—

8 “(1) describing each grant awarded under this
9 section during the preceding fiscal year; and

10 “(2) assessing the impact of each award of a
11 grant under this section in a fiscal year preceding
12 the fiscal year referred to in paragraph (1) on work-
13 ers receiving training under section 236.

14 **“SEC. 279. AUTHORIZATION OF APPROPRIATIONS.**

15 “(a) AUTHORIZATION OF APPROPRIATIONS.—There
16 are authorized to be appropriated to the Secretary of
17 Labor \$40,000,000 for each of the fiscal years 2009 and
18 2010, and \$10,000,000 for the period beginning October
19 1, 2010, and ending December 31, 2010, to fund the Com-
20 munity College and Career Training Grant Program.
21 Funds appropriated pursuant to this section shall remain
22 available until expended.

23 “(b) SUPPLEMENT NOT SUPPLANT.—Funds appro-
24 priated pursuant to this section shall be used to supple-
25 ment and not supplant other Federal, State, and local

1 public funds expended to support community college and
2 career training programs.

3 **“Subchapter C—Industry or Sector Partner-**
4 **ship Grant Program for Communities Im-**
5 **acted by Trade**

6 **“SEC. 279A. INDUSTRY OR SECTOR PARTNERSHIP GRANT**
7 **PROGRAM FOR COMMUNITIES IMPACTED BY**
8 **TRADE.**

9 “(a) PURPOSE.—The purpose of this subchapter is
10 to facilitate efforts by industry or sector partnerships to
11 strengthen and revitalize industries and create employ-
12 ment opportunities for workers in communities impacted
13 by trade.

14 “(b) DEFINITIONS.—In this subchapter:

15 “(1) COMMUNITY IMPACTED BY TRADE.—The
16 term ‘community impacted by trade’ has the mean-
17 ing given that term in section 271.

18 “(2) DISLOCATED WORKER.—The term ‘dis-
19 located worker’ means a worker who has been totally
20 or partially separated, or is threatened with total or
21 partial separation, from employment in an industry
22 or sector in a community impacted by trade.

23 “(3) ELIGIBLE PARTNERSHIP.—The term ‘eligi-
24 ble partnership’ means a voluntary partnership com-
25 posed of public and private persons, firms, or other

1 entities within a community impacted by trade, that
2 shall include representatives of—

3 “(A) an industry or sector within the com-
4 munity, including an industry association;

5 “(B) local, county, or State government;

6 “(C) multiple firms in the industry or sec-
7 tor, including small- and medium-sized firms,
8 within the community;

9 “(D) local workforce investment boards es-
10 tablished under section 117 of the Workforce
11 Investment Act of 1998 (29 U.S.C. 2832);

12 “(E) labor organizations, including State
13 labor federations and labor-management initia-
14 tives, representing workers in the community;
15 and

16 “(F) educational institutions, local edu-
17 cational agencies, or other training providers
18 serving the community.

19 “(4) LEAD ENTITY.—The term ‘lead entity’
20 means—

21 “(A) an entity designated by the eligible
22 partnership to be responsible for submitting a
23 grant proposal under subsection (e) and serving
24 as the eligible partnership’s fiscal agent in ex-

1 pending any Sector Partnership Grant awarded
2 under this section; or

3 “(B) a State agency designated by the
4 Governor of the State to carry out the respon-
5 sibilities described in subparagraph (A).

6 “(5) SECRETARY.—The term ‘Secretary’ means
7 the Secretary of Labor.

8 “(6) TARGETED INDUSTRY OR SECTOR.—The
9 term ‘targeted industry or sector’ means the indus-
10 try or sector represented by an eligible partnership.

11 “(c) SECTOR PARTNERSHIP GRANTS AUTHOR-
12 IZED.—Beginning on August 1, 2009, and subject to the
13 appropriation of funds, the Secretary shall award Sector
14 Partnership Grants to eligible partnerships to assist the
15 eligible partnerships in carrying out projects, over periods
16 of not more than 3 years, to strengthen and revitalize in-
17 dustries and sectors and create employment opportunities
18 for dislocated workers.

19 “(d) USE OF SECTOR PARTNERSHIP GRANTS.—An
20 eligible partnership may use a Sector Partnership Grant
21 to carry out any project that the Secretary determines will
22 further the purpose of this subchapter, which may
23 include—

24 “(1) identifying the skill needs of the targeted
25 industry or sector and any gaps in the available sup-

1 ply of skilled workers in the community impacted by
2 trade, and developing strategies for filling the gaps,
3 including by—

4 “(A) developing systems to better link
5 firms in the targeted industry or sector to avail-
6 able skilled workers;

7 “(B) helping firms in the targeted industry
8 or sector to obtain access to new sources of
9 qualified job applicants;

10 “(C) retraining dislocated and incumbent
11 workers; or

12 “(D) facilitating the training of new skilled
13 workers by aligning the instruction provided by
14 local suppliers of education and training serv-
15 ices with the needs of the targeted industry or
16 sector;

17 “(2) analyzing the skills and education levels of
18 dislocated and incumbent workers and developing
19 training to address skill gaps that prevent such
20 workers from obtaining jobs in the targeted industry
21 or sector;

22 “(3) helping firms, especially small- and me-
23 dium-sized firms, in the targeted industry or sector
24 increase their productivity and the productivity of
25 their workers;

1 “(4) helping such firms retain incumbent work-
2 ers;

3 “(5) developing learning consortia of small- and
4 medium-sized firms in the targeted industry or sec-
5 tor with similar training needs to enable the firms
6 to combine their purchases of training services, and
7 thereby lower their training costs;

8 “(6) providing information and outreach activi-
9 ties to firms in the targeted industry or sector re-
10 garding the activities of the eligible partnership and
11 other local service suppliers that could assist the
12 firms in meeting needs for skilled workers;

13 “(7) seeking, applying, and disseminating best
14 practices learned from similarly situated commu-
15 nities impacted by trade in the development and im-
16 plementation of economic growth and revitalization
17 strategies; and

18 “(8) identifying additional public and private
19 resources to support the activities described in this
20 subsection, which may include the option to apply
21 for a community grant under section 275 or a Com-
22 munity College and Career Training Grant under
23 section 278 (subject to meeting any additional re-
24 quirements of those sections).

25 “(e) GRANT PROPOSALS.—

1 “(1) IN GENERAL.—The lead entity of an eligi-
2 ble partnership seeking to receive a Sector Partner-
3 ship Grant under this section shall submit a grant
4 proposal to the Secretary at such time, in such man-
5 ner, and containing such information as the Sec-
6 retary may require.

7 “(2) GENERAL REQUIREMENTS OF GRANT PRO-
8 POSALS.—A grant proposal submitted under para-
9 graph (1) shall, at a minimum—

10 “(A) identify the members of the eligible
11 partnership;

12 “(B) identify the targeted industry or sec-
13 tor for which the eligible partnership intends to
14 carry out projects using the Sector Partnership
15 Grant;

16 “(C) describe the goals that the eligible
17 partnership intends to achieve to promote the
18 targeted industry or sector;

19 “(D) describe the projects that the eligible
20 partnership will undertake to achieve such
21 goals;

22 “(E) demonstrate that the eligible partner-
23 ship has the organizational capacity to carry
24 out the projects described in subparagraph (D);

25 “(F) explain—

1 “(i) whether—

2 “(I) the community impacted by
3 trade has sought or received a com-
4 munity grant under section 275;

5 “(II) an eligible institution in the
6 community has sought or received a
7 Community College and Career Train-
8 ing Grant under section 278; or

9 “(III) any other entity in the
10 community has received funds pursu-
11 ant to any other federally funded
12 training project; and

13 “(ii) how the eligible partnership will
14 coordinate its use of a Sector Partnership
15 Grant with the use of such other grants or
16 funds in order to enhance the effectiveness
17 of each grant and any such funds and
18 avoid duplication of efforts; and

19 “(G) include performance measures, devel-
20 oped based on the performance measures issued
21 by the Secretary under subsection (g)(2), and a
22 timeline for measuring progress toward achiev-
23 ing the goals described in subparagraph (C).

24 “(f) AWARD OF GRANTS.—

1 “(1) IN GENERAL.—Upon application by the
2 lead entity of an eligible partnership, the Secretary
3 may award a Sector Partnership Grant to the eligi-
4 ble partnership to assist the partnership in carrying
5 out any of the projects in the grant proposal that
6 the Secretary determines will further the purposes of
7 this subchapter.

8 “(2) LIMITATIONS.—An eligible partnership
9 may not be awarded—

10 “(A) more than one Sector Partnership
11 Grant; or

12 “(B) a total grant award under this sub-
13 chapter in excess of—

14 “(i) except as provided in clause (ii),
15 \$2,500,000; or

16 “(ii) in the case of an eligible partner-
17 ship located within a community impacted
18 by trade that is not served by an institu-
19 tion receiving a Community College and
20 Career Training Grant under section 278,
21 \$3,000,000.

22 “(g) ADMINISTRATION BY THE SECRETARY.—

23 “(1) TECHNICAL ASSISTANCE AND OVER-
24 SIGHT.—

1 “(A) IN GENERAL.—The Secretary shall
2 provide technical assistance to, and oversight
3 of, the lead entity of an eligible partnership in
4 applying for and administering Sector Partner-
5 ship Grants awarded under this section.

6 “(B) TECHNICAL ASSISTANCE.—Technical
7 assistance provided under subparagraph (A)
8 shall include providing conferences and such
9 other methods of collecting and disseminating
10 information on best practices developed by eligi-
11 ble partnerships as the Secretary determines
12 appropriate.

13 “(C) GRANTS OR CONTRACTS FOR TECH-
14 NICAL ASSISTANCE.—The Secretary may award
15 a grant or contract to one or more national or
16 State organizations to provide technical assist-
17 ance to foster the planning, formation, and im-
18 plementation of eligible partnerships.

19 “(2) PERFORMANCE MEASURES.—The Sec-
20 retary shall issue a range of performance measures,
21 with quantifiable benchmarks, and methodologies
22 that eligible partnerships may use to measure
23 progress toward the goals described in subsection
24 (e). In developing such measures, the Secretary shall
25 consider the benefits of the eligible partnership and

1 its activities for workers, firms, industries, and com-
2 munities.

3 “(h) REPORTS.—

4 “(1) PROGRESS REPORT.—Not later than 1
5 year after receiving a Sector Partnership Grant, and
6 3 years thereafter, the lead entity shall submit to
7 the Secretary, on behalf of the eligible partnership,
8 a report containing—

9 “(A) a detailed description of the progress
10 made toward achieving the goals described in
11 subsection (e)(2)(C), using the performance
12 measures required under subsection (e)(2)(G);

13 “(B) a detailed evaluation of the impact of
14 the grant award on workers and employers in
15 the community impacted by trade; and

16 “(C) a detailed description of all expendi-
17 tures of funds awarded to the eligible partner-
18 ship under the Sector Partnership Grant ap-
19 proved by the Secretary under this subchapter.

20 “(2) ANNUAL REPORT.—Not later than Decem-
21 ber 15 in each of the calendar years 2009 through
22 2011, the Secretary shall submit to the Committee
23 on Finance of the Senate and the Committee on
24 Ways and Means of the House of Representatives a
25 report—

1 “(A) describing each Sector Partnership
2 Grant awarded to an eligible partnership during
3 the preceding fiscal year; and

4 “(B) assessing the impact of each Sector
5 Partnership Grant awarded in a fiscal year pre-
6 ceding the fiscal year referred to in subpara-
7 graph (A) on workers and employers in commu-
8 nities impacted by trade.

9 **“SEC. 279B. AUTHORIZATION OF APPROPRIATIONS.**

10 “(a) IN GENERAL.—There are authorized to be ap-
11 propriated to the Secretary of Labor \$40,000,000 for each
12 of the fiscal years 2009 and 2010, and \$10,000,000 for
13 the period beginning October 1, 2010, and ending Decem-
14 ber 31, 2010, to carry out the Sector Partnership Grant
15 program under section 279A. Funds appropriated pursu-
16 ant to this section shall remain available until expended.

17 “(b) SUPPLEMENT NOT SUPPLANT.—Funds appro-
18 priated pursuant to this section shall be used to supple-
19 ment and not supplant other Federal, State, and local
20 public funds expended to support the economic develop-
21 ment of local communities.

22 “(c) ADMINISTRATIVE COSTS.—The Secretary may
23 retain not more than 5 percent of the funds appropriated
24 pursuant to this section for each fiscal year to administer

1 the Sector Partnership Grant program under section
2 279A.

3 **“Subchapter D—General Provisions**

4 **“SEC. 279C. RULE OF CONSTRUCTION.**

5 “Nothing in this chapter prevents a worker from re-
6 ceiving trade adjustment assistance under chapter 2 of
7 this title at the same time the worker is receiving assist-
8 ance in any manner from—

9 “(1) a community receiving a community grant
10 under subchapter A;

11 “(2) an eligible institution receiving a Commu-
12 nity College and Career Training Grant under sub-
13 chapter B; or

14 “(3) an eligible partnership receiving a Sector
15 Partnership Grant under subchapter C.”.

16 **SEC. 1873. CONFORMING AMENDMENTS.**

17 (a) TABLE OF CONTENTS.—The table of contents of
18 the Trade Act of 1974 is amended by striking the items
19 relating to chapter 4 of title II and inserting the following:

“CHAPTER 4—TRADE ADJUSTMENT ASSISTANCE FOR COMMUNITIES

“Subchapter A—Trade Adjustment Assistance for Communities

“Sec. 271. Definitions.

“Sec. 272. Establishment of trade adjustment assistance for communities pro-
gram.

“Sec. 273. Eligibility; notification.

“Sec. 274. Technical assistance.

“Sec. 275. Grants for eligible communities.

“Sec. 276. Strategic plans.

“Sec. 277. General provisions.

“Subchapter B—Community College and Career Training Grant Program

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“Sec. 278. Community college and career training grant program.

“Sec. 279. Authorization of appropriations.

“Subchapter C—Industry or Sector Partnership Grant Program for
Communities Impacted by Trade

“Sec. 279A. Industry or sector partnership grant program for communities im-
pacted by trade.

“Sec. 279B. Authorization of appropriations.

“Subchapter D—General Provisions

“Sec. 279C. Rule of construction.”

1 (b) JUDICIAL REVIEW.—

2 (1) Section 284(a) of the Trade Act of 1974
3 (19 U.S.C. 2395(a)) is amended—

4 (A) by inserting “or 296” after “section
5 293”;

6 (B) by striking “or any other interested
7 domestic party” and inserting “or authorized
8 representative of a community”; and

9 (C) by striking “section 271” and inserting
10 “section 273”.

11 (2) Section 1581(d) of title 28, United States
12 Code, is amended—

13 (A) in paragraph (2), by striking “; and”
14 and inserting a semicolon;

15 (B) in paragraph (3)—

16 (i) by striking “271” and inserting
17 “273”; and

18 (ii) by striking the period and insert-
19 ing “; and”; and

20 (C) by adding at the end the following:

1 “(4) any final determination of the Secretary of
2 Agriculture under section 293 or 296 of the Trade
3 Act of 1974 (19 U.S.C. 2401b) with respect to the
4 eligibility of a group of agricultural commodity pro-
5 ducers for adjustment assistance under such Act.”.

6 **PART IV—TRADE ADJUSTMENT ASSISTANCE FOR**
7 **FARMERS**

8 **SEC. 1881. DEFINITIONS.**

9 Section 291 of the Trade Act of 1974 (19 U.S.C.
10 2401) is amended—

11 (1) by amending paragraph (1) to read as fol-
12 lows:

13 “(1) **AGRICULTURAL COMMODITY.**—The term
14 ‘agricultural commodity’ includes—

15 “(A) any agricultural commodity (includ-
16 ing livestock) in its raw or natural state;

17 “(B) any class of goods within an agricul-
18 tural commodity; and

19 “(C) in the case of an agricultural com-
20 modity producer described in paragraph (2)(B),
21 wild-caught aquatic species.”;

22 (2) by amending paragraph (2) to read as fol-
23 lows:

1 “(2) AGRICULTURAL COMMODITY PRODUCER.—

2 The term ‘agricultural commodity producer’
3 means—

4 “(A) a person that shares in the risk of
5 producing an agricultural commodity and that
6 is entitled to a share of the commodity for mar-
7 keting, including an operator, a sharecropper,
8 or a person that owns or rents the land on
9 which the commodity is produced; or

10 “(B) a person that reports gain or loss
11 from the trade or business of fishing on the
12 person’s annual Federal income tax return for
13 the taxable year that most closely corresponds
14 to the marketing year with respect to which a
15 petition is filed under section 292.”; and

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

17 “(7) MARKETING YEAR.—The term ‘marketing
18 year’ means—

19 “(A) a marketing year designated by the
20 Secretary with respect to an agricultural com-
21 modity; or

22 “(B) in the case of an agricultural com-
23 modity with respect to which the Secretary does
24 not designate a marketing year, a calendar
25 year.”.

1 **SEC. 1882. ELIGIBILITY.**

2 (a) IN GENERAL.—Section 292 of the Trade Act of
3 1974 (19 U.S.C. 2401a) is amended by striking sub-
4 sections (c) through (e) and inserting the following:

5 “(c) GROUP ELIGIBILITY REQUIREMENTS.—The
6 Secretary shall certify a group of agricultural commodity
7 producers as eligible to apply for adjustment assistance
8 under this chapter if the Secretary determines that—

9 “(1)(A) the national average price of the agri-
10 cultural commodity produced by the group during
11 the most recent marketing year for which data are
12 available is less than 85 percent of the average of
13 the national average price for the commodity in the
14 3 marketing years preceding such marketing year;

15 “(B) the quantity of production of the agricul-
16 tural commodity produced by the group during such
17 marketing year is less than 85 percent of the aver-
18 age of the quantity of production of the commodity
19 produced by the group in the 3 marketing years pre-
20 ceeding such marketing year;

21 “(C) the value of production of the agricultural
22 commodity produced by the group during such mar-
23 keting year is less than 85 percent of the average
24 value of production of the commodity produced by
25 the group in the 3 marketing years preceding such
26 marketing year; or

1 “(D) the cash receipts for the agricultural com-
2 modity produced by the group during such mar-
3 keting year are less than 85 percent of the average
4 of the cash receipts for the commodity produced by
5 the group in the 3 marketing years preceding such
6 marketing year;

7 “(2) the volume of imports of articles like or di-
8 rectly competitive with the agricultural commodity
9 produced by the group in the marketing year with
10 respect to which the group files the petition in-
11 creased compared to the average volume of such im-
12 ports during the 3 marketing years preceding such
13 marketing year; and

14 “(3) the increase in such imports contributed
15 importantly to the decrease in the national average
16 price, quantity of production, or value of production
17 of, or cash receipts for, the agricultural commodity,
18 as described in paragraph (1).

19 “(d) ELIGIBILITY OF CERTAIN OTHER PRO-
20 DUCERS.—An agricultural commodity producer or group
21 of producers that resides outside of the State or region
22 identified in the petition filed under subsection (a) may
23 file a request to become a party to that petition not later
24 than 15 days after the date the notice is published in the

1 Federal Register under subsection (a) with respect to that
2 petition.

3 “(e) TREATMENT OF CLASSES OF GOODS WITHIN A
4 COMMODITY.—In any case in which there are separate
5 classes of goods within an agricultural commodity, the
6 Secretary shall treat each class as a separate commodity
7 in determining under subsection (c)—

8 “(1) group eligibility;

9 “(2) the national average price, quantity of pro-
10 duction, or value of production, or cash receipts; and

11 “(3) the volume of imports.”.

12 (b) CONFORMING AMENDMENTS.—Section 293 of the
13 Trade Act of 1974 (19 U.S.C. 2401b) is amended—

14 (1) in subsection (a), by striking “section 292
15 (c) or (d), as the case may be,” and inserting “sec-
16 tion 292(c)”; and

17 (2) in subsection (c), by striking “decline in
18 price for” and inserting “decrease in the national
19 average price, quantity of production, or value of
20 production of, or cash receipts for”.

21 **SEC. 1883. BENEFITS.**

22 (a) IN GENERAL.—Section 296 of the Trade Act of
23 1974 (19 U.S.C. 2401e) is amended to read as follows:

1 **“SEC. 296. QUALIFYING REQUIREMENTS AND BENEFITS**
2 **FOR AGRICULTURAL COMMODITY PRO-**
3 **DUCERS.**

4 “(a) IN GENERAL.—

5 “(1) REQUIREMENTS.—

6 “(A) IN GENERAL.—Benefits under this
7 chapter shall be available to an agricultural
8 commodity producer covered by a certification
9 under this chapter who files an application for
10 such benefits not later than 90 days after the
11 date on which the Secretary makes a deter-
12 mination and issues a certification of eligibility
13 under section 293, if the producer submits to
14 the Secretary sufficient information to establish
15 that—

16 “(i) the producer produced the agri-
17 cultural commodity covered by the applica-
18 tion filed under this subsection in the mar-
19 keting year with respect to which the peti-
20 tion is filed and in at least 1 of the 3 mar-
21 keting years preceding that marketing
22 year;

23 “(ii)(I) the quantity of the agricul-
24 tural commodity that was produced by the
25 producer in the marketing year with re-
26 spect to which the petition is filed has de-

1 creased compared to the most recent mar-
2 keting year preceding that marketing year
3 for which data are available; or

4 “**(II)(aa)** the price received for the ag-
5 ricultural commodity by the producer dur-
6 ing the marketing year with respect to
7 which the petition is filed has decreased
8 compared to the average price for the com-
9 modity received by the producer in the 3
10 marketing years preceding that marketing
11 year; or

12 “**(bb)** the county level price main-
13 tained by the Secretary for the agricultural
14 commodity on the date on which the peti-
15 tion is filed has decreased compared to the
16 average county level price for the com-
17 modity in the 3 marketing years preceding
18 the date on which the petition is filed; and

19 “**(iii)** the producer is not receiving—

20 “**(I)** cash benefits under chapter
21 2 or 3; or

22 “**(II)** benefits based on the pro-
23 duction of an agricultural commodity
24 covered by another petition filed
25 under this chapter.

1 “(B) SPECIAL RULE WITH RESPECT TO
2 CROPS NOT GROWN EVERY YEAR.—For pur-
3 poses of subparagraph (A)(ii)(II)(aa), if a peti-
4 tion is filed with respect to an agricultural com-
5 modity that is not produced by the producer
6 every year, an agricultural commodity producer
7 producing that commodity may establish the av-
8 erage price received for the commodity by the
9 producer in the 3 marketing years preceding
10 the year with respect to which the petition is
11 filed by using average price data for the 3 most
12 recent marketing years in which the producer
13 produced the commodity and for which data are
14 available.

15 “(2) LIMITATIONS BASED ON ADJUSTED GROSS
16 INCOME.—

17 “(A) IN GENERAL.—Notwithstanding any
18 other provision of this chapter, an agricultural
19 commodity producer shall not be eligible for as-
20 sistance under this chapter in any year in which
21 the average adjusted gross income (as defined
22 in section 1001D(a) of the Food Security Act
23 of 1985 (7 U.S.C. 1308–3a(a))) of the producer
24 exceeds the level set forth in subparagraph (A)
25 or (B) of section 1001D(b)(1) of the Food Se-

1 security Act of 1985 (7 U.S.C. 1308–3a(b)(1)),
2 whichever is applicable.

3 “(B) DEMONSTRATION OF COMPLIANCE.—
4 An agricultural commodity producer shall pro-
5 vide to the Secretary such information as the
6 Secretary determines necessary to demonstrate
7 that the producer is in compliance with the lim-
8 itation under subparagraph (A).

9 “(C) COUNTER-CYCLICAL AND ACRE PAY-
10 MENTS.—The total amount of payments made
11 to an agricultural commodity producer under
12 this chapter during any crop year may not ex-
13 ceed the limitations on payments set forth in
14 subsections (b)(2), (b)(3), (c)(2), and (c)(3) of
15 section 1001 of the Food Security Act of 1985
16 (7 U.S.C. 1308).

17 “(b) TECHNICAL ASSISTANCE.—

18 “(1) INITIAL TECHNICAL ASSISTANCE.—

19 “(A) IN GENERAL.—An agricultural com-
20 modity producer that files an application and
21 meets the requirements under subsection (a)(1)
22 shall be entitled to receive initial technical as-
23 sistance designed to improve the competitive-
24 ness of the production and marketing of the ag-
25 ricultural commodity with respect to which the

1 producer was certified under this chapter. Such
2 assistance shall include information regarding—

3 “(i) improving the yield and mar-
4 keting of that agricultural commodity; and

5 “(ii) the feasibility and desirability of
6 substituting one or more alternative agri-
7 cultural commodities for that agricultural
8 commodity.

9 “(B) TRANSPORTATION AND SUBSISTENCE
10 EXPENSES.—

11 “(i) IN GENERAL.—The Secretary
12 may authorize supplemental assistance
13 necessary to defray reasonable transpor-
14 tation and subsistence expenses incurred
15 by an agricultural commodity producer in
16 connection with initial technical assistance
17 under subparagraph (A) if such assistance
18 is provided at facilities that are not within
19 normal commuting distance of the regular
20 place of residence of the producer.

21 “(ii) EXCEPTIONS.—The Secretary
22 may not authorize payments to an agricul-
23 tural commodity producer under clause
24 (i)—

1 “(I) for subsistence expenses that
2 exceed the lesser of—

3 “(aa) the actual per diem
4 expenses for subsistence incurred
5 by the producer; or

6 “(bb) the prevailing per
7 diem allowance rate authorized
8 under Federal travel regulations;
9 or

10 “(II) for travel expenses that ex-
11 ceed the prevailing mileage rate au-
12 thorized under the Federal travel reg-
13 ulations.

14 “(2) INTENSIVE TECHNICAL ASSISTANCE.—A
15 producer that has completed initial technical assist-
16 ance under paragraph (1) shall be eligible to partici-
17 pate in intensive technical assistance. Such assist-
18 ance shall consist of—

19 “(A) a series of courses to further assist
20 the producer in improving the competitiveness
21 of the producer in producing—

22 “(i) the agricultural commodity with
23 respect to which the producer was certified
24 under this chapter; or

1 “(ii) another agricultural commodity;

2 and

3 “(B) assistance in developing an initial
4 business plan based on the courses completed
5 under subparagraph (A).

6 “(3) INITIAL BUSINESS PLAN.—

7 “(A) APPROVAL BY SECRETARY.—The Sec-
8 retary shall approve an initial business plan de-
9 veloped under paragraph (2)(B) if the plan—

10 “(i) reflects the skills gained by the
11 producer through the courses described in
12 paragraph (2)(A); and

13 “(ii) demonstrates how the producer
14 will apply those skills to the circumstances
15 of the producer.

16 “(B) FINANCIAL ASSISTANCE FOR IMPLE-
17 MENTING INITIAL BUSINESS PLAN.—Upon ap-
18 proval of the producer’s initial business plan by
19 the Secretary under subparagraph (A), a pro-
20 ducer shall be entitled to an amount not to ex-
21 ceed \$4,000 to—

22 “(i) implement the initial business
23 plan; or

24 “(ii) develop a long-term business ad-
25 justment plan under paragraph (4).

1 “(4) LONG-TERM BUSINESS ADJUSTMENT
2 PLAN.—

3 “(A) IN GENERAL.—A producer that has
4 completed intensive technical assistance under
5 paragraph (2) and whose initial business plan
6 has been approved under paragraph (3)(A)
7 shall be eligible for, in addition to the amount
8 under subparagraph (C), assistance in devel-
9 oping a long-term business adjustment plan.

10 “(B) APPROVAL OF LONG-TERM BUSINESS
11 ADJUSTMENT PLANS.—The Secretary shall ap-
12 prove a long-term business adjustment plan de-
13 veloped under subparagraph (A) if the Sec-
14 retary determines that the plan—

15 “(i) includes steps reasonably cal-
16 culated to materially contribute to the eco-
17 nomic adjustment of the producer to
18 changing market conditions;

19 “(ii) takes into consideration the in-
20 terests of the workers employed by the pro-
21 ducer; and

22 “(iii) demonstrates that the producer
23 will have sufficient resources to implement
24 the business plan.

1 of Agriculture shall submit to the Committee on Finance
2 of the Senate and the Committee on Ways and Means of
3 the House of Representatives a report containing the fol-
4 lowing information with respect to adjustment assistance
5 provided under this chapter during the preceding fiscal
6 year:

7 “(1) A list of the agricultural commodities cov-
8 ered by a certification under this chapter.

9 “(2) The States or regions in which such com-
10 modities are produced and the aggregate amount of
11 such commodities produced in each such State or re-
12 gion.

13 “(3) The total number of agricultural com-
14 modity producers, by congressional district, receiving
15 benefits under this chapter.

16 “(4) The total number of agricultural com-
17 modity producers, by congressional district, receiving
18 technical assistance under this chapter.”.

19 **SEC. 1885. FRAUD AND RECOVERY OF OVERPAYMENTS.**

20 Section 297(a)(1) of the Trade Act of 1974 (19
21 U.S.C. 2401f(a)(1)) is amended by inserting “or has ex-
22 pended funds received under this chapter for a purpose
23 that was not approved by the Secretary,” after “entitled,”.

1 **SEC. 1886. DETERMINATION OF INCREASES OF IMPORTS**
2 **FOR CERTAIN FISHERMEN.**

3 For purposes of chapters 2 and 6 of title II of the
4 Trade Act of 1974 (19 U.S.C. 2251 et seq.), in the case
5 of an agricultural commodity producer that—

6 (1) is a fisherman or aquaculture producer, and

7 (2) is otherwise eligible for adjustment assist-
8 ance under chapter 2 or 6, as the case may be,

9 the increase in imports of articles like or directly competi-
10 tive with the agricultural commodity produced by such
11 producer may be based on imports of wild-caught seafood,
12 farm-raised seafood, or both.

13 **SEC. 1887. EXTENSION OF TRADE ADJUSTMENT ASSIST-**
14 **ANCE FOR FARMERS.**

15 Section 298(a) of the Trade Act of 1974 (19 U.S.C.
16 2401g(a)) is amended by striking “fiscal years 2003
17 through 2007” and all that follows through the end period
18 and inserting “fiscal years 2009 and 2010, and
19 \$22,500,000 for the period beginning October 1, 2010,
20 and ending December 31, 2010, to carry out the purposes
21 of this chapter, including administrative costs, and sala-
22 ries and expenses of employees of the Department of Agri-
23 culture.”.

1 **PART V—GENERAL PROVISIONS**

2 **SEC. 1891. EFFECTIVE DATE.**

3 (a) IN GENERAL.—Except as otherwise provided in
4 this subtitle, and subsection (b) of this section, this sub-
5 title and the amendments made by this subtitle—

6 (1) shall take effect upon the expiration of the
7 90-day period beginning on the date of the enact-
8 ment of this Act; and

9 (2) shall apply to—

10 (A) petitions for certification filed under
11 chapter 2, 3, or 6 of title II of the Trade Act
12 of 1974 on or after the effective date described
13 in paragraph (1); and

14 (B) petitions for assistance and proposals
15 for grants filed under chapter 4 of title II of
16 the Trade Act of 1974 on or after such effective
17 date.

18 (b) CERTIFICATIONS MADE BEFORE EFFECTIVE
19 DATE.—Notwithstanding subsection (a)—

20 (1) a worker shall continue to receive (or be eli-
21 gible to receive) trade adjustment assistance and
22 other benefits under subchapter B of chapter 2 of
23 title II of the Trade Act of 1974, as in effect on the
24 day before the effective date described in subsection
25 (a)(1), for any week for which the worker meets the
26 eligibility requirements of such chapter 2 as in effect

1 on the day before such effective date, if the
2 worker—

3 (A) is certified as eligible for trade adjust-
4 ment assistance benefits under such chapter 2
5 pursuant to a petition filed under section 221
6 of the Trade Act of 1974 on or before such ef-
7 fective date; and

8 (B) would otherwise be eligible to receive
9 trade adjustment assistance benefits under such
10 chapter as in effect on the day before such ef-
11 fective date;

12 (2) a worker shall continue to receive (or be eli-
13 gible to receive) benefits under section 246(a)(2) of
14 the Trade Act of 1974, as in effect on the day be-
15 fore the effective date described in subsection (a)(1),
16 for such period for which the worker meets the eligi-
17 bility requirements of section 246 of that Act as in
18 effect on the day before such effective date, if the
19 worker—

20 (A) is certified as eligible for benefits
21 under such section 246 pursuant to a petition
22 filed under section 221 of the Trade Act of
23 1974 on or before such effective date; and

1 (B) would otherwise be eligible to receive
2 benefits under such section 246(a)(2) as in ef-
3 fect on the day before such effective date; and
4 (3) a firm shall continue to receive (or be eligi-
5 ble to receive) adjustment assistance under chapter
6 3 of title II of the Trade Act of 1974, as in effect
7 on the day before the effective date described in sub-
8 section (a)(1), for such period for which the firm
9 meets the eligibility requirements of such chapter 3
10 as in effect on the day before such effective date, if
11 the firm—

12 (A) is certified as eligible for benefits
13 under such chapter 3 pursuant to a petition
14 filed under section 251 of the Trade Act of
15 1974 on or before such effective date; and

16 (B) would otherwise be eligible to receive
17 benefits under such chapter 3 as in effect on
18 the day before such effective date.

19 **SEC. 1892. EXTENSION OF TRADE ADJUSTMENT ASSIST-**
20 **ANCE PROGRAMS.**

21 (a) FOR WORKERS.—Section 245(a) of the Trade Act
22 of 1974 (19 U.S.C. 2317(a)) is amended by striking “De-
23 cember 31, 2007” and inserting “December 31, 2010”.

24 (b) TERMINATION.—Section 285 of the Trade Act of
25 1974 (19 U.S.C. 2271 note prec.) is amended—

1 (1) in subsection (a), by striking “December
2 31, 2007” each place it appears and inserting “De-
3 cember 31, 2010”; and

4 (2) by amending subsection (b) to read as fol-
5 lows:

6 “(b) OTHER ASSISTANCE.—

7 “(1) ASSISTANCE FOR FIRMS.—

8 “(A) IN GENERAL.—Except as provided in
9 subparagraph (B), technical assistance and
10 grants may not be provided under chapter 3
11 after December 31, 2010.

12 “(B) EXCEPTION.—Notwithstanding sub-
13 paragraph (A), any technical assistance or
14 grant approved under chapter 3 on or before
15 December 31, 2010, may be provided—

16 “(i) to the extent funds are available
17 pursuant to such chapter for such purpose;
18 and

19 “(ii) to the extent the recipient of the
20 technical assistance or grant is otherwise
21 eligible to receive such technical assistance
22 or grant, as the case may be.

23 “(2) FARMERS.—

24 “(A) IN GENERAL.—Except as provided in
25 subparagraph (B), technical assistance and fi-

1 nancial assistance may not be provided under
2 chapter 6 after December 31, 2010.

3 “(B) EXCEPTION.—Notwithstanding sub-
4 paragraph (A), any technical or financial assist-
5 ance approved under chapter 6 on or before De-
6 cember 31, 2010, may be provided—

7 “(i) to the extent funds are available
8 pursuant to such chapter for such purpose;
9 and

10 “(ii) to the extent the recipient of the
11 technical or financial assistance is other-
12 wise eligible to receive such technical or fi-
13 nancial assistance, as the case may be.

14 “(3) ASSISTANCE FOR COMMUNITIES.—

15 “(A) IN GENERAL.—Except as provided in
16 subparagraph (B), technical assistance and
17 grants may not be provided under chapter 4
18 after December 31, 2010.

19 “(B) EXCEPTION.—Notwithstanding sub-
20 paragraph (A), any technical assistance or
21 grant approved under chapter 4 on or before
22 December 31, 2010, may be provided—

23 “(i) to the extent funds are available
24 pursuant to such chapter for such purpose;
25 and

1 “(ii) to the extent the recipient of the
2 technical assistance or grant is otherwise
3 eligible to receive such technical assistance
4 or grant, as the case may be.”.

5 **SEC. 1893. TERMINATION; RELATED PROVISIONS.**

6 (a) SUNSET.—

7 (1) IN GENERAL.—Subject to paragraph (2),
8 the amendments made by this subtitle to chapters 2,
9 3, 4, 5, and 6 of title II of the Trade Act of 1974
10 (19 U.S.C. 2271 et seq.) shall not apply on or after
11 January 1, 2011.

12 (2) EXCEPTION.—The amendments made by
13 this subtitle to section 285 of the Trade Act of 1974
14 shall continue to apply on and after January 1,
15 2011, with respect to—

16 (A) workers certified as eligible for trade
17 adjustment assistance benefits under chapter 2
18 of title II of that Act pursuant to petitions filed
19 under section 221 of that Act before January 1,
20 2011;

21 (B) firms certified as eligible for technical
22 assistance or grants under chapter 3 of title II
23 of that Act pursuant to petitions filed under
24 section 251 of that Act before January 1, 2011;

1 (C) recipients approved for technical as-
2 sistance or grants under chapter 4 of title II of
3 that Act pursuant to petitions for assistance or
4 proposals for grants (as the case may be) filed
5 pursuant to such chapter before January 1,
6 2011; and

7 (D) agricultural commodity producers cer-
8 tified as eligible for technical or financial assist-
9 ance under chapter 6 of title II of that Act pur-
10 suant to petitions filed under section 292 of
11 that Act before January 1, 2011.

12 (b) APPLICATION OF PRIOR LAW.—Chapters 2, 3, 4,
13 5, and 6 of title II of the Trade Act of 1974 (19 U.S.C.
14 2271 et seq.) shall be applied and administered beginning
15 January 1, 2011, as if the amendments made by this sub-
16 title (other than part VI) had never been enacted, except
17 that in applying and administering such chapters—

18 (1) section 245 of that Act shall be applied and
19 administered by substituting “2011” for “2007”;

20 (2) section 246(b) of that Act shall be applied
21 and administered by substituting “December 31,
22 2011” for “the date that is 5 years” and all that fol-
23 lows through “State”;

24 (3) section 256(b) of that Act shall be applied
25 and administered by substituting “the 1-year period

1 beginning January 1, 2011” for “each of fiscal years
2 2003 through 2007, and \$4,000,000 for the 3-
3 month period beginning October 1, 2007”;

4 (4) section 298(a) of that Act shall be applied
5 and administered by substituting “the 1-year period
6 beginning January 1, 2011” for “each of the fiscal
7 years” and all that follows through “October 1,
8 2007”; and

9 (5) subject to subsection (a)(2), section 285 of
10 that Act shall be applied and administered—

11 (A) in subsection (a), by substituting
12 “2011” for “2007” each place it appears; and

13 (B) by applying and administering sub-
14 section (b) as if it read as follows:

15 “(b) OTHER ASSISTANCE.—

16 “(1) ASSISTANCE FOR FIRMS.—

17 “(A) IN GENERAL.—Except as provided in
18 subparagraph (B), assistance may not be pro-
19 vided under chapter 3 after December 31,
20 2011.

21 “(B) EXCEPTION.—Notwithstanding sub-
22 paragraph (A), any assistance approved under
23 chapter 3 on or before December 31, 2011, may
24 be provided—

1 “(i) to the extent funds are available
2 pursuant to such chapter for such purpose;
3 and

4 “(ii) to the extent the recipient of the
5 assistance is otherwise eligible to receive
6 such assistance.

7 “(2) FARMERS.—

8 “(A) IN GENERAL.—Except as provided in
9 subparagraph (B), assistance may not be pro-
10 vided under chapter 6 after December 31,
11 2011.

12 “(B) EXCEPTION.—Notwithstanding sub-
13 paragraph (A), any assistance approved under
14 chapter 6 on or before December 31, 2011, may
15 be provided—

16 “(i) to the extent funds are available
17 pursuant to such chapter for such purpose;
18 and

19 “(ii) to the extent the recipient of the
20 assistance is otherwise eligible to receive
21 such assistance.”.

22 **SEC. 1894. GOVERNMENT ACCOUNTABILITY OFFICE RE-**
23 **PORT.**

24 Not later than September 30, 2012, the Comptroller
25 General of the United States shall prepare and submit to

1 the Committee on Finance of the Senate and the Com-
2 mittee on Ways and Means of the House of Representa-
3 tives a comprehensive report on the operation and effec-
4 tiveness of the amendments made by this subtitle to chap-
5 ters 2, 3, 4, and 6 of the Trade Act of 1974.

6 **SEC. 1895. EMERGENCY DESIGNATION.**

7 Amounts appropriated pursuant to this subtitle are
8 designated as an emergency requirement and necessary to
9 meet emergency needs pursuant to section 204(a) of S.
10 Con. Res. 21 (110th Congress) and section 301(b)(2) of
11 S. Con. Res. 70 (110th Congress), the concurrent resolu-
12 tions on the budget for fiscal years 2008 and 2009.

13 **PART VI—HEALTH COVERAGE IMPROVEMENT**

14 **SEC. 1899. SHORT TITLE.**

15 This part may be cited as the “TAA Health Coverage
16 Improvement Act of 2009”.

17 **SEC. 1899A. IMPROVEMENT OF THE AFFORDABILITY OF**
18 **THE CREDIT.**

19 (a) IMPROVEMENT OF AFFORDABILITY.—

20 (1) IN GENERAL.—Section 35(a) of the Internal
21 Revenue Code of 1986 (relating to credit for health
22 insurance costs of eligible individuals) is amended by
23 inserting “(80 percent in the case of eligible cov-
24 erage months beginning before January 1, 2011)”
25 after “65 percent”.

1 (2) CONFORMING AMENDMENT.—Section
2 7527(b) of such Code (relating to advance payment
3 of credit for health insurance costs of eligible indi-
4 viduals) is amended by inserting “(80 percent in the
5 case of eligible coverage months beginning before
6 January 1, 2011)” after “65 percent”.

7 (b) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to coverage months beginning on
9 or after the first day of the first month beginning 60 days
10 after the date of the enactment of this Act.

11 **SEC. 1899B. PAYMENT FOR MONTHLY PREMIUMS PAID**
12 **PRIOR TO COMMENCEMENT OF ADVANCE**
13 **PAYMENTS OF CREDIT.**

14 (a) PAYMENT FOR PREMIUMS DUE PRIOR TO COM-
15 MENCEMENT OF ADVANCE PAYMENTS OF CREDIT.—Sec-
16 tion 7527 of the Internal Revenue Code of 1986 (relating
17 to advance payment of credit for health insurance costs
18 of eligible individuals) is amended by adding at the end
19 the following new subsection:

20 “(e) PAYMENT FOR PREMIUMS DUE PRIOR TO COM-
21 MENCEMENT OF ADVANCE PAYMENTS.—In the case of eli-
22 gible coverage months beginning before January 1,
23 2011—

24 “(1) IN GENERAL.—The program established
25 under subsection (a) shall provide that the Secretary

1 shall make 1 or more retroactive payments on behalf
2 of a certified individual in an aggregate amount
3 equal to 80 percent of the premiums for coverage of
4 the taxpayer and qualifying family members under
5 qualified health insurance for eligible coverage
6 months (as defined in section 35(b)) occurring prior
7 to the first month for which an advance payment is
8 made on behalf of such individual under subsection
9 (a).

10 “(2) REDUCTION OF PAYMENT FOR AMOUNTS
11 RECEIVED UNDER NATIONAL EMERGENCY
12 GRANTS.—The amount of any payment determined
13 under paragraph (1) shall be reduced by the amount
14 of any payment made to the taxpayer for the pur-
15 chase of qualified health insurance under a national
16 emergency grant pursuant to section 173(f) of the
17 Workforce Investment Act of 1998 for a taxable
18 year including the eligible coverage months described
19 in paragraph (1).”.

20 (b) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to coverage months beginning after
22 December 31, 2008.

23 (c) TRANSITIONAL RULE.—The Secretary of the
24 Treasury shall not be required to make any payments
25 under section 7527(e) of the Internal Revenue Code of

1 1986, as added by this section, until after the date that
2 is 6 months after the date of the enactment of this Act.

3 **SEC. 1899C. TAA RECIPIENTS NOT ENROLLED IN TRAINING**
4 **PROGRAMS ELIGIBLE FOR CREDIT.**

5 (a) IN GENERAL.—Paragraph (2) of section 35(c) of
6 the Internal Revenue Code of 1986 (defining eligible TAA
7 recipient) is amended to read as follows:

8 “(2) ELIGIBLE TAA RECIPIENT.—

9 “(A) IN GENERAL.—Except as provided in
10 subparagraph (B), the term ‘eligible TAA re-
11 cipient’ means, with respect to any month, any
12 individual who is receiving for any day of such
13 month a trade readjustment allowance under
14 chapter 2 of title II of the Trade Act of 1974
15 or who would be eligible to receive such allow-
16 ance if section 231 of such Act were applied
17 without regard to subsection (a)(3)(B) of such
18 section. An individual shall continue to be treat-
19 ed as an eligible TAA recipient during the first
20 month that such individual would otherwise
21 cease to be an eligible TAA recipient by reason
22 of the preceding sentence.

23 “(B) SPECIAL RULE.—In the case of any
24 eligible coverage month beginning after the date
25 of the enactment of this paragraph and before

1 January 1, 2011, the term ‘eligible TAA recipi-
2 ent’ means, with respect to any month, any in-
3 dividual who—

4 “(i) is receiving for any day of such
5 month a trade readjustment allowance
6 under chapter 2 of title II of the Trade
7 Act of 1974,

8 “(ii) would be eligible to receive such
9 allowance except that such individual is in
10 a break in training provided under a train-
11 ing program approved under section 236 of
12 such Act that exceeds the period specified
13 in section 233(e) of such Act, but is within
14 the period for receiving such allowances
15 provided under section 233(a) of such Act,
16 or

17 “(iii) is receiving unemployment com-
18 pensation (as defined in section 85(b)) for
19 any day of such month and who would be
20 eligible to receive such allowance for such
21 month if section 231 of such Act were ap-
22 plied without regard to subsections
23 (a)(3)(B) and (a)(5) thereof.

24 An individual shall continue to be treated as an
25 eligible TAA recipient during the first month

1 that such individual would otherwise cease to be
2 an eligible TAA recipient by reason of the pre-
3 ceding sentence.”.

4 (b) **EFFECTIVE DATE.**—The amendment made by
5 this section shall apply to coverage months beginning after
6 the date of the enactment of this Act.

7 **SEC. 1899D. TAA PRE-CERTIFICATION PERIOD RULE FOR**
8 **PURPOSES OF DETERMINING WHETHER**
9 **THERE IS A 63-DAY LAPSE IN CREDITABLE**
10 **COVERAGE.**

11 (a) **IRC AMENDMENT.**—Section 9801(c)(2) of the In-
12 ternal Revenue Code of 1986 (relating to not counting pe-
13 riods before significant breaks in creditable coverage) is
14 amended by adding at the end the following new subpara-
15 graph:

16 “(D) **TAA-ELIGIBLE INDIVIDUALS.**—In the
17 case of plan years beginning before January 1,
18 2011—

19 “(i) **TAA PRE-CERTIFICATION PERIOD**
20 **RULE.**—In the case of a TAA-eligible indi-
21 vidual, the period beginning on the date
22 the individual has a TAA-related loss of
23 coverage and ending on the date which is
24 7 days after the date of the issuance by
25 the Secretary (or by any person or entity

1 designated by the Secretary) of a qualified
2 health insurance costs credit eligibility cer-
3 tificate for such individual for purposes of
4 section 7527 shall not be taken into ac-
5 count in determining the continuous period
6 under subparagraph (A).

7 “(ii) DEFINITIONS.—The terms ‘TAA-
8 eligible individual’ and ‘TAA-related loss of
9 coverage’ have the meanings given such
10 terms in section 4980B(f)(5)(C)(iv).”.

11 (b) ERISA AMENDMENT.—Section 701(c)(2) of the
12 Employee Retirement Income Security Act of 1974 (29
13 U.S.C. 1181(c)(2)) is amended by adding at the end the
14 following new subparagraph:

15 “(C) TAA-ELIGIBLE INDIVIDUALS.—In the
16 case of plan years beginning before January 1,
17 2011—

18 “(i) TAA PRE-CERTIFICATION PERIOD
19 RULE.—In the case of a TAA-eligible indi-
20 vidual, the period beginning on the date
21 the individual has a TAA-related loss of
22 coverage and ending on the date that is 7
23 days after the date of the issuance by the
24 Secretary (or by any person or entity des-
25 ignated by the Secretary) of a qualified

1 health insurance costs credit eligibility cer-
2 tificate for such individual for purposes of
3 section 7527 of the Internal Revenue Code
4 of 1986 shall not be taken into account in
5 determining the continuous period under
6 subparagraph (A).

7 “(ii) DEFINITIONS.—The terms ‘TAA-
8 eligible individual’ and ‘TAA-related loss of
9 coverage’ have the meanings given such
10 terms in section 605(b)(4).”.

11 (c) PHSA AMENDMENT.—Section 2701(c)(2) of the
12 Public Health Service Act (42 U.S.C. 300gg(c)(2)) is
13 amended by adding at the end the following new subpara-
14 graph:

15 “(C) TAA-ELIGIBLE INDIVIDUALS.—In the
16 case of plan years beginning before January 1,
17 2011—

18 “(i) TAA PRE-CERTIFICATION PERIOD
19 RULE.—In the case of a TAA-eligible indi-
20 vidual, the period beginning on the date
21 the individual has a TAA-related loss of
22 coverage and ending on the date that is 7
23 days after the date of the issuance by the
24 Secretary (or by any person or entity des-
25 ignated by the Secretary) of a qualified

1 health insurance costs credit eligibility cer-
2 tificate for such individual for purposes of
3 section 7527 of the Internal Revenue Code
4 of 1986 shall not be taken into account in
5 determining the continuous period under
6 subparagraph (A).

7 “(ii) DEFINITIONS.—The terms ‘TAA-
8 eligible individual’ and ‘TAA-related loss of
9 coverage’ have the meanings given such
10 terms in section 2205(b)(4).”.

11 (d) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to plan years beginning after the
13 date of the enactment of this Act.

14 **SEC. 1899E. CONTINUED QUALIFICATION OF FAMILY MEM-**
15 **BERS AFTER CERTAIN EVENTS.**

16 (a) IN GENERAL.—Subsection (g) of section 35 of
17 such Code is amended by redesignating paragraph (9) as
18 paragraph (10) and inserting after paragraph (8) the fol-
19 lowing new paragraph:

20 “(9) CONTINUED QUALIFICATION OF FAMILY
21 MEMBERS AFTER CERTAIN EVENTS.—In the case of
22 eligible coverage months beginning before January
23 1, 2011—

24 “(A) MEDICARE ELIGIBILITY.—In the case
25 of any month which would be an eligible cov-

1 erage month with respect to an eligible indi-
2 vidual but for subsection (f)(2)(A), such month
3 shall be treated as an eligible coverage month
4 with respect to such eligible individual solely for
5 purposes of determining the amount of the
6 credit under this section with respect to any
7 qualifying family members of such individual
8 (and any advance payment of such credit under
9 section 7527). This subparagraph shall only
10 apply with respect to the first 24 months after
11 such eligible individual is first entitled to the
12 benefits described in subsection (f)(2)(A).

13 “(B) DIVORCE.—In the case of the final-
14 ization of a divorce between an eligible indi-
15 vidual and such individual’s spouse, such spouse
16 shall be treated as an eligible individual for pur-
17 poses of this section and section 7527 for a pe-
18 riod of 24 months beginning with the date of
19 such finalization, except that the only qualifying
20 family members who may be taken into account
21 with respect to such spouse are those individ-
22 uals who were qualifying family members imme-
23 diately before such finalization.

24 “(C) DEATH.—In the case of the death of
25 an eligible individual—

1 “(i) any spouse of such individual (de-
2 termined at the time of such death) shall
3 be treated as an eligible individual for pur-
4 poses of this section and section 7527 for
5 a period of 24 months beginning with the
6 date of such death, except that the only
7 qualifying family members who may be
8 taken into account with respect to such
9 spouse are those individuals who were
10 qualifying family members immediately be-
11 fore such death, and

12 “(ii) any individual who was a quali-
13 fying family member of the decedent imme-
14 diately before such death (or, in the case
15 of an individual to whom paragraph (4)
16 applies, the taxpayer to whom the deduc-
17 tion under section 151 is allowable) shall
18 be treated as an eligible individual for pur-
19 poses of this section and section 7527 for
20 a period of 24 months beginning with the
21 date of such death, except that in deter-
22 mining the amount of such credit only
23 such qualifying family member may be
24 taken into account.”.

1 (b) CONFORMING AMENDMENT.—Section 173(f) of
2 the Workforce Investment Act of 1998 (29 U.S.C.
3 2918(f)) is amended by adding at the end the following:

4 “(8) CONTINUED QUALIFICATION OF FAMILY
5 MEMBERS AFTER CERTAIN EVENTS.—In the case of
6 eligible coverage months beginning before January
7 1, 2011—

8 “(A) MEDICARE ELIGIBILITY.—In the case
9 of any month which would be an eligible cov-
10 erage month with respect to an eligible indi-
11 vidual but for paragraph (7)(B)(i), such month
12 shall be treated as an eligible coverage month
13 with respect to such eligible individual solely for
14 purposes of determining the eligibility of quali-
15 fying family members of such individual under
16 this subsection. This subparagraph shall only
17 apply with respect to the first 24 months after
18 such eligible individual is first entitled to the
19 benefits described in paragraph (7)(B)(i).

20 “(B) DIVORCE.—In the case of the final-
21 ization of a divorce between an eligible indi-
22 vidual and such individual’s spouse, such spouse
23 shall be treated as an eligible individual for pur-
24 poses of this subsection for a period of 24
25 months beginning with the date of such final-

1 taken into account with respect to such in-
2 dividual.”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to months beginning after Decem-
5 ber 31, 2009.

6 **SEC. 1899F. EXTENSION OF COBRA BENEFITS FOR CERTAIN**
7 **TAA-ELIGIBLE INDIVIDUALS AND PBGC RE-**
8 **CIPIENTS.**

9 (a) ERISA AMENDMENTS.—Section 602(2)(A) of the
10 Employee Retirement Income Security Act of 1974 (29
11 U.S.C. 1162(2)(A)) is amended—

12 (1) by moving clause (v) to after clause (iv) and
13 before the flush left sentence beginning with “In the
14 case of a qualified beneficiary”;

15 (2) by striking “In the case of a qualified bene-
16 ficiary” and inserting the following:

17 “(vi) SPECIAL RULE FOR DIS-
18 ABILITY.—In the case of a qualified bene-
19 ficiary”; and

20 (3) by redesignating clauses (v) and (vi), as
21 amended by paragraphs (1) and (2), as clauses (vii)
22 and (viii), respectively, and by inserting after clause
23 (iv) the following new clauses:

24 “(v) SPECIAL RULE FOR PBGC RECIPI-
25 ENTS.—In the case of a qualifying event

1 described in section 603(2) with respect to
2 a covered employee who (as of such quali-
3 fying event) has a nonforfeitable right to a
4 benefit any portion of which is to be paid
5 by the Pension Benefit Guaranty Corpora-
6 tion under title IV, notwithstanding clause
7 (i) or (ii), the date of the death of the cov-
8 ered employee, or in the case of the sur-
9 viving spouse or dependent children of the
10 covered employee, 24 months after the
11 date of the death of the covered employee.
12 The preceding sentence shall not require
13 any period of coverage to extend beyond
14 December 31, 2010.

15 “(vi) SPECIAL RULE FOR TAA-ELIGI-
16 BLE INDIVIDUALS.—In the case of a quali-
17 fying event described in section 603(2)
18 with respect to a covered employee who is
19 (as of the date that the period of coverage
20 would, but for this clause or clause (vii),
21 otherwise terminate under clause (i) or
22 (ii)) a TAA-eligible individual (as defined
23 in section 605(b)(4)(B)), the period of cov-
24 erage shall not terminate by reason of
25 clause (i) or (ii), as the case may be, be-

1 fore the later of the date specified in such
2 clause or the date on which such individual
3 ceases to be such a TAA-eligible individual.
4 The preceding sentence shall not require
5 any period of coverage to extend beyond
6 December 31, 2010.”.

7 (b) IRC AMENDMENTS.—Clause (i) of section
8 4980B(f)(2)(B) of the Internal Revenue Code of 1986 is
9 amended—

10 (1) by striking “In the case of a qualified bene-
11 ficiary” and inserting the following:

12 “(VI) SPECIAL RULE FOR DIS-
13 ABILITY.—In the case of a qualified
14 beneficiary”, and

15 (2) by redesignating subclauses (V) and (VI),
16 as amended by paragraph (1), as subclauses (VII)
17 and (VIII), respectively, and by inserting after
18 clause (IV) the following new subclauses:

19 “(V) SPECIAL RULE FOR PBGC
20 RECIPIENTS.—In the case of a quali-
21 fying event described in paragraph
22 (3)(B) with respect to a covered em-
23 ployee who (as of such qualifying
24 event) has a nonforfeitable right to a
25 benefit any portion of which is to be

1 paid by the Pension Benefit Guaranty
2 Corporation under title IV of the Em-
3 ployee Retirement Income Security
4 Act of 1974, notwithstanding sub-
5 clause (I) or (II), the date of the
6 death of the covered employee, or in
7 the case of the surviving spouse or de-
8 pendent children of the covered em-
9 ployee, 24 months after the date of
10 the death of the covered employee.
11 The preceding sentence shall not re-
12 quire any period of coverage to extend
13 beyond December 31, 2010.

14 “(VI) SPECIAL RULE FOR TAA-
15 ELIGIBLE INDIVIDUALS.—In the case
16 of a qualifying event described in
17 paragraph (3)(B) with respect to a
18 covered employee who is (as of the
19 date that the period of coverage
20 would, but for this subclause or sub-
21 clause (VII), otherwise terminate
22 under subclause (I) or (II)) a TAA-el-
23 igible individual (as defined in para-
24 graph (5)(C)(iv)(II)), the period of
25 coverage shall not terminate by reason

1 of subclause (I) or (II), as the case
2 may be, before the later of the date
3 specified in such subclause or the date
4 on which such individual ceases to be
5 such a TAA-eligible individual. The
6 preceding sentence shall not require
7 any period of coverage to extend be-
8 yond December 31, 2010.”.

9 (c) PHSA AMENDMENTS.—Section 2202(2)(A) of
10 the Public Health Service Act (42 U.S.C. 300bb-2(2)(A))
11 is amended—

12 (1) by striking “In the case of a qualified bene-
13 ficiary” and inserting the following:

14 “(v) SPECIAL RULE FOR DIS-
15 ABILITY.—In the case of a qualified bene-
16 ficiary”; and

17 (2) by redesignating clauses (iv) and (v), as
18 amended by paragraph (1), as clauses (v) and (vi),
19 respectively, and by inserting after clause (iii) the
20 following new clause:

21 “(iv) SPECIAL RULE FOR TAA-ELIGI-
22 BLE INDIVIDUALS.—In the case of a quali-
23 fying event described in section 2203(2)
24 with respect to a covered employee who is
25 (as of the date that the period of coverage

1 would, but for this clause or clause (v),
2 otherwise terminate under clause (i) or
3 (ii)) a TAA-eligible individual (as defined
4 in section 2205(b)(4)(B)), the period of
5 coverage shall not terminate by reason of
6 clause (i) or (ii), as the case may be, be-
7 fore the later of the date specified in such
8 clause or the date on which such individual
9 ceases to be such a TAA-eligible individual.
10 The preceding sentence shall not require
11 any period of coverage to extend beyond
12 December 31, 2010.”.

13 (d) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to periods of coverage which would
15 (without regard to the amendments made by this section)
16 end on or after the date of the enactment of this Act.

17 **SEC. 1899G. ADDITION OF COVERAGE THROUGH VOL-**
18 **UNTARY EMPLOYEES’ BENEFICIARY ASSOCIA-**
19 **TIONS.**

20 (a) IN GENERAL.—Paragraph (1) of section 35(e) of
21 the Internal Revenue Code of 1986 is amended by adding
22 at the end the following new subparagraph:

23 “(K) In the case of eligible coverage
24 months beginning before January 1, 2011, cov-
25 erage under an employee benefit plan funded by

1 a voluntary employees' beneficiary association
2 (as defined in section 501(c)(9)) established
3 pursuant to an order of a bankruptcy court, or
4 by agreement with an authorized representative,
5 as provided in section 1114 of title 11, United
6 States Code.”.

7 (b) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to coverage months beginning after
9 the date of the enactment of this Act.

10 **SEC. 1899H. NOTICE REQUIREMENTS.**

11 (a) IN GENERAL.—Subsection (d) of section 7527 of
12 the Internal Revenue Code of 1986 (relating to qualified
13 health insurance costs credit eligibility certificate) is
14 amended to read as follows:

15 “(d) QUALIFIED HEALTH INSURANCE COSTS ELIGI-
16 BILITY CERTIFICATE.—

17 “(1) IN GENERAL.—For purposes of this sec-
18 tion, the term ‘qualified health insurance costs eligi-
19 bility certificate’ means any written statement that
20 an individual is an eligible individual (as defined in
21 section 35(c)) if such statement provides such infor-
22 mation as the Secretary may require for purposes of
23 this section and—

24 “(A) in the case of an eligible TAA recipi-
25 ent (as defined in section 35(c)(2)) or an eligi-

1 ble alternative TAA recipient (as defined in sec-
2 tion 35(e)(3)), is certified by the Secretary of
3 Labor (or by any other person or entity des-
4 ignated by the Secretary), or

5 “(B) in the case of an eligible PBGC pen-
6 sion recipient (as defined in section 35(e)(4)), is
7 certified by the Pension Benefit Guaranty Cor-
8 poration (or by any other person or entity des-
9 ignated by the Secretary).

10 “(2) INCLUSION OF CERTAIN INFORMATION.—

11 In the case of any statement described in paragraph
12 (1) which is issued before January 1, 2011, such
13 statement shall not be treated as a qualified health
14 insurance costs credit eligibility certificate unless
15 such statement includes—

16 “(A) the name, address, and telephone
17 number of the State office or offices responsible
18 for providing the individual with assistance with
19 enrollment in qualified health insurance (as de-
20 fined in section 35(e)),

21 “(B) a list of the coverage options that are
22 treated as qualified health insurance (as so de-
23 fined) by the State in which the individual re-
24 sides, and

1 (A) HCTC PARTICIPANTS.—In the case of
2 eligible individuals receiving the health coverage
3 tax credit (including individuals participating in
4 the health coverage tax credit program under
5 section 7527 of such Code, hereinafter in this
6 section referred to as the “HCTC program”)—

7 (i) demographic information of such
8 individuals, including income and edu-
9 cation levels,

10 (ii) satisfaction of such individuals
11 with the enrollment process in the HCTC
12 program,

13 (iii) satisfaction of such individuals
14 with available health coverage options
15 under the credit, including level of pre-
16 miums, benefits, deductibles, cost-sharing
17 requirements, and the adequacy of provider
18 networks, and

19 (iv) any other information that the
20 Secretary determines is appropriate.

21 (B) NON-HCTC PARTICIPANTS.—In the
22 case of eligible individuals not receiving the
23 health coverage tax credit—

1 (i) demographic information of each
2 individual, including income and education
3 levels,

4 (ii) whether the individual was aware
5 of the health coverage tax credit or the
6 HCTC program,

7 (iii) the reasons the individual has not
8 enrolled in the HCTC program, including
9 whether such reasons include the burden of
10 the process of enrollment and the afford-
11 ability of coverage,

12 (iv) whether the individual has health
13 insurance coverage, and, if so, the source
14 of such coverage, and

15 (v) any other information that the
16 Secretary determines is appropriate.

17 (3) REPORT.—Not later than December 31 of
18 each year in which a survey is conducted under
19 paragraph (1) (beginning in 2010), the Secretary of
20 the Treasury shall report to the Committee on Fi-
21 nance and the Committee on Health, Education,
22 Labor, and Pensions of the Senate and the Com-
23 mittee on Ways and Means, the Committee on Edu-
24 cation and Labor, and the Committee on Energy
25 and Commerce of the House of Representatives the

1 findings of the most recent survey conducted under
2 paragraph (1).

3 (b) REPORT.—Not later than October 1 of each year
4 (beginning in 2010), the Secretary of the Treasury (after
5 consultation with the Secretary of Health and Human
6 Services, and, in the case of the information required
7 under paragraph (7), the Secretary of Labor) shall report
8 to the Committee on Finance and the Committee on
9 Health, Education, Labor, and Pensions of the Senate and
10 the Committee on Ways and Means, the Committee on
11 Education and Labor, and the Committee on Energy and
12 Commerce of the House of Representatives the following
13 information with respect to the most recent taxable year
14 ending before such date:

15 (1) In each State and nationally—

16 (A) the total number of eligible individuals
17 (as defined in section 35(c) of the Internal Rev-
18 enue Code of 1986) and the number of eligible
19 individuals receiving the health coverage tax
20 credit,

21 (B) the total number of such eligible indi-
22 viduals who receive an advance payment of the
23 health coverage tax credit through the HCTC
24 program,

1 (C) the average length of the time period
2 of the participation of eligible individuals in the
3 HCTC program, and

4 (D) the total number of participating eligi-
5 ble individuals in the HCTC program who are
6 enrolled in each category of coverage as de-
7 scribed in section 35(e)(1) of such Code,
8 with respect to each category of eligible individuals
9 described in section 35(e)(1) of such Code.

10 (2) In each State and nationally, an analysis
11 of—

12 (A) the range of monthly health insurance
13 premiums, for self-only coverage and for family
14 coverage, for individuals receiving the health
15 coverage tax credit, and

16 (B) the average and median monthly
17 health insurance premiums, for self-only cov-
18 erage and for family coverage, for individuals
19 receiving the health coverage tax credit,

20 with respect to each category of coverage as de-
21 scribed in section 35(e)(1) of such Code.

22 (3) In each State and nationally, an analysis of
23 the following information with respect to the health
24 insurance coverage of individuals receiving the
25 health coverage tax credit who are enrolled in cov-

1 erage described in subparagraphs (B) through (H)
2 of section 35(e)(1) of such Code:

3 (A) Deductible amounts.

4 (B) Other out-of-pocket cost-sharing
5 amounts.

6 (C) A description of any annual or lifetime
7 limits on coverage or any other significant lim-
8 its on coverage services, or benefits.

9 The information required under this paragraph shall
10 be reported with respect to each category of coverage
11 described in such subparagraphs.

12 (4) In each State and nationally, the gender
13 and average age of eligible individuals (as defined in
14 section 35(c) of such Code) who receive the health
15 coverage tax credit, in each category of coverage de-
16 scribed in section 35(e)(1) of such Code, with re-
17 spect to each category of eligible individuals de-
18 scribed in such section.

19 (5) The steps taken by the Secretary of the
20 Treasury to increase the participation rates in the
21 HCTC program among eligible individuals, including
22 outreach and enrollment activities.

23 (6) The cost of administering the HCTC pro-
24 gram by function, including the cost of subcontractors,
25 and recommendations on ways to reduce ad-

1 PROTECTIONS.—Funds made available to a
2 State or entity under paragraph (4)(A) of sub-
3 section (a) may be used to provide an eligible
4 individual described in paragraph (4)(C) and
5 such individual’s qualifying family members
6 with health insurance coverage for the 3-month
7 period that immediately precedes the first eligi-
8 ble coverage month (as defined in section 35(b)
9 of the Internal Revenue Code of 1986) in which
10 such eligible individual and such individual’s
11 qualifying family members are covered by quali-
12 fied health insurance that meets the require-
13 ments described in clauses (i) through (v) of
14 section 35(e)(2)(A) of the Internal Revenue
15 Code of 1986 (or such longer minimum period
16 as is necessary in order for such eligible indi-
17 vidual and such individual’s qualifying family
18 members to be covered by qualified health in-
19 surance that meets such requirements).

20 “(B) ADDITIONAL USES.—Funds made
21 available to a State or entity under paragraph
22 (4)(A) of subsection (a) may be used by the
23 State or entity for the following:

24 “(i) HEALTH INSURANCE COV-
25 ERAGE.—To assist an eligible individual

1 and such individual's qualifying family
2 members with enrolling in health insurance
3 coverage and qualified health insurance or
4 paying premiums for such coverage or in-
5 surance.

6 “(ii) ADMINISTRATIVE EXPENSES AND
7 START-UP EXPENSES TO ESTABLISH
8 GROUP HEALTH PLAN COVERAGE OPTIONS
9 FOR QUALIFIED HEALTH INSURANCE.—To
10 pay the administrative expenses related to
11 the enrollment of eligible individuals and
12 such individuals' qualifying family mem-
13 bers in health insurance coverage and
14 qualified health insurance, including—

15 “(I) eligibility verification activi-
16 ties;

17 “(II) the notification of eligible
18 individuals of available health insur-
19 ance and qualified health insurance
20 options;

21 “(III) processing qualified health
22 insurance costs credit eligibility cer-
23 tificates provided for under section
24 7527 of the Internal Revenue Code of
25 1986;

1 “(IV) providing assistance to eli-
2 gible individuals in enrolling in health
3 insurance coverage and qualified
4 health insurance;

5 “(V) the development or installa-
6 tion of necessary data management
7 systems; and

8 “(VI) any other expenses deter-
9 mined appropriate by the Secretary,
10 including start-up costs and on going
11 administrative expenses, in order for
12 the State to treat the coverage de-
13 scribed in subparagraphs (C) through
14 (H) of section 35(e)(1) of the Internal
15 Revenue Code of 1986 as qualified
16 health insurance under that section.

17 “(iii) OUTREACH.—To pay for out-
18 reach to eligible individuals to inform such
19 individuals of available health insurance
20 and qualified health insurance options, in-
21 cluding outreach consisting of notice to eli-
22 gible individuals of such options made
23 available after the date of enactment of
24 this clause and direct assistance to help
25 potentially eligible individuals and such in-

1 individual's qualifying family members qual-
2 ify and remain eligible for the credit estab-
3 lished under section 35 of the Internal
4 Revenue Code of 1986 and advance pay-
5 ment of such credit under section 7527 of
6 such Code.

7 “(iv) BRIDGE FUNDING.—To assist
8 potentially eligible individuals to purchase
9 qualified health insurance coverage prior to
10 issuance of a qualified health insurance
11 costs credit eligibility certificate under sec-
12 tion 7527 of the Internal Revenue Code of
13 1986 and commencement of advance pay-
14 ment, and receipt of expedited payment,
15 under subsections (a) and (e), respectively,
16 of that section.

17 “(C) RULE OF CONSTRUCTION.—The in-
18 clusion of a permitted use under this paragraph
19 shall not be construed as prohibiting a similar
20 use of funds permitted under subsection (g).”;
21 and

22 (2) by striking paragraph (2) and inserting the
23 following new paragraph:

24 “(2) QUALIFIED HEALTH INSURANCE.—For
25 purposes of this subsection and subsection (g), the

1 term ‘qualified health insurance’ has the meaning
2 given that term in section 35(e) of the Internal Rev-
3 enue Code of 1986.”.

4 (b) FUNDING.—Section 174(c)(1) of the Workforce
5 Investment Act of 1998 (29 U.S.C. 2919(c)(1)) is
6 amended—

7 (1) in the paragraph heading, by striking “AU-
8 THORIZATION AND APPROPRIATION FOR FISCAL
9 YEAR 2002” and inserting “APPROPRIATIONS”; and

10 (2) by striking subparagraph (A) and inserting
11 the following new subparagraph:

12 “(A) to carry out subsection (a)(4)(A) of
13 section 173—

14 “(i) \$10,000,000 for fiscal year 2002;

15 and

16 “(ii) \$150,000,000 for the period of
17 fiscal years 2009 through 2010; and”.

18 **SEC. 1899L. GAO STUDY AND REPORT.**

19 (a) STUDY.—The Comptroller General of the United
20 States shall conduct a study regarding the health insur-
21 ance tax credit allowed under section 35 of the Internal
22 Revenue Code of 1986.

23 (b) REPORT.—Not later than March 1, 2010, the
24 Comptroller General shall submit a report to Congress re-

1 garding the results of the study conducted under sub-
2 section (a). Such report shall include an analysis of—

3 (1) the administrative costs—

4 (A) of the Federal Government with re-
5 spect to such credit and the advance payment
6 of such credit under section 7527 of such Code,
7 and

8 (B) of providers of qualified health insur-
9 ance with respect to providing such insurance
10 to eligible individuals and their qualifying fam-
11 ily members,

12 (2) the health status and relative risk status of
13 eligible individuals and qualifying family members
14 covered under such insurance,

15 (3) participation in such credit and the advance
16 payment of such credit by eligible individuals and
17 their qualifying family members, including the rea-
18 sons why such individuals did or did not participate
19 and the effect of the amendments made by this part
20 on such participation, and

21 (4) the extent to which eligible individuals and
22 their qualifying family members—

23 (A) obtained health insurance other than
24 qualifying health insurance, or

1 (B) went without health insurance cov-
2 erage.

3 (c) ACCESS TO RECORDS.—For purposes of con-
4 ducting the study required under this section, the Comp-
5 troller General and any of his duly authorized representa-
6 tives shall have access to, and the right to examine and
7 copy, all documents, records, and other recorded
8 information—

9 (1) within the possession or control of providers
10 of qualified health insurance, and

11 (2) determined by the Comptroller General (or
12 any such representative) to be relevant to the study.

13 The Comptroller General shall not disclose the identity of
14 any provider of qualified health insurance or any eligible
15 individual in making any information obtained under this
16 section available to the public.

17 (d) DEFINITIONS.—Any term which is defined in sec-
18 tion 35 of the Internal Revenue Code of 1986 shall have
19 the same meaning when used in this section.

1 **TITLE II—ASSISTANCE FOR UN-**
 2 **EMPLOYED WORKERS AND**
 3 **STRUGGLING FAMILIES**

4 **SEC. 2000. SHORT TITLE; TABLE OF CONTENTS OF TITLE.**

5 (a) **SHORT TITLE.**—This title may be cited as the
 6 “Assistance for Unemployed Workers and Struggling
 7 Families Act”.

8 (b) **TABLE OF CONTENTS OF TITLE.**—The table of
 9 contents of this title is as follows:

TITLE II—ASSISTANCE FOR UNEMPLOYED WORKERS AND
 STRUGGLING FAMILIES

Sec. 2000. Short title; table of contents of title.

Subtitle A—Unemployment Insurance

- Sec. 2001. Extension of emergency unemployment compensation program.
- Sec. 2002. Increase in unemployment compensation benefits.
- Sec. 2003. Special transfers for unemployment compensation modernization.
- Sec. 2004. Temporary assistance for states with advances.
- Sec. 2005. Full Federal funding of extended unemployment compensation for a limited period.
- Sec. 2006. Temporary increase in extended unemployment benefits under the Railroad Unemployment Insurance Act.

Subtitle B—Assistance for Vulnerable Individuals

- Sec. 2101. Emergency fund for TANF program.
- Sec. 2102. Extension of TANF supplemental grants.
- Sec. 2103. Clarification of authority of States to use TANF funds carried over from prior years to provide TANF benefits and services.
- Sec. 2104. Temporary resumption of prior child support law.

Subtitle C—Economic Recovery Payments to Certain Individuals

- Sec. 2201. Economic recovery payment to recipients of social security, supplemental security income, railroad retirement benefits, and veterans disability compensation or pension benefits.
- Sec. 2202. Special credit for certain government retirees.

1 **Subtitle A—Unemployment**
2 **Insurance**

3 **SEC. 2001. EXTENSION OF EMERGENCY UNEMPLOYMENT**
4 **COMPENSATION PROGRAM.**

5 (a) IN GENERAL.—Section 4007 of the Supplemental
6 Appropriations Act, 2008 (Public Law 110–252; 26
7 U.S.C. 3304 note), as amended by section 4 of the Unem-
8 ployment Compensation Extension Act of 2008 (Public
9 Law 110–449; 122 Stat. 5015), is amended—

10 (1) by striking “March 31, 2009” each place it
11 appears and inserting “December 31, 2009”;

12 (2) in the heading for subsection (b)(2), by
13 striking “MARCH 31, 2009” and inserting “DECEM-
14 BER 31, 2009”; and

15 (3) in subsection (b)(3), by striking “August
16 27, 2009” and inserting “May 31, 2010”.

17 (b) FINANCING PROVISIONS.—Section 4004 of such
18 Act is amended by adding at the end the following:

19 “(e) TRANSFER OF FUNDS.—Notwithstanding any
20 other provision of law, the Secretary of the Treasury shall
21 transfer from the general fund of the Treasury (from
22 funds not otherwise appropriated)—

23 “(1) to the extended unemployment compensa-
24 tion account (as established by section 905 of the
25 Social Security Act) such sums as the Secretary of

1 Labor estimates to be necessary to make payments
2 to States under this title by reason of the amend-
3 ments made by section 2001(a) of the Assistance for
4 Unemployed Workers and Struggling Families Act;
5 and

6 “(2) to the employment security administration
7 account (as established by section 901 of the Social
8 Security Act) such sums as the Secretary of Labor
9 estimates to be necessary for purposes of assisting
10 States in meeting administrative costs by reason of
11 the amendments referred to in paragraph (1).

12 There are appropriated from the general fund of the
13 Treasury, without fiscal year limitation, the sums referred
14 to in the preceding sentence and such sums shall not be
15 required to be repaid.”.

16 **SEC. 2002. INCREASE IN UNEMPLOYMENT COMPENSATION**
17 **BENEFITS.**

18 (a) **FEDERAL-STATE AGREEMENTS.**—Any State
19 which desires to do so may enter into and participate in
20 an agreement under this section with the Secretary of
21 Labor (hereinafter in this section referred to as the “Sec-
22 retary”). Any State which is a party to an agreement
23 under this section may, upon providing 30 days’ written
24 notice to the Secretary, terminate such agreement.

25 (b) **PROVISIONS OF AGREEMENT.**—

1 (1) ADDITIONAL COMPENSATION.—Any agree-
2 ment under this section shall provide that the State
3 agency of the State will make payments of regular
4 compensation to individuals in amounts and to the
5 extent that they would be determined if the State
6 law of the State were applied, with respect to any
7 week for which the individual is (disregarding this
8 section) otherwise entitled under the State law to re-
9 ceive regular compensation, as if such State law had
10 been modified in a manner such that the amount of
11 regular compensation (including dependents' allow-
12 ances) payable for any week shall be equal to the
13 amount determined under the State law (before the
14 application of this paragraph) plus an additional
15 \$25.

16 (2) ALLOWABLE METHODS OF PAYMENT.—Any
17 additional compensation provided for in accordance
18 with paragraph (1) shall be payable either—

19 (A) as an amount which is paid at the
20 same time and in the same manner as any reg-
21 ular compensation otherwise payable for the
22 week involved; or

23 (B) at the option of the State, by pay-
24 ments which are made separately from, but on

1 (b)(1)) paid to individuals by the State
2 pursuant to such agreement; and

3 (ii) any additional administrative ex-
4 penses incurred by the State by reason of
5 such agreement (as determined by the Sec-
6 retary).

7 (B) TERMS OF PAYMENTS.—Sums payable
8 to any State by reason of such State's having
9 an agreement under this section shall be pay-
10 able, either in advance or by way of reimburse-
11 ment (as determined by the Secretary), in such
12 amounts as the Secretary estimates the State
13 will be entitled to receive under this section for
14 each calendar month, reduced or increased, as
15 the case may be, by any amount by which the
16 Secretary finds that his estimates for any prior
17 calendar month were greater or less than the
18 amounts which should have been paid to the
19 State. Such estimates may be made on the
20 basis of such statistical, sampling, or other
21 method as may be agreed upon by the Secretary
22 and the State agency of the State involved.

23 (2) CERTIFICATIONS.—The Secretary shall
24 from time to time certify to the Secretary of the

1 Treasury for payment to each State the sums pay-
2 able to such State under this section.

3 (3) APPROPRIATION.—There are appropriated
4 from the general fund of the Treasury, without fiscal
5 year limitation, such sums as may be necessary for
6 purposes of this subsection.

7 (e) APPLICABILITY.—

8 (1) IN GENERAL.—An agreement entered into
9 under this section shall apply to weeks of
10 unemployment—

11 (A) beginning after the date on which such
12 agreement is entered into; and

13 (B) ending before January 1, 2010.

14 (2) TRANSITION RULE FOR INDIVIDUALS RE-
15 MAINING ENTITLED TO REGULAR COMPENSATION AS
16 OF JANUARY 1, 2010.—In the case of any individual
17 who, as of the date specified in paragraph (1)(B),
18 has not yet exhausted all rights to regular com-
19 pensation under the State law of a State with re-
20 spect to a benefit year that began before such date,
21 additional compensation (as described in subsection
22 (b)(1)) shall continue to be payable to such indi-
23 vidual for any week beginning on or after such date
24 for which the individual is otherwise eligible for reg-
25 ular compensation with respect to such benefit year.

1 (3) TERMINATION.—Notwithstanding any other
2 provision of this subsection, no additional compensa-
3 tion (as described in subsection (b)(1)) shall be pay-
4 able for any week beginning after June 30, 2010.

5 (f) FRAUD AND OVERPAYMENTS.—The provisions of
6 section 4005 of the Supplemental Appropriations Act,
7 2008 (Public Law 110–252; 122 Stat. 2356) shall apply
8 with respect to additional compensation (as described in
9 subsection (b)(1)) to the same extent and in the same
10 manner as in the case of emergency unemployment com-
11 pensation.

12 (g) APPLICATION TO OTHER UNEMPLOYMENT BENE-
13 FITS.—

14 (1) IN GENERAL.—Each agreement under this
15 section shall include provisions to provide that the
16 purposes of the preceding provisions of this section
17 shall be applied with respect to unemployment bene-
18 fits described in subsection (i)(3) to the same extent
19 and in the same manner as if those benefits were
20 regular compensation.

21 (2) ELIGIBILITY AND TERMINATION RULES.—
22 Additional compensation (as described in subsection
23 (b)(1))—

24 (A) shall not be payable, pursuant to this
25 subsection, with respect to any unemployment

1 benefits described in subsection (i)(3) for any
2 week beginning on or after the date specified in
3 subsection (e)(1)(B), except in the case of an
4 individual who was eligible to receive additional
5 compensation (as so described) in connection
6 with any regular compensation or any unem-
7 ployment benefits described in subsection (i)(3)
8 for any period of unemployment ending before
9 such date; and

10 (B) shall in no event be payable for any
11 week beginning after the date specified in sub-
12 section (e)(3).

13 (h) DISREGARD OF ADDITIONAL COMPENSATION FOR
14 PURPOSES OF MEDICAID AND SCHIP.—The monthly
15 equivalent of any additional compensation paid under this
16 section shall be disregarded in considering the amount of
17 income of an individual for any purposes under title XIX
18 and title XXI of the Social Security Act.

19 (i) DEFINITIONS.—For purposes of this section—

20 (1) the terms “compensation”, “regular com-
21 pensation”, “benefit year”, “State”, “State agency”,
22 “State law”, and “week” have the respective mean-
23 ings given such terms under section 205 of the Fed-
24 eral-State Extended Unemployment Compensation
25 Act of 1970 (26 U.S.C. 3304 note);

1 ment compensation modernization incentive payments
2 (hereinafter ‘incentive payments’) to the accounts of the
3 States in the Unemployment Trust Fund, by transfer from
4 amounts reserved for that purpose in the Federal unem-
5 ployment account, in accordance with succeeding provi-
6 sions of this subsection.

7 “(B) The maximum incentive payment allowable
8 under this subsection with respect to any State shall, as
9 determined by the Secretary of Labor, be equal to the
10 amount obtained by multiplying \$7,000,000,000 by the
11 same ratio as would apply under subsection (a)(2)(B) for
12 purposes of determining such State’s share of any excess
13 amount (as described in subsection (a)(1)) that would
14 have been subject to transfer to State accounts, as of Oc-
15 tober 1, 2008, under the provisions of subsection (a).

16 “(C) Of the maximum incentive payment determined
17 under subparagraph (B) with respect to a State—

18 “(i) one-third shall be transferred to the ac-
19 count of such State upon a certification under para-
20 graph (4)(B) that the State law of such State meets
21 the requirements of paragraph (2); and

22 “(ii) the remainder shall be transferred to the
23 account of such State upon a certification under
24 paragraph (4)(B) that the State law of such State
25 meets the requirements of paragraph (3).

1 “(2) The State law of a State meets the requirements
2 of this paragraph if such State law—

3 “(A) uses a base period that includes the most
4 recently completed calendar quarter before the start
5 of the benefit year for purposes of determining eligi-
6 bility for unemployment compensation; or

7 “(B) provides that, in the case of an individual
8 who would not otherwise be eligible for unemploy-
9 ment compensation under the State law because of
10 the use of a base period that does not include the
11 most recently completed calendar quarter before the
12 start of the benefit year, eligibility shall be deter-
13 mined using a base period that includes such cal-
14 endar quarter.

15 “(3) The State law of a State meets the requirements
16 of this paragraph if such State law includes provisions to
17 carry out at least 2 of the following subparagraphs:

18 “(A) An individual shall not be denied regular
19 unemployment compensation under any State law
20 provisions relating to availability for work, active
21 search for work, or refusal to accept work, solely be-
22 cause such individual is seeking only part-time work
23 (as defined by the Secretary of Labor), except that
24 the State law provisions carrying out this subpara-
25 graph may exclude an individual if a majority of the

1 weeks of work in such individual's base period do
2 not include part-time work (as so defined).

3 “(B) An individual shall not be disqualified
4 from regular unemployment compensation for sepa-
5 rating from employment if that separation is for any
6 compelling family reason. For purposes of this sub-
7 paragraph, the term ‘compelling family reason’
8 means the following:

9 “(i) Domestic violence, verified by such
10 reasonable and confidential documentation as
11 the State law may require, which causes the in-
12 dividual reasonably to believe that such individ-
13 ual's continued employment would jeopardize
14 the safety of the individual or of any member
15 of the individual's immediate family (as defined
16 by the Secretary of Labor).

17 “(ii) The illness or disability of a member
18 of the individual's immediate family (as those
19 terms are defined by the Secretary of Labor).

20 “(iii) The need for the individual to accom-
21 pany such individual's spouse—

22 “(I) to a place from which it is im-
23 practical for such individual to commute;
24 and

1 “(II) due to a change in location of
2 the spouse’s employment.

3 “(C)(i) Weekly unemployment compensation is
4 payable under this subparagraph to any individual
5 who is unemployed (as determined under the State
6 unemployment compensation law), has exhausted all
7 rights to regular unemployment compensation under
8 the State law, and is enrolled and making satisfac-
9 tory progress in a State-approved training program
10 or in a job training program authorized under the
11 Workforce Investment Act of 1998, except that such
12 compensation is not required to be paid to an indi-
13 vidual who is receiving similar stipends or other
14 training allowances for non-training costs.

15 “(ii) Each State-approved training program or
16 job training program referred to in clause (i) shall
17 prepare individuals who have been separated from a
18 declining occupation, or who have been involuntarily
19 and indefinitely separated from employment as a re-
20 sult of a permanent reduction of operations at the
21 individual’s place of employment, for entry into a
22 high-demand occupation.

23 “(iii) The amount of unemployment compensa-
24 tion payable under this subparagraph to an indi-

1 vidual for a week of unemployment shall be equal
2 to—

3 “(I) the individual’s average weekly benefit
4 amount (including dependents’ allowances) for
5 the most recent benefit year, less

6 “(II) any deductible income, as determined
7 under State law.

8 The total amount of unemployment compensation
9 payable under this subparagraph to any individual
10 shall be equal to at least 26 times the individual’s
11 average weekly benefit amount (including depend-
12 ents’ allowances) for the most recent benefit year.

13 “(D) Dependents’ allowances are provided, in
14 the case of any individual who is entitled to receive
15 regular unemployment compensation and who has
16 any dependents (as defined by State law), in an
17 amount equal to at least \$15 per dependent per
18 week, subject to any aggregate limitation on such al-
19 lowances which the State law may establish (but
20 which aggregate limitation on the total allowance for
21 dependents paid to an individual may not be less
22 than \$50 for each week of unemployment or 50 per-
23 cent of the individual’s weekly benefit amount for
24 the benefit year, whichever is less), except that a
25 State law may provide for a reasonable reduction in

1 the amount of any such allowance for a week of less
2 than total unemployment.

3 “(4)(A) Any State seeking an incentive payment
4 under this subsection shall submit an application therefor
5 at such time, in such manner, and complete with such in-
6 formation as the Secretary of Labor may within 60 days
7 after the date of the enactment of this subsection prescribe
8 (whether by regulation or otherwise), including informa-
9 tion relating to compliance with the requirements of para-
10 graph (2) or (3), as well as how the State intends to use
11 the incentive payment to improve or strengthen the State’s
12 unemployment compensation program. The Secretary of
13 Labor shall, within 30 days after receiving a complete ap-
14 plication, notify the State agency of the State of the Sec-
15 retary’s findings with respect to the requirements of para-
16 graph (2) or (3) (or both).

17 “(B)(i) If the Secretary of Labor finds that the State
18 law provisions (disregarding any State law provisions
19 which are not then currently in effect as permanent law
20 or which are subject to discontinuation) meet the require-
21 ments of paragraph (2) or (3), as the case may be, the
22 Secretary of Labor shall thereupon make a certification
23 to that effect to the Secretary of the Treasury, together
24 with a certification as to the amount of the incentive pay-
25 ment to be transferred to the State account pursuant to

1 that finding. The Secretary of the Treasury shall make
2 the appropriate transfer within 7 days after receiving such
3 certification.

4 “(ii) For purposes of clause (i), State law provisions
5 which are to take effect within 12 months after the date
6 of their certification under this subparagraph shall be con-
7 sidered to be in effect as of the date of such certification.

8 “(C)(i) No certification of compliance with the re-
9 quirements of paragraph (2) or (3) may be made with re-
10 spect to any State whose State law is not otherwise eligible
11 for certification under section 303 or approvable under
12 section 3304 of the Federal Unemployment Tax Act.

13 “(ii) No certification of compliance with the require-
14 ments of paragraph (3) may be made with respect to any
15 State whose State law is not in compliance with the re-
16 quirements of paragraph (2).

17 “(iii) No application under subparagraph (A) may be
18 considered if submitted before the date of the enactment
19 of this subsection or after the latest date necessary (as
20 specified by the Secretary of Labor) to ensure that all in-
21 centive payments under this subsection are made before
22 October 1, 2011.

23 “(5)(A) Except as provided in subparagraph (B), any
24 amount transferred to the account of a State under this
25 subsection may be used by such State only in the payment

1 of cash benefits to individuals with respect to their unem-
2 ployment (including for dependents' allowances and for
3 unemployment compensation under paragraph (3)(C)), ex-
4 clusive of expenses of administration.

5 “(B) A State may, subject to the same conditions as
6 set forth in subsection (c)(2) (excluding subparagraph (B)
7 thereof, and deeming the reference to ‘subsections (a) and
8 (b)’ in subparagraph (D) thereof to include this sub-
9 section), use any amount transferred to the account of
10 such State under this subsection for the administration
11 of its unemployment compensation law and public employ-
12 ment offices.

13 “(6) Out of any money in the Federal unemployment
14 account not otherwise appropriated, the Secretary of the
15 Treasury shall reserve \$7,000,000,000 for incentive pay-
16 ments under this subsection. Any amount so reserved shall
17 not be taken into account for purposes of any determina-
18 tion under section 902, 910, or 1203 of the amount in
19 the Federal unemployment account as of any given time.
20 Any amount so reserved for which the Secretary of the
21 Treasury has not received a certification under paragraph
22 (4)(B) by the deadline described in paragraph (4)(C)(iii)
23 shall, upon the close of fiscal year 2011, become unre-
24 stricted as to use as part of the Federal unemployment
25 account.

1 “(7) For purposes of this subsection, the terms ‘ben-
2 efit year’, ‘base period’, and ‘week’ have the respective
3 meanings given such terms under section 205 of the Fed-
4 eral-State Extended Unemployment Compensation Act of
5 1970 (26 U.S.C. 3304 note).

6 “Special Transfer in Fiscal Year 2009 for Administration

7 “(g)(1) In addition to any other amounts, the Sec-
8 retary of the Treasury shall transfer from the employment
9 security administration account to the account of each
10 State in the Unemployment Trust Fund, within 30 days
11 after the date of the enactment of this subsection, the
12 amount determined with respect to such State under para-
13 graph (2).

14 “(2) The amount to be transferred under this sub-
15 section to a State account shall (as determined by the Sec-
16 retary of Labor and certified by such Secretary to the Sec-
17 retary of the Treasury) be equal to the amount obtained
18 by multiplying \$500,000,000 by the same ratio as deter-
19 mined under subsection (f)(1)(B) with respect to such
20 State.

21 “(3) Any amount transferred to the account of a
22 State as a result of the enactment of this subsection may
23 be used by the State agency of such State only in the pay-
24 ment of expenses incurred by it for—

1 “(A) the administration of the provisions of its
2 State law carrying out the purposes of subsection
3 (f)(2) or any subparagraph of subsection (f)(3);

4 “(B) improved outreach to individuals who
5 might be eligible for regular unemployment com-
6 pensation by virtue of any provisions of the State
7 law which are described in subparagraph (A);

8 “(C) the improvement of unemployment benefit
9 and unemployment tax operations, including re-
10 sponding to increased demand for unemployment
11 compensation; and

12 “(D) staff-assisted reemployment services for
13 unemployment compensation claimants.”.

14 (b) REGULATIONS.—The Secretary of Labor may
15 prescribe any regulations, operating instructions, or other
16 guidance necessary to carry out the amendment made by
17 subsection (a).

18 **SEC. 2004. TEMPORARY ASSISTANCE FOR STATES WITH AD-**

19 **VANCES.**

20 Section 1202(b) of the Social Security Act (42 U.S.C.
21 1322(b)) is amended by adding at the end the following
22 new paragraph:

23 “(10)(A) With respect to the period beginning on the
24 date of enactment of this paragraph and ending on De-
25 cember 31, 2010—

1 “(i) any interest payment otherwise due from a
2 State under this subsection during such period shall
3 be deemed to have been made by the State; and

4 “(ii) no interest shall accrue during such period
5 on any advance or advances made under section
6 1201 to a State.

7 “(B) The provisions of subparagraph (A) shall have
8 no effect on the requirement for interest payments under
9 this subsection after the period described in such subpara-
10 graph or on the accrual of interest under this subsection
11 after such period.”.

12 **SEC. 2005. FULL FEDERAL FUNDING OF EXTENDED UNEM-**
13 **PLOYMENT COMPENSATION FOR A LIMITED**
14 **PERIOD.**

15 (a) **IN GENERAL.**—In the case of sharable extended
16 compensation and sharable regular compensation paid for
17 weeks of unemployment beginning after the date of the
18 enactment of this section and before January 1, 2010, sec-
19 tion 204(a)(1) of the Federal-State Extended Unemploy-
20 ment Compensation Act of 1970 (26 U.S.C. 3304 note)
21 shall be applied by substituting “100 percent of” for “one-
22 half of”.

23 (b) **SPECIAL RULE.**—At the option of a State, for
24 any weeks of unemployment beginning after the date of
25 the enactment of this section and before January 1, 2010,

1 an individual's eligibility period (as described in section
2 203(c) of the Federal-State Extended Unemployment
3 Compensation Act of 1970) shall, for purposes of any de-
4 termination of eligibility for extended compensation under
5 the State law of such State, be considered to include any
6 week which begins—

7 (1) after the date as of which such individual
8 exhausts all rights to emergency unemployment com-
9 pensation; and

10 (2) during an extended benefit period that
11 began on or before the date described in paragraph
12 (1).

13 (c) LIMITED EXTENSION.—In the case of an indi-
14 vidual who receives extended compensation with respect to
15 1 or more weeks of unemployment beginning after the date
16 of the enactment of this Act and before January 1, 2010,
17 the provisions of subsections (a) and (b) shall, at the op-
18 tion of a State, be applied by substituting “ending before
19 June 1, 2010” for “before January 1, 2010”.

20 (d) EXTENSION OF TEMPORARY FEDERAL MATCH-
21 ING FOR THE FIRST WEEK OF EXTENDED BENEFITS FOR
22 STATES WITH NO WAITING WEEK.—

23 (1) IN GENERAL.—Section 5 of the Unemploy-
24 ment Compensation Extension Act of 2008 (Public

1 Law 110–449) is amended by striking “December 8,
2 2009” and inserting “May 30, 2010”.

3 (2) EFFECTIVE DATE.—The amendment made
4 by paragraph (1) shall take effect as if included in
5 the enactment of the Unemployment Compensation
6 Extension Act of 2008 (Public Law 110–449).

7 (e) DEFINITIONS.—For purposes of this section—

8 (1) the terms “sharable extended compensa-
9 tion” and “sharable regular compensation” have the
10 respective meanings given such terms under section
11 204 of the Federal-State Extended Unemployment
12 Compensation Act of 1970;

13 (2) the terms “extended compensation”,
14 “State”, “State law”, and “week” have the respec-
15 tive meanings given such terms under section 205 of
16 the Federal-State Extended Unemployment Com-
17 pensation Act of 1970;

18 (3) the term “emergency unemployment com-
19 pensation” means benefits payable to individuals
20 under title IV of the Supplemental Appropriations
21 Act, 2008 with respect to their unemployment; and

22 (4) the term “extended benefit period” means
23 an extended benefit period as determined in accord-
24 ance with applicable provisions of the Federal-State

1 Extended Unemployment Compensation Act of
2 1970.

3 (f) REGULATIONS.—The Secretary of Labor may pre-
4 scribe any operating instructions or regulations necessary
5 to carry out this section.

6 **SEC. 2006. TEMPORARY INCREASE IN EXTENDED UNEM-**
7 **PLOYMENT BENEFITS UNDER THE RAILROAD**
8 **UNEMPLOYMENT INSURANCE ACT.**

9 (a) IN GENERAL.—Section 2(c)(2) of the Railroad
10 Unemployment Insurance Act (45 U.S.C. 352(c)(2)) is
11 amended by adding at the end the following:

12 “(D) TEMPORARY INCREASE IN EXTENDED
13 UNEMPLOYMENT BENEFITS.—

14 “(i) EMPLOYEES WITH 10 OR MORE
15 YEARS OF SERVICE.—Subject to clause
16 (iii), in the case of an employee who has
17 10 or more years of service (as so defined),
18 with respect to extended unemployment
19 benefits—

20 “(I) subparagraph (A) shall be
21 applied by substituting ‘130 days of
22 unemployment’ for ‘65 days of unem-
23 ployment’; and

24 “(II) subparagraph (B) shall be
25 applied by inserting ‘(or, in the case

1 of unemployment benefits, 13 con-
2 secutive 14-day periods)’ after ‘7 con-
3 secutive 14-day periods’.

4 “(ii) EMPLOYEES WITH LESS THAN 10
5 YEARS OF SERVICE.—Subject to clause
6 (iii), in the case of an employee who has
7 less than 10 years of service (as so de-
8 fined), with respect to extended unemploy-
9 ment benefits, this paragraph shall apply
10 to such an employee in the same manner
11 as this paragraph would apply to an em-
12 ployee described in clause (i) if such clause
13 had not been enacted.

14 “(iii) APPLICATION.—The provisions
15 of clauses (i) and (ii) shall apply to an em-
16 ployee who received normal benefits for
17 days of unemployment under this Act dur-
18 ing the period beginning July 1, 2008, and
19 ending on June 30, 2009, except that no
20 extended benefit period under this para-
21 graph shall begin after December 31,
22 2009. Notwithstanding the preceding sen-
23 tence, no benefits shall be payable under
24 this subparagraph and clauses (i) and (ii)
25 shall no longer be applicable upon the ex-

1 haustion of the funds appropriated under
2 clause (iv) for payment of benefits under
3 this subparagraph.

4 “(iv) APPROPRIATION.—Out of any
5 funds in the Treasury not otherwise appro-
6 priated, there are appropriated
7 \$20,000,000 to cover the cost of additional
8 extended unemployment benefits provided
9 under this subparagraph, to remain avail-
10 able until expended.”.

11 (b) FUNDING FOR ADMINISTRATION.—Out of any
12 funds in the Treasury not otherwise appropriated, there
13 are appropriated to the Railroad Retirement Board
14 \$80,000 to cover the administrative expenses associated
15 with the payment of additional extended unemployment
16 benefits under section 2(c)(2)(D) of the Railroad Unem-
17 ployment Insurance Act, as added by subsection (a), to
18 remain available until expended.

19 **Subtitle B—Assistance for**
20 **Vulnerable Individuals**

21 **SEC. 2101. EMERGENCY FUND FOR TANF PROGRAM.**

22 (a) TEMPORARY FUND.—

23 (1) IN GENERAL.—Section 403 of the Social
24 Security Act (42 U.S.C. 603) is amended by adding
25 at the end the 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.—

9 “(A) IN GENERAL.—Out of any money in
10 the Treasury of the United States not otherwise
11 appropriated, there are appropriated for fiscal
12 year 2009, \$5,000,000,000 for payment to the
13 Emergency Fund.

14 “(B) AVAILABILITY AND USE OF FUNDS.—
15 The amounts appropriated to the Emergency
16 Fund under subparagraph (A) shall remain
17 available through fiscal year 2010 and shall be
18 used to make grants to States in each of fiscal
19 years 2009 and 2010 in accordance with the re-
20 quirements of paragraph (3).

21 “(C) LIMITATION.—In no case may the
22 Secretary make a grant from the Emergency
23 Fund for a fiscal year after fiscal year 2010.

24 “(3) GRANTS.—

1 “(A) GRANT RELATED TO CASELOAD IN-
2 CREASES.—

3 “(i) IN GENERAL.—For each calendar
4 quarter in fiscal year 2009 or 2010, the
5 Secretary shall make a grant from the
6 Emergency Fund to each State that—

7 “(I) requests a grant under this
8 subparagraph for the quarter; and

9 “(II) meets the requirement of
10 clause (ii) for the quarter.

11 “(ii) CASELOAD INCREASE REQUIRE-
12 MENT.—A State meets the requirement of
13 this clause for a quarter if the average
14 monthly assistance caseload of the State
15 for the quarter exceeds the average month-
16 ly assistance caseload of the State for the
17 corresponding quarter in the emergency
18 fund base year of the State.

19 “(iii) AMOUNT OF GRANT.—Subject to
20 paragraph (5), the amount of the grant to
21 be made to a State under this subpara-
22 graph for a quarter shall be an amount
23 equal to 80 percent of the amount (if any)
24 by which the total expenditures of the
25 State for basic assistance (as defined by

1 the Secretary) in the quarter, whether
2 under the State program funded under this
3 part or as qualified State expenditures, ex-
4 ceeds the total expenditures of the State
5 for such assistance for the corresponding
6 quarter in the emergency fund base year of
7 the State.

8 “(B) GRANT RELATED TO INCREASED EX-
9 PENDITURES FOR NON-RECURRENT SHORT
10 TERM BENEFITS.—

11 “(i) IN GENERAL.—For each calendar
12 quarter in fiscal year 2009 or 2010, the
13 Secretary shall make a grant from the
14 Emergency Fund to each State that—

15 “(I) requests a grant under this
16 subparagraph for the quarter; and

17 “(II) meets the requirement of
18 clause (ii) for the quarter.

19 “(ii) NON-RECURRENT SHORT TERM
20 EXPENDITURE REQUIREMENT.—A State
21 meets the requirement of this clause for a
22 quarter if the total expenditures of the
23 State for non-recurrent short term benefits
24 in the quarter, whether under the State
25 program funded under this part or as

1 qualified State expenditures, exceeds the
2 total expenditures of the State for non-re-
3 current short term benefits in the cor-
4 responding quarter in the emergency fund
5 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 an amount
10 equal to 80 percent of the excess described
11 in clause (ii).

12 “(C) GRANT RELATED TO INCREASED EX-
13 PENDITURES FOR SUBSIDIZED EMPLOYMENT.—

14 “(i) IN GENERAL.—For each calendar
15 quarter in fiscal year 2009 or 2010, the
16 Secretary shall make a grant from the
17 Emergency Fund to each State that—

18 “(I) requests a grant under this
19 subparagraph for the quarter; and

20 “(II) meets the requirement of
21 clause (ii) for the quarter.

22 “(ii) SUBSIDIZED EMPLOYMENT EX-
23 PENDITURE REQUIREMENT.—A State
24 meets the requirement of this clause for a
25 quarter if the total expenditures of the

1 State for subsidized employment in the
2 quarter, whether under the State program
3 funded under this part or as qualified
4 State expenditures, exceeds the total such
5 expenditures of the State in the cor-
6 responding quarter in the emergency fund
7 base year of the State.

8 “(iii) AMOUNT OF GRANT.—Subject to
9 paragraph (5), the amount of the grant to
10 be made to a State under this subpara-
11 graph for a quarter shall be an amount
12 equal to 80 percent of the excess described
13 in clause (ii).

14 “(4) AUTHORITY TO MAKE NECESSARY ADJUST-
15 MENTS TO DATA AND COLLECT NEEDED DATA.—In
16 determining the size of the caseload of a State and
17 the expenditures of a State for basic assistance, non-
18 recurrent short-term benefits, and subsidized em-
19 ployment, during any period for which the State re-
20 quests funds under this subsection, and during the
21 emergency fund base year of the State, the Sec-
22 retary may make appropriate adjustments to the
23 data, on a State-by-State basis, to ensure that the
24 data are comparable with respect to the groups of
25 families served and the types of aid provided. The

1 Secretary may develop a mechanism for collecting
2 expenditure data, including procedures which allow
3 States to make reasonable estimates, and may set
4 deadlines for making revisions to the data.

5 “(5) LIMITATION.—The total amount payable
6 to a single State under subsection (b) and this sub-
7 section for fiscal years 2009 and 2010 combined
8 shall not exceed 50 percent of the annual State fam-
9 ily assistance grant.

10 “(6) LIMITATIONS ON USE OF FUNDS.—A State
11 to which an amount is paid under this subsection
12 may use the amount only as authorized by section
13 404.

14 “(7) TIMING OF IMPLEMENTATION.—The Sec-
15 retary shall implement this subsection as quickly as
16 reasonably possible, pursuant to appropriate guid-
17 ance to States.

18 “(8) APPLICATION TO INDIAN TRIBES.—This
19 subsection shall apply to an Indian tribe with an ap-
20 proved tribal family assistance plan under section
21 412 in the same manner as this subsection applies
22 to a State.

23 “(9) DEFINITIONS.—In this subsection:

24 “(A) AVERAGE MONTHLY ASSISTANCE
25 CASELOAD DEFINED.—The term ‘average

1 monthly assistance caseload' means, with re-
2 spect to a State and a quarter, the number of
3 families receiving assistance during the quarter
4 under the State program funded under this
5 part or as qualified State expenditures, subject
6 to adjustment under paragraph (4).

7 “(B) EMERGENCY FUND BASE YEAR.—

8 “(i) IN GENERAL.—The term ‘emer-
9 gency fund base year’ means, with respect
10 to a State and a category described in
11 clause (ii), whichever of fiscal year 2007 or
12 2008 is the fiscal year in which the
13 amount described by the category with re-
14 spect to the State is the lesser.

15 “(ii) CATEGORIES DESCRIBED.—The
16 categories described in this clause are the
17 following:

18 “(I) The average monthly assist-
19 ance caseload of the State.

20 “(II) The total expenditures of
21 the State for non-recurrent short term
22 benefits, whether under the State pro-
23 gram funded under this part or as
24 qualified State expenditures.

1 “(III) The total expenditures of
2 the State for subsidized employment,
3 whether under the State program
4 funded under this part or as qualified
5 State expenditures.

6 “(C) QUALIFIED STATE EXPENDITURES.—
7 The term ‘qualified State expenditures’ has the
8 meaning given the term in section 409(a)(7).”.

9 (2) REPEAL.—Effective October 1, 2010, sub-
10 section (c) of section 403 of the Social Security Act
11 (42 U.S.C. 603) (as added by paragraph (1)) is re-
12 pealed, except that paragraph (9) of such subsection
13 shall remain in effect until October 1, 2011, but
14 only with respect to section 407(b)(3)(A)(i) of such
15 Act.

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 2008,
20 2009, or 2010, then, at State option, during the emer-
21 gency fund base year of the State with respect to the aver-
22 age monthly assistance caseload of the State (within the
23 meaning of section 403(c)(9)), except that, if a State
24 elects such option for fiscal year 2008, the emergency fund

1 base year of the State with respect to such caseload shall
2 be fiscal year 2007))” before “under the State”.

3 (c) DISREGARD FROM LIMITATION ON TOTAL PAY-
4 MENTS TO TERRITORIES.—Section 1108(a)(2) of the So-
5 cial Security Act (42 U.S.C. 1308(a)(2)) is amended by
6 inserting “403(c)(3),” after “403(a)(5),”.

7 (d) SUNSET OF OTHER TEMPORARY PROVISIONS.—

8 (1) DISREGARD FROM LIMITATION ON TOTAL
9 PAYMENTS TO TERRITORIES.—Effective October 1,
10 2010, section 1108(a)(2) of the Social Security Act
11 (42 U.S.C. 1308(a)(2)) is amended by striking
12 “403(c)(3),” (as added by subsection (c)).

13 (2) CASELOAD REDUCTION CREDIT.—Effective
14 October 1, 2011, section 407(b)(3)(A)(i) of such Act
15 (42 U.S.C. 607(b)(3)(A)(i)) is amended by striking
16 “(or if the immediately preceding fiscal year is fiscal
17 year 2008, 2009, or 2010, then, at State option,
18 during the emergency fund base year of the State
19 with respect to the average monthly assistance case-
20 load of the State (within the meaning of section
21 403(c)(9)), except that, if a State elects such option
22 for fiscal year 2008, the emergency fund base year
23 of the State with respect to such caseload shall be
24 fiscal year 2007))” (as added by subsection (b)).

1 **SEC. 2102. EXTENSION OF TANF SUPPLEMENTAL GRANTS.**

2 (a) **EXTENSION THROUGH FISCAL YEAR 2010.**—Sec-
3 tion 7101(a) of the Deficit Reduction Act of 2005 (Public
4 Law 109–171; 120 Stat. 135), as amended by section
5 301(a) of the Medicare Improvements for Patients and
6 Providers Act of 2008 (Public Law 110–275), is amended
7 by striking “fiscal year 2009” and inserting “fiscal year
8 2010”.

9 (b) **CONFORMING AMENDMENT.**—Section
10 403(a)(3)(H)(ii) of the Social Security Act (42 U.S.C.
11 603(a)(3)(H)(ii)) is amended to read as follows:

12 “(ii) subparagraph (G) shall be ap-
13 plied as if ‘fiscal year 2010’ were sub-
14 stituted for ‘fiscal year 2001’; and”.

15 **SEC. 2103. CLARIFICATION OF AUTHORITY OF STATES TO**
16 **USE TANF FUNDS CARRIED OVER FROM**
17 **PRIOR YEARS TO PROVIDE TANF BENEFITS**
18 **AND SERVICES.**

19 Section 404(e) of the Social Security Act (42 U.S.C.
20 604(e)) is amended to read as follows:

21 “(e) **AUTHORITY TO CARRY OVER CERTAIN**
22 **AMOUNTS FOR BENEFITS OR SERVICES OR FOR FUTURE**
23 **CONTINGENCIES.**—A State or tribe may use a grant made
24 to the State or tribe under this part for any fiscal year
25 to provide, without fiscal year limitation, any benefit or

1 service that may be provided under the State or tribal pro-
2 gram funded under this part.”.

3 **SEC. 2104. TEMPORARY RESUMPTION OF PRIOR CHILD**
4 **SUPPORT LAW.**

5 During the period that begins on October 1, 2008,
6 and ends on September 30, 2010, section 455(a)(1) of the
7 Social Security Act (42 U.S.C. 655(a)(1)) shall be applied
8 and administered as if the phrase “from amounts paid to
9 the State under section 458 or” does not appear in such
10 section.

11 **Subtitle C—Economic Recovery**
12 **Payments to Certain Individuals**

13 **SEC. 2201. ECONOMIC RECOVERY PAYMENT TO RECIPIENTS**
14 **OF SOCIAL SECURITY, SUPPLEMENTAL SECU-**
15 **RITY INCOME, RAILROAD RETIREMENT BENE-**
16 **FITS, AND VETERANS DISABILITY COMPENSA-**
17 **TION OR PENSION BENEFITS.**

18 (a) AUTHORITY TO MAKE PAYMENTS.—

19 (1) ELIGIBILITY.—

20 (A) IN GENERAL.—Subject to paragraph
21 (5)(B), the Secretary of the Treasury shall dis-
22 burse a \$250 payment to each individual who,
23 for any month during the 3-month period end-
24 ing with the month which ends prior to the
25 month that includes the date of the enactment

1 of this Act, is entitled to a benefit payment de-
2 scribed in clause (i), (ii), or (iii) of subpara-
3 graph (B) or is eligible for a SSI cash benefit
4 described in subparagraph (C).

5 (B) BENEFIT PAYMENT DESCRIBED.—For
6 purposes of subparagraph (A):

7 (i) TITLE II BENEFIT.—A benefit pay-
8 ment described in this clause is a monthly
9 insurance benefit payable (without regard
10 to sections 202(j)(1) and 223(b) of the So-
11 cial Security Act (42 U.S.C. 402(j)(1),
12 423(b)) under—

13 (I) section 202(a) of such Act
14 (42 U.S.C. 402(a));

15 (II) section 202(b) of such Act
16 (42 U.S.C. 402(b));

17 (III) section 202(c) of such Act
18 (42 U.S.C. 402(c));

19 (IV) section 202(d)(1)(B)(ii) of
20 such Act (42 U.S.C.
21 402(d)(1)(B)(ii));

22 (V) section 202(e) of such Act
23 (42 U.S.C. 402(e));

24 (VI) section 202(f) of such Act
25 (42 U.S.C. 402(f));

1 (VII) section 202(g) of such Act
2 (42 U.S.C. 402(g));

3 (VIII) section 202(h) of such Act
4 (42 U.S.C. 402(h));

5 (IX) section 223(a) of such Act
6 (42 U.S.C. 423(a));

7 (X) section 227 of such Act (42
8 U.S.C. 427); or

9 (XI) section 228 of such Act (42
10 U.S.C. 428).

11 (ii) RAILROAD RETIREMENT BEN-
12 EFIT.—A benefit payment described in this
13 clause is a monthly annuity or pension
14 payment payable (without regard to section
15 5(a)(ii) of the Railroad Retirement Act of
16 1974 (45 U.S.C. 231d(a)(ii))) under—

17 (I) section 2(a)(1) of such Act
18 (45 U.S.C. 231a(a)(1));

19 (II) section 2(c) of such Act (45
20 U.S.C. 231a(c));

21 (III) section 2(d)(1)(i) of such
22 Act (45 U.S.C. 231a(d)(1)(i));

23 (IV) section 2(d)(1)(ii) of such
24 Act (45 U.S.C. 231a(d)(1)(ii));

1 (V) section 2(d)(1)(iii)(C) of such
2 Act to an adult disabled child (45
3 U.S.C. 231a(d)(1)(iii)(C));

4 (VI) section 2(d)(1)(iv) of such
5 Act (45 U.S.C. 231a(d)(1)(iv));

6 (VII) section 2(d)(1)(v) of such
7 Act (45 U.S.C. 231a(d)(1)(v)); or

8 (VIII) section 7(b)(2) of such Act
9 (45 U.S.C. 231f(b)(2)) with respect to
10 any of the benefit payments described
11 in clause (i) of this subparagraph.

12 (iii) VETERANS BENEFIT.—A benefit
13 payment described in this clause is a com-
14 pensation or pension payment payable
15 under—

16 (I) section 1110, 1117, 1121,
17 1131, 1141, or 1151 of title 38,
18 United States Code;

19 (II) section 1310, 1312, 1313,
20 1315, 1316, or 1318 of title 38,
21 United States Code;

22 (III) section 1513, 1521, 1533,
23 1536, 1537, 1541, 1542, or 1562 of
24 title 38, United States Code; or

1 (IV) section 1805, 1815, or 1821
2 of title 38, United States Code,
3 to a veteran, surviving spouse, child, or
4 parent as described in paragraph (2), (3),
5 (4)(A)(ii), or (5) of section 101, title 38,
6 United States Code, who received that ben-
7 efit during any month within the 3 month
8 period ending with the month which ends
9 prior to the month that includes the date
10 of the enactment of this Act.

11 (C) SSI CASH BENEFIT DESCRIBED.—A
12 SSI cash benefit described in this subparagraph
13 is a cash benefit payable under section 1611
14 (other than under subsection (e)(1)(B) of such
15 section) or 1619(a) of the Social Security Act
16 (42 U.S.C. 1382, 1382h).

17 (2) REQUIREMENT.—A payment shall be made
18 under paragraph (1) only to individuals who reside
19 in 1 of the 50 States, the District of Columbia,
20 Puerto Rico, Guam, the United States Virgin Is-
21 lands, American Samoa, or the Northern Mariana
22 Islands. For purposes of the preceding sentence, the
23 determination of the individual's residence shall be
24 based on the current address of record under a pro-
25 gram specified in paragraph (1).

1 (3) NO DOUBLE PAYMENTS.—An individual
2 shall be paid only 1 payment under this section, re-
3 gardless of whether the individual is entitled to, or
4 eligible for, more than 1 benefit or cash payment de-
5 scribed in paragraph (1).

6 (4) LIMITATION.—A payment under this section
7 shall not be made—

8 (A) in the case of an individual entitled to
9 a benefit specified in paragraph (1)(B)(i) or
10 paragraph (1)(B)(ii)(VIII) if, for the most re-
11 cent month of such individual's entitlement in
12 the 3-month period described in paragraph (1),
13 such individual's benefit under such paragraph
14 was not payable by reason of subsection (x) or
15 (y) of section 202 the Social Security Act (42
16 U.S.C. 402) or section 1129A of such Act (42
17 U.S.C. 1320a-8a);

18 (B) in the case of an individual entitled to
19 a benefit specified in paragraph (1)(B)(iii) if,
20 for the most recent month of such individual's
21 entitlement in the 3 month period described in
22 paragraph (1), such individual's benefit under
23 such paragraph was not payable, or was re-
24 duced, by reason of section 1505, 5313, or
25 5313B of title 38, United States Code;

1 (C) in the case of an individual entitled to
2 a benefit specified in paragraph (1)(C) if, for
3 such most recent month, such individual's ben-
4 efit under such paragraph was not payable by
5 reason of subsection (e)(1)(A) or (e)(4) of sec-
6 tion 1611 (42 U.S.C. 1382) or section 1129A
7 of such Act (42 U.S.C. 1320a-8a); or

8 (D) in the case of any individual whose
9 date of death occurs before the date on which
10 the individual is certified under subsection (b)
11 to receive a payment under this section.

12 (5) TIMING AND MANNER OF PAYMENTS.—

13 (A) IN GENERAL.—The Secretary of the
14 Treasury shall commence disbursing payments
15 under this section at the earliest practicable
16 date but in no event later than 120 days after
17 the date of enactment of this Act. The Sec-
18 retary of the Treasury may disburse any pay-
19 ment electronically to an individual in such
20 manner as if such payment was a benefit pay-
21 ment or cash benefit to such individual under
22 the applicable program described in subpara-
23 graph (B) or (C) of paragraph (1).

24 (B) DEADLINE.—No payments shall be
25 disbursed under this section after December 31,

1 2010, regardless of any determinations of enti-
2 tlement to, or eligibility for, such payments
3 made after such date.

4 (b) IDENTIFICATION OF RECIPIENTS.—The Commis-
5 sioner of Social Security, the Railroad Retirement Board,
6 and the Secretary of Veterans Affairs shall certify the in-
7 dividuals entitled to receive payments under this section
8 and provide the Secretary of the Treasury with the infor-
9 mation needed to disburse such payments. A certification
10 of an individual shall be unaffected by any subsequent de-
11 termination or redetermination of the individual's entitle-
12 ment to, or eligibility for, a benefit specified in subpara-
13 graph (B) or (C) of subsection (a)(1).

14 (c) TREATMENT OF PAYMENTS.—

15 (1) PAYMENT TO BE DISREGARDED FOR PUR-
16 POSES OF ALL FEDERAL AND FEDERALLY ASSISTED
17 PROGRAMS.—A payment under subsection (a) shall
18 not be regarded as income and shall not be regarded
19 as a resource for the month of receipt and the fol-
20 lowing 9 months, for purposes of determining the
21 eligibility of the recipient (or the recipient's spouse
22 or family) for benefits or assistance, or the amount
23 or extent of benefits or assistance, under any Fed-
24 eral program or under any State or local program fi-
25 nanced in whole or in part with Federal funds.

1 (2) PAYMENT NOT CONSIDERED INCOME FOR
2 PURPOSES OF TAXATION.—A payment under sub-
3 section (a) shall not be considered as gross income
4 for purposes of the Internal Revenue Code of 1986.

5 (3) PAYMENTS PROTECTED FROM ASSIGN-
6 MENT.—The provisions of sections 207 and
7 1631(d)(1) of the Social Security Act (42 U.S.C.
8 407, 1383(d)(1)), section 14(a) of the Railroad Re-
9 tirement Act of 1974 (45 U.S.C. 231m(a)), and sec-
10 tion 5301 of title 38, United States Code, shall
11 apply to any payment made under subsection (a) as
12 if such payment was a benefit payment or cash ben-
13 efit to such individual under the applicable program
14 described in subparagraph (B) or (C) of subsection
15 (a)(1).

16 (4) PAYMENTS SUBJECT TO OFFSET.—Notwith-
17 standing paragraph (3), for purposes of section
18 3716 of title 31, United States Code, any payment
19 made under this section shall not be considered a
20 benefit payment or cash benefit made under the ap-
21 plicable program described in subparagraph (B) or
22 (C) of subsection (a)(1) and all amounts paid shall
23 be subject to offset to collect delinquent debts.

24 (d) PAYMENT TO REPRESENTATIVE PAYEES AND FI-
25 DUCIARIES.—

1 (1) IN GENERAL.—In any case in which an in-
2 dividual who is entitled to a payment under sub-
3 section (a) and whose benefit payment or cash ben-
4 efit described in paragraph (1) of that subsection is
5 paid to a representative payee or fiduciary, the pay-
6 ment under subsection (a) shall be made to the indi-
7 vidual's representative payee or fiduciary and the en-
8 tire payment shall be used only for the benefit of the
9 individual who is entitled to the payment.

10 (2) APPLICABILITY.—

11 (A) PAYMENT ON THE BASIS OF A TITLE
12 II OR SSI BENEFIT.—Section 1129(a)(3) of the
13 Social Security Act (42 U.S.C. 1320a-8(a)(3))
14 shall apply to any payment made on the basis
15 of an entitlement to a benefit specified in para-
16 graph (1)(B)(i) or (1)(C) of subsection (a) in
17 the same manner as such section applies to a
18 payment under title II or XVI of such Act.

19 (B) PAYMENT ON THE BASIS OF A RAIL-
20 ROAD RETIREMENT BENEFIT.—Section 13 of
21 the Railroad Retirement Act (45 U.S.C. 2311)
22 shall apply to any payment made on the basis
23 of an entitlement to a benefit specified in para-
24 graph (1)(B)(ii) of subsection (a) in the same

1 manner as such section applies to a payment
2 under such Act.

3 (C) PAYMENT ON THE BASIS OF A VET-
4 ERANS BENEFIT.—Sections 5502, 6106, and
5 6108 of title 38, United States Code, shall
6 apply to any payment made on the basis of an
7 entitlement to a benefit specified in paragraph
8 (1)(B)(iii) of subsection (a) in the same manner
9 as those sections apply to a payment under that
10 title.

11 (e) APPROPRIATION.—Out of any sums in the Treas-
12 ury of the United States not otherwise appropriated, the
13 following sums are appropriated for the period of fiscal
14 years 2009 through 2011, to remain available until ex-
15 pended, to carry out this section:

16 (1) For the Secretary of the Treasury,
17 \$131,000,000 for administrative costs incurred in
18 carrying out this section, section 2202, section 36A
19 of the Internal Revenue Code of 1986 (as added by
20 this Act), and other provisions of this Act or the
21 amendments made by this Act relating to the Inter-
22 nal Revenue Code of 1986.

23 (2) For the Commissioner of Social Security—
24 (A) such sums as may be necessary for
25 payments to individuals certified by the Com-

1 missioner of Social Security as entitled to re-
2 ceive a payment under this section; and

3 (B) \$90,000,000 for the Social Security
4 Administration's Limitation on Administrative
5 Expenses for costs incurred in carrying out this
6 section.

7 (3) For the Railroad Retirement Board—

8 (A) such sums as may be necessary for
9 payments to individuals certified by the Rail-
10 road Retirement Board as entitled to receive a
11 payment under this section; and

12 (B) \$1,400,000 to the Railroad Retirement
13 Board's Limitation on Administration for ad-
14 ministrative costs incurred in carrying out this
15 section.

16 (4)(A) For the Secretary of Veterans Affairs—

17 (i) such sums as may be necessary for
18 the Compensation and Pensions account,
19 for payments to individuals certified by the
20 Secretary of Veterans Affairs as entitled to
21 receive a payment under this section; and

22 (ii) \$100,000 for the Information Sys-
23 tems Technology account and \$7,100,000
24 for the General Operating Expenses ac-

1 count for administrative costs incurred in
2 carrying out this section.

3 (B) The Department of Veterans Affairs Com-
4 pensation and Pensions account shall hereinafter be
5 available for payments authorized under subsection
6 (a)(1)(A) to individuals entitled to a benefit payment
7 described in subsection (a)(1)(B)(iii).

8 **SEC. 2202. SPECIAL CREDIT FOR CERTAIN GOVERNMENT**
9 **RETIREES.**

10 (a) **IN GENERAL.**—In the case of an eligible indi-
11 vidual, there shall be allowed as a credit against the tax
12 imposed by subtitle A of the Internal Revenue Code of
13 1986 for the first taxable year beginning in 2009 an
14 amount equal \$250 (\$500 in the case of a joint return
15 where both spouses are eligible individuals).

16 (b) **ELIGIBLE INDIVIDUAL.**—For purposes of this
17 section—

18 (1) **IN GENERAL.**—The term “eligible indi-
19 vidual” means any individual—

20 (A) who receives during the first taxable
21 year beginning in 2009 any amount as a pen-
22 sion or annuity for service performed in the em-
23 ploy of the United States or any State, or any
24 instrumentality thereof, which is not considered

1 employment for purposes of chapter 21 of the
2 Internal Revenue Code of 1986, and

3 (B) who does not receive a payment under
4 section 2201 during such taxable year.

5 (2) IDENTIFICATION NUMBER REQUIREMENT.—

6 Such term shall not include any individual who does
7 not include on the return of tax for the taxable
8 year—

9 (A) such individual's social security ac-
10 count number, and

11 (B) in the case of a joint return, the social
12 security account number of one of the taxpayers
13 on such return.

14 For purposes of the preceding sentence, the social
15 security account number shall not include a TIN (as
16 defined in section 7701(a)(41) of the Internal Rev-
17 enue Code of 1986) issued by the Internal Revenue
18 Service. Any omission of a correct social security ac-
19 count number required under this subparagraph
20 shall be treated as a mathematical or clerical error
21 for purposes of applying section 6213(g)(2) of such
22 Code to such omission.

23 (c) TREATMENT OF CREDIT.—

24 (1) REFUNDABLE CREDIT.—

1 (A) IN GENERAL.—The credit allowed by
2 subsection (a) shall be treated as allowed by
3 subpart C of part IV of subchapter A of chap-
4 ter 1 of the Internal Revenue Code of 1986.

5 (B) APPROPRIATIONS.—For purposes of
6 section 1324(b)(2) of title 31, United States
7 Code, the credit allowed by subsection (a) shall
8 be treated in the same manner a refund from
9 the credit allowed under section 36A of the In-
10 ternal Revenue Code of 1986 (as added by this
11 Act).

12 (2) DEFICIENCY RULES.—For purposes of sec-
13 tion 6211(b)(4)(A) of the Internal Revenue Code of
14 1986, the credit allowable by subsection (a) shall be
15 treated in the same manner as the credit allowable
16 under section 36A of the Internal Revenue Code of
17 1986 (as added by this Act).

18 (d) REFUNDS DISREGARDED IN THE ADMINISTRA-
19 TION OF FEDERAL PROGRAMS AND FEDERALLY AS-
20 SISTED PROGRAMS.—Any credit or refund allowed or
21 made to any individual by reason of this section shall not
22 be taken into account as income and shall not be taken
23 into account as resources for the month of receipt and the
24 following 2 months, for purposes of determining the eligi-
25 bility of such individual or any other individual for benefits

1 or assistance, or the amount or extent of benefits or assist-
2 ance, under any Federal program or under any State or
3 local program financed in whole or in part with Federal
4 funds.

5 **TITLE III—PREMIUM ASSIST-**
6 **ANCE FOR COBRA BENEFITS**

7 **SEC. 3000. TABLE OF CONTENTS.**

8 The table of contents of this title is as follows:

TITLE III—PREMIUM ASSISTANCE FOR COBRA BENEFITS

Sec. 3000. Table of contents.

Sec. 3001. Premium assistance for COBRA benefits.

9 **SEC. 3001. PREMIUM ASSISTANCE FOR COBRA BENEFITS.**

10 (a) PREMIUM ASSISTANCE FOR COBRA CONTINU-
11 ATION COVERAGE FOR INDIVIDUALS AND THEIR FAMI-
12 LIES.—

13 (1) PROVISION OF PREMIUM ASSISTANCE.—

14 (A) REDUCTION OF PREMIUMS PAY-
15 ABLE.—In the case of any premium for a pe-
16 riod of coverage beginning on or after the date
17 of the enactment of this Act for COBRA con-
18 tinuation coverage with respect to any assist-
19 ance eligible individual, such individual shall be
20 treated for purposes of any COBRA continu-
21 ation provision as having paid the amount of
22 such premium if such individual pays (or a per-
23 son other than such individual's employer pays

1 on behalf of such individual) 35 percent of the
2 amount of such premium (as determined with-
3 out regard to this subsection).

4 (B) PLAN ENROLLMENT OPTION.—

5 (i) IN GENERAL.—Notwithstanding
6 the COBRA continuation provisions, an as-
7 sistance eligible individual may, not later
8 than 90 days after the date of notice of the
9 plan enrollment option described in this
10 subparagraph, elect to enroll in coverage
11 under a plan offered by the employer in-
12 volved, or the employee organization in-
13 volved (including, for this purpose, a joint
14 board of trustees of a multiemployer trust
15 affiliated with one or more multiemployer
16 plans), that is different than coverage
17 under the plan in which such individual
18 was enrolled at the time the qualifying
19 event occurred, and such coverage shall be
20 treated as COBRA continuation coverage
21 for purposes of the applicable COBRA con-
22 tinuation coverage provision.

23 (ii) REQUIREMENTS.—An assistance
24 eligible individual may elect to enroll in

1 different coverage as described in clause (i)
2 only if—

3 (I) the employer involved has
4 made a determination that such em-
5 ployer will permit assistance eligible
6 individuals to enroll in different cov-
7 erage as provided for this subpara-
8 graph;

9 (II) the premium for such dif-
10 ferent coverage does not exceed the
11 premium for coverage in which the in-
12 dividual was enrolled at the time the
13 qualifying event occurred;

14 (III) the different coverage in
15 which the individual elects to enroll is
16 coverage that is also offered to the ac-
17 tive employees of the employer at the
18 time at which such election is made;
19 and

20 (IV) the different coverage is
21 not—

22 (aa) coverage that provides
23 only dental, vision, counseling, or
24 referral services (or a combina-
25 tion of such services);

1 (bb) a flexible spending ar-
2 rangement (as defined in section
3 106(c)(2) of the Internal Rev-
4 enue Code of 1986); or

5 (cc) coverage that provides
6 coverage for services or treat-
7 ments furnished in an on-site
8 medical facility maintained by
9 the employer and that consists
10 primarily of first-aid services,
11 prevention and wellness care, or
12 similar care (or a combination of
13 such care).

14 (C) PREMIUM REIMBURSEMENT.—For pro-
15 visions providing the balance of such premium,
16 see section 6432 of the Internal Revenue Code
17 of 1986, as added by paragraph (12).

18 (2) LIMITATION OF PERIOD OF PREMIUM AS-
19 SISTANCE.—

20 (A) IN GENERAL.—Paragraph (1)(A) shall
21 not apply with respect to any assistance eligible
22 individual for months of coverage beginning on
23 or after the earlier of—

24 (i) the first date that such individual
25 is eligible for coverage under any other

1 group health plan (other than coverage
2 consisting of only dental, vision, coun-
3 seling, or referral services (or a combina-
4 tion thereof), coverage under a flexible
5 spending arrangement (as defined in sec-
6 tion 106(c)(2) of the Internal Revenue
7 Code of 1986), or coverage of treatment
8 that is furnished in an on-site medical fa-
9 cility maintained by the employer and that
10 consists primarily of first-aid services, pre-
11 vention and wellness care, or similar care
12 (or a combination thereof)) or is eligible
13 for benefits under title XVIII of the Social
14 Security Act, or

15 (ii) the earliest of—

16 (I) the date which is 9 months
17 after the first day of the first month
18 that paragraph (1)(A) applies with re-
19 spect to such individual,

20 (II) the date following the expira-
21 tion of the maximum period of con-
22 tinuation coverage required under the
23 applicable COBRA continuation cov-
24 erage provision, or

1 (III) the date following the expi-
2 ration of the period of continuation
3 coverage allowed under paragraph
4 (4)(B)(ii).

5 (B) TIMING OF ELIGIBILITY FOR ADDI-
6 TIONAL COVERAGE.—For purposes of subpara-
7 graph (A)(i), an individual shall not be treated
8 as eligible for coverage under a group health
9 plan before the first date on which such indi-
10 vidual could be covered under such plan.

11 (C) NOTIFICATION REQUIREMENT.—An
12 assistance eligible individual shall notify in writ-
13 ing the group health plan with respect to which
14 paragraph (1)(A) applies if such paragraph
15 ceases to apply by reason of subparagraph
16 (A)(i). Such notice shall be provided to the
17 group health plan in such time and manner as
18 may be specified by the Secretary of Labor.

19 (3) ASSISTANCE ELIGIBLE INDIVIDUAL.—For
20 purposes of this section, the term “assistance eligible
21 individual” means any qualified beneficiary if—

22 (A) at any time during the period that be-
23 gins with September 1, 2008, and ends with
24 December 31, 2009, such qualified beneficiary
25 is eligible for COBRA continuation coverage,

1 (B) such qualified beneficiary elects such
2 coverage, and

3 (C) the qualifying event with respect to the
4 COBRA continuation coverage consists of the
5 involuntary termination of the covered employ-
6 ee's employment and occurred during such pe-
7 riod.

8 (4) EXTENSION OF ELECTION PERIOD AND EF-
9 FECT ON COVERAGE.—

10 (A) IN GENERAL.—For purposes of apply-
11 ing section 605(a) of the Employee Retirement
12 Income Security Act of 1974, section
13 4980B(f)(5)(A) of the Internal Revenue Code
14 of 1986, section 2205(a) of the Public Health
15 Service Act, and section 8905a(c)(2) of title 5,
16 United States Code, in the case of an individual
17 who does not have an election of COBRA con-
18 tinuation coverage in effect on the date of the
19 enactment of this Act but who would be an as-
20 sistance eligible individual if such election were
21 so in effect, such individual may elect the
22 COBRA continuation coverage under the
23 COBRA continuation coverage provisions con-
24 taining such sections during the period begin-
25 ning on the date of the enactment of this Act

1 and ending 60 days after the date on which the
2 notification required under paragraph (7)(C) is
3 provided to such individual.

4 (B) COMMENCEMENT OF COVERAGE; NO
5 REACH-BACK.—Any COBRA continuation cov-
6 erage elected by a qualified beneficiary during
7 an extended election period under subparagraph
8 (A)—

9 (i) shall commence with the first pe-
10 riod of coverage beginning on or after the
11 date of the enactment of this Act, and

12 (ii) shall not extend beyond the period
13 of COBRA continuation coverage that
14 would have been required under the appli-
15 cable COBRA continuation coverage provi-
16 sion if the coverage had been elected as re-
17 quired under such provision.

18 (C) PREEXISTING CONDITIONS.—With re-
19 spect to a qualified beneficiary who elects
20 COBRA continuation coverage pursuant to sub-
21 paragraph (A), the period—

22 (i) beginning on the date of the quali-
23 fying event, and

24 (ii) ending with the beginning of the
25 period described in subparagraph (B)(i),

1 shall be disregarded for purposes of deter-
2 mining the 63-day periods referred to in section
3 701(c)(2) of the Employee Retirement Income
4 Security Act of 1974, section 9801(c)(2) of the
5 Internal Revenue Code of 1986, and section
6 2701(c)(2) of the Public Health Service Act.

7 (5) EXPEDITED REVIEW OF DENIALS OF PRE-
8 MIUM ASSISTANCE.—In any case in which an indi-
9 vidual requests treatment as an assistance eligible
10 individual and is denied such treatment by the group
11 health plan, the Secretary of Labor (or the Sec-
12 retary of Health and Human Services in connection
13 with COBRA continuation coverage which is pro-
14 vided other than pursuant to part 6 of subtitle B of
15 title I of the Employee Retirement Income Security
16 Act of 1974), in consultation with the Secretary of
17 the Treasury, shall provide for expedited review of
18 such denial. An individual shall be entitled to such
19 review upon application to such Secretary in such
20 form and manner as shall be provided by such Sec-
21 retary. Such Secretary shall make a determination
22 regarding such individual's eligibility within 15 busi-
23 ness days after receipt of such individual's applica-
24 tion for review under this paragraph. Either Sec-
25 retary's determination upon review of the denial

1 shall be de novo and shall be the final determination
2 of such Secretary. A reviewing court shall grant def-
3 erence to such Secretary's determination. The provi-
4 sions of this paragraph, paragraphs (1) through (4),
5 and paragraph (7) shall be treated as provisions of
6 title I of the Employee Retirement Income Security
7 Act of 1974 for purposes of part 5 of subtitle B of
8 such title.

9 (6) DISREGARD OF SUBSIDIES FOR PURPOSES
10 OF FEDERAL AND STATE PROGRAMS.—Notwith-
11 standing any other provision of law, any premium
12 reduction with respect to an assistance eligible indi-
13 vidual under this subsection shall not be considered
14 income or resources in determining eligibility for, or
15 the amount of assistance or benefits provided under,
16 any other public benefit provided under Federal law
17 or the law of any State or political subdivision there-
18 of.

19 (7) NOTICES TO INDIVIDUALS.—

20 (A) GENERAL NOTICE.—

21 (i) IN GENERAL.—In the case of no-
22 tices provided under section 606(a)(4) of
23 the Employee Retirement Income Security
24 Act of 1974 (29 U.S.C. 1166(4)), section
25 4980B(f)(6)(D) of the Internal Revenue

1 Code of 1986, section 2206(4) of the Pub-
2 lic Health Service Act (42 U.S.C. 300bb-
3 6(4)), or section 8905a(f)(2)(A) of title 5,
4 United States Code, with respect to indi-
5 viduals who, during the period described in
6 paragraph (3)(A), become entitled to elect
7 COBRA continuation coverage, the re-
8 quirements of such sections shall not be
9 treated as met unless such notices include
10 an additional notification to the recipient
11 of—

12 (I) the availability of premium
13 reduction with respect to such cov-
14 erage under this subsection, and

15 (II) the option to enroll in dif-
16 ferent coverage if the employer per-
17 mits assistance eligible individuals to
18 elect enrollment in different coverage
19 (as described in paragraph (1)(B)).

20 (ii) ALTERNATIVE NOTICE.—In the
21 case of COBRA continuation coverage to
22 which the notice provision under such sec-
23 tions does not apply, the Secretary of
24 Labor, in consultation with the Secretary
25 of the Treasury and the Secretary of

1 Health and Human Services, shall, in con-
2 sultation with administrators of the group
3 health plans (or other entities) that provide
4 or administer the COBRA continuation
5 coverage involved, provide rules requiring
6 the provision of such notice.

7 (iii) FORM.—The requirement of the
8 additional notification under this subpara-
9 graph may be met by amendment of exist-
10 ing notice forms or by inclusion of a sepa-
11 rate document with the notice otherwise
12 required.

13 (B) SPECIFIC REQUIREMENTS.—Each ad-
14 ditional notification under subparagraph (A)
15 shall include—

16 (i) the forms necessary for estab-
17 lishing eligibility for premium reduction
18 under this subsection,

19 (ii) the name, address, and telephone
20 number necessary to contact the plan ad-
21 ministrator and any other person main-
22 taining relevant information in connection
23 with such premium reduction,

1 (iii) a description of the extended elec-
2 tion period provided for in paragraph
3 (4)(A),

4 (iv) a description of the obligation of
5 the qualified beneficiary under paragraph
6 (2)(C) to notify the plan providing continu-
7 ation coverage of eligibility for subsequent
8 coverage under another group health plan
9 or eligibility for benefits under title XVIII
10 of the Social Security Act and the penalty
11 provided under section 6720C of the Inter-
12 nal Revenue Code of 1986 for failure to so
13 notify the plan,

14 (v) a description, displayed in a
15 prominent manner, of the qualified bene-
16 ficiary's right to a reduced premium and
17 any conditions on entitlement to the re-
18 duced premium, and

19 (vi) a description of the option of the
20 qualified beneficiary to enroll in different
21 coverage if the employer permits such ben-
22 eficiary to elect to enroll in such different
23 coverage under paragraph (1)(B).

24 (C) NOTICE IN CONNECTION WITH EX-
25 TENDED ELECTION PERIODS.—In the case of

1 any assistance eligible individual (or any indi-
2 vidual described in paragraph (4)(A)) who be-
3 came entitled to elect COBRA continuation cov-
4 erage before the date of the enactment of this
5 Act, the administrator of the group health plan
6 (or other entity) involved shall provide (within
7 60 days after the date of enactment of this Act)
8 for the additional notification required to be
9 provided under subparagraph (A) and failure to
10 provide such notice shall be treated as a failure
11 to meet the notice requirements under the ap-
12 plicable COBRA continuation provision.

13 (D) MODEL NOTICES.—Not later than 30
14 days after the date of enactment of this Act—

15 (i) the Secretary of the Labor, in con-
16 sultation with the Secretary of the Treas-
17 ury and the Secretary of Health and
18 Human Services, shall prescribe models for
19 the additional notification required under
20 this paragraph (other than the additional
21 notification described in clause (ii)), and

22 (ii) in the case of any additional noti-
23 fication provided pursuant to subpara-
24 graph (A) under section 8905a(f)(2)(A) of
25 title 5, United States Code, the Office of

1 Personnel Management shall prescribe a
2 model for such additional notification.

3 (8) REGULATIONS.—The Secretary of the
4 Treasury may prescribe such regulations or other
5 guidance as may be necessary or appropriate to
6 carry out the provisions of this subsection, including
7 the prevention of fraud and abuse under this sub-
8 section, except that the Secretary of Labor and the
9 Secretary of Health and Human Services may pre-
10 scribe such regulations (including interim final regu-
11 lations) or other guidance as may be necessary or
12 appropriate to carry out the provisions of para-
13 graphs (5), (7), and (9).

14 (9) OUTREACH.—The Secretary of Labor, in
15 consultation with the Secretary of the Treasury and
16 the Secretary of Health and Human Services, shall
17 provide outreach consisting of public education and
18 enrollment assistance relating to premium reduction
19 provided under this subsection. Such outreach shall
20 target employers, group health plan administrators,
21 public assistance programs, States, insurers, and
22 other entities as determined appropriate by such
23 Secretaries. Such outreach shall include an initial
24 focus on those individuals electing continuation cov-
25 erage who are referred to in paragraph (7)(C). In-

1 formation on such premium reduction, including en-
2 rollment, shall also be made available on websites of
3 the Departments of Labor, Treasury, and Health
4 and Human Services.

5 (10) DEFINITIONS.—For purposes of this
6 section—

7 (A) ADMINISTRATOR.—The term “admin-
8 istrator” has the meaning given such term in
9 section 3(16)(A) of the Employee Retirement
10 Income Security Act of 1974.

11 (B) COBRA CONTINUATION COVERAGE.—
12 The term “COBRA continuation coverage”
13 means continuation coverage provided pursuant
14 to part 6 of subtitle B of title I of the Em-
15 ployee Retirement Income Security Act of 1974
16 (other than under section 609), title XXII of
17 the Public Health Service Act, section 4980B of
18 the Internal Revenue Code of 1986 (other than
19 subsection (f)(1) of such section insofar as it
20 relates to pediatric vaccines), or section 8905a
21 of title 5, United States Code, or under a State
22 program that provides comparable continuation
23 coverage. Such term does not include coverage
24 under a health flexible spending arrangement
25 under a cafeteria plan within the meaning of

1 section 125 of the Internal Revenue Code of
2 1986.

3 (C) COBRA CONTINUATION PROVISION.—
4 The term “COBRA continuation provision”
5 means the provisions of law described in sub-
6 paragraph (B).

7 (D) COVERED EMPLOYEE.—The term
8 “covered employee” has the meaning given such
9 term in section 607(2) of the Employee Retirement
10 Income Security Act of 1974.

11 (E) QUALIFIED BENEFICIARY.—The term
12 “qualified beneficiary” has the meaning given
13 such term in section 607(3) of the Employee
14 Retirement Income Security Act of 1974.

15 (F) GROUP HEALTH PLAN.—The term
16 “group health plan” has the meaning given
17 such term in section 607(1) of the Employee
18 Retirement Income Security Act of 1974.

19 (G) STATE.—The term “State” includes
20 the District of Columbia, the Commonwealth of
21 Puerto Rico, the Virgin Islands, Guam, Amer-
22 ican Samoa, and the Commonwealth of the
23 Northern Mariana Islands.

24 (H) PERIOD OF COVERAGE.—Any ref-
25 erence in this subsection to a period of coverage

1 shall be treated as a reference to a monthly or
2 shorter period of coverage with respect to which
3 premiums are charged with respect to such cov-
4 erage.

5 (11) REPORTS.—

6 (A) INTERIM REPORT.—The Secretary of
7 the Treasury shall submit an interim report to
8 the Committee on Education and Labor, the
9 Committee on Ways and Means, and the Com-
10 mittee on Energy and Commerce of the House
11 of Representatives and the Committee on
12 Health, Education, Labor, and Pensions and
13 the Committee on Finance of the Senate re-
14 garding the premium reduction provided under
15 this subsection that includes—

16 (i) the number of individuals provided
17 such assistance as of the date of the re-
18 port; and

19 (ii) the total amount of expenditures
20 incurred (with administrative expenditures
21 noted separately) in connection with such
22 assistance as of the date of the report.

23 (B) FINAL REPORT.—As soon as prac-
24 ticable after the last period of COBRA continu-
25 ation coverage for which premium reduction is

1 provided under this section, the Secretary of the
2 Treasury shall submit a final report to each
3 Committee referred to in subparagraph (A) that
4 includes—

5 (i) the number of individuals provided
6 premium reduction under this section;

7 (ii) the average dollar amount
8 (monthly and annually) of premium reduc-
9 tions provided to such individuals; and

10 (iii) the total amount of expenditures
11 incurred (with administrative expenditures
12 noted separately) in connection with pre-
13 mium reduction under this section.

14 (12) COBRA PREMIUM ASSISTANCE.—

15 (A) IN GENERAL.—Subchapter B of chap-
16 ter 65 of the Internal Revenue Code of 1986,
17 as amended by this Act, is amended by adding
18 at the end the following new section:

19 **“SEC. 6432. COBRA PREMIUM ASSISTANCE.**

20 “(a) IN GENERAL.—The person to whom premiums
21 are payable under COBRA continuation coverage shall be
22 reimbursed as provided in subsection (c) for the amount
23 of premiums not paid by assistance eligible individuals by
24 reason of section 3002(a) of the Health Insurance Assist-
25 ance for the Unemployed Act of 2009.

1 “(b) PERSON ENTITLED TO REIMBURSEMENT.—For
2 purposes of subsection (a), except as otherwise provided
3 by the Secretary, the person to whom premiums are pay-
4 able under COBRA continuation coverage shall be treated
5 as being—

6 “(1) in the case of any group health plan which
7 is a multiemployer plan (as defined in section 3(37)
8 of the Employee Retirement Income Security Act of
9 1974), the plan,

10 “(2) in the case of any group health plan not
11 described in paragraph (1)—

12 “(A) which is subject to the COBRA con-
13 tinuation provisions contained in—

14 “(i) the Internal Revenue Code of
15 1986,

16 “(ii) the Employee Retirement Income
17 Security Act of 1974,

18 “(iii) the Public Health Service Act,
19 or

20 “(iv) title 5, United States Code, or

21 “(B) under which some or all of the cov-
22 erage is not provided by insurance,
23 the employer maintaining the plan, and

1 “(3) in the case of any group health plan not
2 described in paragraph (1) or (2), the insurer pro-
3 viding the coverage under the group health plan.

4 “(c) METHOD OF REIMBURSEMENT.—Except as oth-
5 erwise provided by the Secretary—

6 “(1) TREATMENT AS PAYMENT OF PAYROLL
7 TAXES.—Each person entitled to reimbursement
8 under subsection (a) (and filing a claim for such re-
9 imbursement at such time and in such manner as
10 the Secretary may require) shall be treated for pur-
11 poses of this title and section 1324(b)(2) of title 31,
12 United States Code, as having paid to the Secretary,
13 on the date that the assistance eligible individual’s
14 premium payment is received, payroll taxes in an
15 amount equal to the portion of such reimbursement
16 which relates to such premium. To the extent that
17 the amount treated as paid under the preceding sen-
18 tence exceeds the amount of such person’s liability
19 for such taxes, the Secretary shall credit or refund
20 such excess in the same manner as if it were an
21 overpayment of such taxes.

22 “(2) OVERSTATEMENTS.—Any overstatement of
23 the reimbursement to which a person is entitled
24 under this section (and any amount paid by the Sec-
25 retary as a result of such overstatement) shall be

1 treated as an underpayment of payroll taxes by such
2 person and may be assessed and collected by the
3 Secretary in the same manner as payroll taxes.

4 “(3) REIMBURSEMENT CONTINGENT ON PAY-
5 MENT OF REMAINING PREMIUM.—No reimbursement
6 may be made under this section to a person with re-
7 spect to any assistance eligible individual until after
8 the reduced premium required under section
9 3002(a)(1)(A) of such Act with respect to such indi-
10 vidual has been received.

11 “(d) DEFINITIONS.—For purposes of this section—

12 “(1) PAYROLL TAXES.—The term ‘payroll
13 taxes’ means—

14 “(A) amounts required to be deducted and
15 withheld for the payroll period under section
16 3402 (relating to wage withholding),

17 “(B) amounts required to be deducted for
18 the payroll period under section 3102 (relating
19 to FICA employee taxes), and

20 “(C) amounts of the taxes imposed for the
21 payroll period under section 3111 (relating to
22 FICA employer taxes).

23 “(2) PERSON.—The term ‘person’ includes any
24 governmental entity.

1 “(e) REPORTING.—Each person entitled to reim-
2 bursement under subsection (a) for any period shall sub-
3 mit such reports (at such time and in such manner) as
4 the Secretary may require, including—

5 “(1) an attestation of involuntary termination
6 of employment for each covered employee on the
7 basis of whose termination entitlement to reimburse-
8 ment is claimed under subsection (a),

9 “(2) a report of the amount of payroll taxes off-
10 set under subsection (a) for the reporting period and
11 the estimated offsets of such taxes for the subse-
12 quent reporting period in connection with reimburse-
13 ments under subsection (a), and

14 “(3) a report containing the TINs of all covered
15 employees, the amount of subsidy reimbursed with
16 respect to each covered employee and qualified bene-
17 ficiaries, and a designation with respect to each cov-
18 ered employee as to whether the subsidy reimburse-
19 ment is for coverage of 1 individual or 2 or more in-
20 dividuals.

21 “(f) REGULATIONS.—The Secretary shall issue such
22 regulations or other guidance as may be necessary or ap-
23 propriate to carry out this section, including—

24 “(1) the requirement to report information or
25 the establishment of other methods for verifying the

1 correct amounts of reimbursements under this sec-
2 tion, and

3 “(2) the application of this section to group
4 health plans that are multiemployer plans (as de-
5 fined in section 3(37) of the Employee Retirement
6 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 6432 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. 6432. 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 (E) SPECIAL RULE.—

21 (i) IN GENERAL.—In the case of an
22 assistance eligible individual who pays,
23 with respect to the first period of COBRA
24 continuation coverage to which subsection
25 (a)(1)(A) applies or the immediately subse-

1 person receives from the individual the
2 payment of the full premium amount, a
3 person to which clause (i) applies shall
4 make the payment required under such
5 clause to the individual within 60 days of
6 such payment of the full premium amount.
7 If, as of any day within the 180-day pe-
8 riod, it is no longer reasonable to believe
9 that the credit will be used during that pe-
10 riod, payment equal to the remainder of
11 the credit outstanding shall be made to the
12 individual within 60 days of such day.

13 (13) PENALTY FOR FAILURE TO NOTIFY
14 HEALTH PLAN OF CESSATION OF ELIGIBILITY FOR
15 PREMIUM ASSISTANCE.—

16 (A) IN GENERAL.—Part I of subchapter B
17 of chapter 68 of the Internal Revenue Code of
18 1986 is amended by adding at the end the fol-
19 lowing new section:

20 **“SEC. 6720C. PENALTY FOR FAILURE TO NOTIFY HEALTH**
21 **PLAN OF CESSATION OF ELIGIBILITY FOR**
22 **COBRA PREMIUM ASSISTANCE.**

23 “(a) IN GENERAL.—Any person required to notify a
24 group health plan under section 3002(a)(2)(C) of the
25 Health Insurance Assistance for the Unemployed Act of

1 2009 who fails to make such a notification at such time
2 and in such manner as the Secretary of Labor may require
3 shall pay a penalty of 110 percent of the premium reduc-
4 tion provided under such section after termination of eligi-
5 bility under such subsection.

6 “(b) REASONABLE CAUSE EXCEPTION.—No penalty
7 shall be imposed under subsection (a) with respect to any
8 failure if it is shown that such failure is due to reasonable
9 cause and not to willful neglect.”.

10 (B) CLERICAL AMENDMENT.—The table of
11 sections of part I of subchapter B of chapter 68
12 of such Code is amended by adding at the end
13 the following new item:

“Sec. 6720C. Penalty for failure to notify health plan of cessation of eligibility
for COBRA premium assistance.”.

14 (C) EFFECTIVE DATE.—The amendments
15 made by this paragraph shall apply to failures
16 occurring after the date of the enactment of
17 this Act.

18 (14) COORDINATION WITH HCTC.—

19 (A) IN GENERAL.—Subsection (g) of sec-
20 tion 35 of the Internal Revenue Code of 1986
21 is amended by redesignating paragraph (9) as
22 paragraph (10) and inserting after paragraph
23 (8) the following new paragraph:

1 “(9) COBRA PREMIUM ASSISTANCE.—In the
2 case of an assistance eligible individual who receives
3 premium reduction for COBRA continuation cov-
4 erage under section 3002(a) of the Health Insurance
5 Assistance for the Unemployed Act of 2009 for any
6 month during the taxable year, such individual shall
7 not be treated as an eligible individual, a certified
8 individual, or a qualifying family member for pur-
9 poses of this section or section 7527 with respect to
10 such month.”.

11 (B) EFFECTIVE DATE.—The amendment
12 made by subparagraph (A) shall apply to tax-
13 able years ending after the date of the enact-
14 ment of this Act.

15 (15) EXCLUSION OF COBRA PREMIUM ASSIST-
16 ANCE FROM GROSS INCOME.—

17 (A) IN GENERAL.—Part III of subchapter
18 B of chapter 1 of the Internal Revenue Code of
19 1986 is amended by inserting after section
20 139B the following new section:

21 **“SEC. 139C. COBRA PREMIUM ASSISTANCE.**

22 “**In the case of an assistance eligible individual (as**
23 **defined in section 3002 of the Health Insurance Assist-**
24 **ance for the Unemployed Act of 2009), gross income does**

1 not include any premium reduction provided under sub-
2 section (a) of such section.”.

3 (B) CLERICAL AMENDMENT.—The table of
4 sections for part III of subchapter B of chapter
5 1 of such Code is amended by inserting after
6 the item relating to section 139B the following
7 new item:

“Sec. 139C. COBRA premium assistance.”.

8 (C) EFFECTIVE DATE.—The amendments
9 made by this paragraph shall apply to taxable
10 years ending after the date of the enactment of
11 this Act.

12 (b) ELIMINATION OF PREMIUM SUBSIDY FOR HIGH-
13 INCOME INDIVIDUALS.—

14 (1) RECAPTURE OF SUBSIDY FOR HIGH-INCOME
15 INDIVIDUALS.—If—

16 (A) premium assistance is provided under
17 this section with respect to any COBRA con-
18 tinuation coverage which covers the taxpayer,
19 the taxpayer’s spouse, or any dependent (within
20 the meaning of section 152 of the Internal Rev-
21 enue Code of 1986, determined without regard
22 to subsections (b)(1), (b)(2), and (d)(1)(B)
23 thereof) of the taxpayer during any portion of
24 the taxable year, and

1 (B) the taxpayer's modified adjusted gross
2 income for such taxable year exceeds \$125,000
3 (\$250,000 in the case of a joint return),
4 then the tax imposed by chapter 1 of such Code with
5 respect to the taxpayer for such taxable year shall
6 be increased by the amount of such assistance.

7 (2) PHASE-IN OF RECAPTURE.—

8 (A) IN GENERAL.—In the case of a tax-
9 payer whose modified adjusted gross income for
10 the taxable year does not exceed \$145,000
11 (\$290,000 in the case of a joint return), the in-
12 crease in the tax imposed under paragraph (1)
13 shall not exceed the phase-in percentage of such
14 increase (determined without regard to this
15 paragraph).

16 (B) PHASE-IN PERCENTAGE.—For pur-
17 poses of this subsection, the term “phase-in
18 percentage” means the ratio (expressed as a
19 percentage) obtained by dividing—

20 (i) the excess of described in subpara-
21 graph (B) of paragraph (1), by

22 (ii) \$20,000 (\$40,000 in the case of a
23 joint return).

24 (3) OPTION FOR HIGH-INCOME INDIVIDUALS TO
25 WAIVE ASSISTANCE AND AVOID RECAPTURE.—Not-

1 withstanding subsection (a)(3), an individual shall
2 not be treated as an assistance eligible individual for
3 purposes of this section and section 6432 of the In-
4 ternal Revenue Code of 1986 if such individual—

5 (A) makes a permanent election (at such
6 time and in such form and manner as the Sec-
7 retary of the Treasury may prescribe) to waive
8 the right to the premium assistance provided
9 under this section, and

10 (B) notifies the entity to whom premiums
11 are reimbursed under section 6432(a) of such
12 Code of such election.

13 (4) MODIFIED ADJUSTED GROSS INCOME.—For
14 purposes of this subsection, the term “modified ad-
15 justed gross income” means the adjusted gross in-
16 come (as defined in section 62 of the Internal Rev-
17 enue Code of 1986) of the taxpayer for the taxable
18 year increased by any amount excluded from gross
19 income under section 911, 931, or 933 of such Code.

20 (5) CREDITS NOT ALLOWED AGAINST TAX,
21 ETC.—For purposes determining regular tax liability
22 under section 26(b) of such Code, the increase in tax
23 under this subsection shall not be treated as a tax
24 imposed under chapter 1 of such Code.

1 (6) REGULATIONS.—The Secretary of the
 2 Treasury shall issue such regulations or other guid-
 3 ance as are necessary or appropriate to carry out
 4 this subsection, including requirements that the enti-
 5 ty to whom premiums are reimbursed under section
 6 6432(a) of the Internal Revenue Code of 1986 re-
 7 port to the Secretary, and to each assistance eligible
 8 individual, the amount of premium assistance pro-
 9 vided under subsection (a) with respect to each such
 10 individual.

11 (7) EFFECTIVE DATE.—The provisions of this
 12 subsection shall apply to taxable years ending after
 13 the date of the enactment of this Act.

14 **TITLE IV—MEDICARE AND MED-**
 15 **ICAID HEALTH INFORMATION**
 16 **TECHNOLOGY; MISCELLA-**
 17 **NEOUS MEDICARE PROVI-**
 18 **SIONS**

19 **SEC. 4001. TABLE OF CONTENTS OF TITLE.**

20 The table of contents of this title is as follows:

TITLE IV—MEDICARE AND MEDICAID HEALTH INFORMATION
 TECHNOLOGY; MISCELLANEOUS MEDICARE PROVISIONS

Sec. 4001. Table of contents of title.

Subtitle A—Medicare Incentives

Sec. 4101. Incentives for eligible professionals.

Sec. 4102. Incentives for hospitals.

Sec. 4103. Treatment of payments and savings; implementation funding.

Sec. 4104. Studies and reports on health information technology.

Subtitle B—Medicaid Incentives

Sec. 4201. Medicaid provider HIT adoption and operation payments; implementation funding.

Subtitle C—Miscellaneous Medicare Provisions

Sec. 4301. Moratoria on certain Medicare regulations.

Sec. 4302. Long-term care hospital technical corrections.

1 **Subtitle A—Medicare Incentives**

2 **SEC. 4101. INCENTIVES FOR ELIGIBLE PROFESSIONALS.**

3 (a) INCENTIVE PAYMENTS.—Section 1848 of the So-
4 cial Security Act (42 U.S.C. 1395w-4) is amended by add-
5 ing at the end the following new subsection:

6 “(o) INCENTIVES FOR ADOPTION AND MEANINGFUL
7 USE OF CERTIFIED EHR TECHNOLOGY.—

8 “(1) INCENTIVE PAYMENTS.—

9 “(A) IN GENERAL.—

10 “(i) IN GENERAL.—Subject to the
11 succeeding subparagraphs of this para-
12 graph, with respect to covered professional
13 services furnished by an eligible profes-
14 sional during a payment year (as defined
15 in subparagraph (E)), if the eligible profes-
16 sional is a meaningful EHR user (as deter-
17 mined under paragraph (2)) for the EHR
18 reporting period with respect to such year,
19 in addition to the amount otherwise paid
20 under this part, there also shall be paid to
21 the eligible professional (or to an employer
22 or facility in the cases described in clause

1 (A) of section 1842(b)(6)), from the Fed-
2 eral Supplementary Medical Insurance
3 Trust Fund established under section 1841
4 an amount equal to 75 percent of the Sec-
5 retary's estimate (based on claims sub-
6 mitted not later than 2 months after the
7 end of the payment year) of the allowed
8 charges under this part for all such cov-
9 ered professional services furnished by the
10 eligible professional during such year.

11 “(ii) NO INCENTIVE PAYMENTS WITH
12 RESPECT TO YEARS AFTER 2016.—No in-
13 centive payments may be made under this
14 subsection with respect to a year after
15 2016.

16 “(B) LIMITATIONS ON AMOUNTS OF IN-
17 CENTIVE PAYMENTS.—

18 “(i) IN GENERAL.—In no case shall
19 the amount of the incentive payment pro-
20 vided under this paragraph for an eligible
21 professional for a payment year exceed the
22 applicable amount specified under this sub-
23 paragraph with respect to such eligible
24 professional and such year.

1 “(ii) AMOUNT.—Subject to clauses
2 (iii) through (v), the applicable amount
3 specified in this subparagraph for an eligi-
4 ble professional is as follows:

5 “(I) For the first payment year
6 for such professional, \$15,000 (or, if
7 the first payment year for such eligi-
8 ble professional is 2011 or 2012,
9 \$18,000).

10 “(II) For the second payment
11 year for such professional, \$12,000.

12 “(III) For the third payment
13 year for such professional, \$8,000.

14 “(IV) For the fourth payment
15 year for such professional, \$4,000.

16 “(V) For the fifth payment year
17 for such professional, \$2,000.

18 “(VI) For any succeeding pay-
19 ment year for such professional, \$0.

20 “(iii) PHASE DOWN FOR ELIGIBLE
21 PROFESSIONALS FIRST ADOPTING EHR
22 AFTER 2013.—If the first payment year for
23 an eligible professional is after 2013, then
24 the amount specified in this subparagraph
25 for a payment year for such professional is

1 the same as the amount specified in clause
2 (ii) for such payment year for an eligible
3 professional whose first payment year is
4 2013.

5 “(iv) INCREASE FOR CERTAIN ELIGI-
6 BLE PROFESSIONALS.—In the case of an
7 eligible professional who predominantly
8 furnishes services under this part in an
9 area that is designated by the Secretary
10 (under section 332(a)(1)(A) of the Public
11 Health Service Act) as a health profes-
12 sional shortage area, the amount that
13 would otherwise apply for a payment year
14 for such professional under subclauses (I)
15 through (V) of clause (ii) shall be in-
16 creased by 10 percent. In implementing
17 the preceding sentence, the Secretary may,
18 as determined appropriate, apply provi-
19 sions of subsections (m) and (u) of section
20 1833 in a similar manner as such provi-
21 sions apply under such subsection.

22 “(v) NO INCENTIVE PAYMENT IF
23 FIRST ADOPTING AFTER 2014.—If the first
24 payment year for an eligible professional is
25 after 2014 then the applicable amount

1 specified in this subparagraph for such
2 professional for such year and any subse-
3 quent year shall be \$0.

4 “(C) NON-APPLICATION TO HOSPITAL-
5 BASED ELIGIBLE PROFESSIONALS.—

6 “(i) IN GENERAL.—No incentive pay-
7 ment may be made under this paragraph
8 in the case of a hospital-based eligible pro-
9 fessional.

10 “(ii) HOSPITAL-BASED ELIGIBLE PRO-
11 FESSIONAL.—For purposes of clause (i),
12 the term ‘hospital-based eligible profes-
13 sional’ means, with respect to covered pro-
14 fessional services furnished by an eligible
15 professional during the EHR reporting pe-
16 riod for a payment year, an eligible profes-
17 sional, such as a pathologist, anesthesiol-
18 ogist, or emergency physician, who fur-
19 nishes substantially all of such services in
20 a hospital setting (whether inpatient or
21 outpatient) and through the use of the fa-
22 cilities and equipment, including qualified
23 electronic health records, of the hospital.
24 The determination of whether an eligible
25 professional is a hospital-based eligible pro-

1 plicative requirements from Federal and
2 State governments to demonstrate mean-
3 ingful use of certified EHR technology
4 under this title and title XIX. The Sec-
5 retary may also adjust the reporting peri-
6 ods under such title and such subsections
7 in order to carry out this clause.

8 “(E) PAYMENT YEAR DEFINED.—

9 “(i) IN GENERAL.—For purposes of
10 this subsection, the term ‘payment year’
11 means a year beginning with 2011.

12 “(ii) FIRST, SECOND, ETC. PAYMENT
13 YEAR.—The term ‘first payment year’
14 means, with respect to covered professional
15 services furnished by an eligible profes-
16 sional, the first year for which an incentive
17 payment is made for such services under
18 this subsection. The terms ‘second pay-
19 ment year’, ‘third payment year’, ‘fourth
20 payment year’, and ‘fifth payment year’
21 mean, with respect to covered professional
22 services furnished by such eligible profes-
23 sional, each successive year immediately
24 following the first payment year for such
25 professional.

1 “(2) MEANINGFUL EHR USER.—

2 “(A) IN GENERAL.—For purposes of para-
3 graph (1), an eligible professional shall be
4 treated as a meaningful EHR user for an EHR
5 reporting period for a payment year (or, for
6 purposes of subsection (a)(7), for an EHR re-
7 porting period under such subsection for a
8 year) if each of the following requirements is
9 met:

10 “(i) MEANINGFUL USE OF CERTIFIED
11 EHR TECHNOLOGY.—The eligible profes-
12 sional demonstrates to the satisfaction of
13 the Secretary, in accordance with subpara-
14 graph (C)(i), that during such period the
15 professional is using certified EHR tech-
16 nology in a meaningful manner, which
17 shall include the use of electronic pre-
18 scribing as determined to be appropriate
19 by the Secretary.

20 “(ii) INFORMATION EXCHANGE.—The
21 eligible professional demonstrates to the
22 satisfaction of the Secretary, in accordance
23 with subparagraph (C)(i), that during such
24 period such certified EHR technology is
25 connected in a manner that provides, in

1 accordance with law and standards appli-
2 cable to the exchange of information, for
3 the electronic exchange of health informa-
4 tion to improve the quality of health care,
5 such as promoting care coordination.

6 “(iii) REPORTING ON MEASURES
7 USING EHR.—Subject to subparagraph
8 (B)(ii) and using such certified EHR tech-
9 nology, the eligible professional submits in-
10 formation for such period, in a form and
11 manner specified by the Secretary, on such
12 clinical quality measures and such other
13 measures as selected by the Secretary
14 under subparagraph (B)(i).

15 The Secretary may provide for the use of alter-
16 native means for meeting the requirements of
17 clauses (i), (ii), and (iii) in the case of an eligi-
18 ble professional furnishing covered professional
19 services in a group practice (as defined by the
20 Secretary). The Secretary shall seek to improve
21 the use of electronic health records and health
22 care quality over time by requiring more strin-
23 gent measures of meaningful use selected under
24 this paragraph.

25 “(B) REPORTING ON MEASURES.—

1 “(i) SELECTION.—The Secretary shall
2 select measures for purposes of subpara-
3 graph (A)(iii) but only consistent with the
4 following:

5 “(I) The Secretary shall provide
6 preference to clinical quality measures
7 that have been endorsed by the entity
8 with a contract with the Secretary
9 under section 1890(a).

10 “(II) Prior to any measure being
11 selected under this subparagraph, the
12 Secretary shall publish in the Federal
13 Register such measure and provide for
14 a period of public comment on such
15 measure.

16 “(ii) LIMITATION.—The Secretary
17 may not require the electronic reporting of
18 information on clinical quality measures
19 under subparagraph (A)(iii) unless the
20 Secretary has the capacity to accept the in-
21 formation electronically, which may be on
22 a pilot basis.

23 “(iii) COORDINATION OF REPORTING
24 OF INFORMATION.—In selecting such
25 measures, and in establishing the form and

1 manner for reporting measures under sub-
2 paragraph (A)(iii), the Secretary shall seek
3 to avoid redundant or duplicative reporting
4 otherwise required, including reporting
5 under subsection (k)(2)(C).

6 “(C) DEMONSTRATION OF MEANINGFUL
7 USE OF CERTIFIED EHR TECHNOLOGY AND IN-
8 FORMATION EXCHANGE.—

9 “(i) IN GENERAL.—A professional
10 may satisfy the demonstration requirement
11 of clauses (i) and (ii) of subparagraph (A)
12 through means specified by the Secretary,
13 which may include—

14 “(I) an attestation;

15 “(II) the submission of claims
16 with appropriate coding (such as a
17 code indicating that a patient encoun-
18 ter was documented using certified
19 EHR technology);

20 “(III) a survey response;

21 “(IV) reporting under subpara-
22 graph (A)(iii); and

23 “(V) other means specified by the
24 Secretary.

1 “(ii) USE OF PART D DATA.—Not-
2 withstanding sections 1860D–15(d)(2)(B)
3 and 1860D–15(f)(2), the Secretary may
4 use data regarding drug claims submitted
5 for purposes of section 1860D–15 that are
6 necessary for purposes of subparagraph
7 (A).

8 “(3) APPLICATION.—

9 “(A) PHYSICIAN REPORTING SYSTEM
10 RULES.—Paragraphs (5), (6), and (8) of sub-
11 section (k) shall apply for purposes of this sub-
12 section in the same manner as they apply for
13 purposes of such subsection.

14 “(B) COORDINATION WITH OTHER PAY-
15 MENTS.—The provisions of this subsection shall
16 not be taken into account in applying the provi-
17 sions of subsection (m) of this section and of
18 section 1833(m) and any payment under such
19 provisions shall not be taken into account in
20 computing allowable charges under this sub-
21 section.

22 “(C) LIMITATIONS ON REVIEW.—There
23 shall be no administrative or judicial review
24 under section 1869, section 1878, or otherwise,
25 of—

1 “(i) the methodology and standards
2 for determining payment amounts under
3 this subsection and payment adjustments
4 under subsection (a)(7)(A), including the
5 limitation under paragraph (1)(B) and co-
6 ordination under clauses (ii) and (iii) of
7 paragraph (1)(D);

8 “(ii) the methodology and standards
9 for determining a meaningful EHR user
10 under paragraph (2), including selection of
11 measures under paragraph (2)(B), speci-
12 fication of the means of demonstrating
13 meaningful EHR use under paragraph
14 (2)(C), and the hardship exception under
15 subsection (a)(7)(B);

16 “(iii) the methodology and standards
17 for determining a hospital-based eligible
18 professional under paragraph (1)(C); and

19 “(iv) the specification of reporting pe-
20 riods under paragraph (5) and the selec-
21 tion of the form of payment under para-
22 graph (1)(D)(i).

23 “(D) POSTING ON WEBSITE.—The Sec-
24 retary shall post on the Internet website of the
25 Centers for Medicare & Medicaid Services, in an

1 easily understandable format, a list of the
2 names, business addresses, and business phone
3 numbers of the eligible professionals who are
4 meaningful EHR users and, as determined ap-
5 propriate by the Secretary, of group practices
6 receiving incentive payments under paragraph
7 (1).

8 “(4) CERTIFIED EHR TECHNOLOGY DEFINED.—
9 For purposes of this section, the term ‘certified
10 EHR technology’ means a qualified electronic health
11 record (as defined in section 3000(13) of the Public
12 Health Service Act) that is certified pursuant to sec-
13 tion 3001(e)(5) of such Act as meeting standards
14 adopted under section 3004 of such Act that are ap-
15 plicable to the type of record involved (as determined
16 by the Secretary, such as an ambulatory electronic
17 health record for office-based physicians or an inpa-
18 tient hospital electronic health record for hospitals).

19 “(5) DEFINITIONS.—For purposes of this sub-
20 section:

21 “(A) COVERED PROFESSIONAL SERV-
22 ICES.—The term ‘covered professional services’
23 has the meaning given such term in subsection
24 (k)(3).

1 “(B) EHR REPORTING PERIOD.—The
2 term ‘EHR reporting period’ means, with re-
3 spect to a payment year, any period (or peri-
4 ods) as specified by the Secretary.

5 “(C) ELIGIBLE PROFESSIONAL.—The term
6 ‘eligible professional’ means a physician, as de-
7 fined in section 1861(r).”.

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 2015 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 an EHR reporting period for the year, the
23 fee 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 2015, 99 percent (or, in
12 the case of an eligible professional
13 who was subject to the application of
14 the payment adjustment under section
15 1848(a)(5) for 2014, 98 percent);

16 “(II) for 2016, 98 percent; and

17 “(III) for 2017 and each subse-
18 quent year, 97 percent.

19 “(iii) AUTHORITY TO DECREASE AP-
20 PPLICABLE PERCENTAGE FOR 2018 AND
21 SUBSEQUENT YEARS.—For 2018 and each
22 subsequent year, if the Secretary finds that
23 the proportion of eligible professionals who
24 are meaningful EHR users (as determined
25 under subsection (o)(2)) is less than 75

1 percent, the applicable percent shall be de-
2 creased by 1 percentage point from the ap-
3 plicable percent in the preceding year, but
4 in no case shall the applicable percent be
5 less than 95 percent.

6 “(B) SIGNIFICANT HARDSHIP EXCEP-
7 TION.—The Secretary may, on a case-by-case
8 basis, exempt an eligible professional from the
9 application of the payment adjustment under
10 subparagraph (A) if the Secretary determines,
11 subject to annual renewal, that compliance with
12 the requirement for being a meaningful EHR
13 user would result in a significant hardship, such
14 as in the case of an eligible professional who
15 practices in a rural area without sufficient
16 Internet access. In no case may an eligible pro-
17 fessional be granted an exemption under this
18 subparagraph for more than 5 years.

19 “(C) APPLICATION OF PHYSICIAN REPORT-
20 ING SYSTEM RULES.—Paragraphs (5), (6), and
21 (8) of subsection (k) shall apply for purposes of
22 this paragraph in the same manner as they
23 apply for purposes of such subsection.

24 “(D) NON-APPLICATION TO HOSPITAL-
25 BASED ELIGIBLE PROFESSIONALS.—No pay-

1 ment adjustment may be made under subpara-
2 graph (A) in the case of hospital-based eligible
3 professionals (as defined in subsection
4 (o)(1)(C)(ii)).

5 “(E) DEFINITIONS.—For purposes of this
6 paragraph:

7 “(i) COVERED PROFESSIONAL SERV-
8 ICES.—The term ‘covered professional
9 services’ has the meaning given such term
10 in subsection (k)(3).

11 “(ii) EHR REPORTING PERIOD.—The
12 term ‘EHR reporting period’ means, with
13 respect to a year, a period (or periods)
14 specified by the Secretary.

15 “(iii) ELIGIBLE PROFESSIONAL.—The
16 term ‘eligible professional’ means a physi-
17 cian, as defined in section 1861(r).”.

18 (c) APPLICATION TO CERTAIN MA-AFFILIATED ELI-
19 GIBLE PROFESSIONALS.—Section 1853 of the Social Secu-
20 rity Act (42 U.S.C. 1395w-23) is amended by adding at
21 the end the following new subsection:

22 “(l) APPLICATION OF ELIGIBLE PROFESSIONAL IN-
23 CENTIVES FOR CERTAIN MA ORGANIZATIONS FOR ADOP-
24 TION AND MEANINGFUL USE OF CERTIFIED EHR TECH-
25 NOLOGY.—

1 “(1) IN GENERAL.—Subject to paragraphs (3)
2 and (4), in the case of a qualifying MA organization,
3 the provisions of sections 1848(o) and 1848(a)(7)
4 shall apply with respect to eligible professionals de-
5 scribed in paragraph (2) of the organization who the
6 organization attests under paragraph (6) to be
7 meaningful EHR users in a similar manner as they
8 apply to eligible professionals under such sections.
9 Incentive payments under paragraph (3) shall be
10 made to and payment adjustments under paragraph
11 (4) shall apply to such qualifying organizations.

12 “(2) ELIGIBLE PROFESSIONAL DESCRIBED.—
13 With respect to a qualifying MA organization, an eli-
14 gible professional described in this paragraph is an
15 eligible professional (as defined for purposes of sec-
16 tion 1848(o)) who—

17 “(A)(i) is employed by the organization; or

18 “(ii)(I) is employed by, or is a partner of,
19 an entity that through contract with the organi-
20 zation furnishes at least 80 percent of the enti-
21 ty’s Medicare patient care services to enrollees
22 of such organization; and

23 “(II) furnishes at least 80 percent of the
24 professional services of the eligible professional

1 covered under this title to enrollees of the orga-
2 nization; and

3 “(B) furnishes, on average, at least 20
4 hours per week of patient care services.

5 “(3) ELIGIBLE PROFESSIONAL INCENTIVE PAY-
6 MENTS.—

7 “(A) IN GENERAL.—In applying section
8 1848(o) under paragraph (1), instead of the ad-
9 ditional payment amount under section
10 1848(o)(1)(A) and subject to subparagraph
11 (B), the Secretary may substitute an amount
12 determined by the Secretary to the extent fea-
13 sible and practical to be similar to the esti-
14 mated amount in the aggregate that would be
15 payable if payment for services furnished by
16 such professionals was payable under part B in-
17 stead of this part.

18 “(B) AVOIDING DUPLICATION OF PAY-
19 MENTS.—

20 “(i) IN GENERAL.—In the case of an
21 eligible professional described in paragraph
22 (2)—

23 “(I) that is eligible for the max-
24 imum incentive payment under section
25 1848(o)(1)(A) for the same payment

1 period, the payment incentive shall be
2 made only under such section and not
3 under this subsection; and

4 “(II) that is eligible for less than
5 such maximum incentive payment for
6 the same payment period, the pay-
7 ment incentive shall be made only
8 under this subsection and not under
9 section 1848(o)(1)(A).

10 “(ii) METHODS.—In the case of an el-
11 igible professional described in paragraph
12 (2) who is eligible for an incentive payment
13 under section 1848(o)(1)(A) but is not de-
14 scribed in clause (i) for the same payment
15 period, the Secretary shall develop a
16 process—

17 “(I) to ensure that duplicate pay-
18 ments are not made with respect to
19 an eligible professional both under
20 this subsection and under section
21 1848(o)(1)(A); and

22 “(II) to collect data from Medi-
23 care Advantage organizations to en-
24 sure against such duplicate payments.

1 “(C) FIXED SCHEDULE FOR APPLICATION
2 OF LIMITATION ON INCENTIVE PAYMENTS FOR
3 ALL ELIGIBLE PROFESSIONALS.—In applying
4 section 1848(o)(1)(B)(ii) under subparagraph
5 (A), in accordance with rules specified by the
6 Secretary, a qualifying MA organization shall
7 specify a year (not earlier than 2011) that shall
8 be treated as the first payment year for all eli-
9 gible professionals with respect to such organi-
10 zation.

11 “(4) PAYMENT ADJUSTMENT.—

12 “(A) IN GENERAL.—In applying section
13 1848(a)(7) under paragraph (1), instead of the
14 payment adjustment being an applicable per-
15 cent of the fee schedule amount for a year
16 under such section, subject to subparagraph
17 (D), the payment adjustment under paragraph
18 (1) shall be equal to the percent specified in
19 subparagraph (B) for such year of the payment
20 amount otherwise provided under this section
21 for such year.

22 “(B) SPECIFIED PERCENT.—The percent
23 specified under this subparagraph for a year is
24 100 percent minus a number of percentage
25 points equal to the product of—

1 “(i) the number of percentage points
2 by which the applicable percent (under sec-
3 tion 1848(a)(7)(A)(ii)) for the year is less
4 than 100 percent; and

5 “(ii) the Medicare physician expendi-
6 ture proportion specified in subparagraph
7 (C) for the year.

8 “(C) MEDICARE PHYSICIAN EXPENDITURE
9 PROPORTION.—The Medicare physician expend-
10 iture proportion under this subparagraph for a
11 year is the Secretary’s estimate of the propor-
12 tion, of the expenditures under parts A and B
13 that are not attributable to this part, that are
14 attributable to expenditures for physicians’
15 services.

16 “(D) APPLICATION OF PAYMENT ADJUST-
17 MENT.—In the case that a qualifying MA orga-
18 nization attests that not all eligible profes-
19 sionals of the organization are meaningful EHR
20 users with respect to a year, the Secretary shall
21 apply the payment adjustment under this para-
22 graph based on the proportion of all such eligi-
23 ble professionals of the organization that are
24 not meaningful EHR users for such year.

1 “(5) QUALIFYING MA ORGANIZATION DE-
2 FINED.—In this subsection and subsection (m), the
3 term ‘qualifying MA organization’ means a Medicare
4 Advantage organization that is organized as a health
5 maintenance organization (as defined in section
6 2791(b)(3) of the Public Health Service Act).

7 “(6) MEANINGFUL EHR USER ATTESTATION.—
8 For purposes of this subsection and subsection (m),
9 a qualifying MA organization shall submit an attes-
10 tation, in a form and manner specified by the Sec-
11 retary which may include the submission of such at-
12 testation as part of submission of the initial bid
13 under section 1854(a)(1)(A)(iv), identifying—

14 “(A) whether each eligible professional de-
15 scribed in paragraph (2), with respect to such
16 organization is a meaningful EHR user (as de-
17 fined in section 1848(o)(2)) for a year specified
18 by the Secretary; and

19 “(B) whether each eligible hospital de-
20 scribed in subsection (m)(1), with respect to
21 such organization, is a meaningful EHR user
22 (as defined in section 1886(n)(3)) for an appli-
23 cable period specified by the Secretary.

24 “(7) POSTING ON WEBSITE.—The Secretary
25 shall post on the Internet website of the Centers for

1 Medicare & Medicaid Services, in an easily under-
2 standable format, a list of the names, business ad-
3 dresses, and business phone numbers of—

4 “(A) each qualifying MA organization re-
5 ceiving an incentive payment under this sub-
6 section for eligible professionals of the organiza-
7 tion; and

8 “(B) the eligible professionals of such or-
9 ganization for which such incentive payment is
10 based.

11 “(8) LIMITATION ON REVIEW.—There shall be
12 no administrative or judicial review under section
13 1869, section 1878, or otherwise, of—

14 “(A) the methodology and standards for
15 determining payment amounts and payment ad-
16 justments under this subsection, including
17 avoiding duplication of payments under para-
18 graph (3)(B) and the specification of rules for
19 the fixed schedule for application of limitation
20 on incentive payments for all eligible profes-
21 sionals under paragraph (3)(C);

22 “(B) the methodology and standards for
23 determining eligible professionals under para-
24 graph (2); and

1 “(C) the methodology and standards for
2 determining a meaningful EHR user under sec-
3 tion 1848(o)(2), including specification of the
4 means of demonstrating meaningful EHR use
5 under section 1848(o)(3)(C) and selection of
6 measures under section 1848(o)(3)(B).”.

7 (d) STUDY AND REPORT RELATING TO MA ORGANI-
8 ZATIONS.—

9 (1) STUDY.—The Secretary of Health and
10 Human Services shall conduct a study on the extent
11 to which and manner in which payment incentives
12 and adjustments (such as under sections 1848(o)
13 and 1848(a)(7) of the Social Security Act) could be
14 made available to professionals, as defined in
15 1861(r), who are not eligible for HIT incentive pay-
16 ments under section 1848(o) and receive payments
17 for Medicare patient services nearly-exclusively
18 through contractual arrangements with one or more
19 Medicare Advantage organizations, or an inter-
20 mediary organization or organizations with contracts
21 with Medicare Advantage organizations. Such study
22 shall assess approaches for measuring meaningful
23 use of qualified EHR technology among such profes-
24 sionals and mechanisms for delivering incentives and
25 adjustments to those professionals, including

1 through incentive payments and adjustments
2 through Medicare Advantage organizations or inter-
3 mediary organizations.

4 (2) REPORT.—Not later than 120 days after
5 the date of the enactment of this Act, the Secretary
6 of Health and Human Services shall submit to Con-
7 gress a report on the findings and the conclusions of
8 the study conducted under paragraph (1), together
9 with recommendations for such legislation and ad-
10 ministrative action as the Secretary determines ap-
11 propriate.

12 (e) CONFORMING AMENDMENTS.—Section 1853 of
13 the Social Security Act (42 U.S.C. 1395w–23) is
14 amended—

15 (1) in subsection (a)(1)(A), by striking “and
16 (i)” and inserting “(i), and (l)”;

17 (2) in subsection (c)—

18 (A) in paragraph (1)(D)(i), by striking
19 “section 1886(h)” and inserting “sections
20 1848(o) and 1886(h)”;

21 (B) in paragraph (6)(A), by inserting after
22 “under part B,” the following: “excluding ex-
23 penditures attributable to subsections (a)(7)
24 and (o) of section 1848,”; and

1 (3) in subsection (f), by inserting “and for pay-
2 ments under subsection (l)” after “with the organi-
3 zation”.

4 (f) CONFORMING AMENDMENTS TO E-PRE-
5 SCRIBING.—

6 (1) Section 1848(a)(5)(A) of the Social Security
7 Act (42 U.S.C. 1395w-4(a)(5)(A)) is amended—

8 (A) in clause (i), by striking “or any sub-
9 sequent year” and inserting “, 2013 or 2014”;
10 and

11 (B) in clause (ii), by striking “and each
12 subsequent year”.

13 (2) Section 1848(m)(2) of such Act (42 U.S.C.
14 1395w-4(m)(2)) is amended—

15 (A) in subparagraph (A), by striking “For
16 2009” and inserting “Subject to subparagraph
17 (D), for 2009”; and

18 (B) by adding at the end the following new
19 subparagraph:

20 “(D) LIMITATION WITH RESPECT TO EHR
21 INCENTIVE PAYMENTS.—The provisions of this
22 paragraph shall not apply to an eligible profes-
23 sional (or, in the case of a group practice under
24 paragraph (3)(C), to the group practice) if, for
25 the EHR reporting period the eligible profes-

1 sional (or group practice) receives an incentive
2 payment under subsection (o)(1)(A) with re-
3 spect to a certified EHR technology (as defined
4 in subsection (o)(4)) that has the capability of
5 electronic prescribing.”.

6 **SEC. 4102. INCENTIVES FOR HOSPITALS.**

7 (a) INCENTIVE PAYMENT.—

8 (1) IN GENERAL.—Section 1886 of the Social
9 Security Act (42 U.S.C. 1395ww) is amended by
10 adding at the end the following new subsection:

11 “(n) INCENTIVES FOR ADOPTION AND MEANINGFUL
12 USE OF CERTIFIED EHR TECHNOLOGY.—

13 “(1) IN GENERAL.—Subject to the succeeding
14 provisions of this subsection, with respect to inpa-
15 tient hospital services furnished by an eligible hos-
16 pital during a payment year (as defined in para-
17 graph (2)(G)), if the eligible hospital is a meaningful
18 EHR user (as determined under paragraph (3)) for
19 the EHR reporting period with respect to such year,
20 in addition to the amount otherwise paid under this
21 section, there also shall be paid to the eligible hos-
22 pital, from the Federal Hospital Insurance Trust
23 Fund established under section 1817, an amount
24 equal to the applicable amount specified in para-
25 graph (2)(A) for the hospital for such payment year.

1 “(2) PAYMENT AMOUNT.—

2 “(A) IN GENERAL.—Subject to the suc-
3 ceeding subparagraphs of this paragraph, the
4 applicable amount specified in this subpara-
5 graph for an eligible hospital for a payment
6 year is equal to the product of the following:

7 “(i) INITIAL AMOUNT.—The sum of—

8 “(I) the base amount specified in
9 subparagraph (B); plus

10 “(II) the discharge related
11 amount specified in subparagraph (C)
12 for a 12-month period selected by the
13 Secretary with respect to such pay-
14 ment year.

15 “(ii) MEDICARE SHARE.—The Medi-
16 care share as specified in subparagraph
17 (D) for the eligible hospital for a period se-
18 lected by the Secretary with respect to
19 such payment year.

20 “(iii) TRANSITION FACTOR.—The
21 transition factor specified in subparagraph
22 (E) for the eligible hospital for the pay-
23 ment year.

24 “(B) BASE AMOUNT.—The base amount
25 specified in this subparagraph is \$2,000,000.

1 “(C) DISCHARGE RELATED AMOUNT.—The
2 discharge related amount specified in this sub-
3 paragraph for a 12-month period selected by
4 the Secretary shall be determined as the sum of
5 the amount, estimated based upon total dis-
6 charges for the eligible hospital (regardless of
7 any source of payment) for the period, for each
8 discharge up to the 23,000th discharge as fol-
9 lows:

10 “(i) For the first through 1,149th dis-
11 charge, \$0.

12 “(ii) For the 1,150th through the
13 23,000th discharge, \$200.

14 “(iii) For any discharge greater than
15 the 23,000th, \$0.

16 “(D) MEDICARE SHARE.—The Medicare
17 share specified under this subparagraph for an
18 eligible hospital for a period selected by the
19 Secretary for a payment year is equal to the
20 fraction—

21 “(i) the numerator of which is the
22 sum (for such period and with respect to
23 the eligible hospital) of—

24 “(I) the estimated number of in-
25 patient-bed-days (as established by

1 the Secretary) which are attributable
2 to individuals with respect to whom
3 payment may be made under part A;
4 and

5 “(II) the estimated number of in-
6 patient-bed-days (as so established)
7 which are attributable to individuals
8 who are enrolled with a Medicare Ad-
9 vantage organization under part C;
10 and

11 “(ii) the denominator of which is the
12 product of—

13 “(I) the estimated total number
14 of inpatient-bed-days with respect to
15 the eligible hospital during such pe-
16 riod; and

17 “(II) the estimated total amount
18 of the eligible hospital’s charges dur-
19 ing such period, not including any
20 charges that are attributable to char-
21 ity care (as such term is used for pur-
22 poses of hospital cost reporting under
23 this title), divided by the estimated
24 total amount of the hospital’s charges
25 during such period.

1 Insofar as the Secretary determines that data
2 are not available on charity care necessary to
3 calculate the portion of the formula specified in
4 clause (ii)(II), the Secretary shall use data on
5 uncompensated care and may adjust such data
6 so as to be an appropriate proxy for charity
7 care including a downward adjustment to elimi-
8 nate bad debt data from uncompensated care
9 data. In the absence of the data necessary, with
10 respect to a hospital, for the Secretary to com-
11 pute the amount described in clause (ii)(II), the
12 amount under such clause shall be deemed to
13 be 1. In the absence of data, with respect to a
14 hospital, necessary to compute the amount de-
15 scribed in clause (i)(II), the amount under such
16 clause shall be deemed to be 0.

17 “(E) TRANSITION FACTOR SPECIFIED.—

18 “(i) IN GENERAL.—Subject to clause
19 (ii), the transition factor specified in this
20 subparagraph for an eligible hospital for a
21 payment year is as follows:

22 “(I) For the first payment year
23 for such hospital, 1.

24 “(II) For the second payment
25 year for such hospital, $\frac{3}{4}$.

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1 “(III) For the third payment
2 year for such hospital, $\frac{1}{2}$.

3 “(IV) For the fourth payment
4 year for such hospital, $\frac{1}{4}$.

5 “(V) For any succeeding pay-
6 ment year for such hospital, 0.

7 “(ii) PHASE DOWN FOR ELIGIBLE
8 HOSPITALS FIRST ADOPTING EHR AFTER
9 2013.—If the first payment year for an eli-
10 gible hospital is after 2013, then the tran-
11 sition factor specified in this subparagraph
12 for a payment year for such hospital is the
13 same as the amount specified in clause (i)
14 for such payment year for an eligible hos-
15 pital for which the first payment year is
16 2013. If the first payment year for an eli-
17 gible hospital is after 2015 then the transi-
18 tion factor specified in this subparagraph
19 for such hospital and for such year and
20 any subsequent year shall be 0.

21 “(F) FORM OF PAYMENT.—The payment
22 under this subsection for a payment year may
23 be in the form of a single consolidated payment
24 or in the form of such periodic installments as
25 the Secretary may specify.

1 “(G) PAYMENT YEAR DEFINED.—

2 “(i) IN GENERAL.—For purposes of
3 this subsection, the term ‘payment year’
4 means a fiscal year beginning with fiscal
5 year 2011.

6 “(ii) FIRST, SECOND, ETC. PAYMENT
7 YEAR.—The term ‘first payment year’
8 means, with respect to inpatient hospital
9 services furnished by an eligible hospital,
10 the first fiscal year for which an incentive
11 payment is made for such services under
12 this subsection. The terms ‘second pay-
13 ment year’, ‘third payment year’, and
14 ‘fourth payment year’ mean, with respect
15 to an eligible hospital, each successive year
16 immediately following the first payment
17 year for that hospital.

18 “(3) MEANINGFUL EHR USER.—

19 “(A) IN GENERAL.—For purposes of para-
20 graph (1), an eligible hospital shall be treated
21 as a meaningful EHR user for an EHR report-
22 ing period for a payment year (or, for purposes
23 of subsection (b)(3)(B)(ix), for an EHR report-
24 ing period under such subsection for a fiscal

1 year) if each of the following requirements are
2 met:

3 “(i) MEANINGFUL USE OF CERTIFIED
4 EHR TECHNOLOGY.—The eligible hospital
5 demonstrates to the satisfaction of the Sec-
6 retary, in accordance with subparagraph
7 (C)(i), that during such period the hospital
8 is using certified EHR technology in a
9 meaningful manner.

10 “(ii) INFORMATION EXCHANGE.—The
11 eligible hospital demonstrates to the satis-
12 faction of the Secretary, in accordance
13 with subparagraph (C)(i), that during such
14 period such certified EHR technology is
15 connected in a manner that provides, in
16 accordance with law and standards appli-
17 cable to the exchange of information, for
18 the electronic exchange of health informa-
19 tion to improve the quality of health care,
20 such as promoting care coordination.

21 “(iii) REPORTING ON MEASURES
22 USING EHR.—Subject to subparagraph
23 (B)(ii) and using such certified EHR tech-
24 nology, the eligible hospital submits infor-
25 mation for such period, in a form and

1 manner specified by the Secretary, on such
2 clinical quality measures and such other
3 measures as selected by the Secretary
4 under subparagraph (B)(i).

5 The Secretary shall seek to improve the use of
6 electronic health records and health care quality
7 over time by requiring more stringent measures
8 of meaningful use selected under this para-
9 graph.

10 “(B) REPORTING ON MEASURES.—

11 “(i) SELECTION.—The Secretary shall
12 select measures for purposes of subpara-
13 graph (A)(iii) but only consistent with the
14 following:

15 “(I) The Secretary shall provide
16 preference to clinical quality measures
17 that have been selected for purposes
18 of applying subsection (b)(3)(B)(viii)
19 or that have been endorsed by the en-
20 tity with a contract with the Secretary
21 under section 1890(a).

22 “(II) Prior to any measure (other
23 than a clinical quality measure that
24 has been selected for purposes of ap-
25 plying subsection (b)(3)(B)(viii))

1 being selected under this subpara-
2 graph, the Secretary shall publish in
3 the Federal Register such measure
4 and provide for a period of public
5 comment on such measure.

6 “(ii) LIMITATIONS.—The Secretary
7 may not require the electronic reporting of
8 information on clinical quality measures
9 under subparagraph (A)(iii) unless the
10 Secretary has the capacity to accept the in-
11 formation electronically, which may be on
12 a pilot basis.

13 “(iii) COORDINATION OF REPORTING
14 OF INFORMATION.—In selecting such
15 measures, and in establishing the form and
16 manner for reporting measures under sub-
17 paragraph (A)(iii), the Secretary shall seek
18 to avoid redundant or duplicative reporting
19 with reporting otherwise required, includ-
20 ing reporting under subsection
21 (b)(3)(B)(viii).

22 “(C) DEMONSTRATION OF MEANINGFUL
23 USE OF CERTIFIED EHR TECHNOLOGY AND IN-
24 FORMATION EXCHANGE.—

1 “(i) IN GENERAL.—An eligible hos-
2 pital may satisfy the demonstration re-
3 quirement of clauses (i) and (ii) of sub-
4 paragraph (A) through means specified by
5 the Secretary, which may include—

6 “(I) an attestation;

7 “(II) the submission of claims
8 with appropriate coding (such as a
9 code indicating that inpatient care
10 was documented using certified EHR
11 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 “(4) APPLICATION.—

1 “(A) LIMITATIONS ON REVIEW.—There
2 shall be no administrative or judicial review
3 under section 1869, section 1878, or otherwise,
4 of—

5 “(i) the methodology and standards
6 for determining payment amounts under
7 this subsection and payment adjustments
8 under subsection (b)(3)(B)(ix), including
9 selection of periods under paragraph (2)
10 for determining, and making estimates or
11 using proxies of, discharges under para-
12 graph (2)(C) and inpatient-bed-days, hos-
13 pital charges, charity charges, and Medi-
14 care share under paragraph (2)(D);

15 “(ii) the methodology and standards
16 for determining a meaningful EHR user
17 under paragraph (3), including selection of
18 measures under paragraph (3)(B), speci-
19 fication of the means of demonstrating
20 meaningful EHR use under paragraph
21 (3)(C), and the hardship exception under
22 subsection (b)(3)(B)(ix)(II); and

23 “(iii) the specification of EHR report-
24 ing periods under paragraph (6)(B) and

1 the selection of the form of payment under
2 paragraph (2)(F).

3 “(B) POSTING ON WEBSITE.—The Sec-
4 retary shall post on the Internet website of the
5 Centers for Medicare & Medicaid Services, in an
6 easily understandable format, a list of the
7 names of the eligible hospitals that are mean-
8 ingful EHR users under this subsection or sub-
9 section (b)(3)(B)(ix) (and a list of the names of
10 critical access hospitals to which paragraph (3)
11 or (4) of section 1814(l) applies), and other rel-
12 evant data as determined appropriate by the
13 Secretary. The Secretary shall ensure that an
14 eligible hospital (or critical access hospital) has
15 the opportunity to review the other relevant
16 data that are to be made public with respect to
17 the hospital (or critical access hospital) prior to
18 such data being made public.

19 “(5) CERTIFIED EHR TECHNOLOGY DEFINED.—
20 The term ‘certified EHR technology’ has the mean-
21 ing given such term in section 1848(o)(4).

22 “(6) DEFINITIONS.—For purposes of this sub-
23 section:

24 “(A) EHR REPORTING PERIOD.—The term
25 ‘EHR reporting period’ means, with respect to

1 a payment year, any period (or periods) as
2 specified by the Secretary.

3 “(B) ELIGIBLE HOSPITAL.—The term ‘eli-
4 gible hospital’ means a subsection (d) hos-
5 pital.”.

6 (2) CRITICAL ACCESS HOSPITALS.—Section
7 1814(l) of the Social Security Act (42 U.S.C.
8 1395f(1)) is amended—

9 (A) in paragraph (1), by striking “para-
10 graph (2)” and inserting “the subsequent para-
11 graphs of this subsection”; and

12 (B) by adding at the end the following new
13 paragraph:

14 “(3)(A) The following rules shall apply in deter-
15 mining payment and reasonable costs under paragraph (1)
16 for costs described in subparagraph (C) for a critical ac-
17 cess hospital that would be a meaningful EHR user (as
18 would be determined under paragraph (3) of section
19 1886(n)) for an EHR reporting period for a cost reporting
20 period beginning during a payment year if such critical
21 access hospital was treated as an eligible hospital under
22 such section:

23 “(i) The Secretary shall compute reasonable
24 costs by expensing such costs in a single payment
25 year and not depreciating such costs over a period

1 of years (and shall include as costs with respect to
2 cost reporting periods beginning during a payment
3 year costs from previous cost reporting periods to
4 the extent they have not been fully depreciated as of
5 the period involved).

6 “(ii) There shall be substituted for the Medi-
7 care share that would otherwise be applied under
8 paragraph (1) a percent (not to exceed 100 percent)
9 equal to the sum of—

10 “(I) the Medicare share (as would be speci-
11 fied under paragraph (2)(D) of section
12 1886(n)) for such critical access hospital if such
13 critical access hospital was treated as an eligible
14 hospital under such section; and

15 “(II) 20 percentage points.

16 “(B) The payment under this paragraph with respect
17 to a critical access hospital shall be paid through a prompt
18 interim payment (subject to reconciliation) after submis-
19 sion and review of such information (as specified by the
20 Secretary) necessary to make such payment, including in-
21 formation necessary to apply this paragraph. In no case
22 may payment under this paragraph be made with respect
23 to a cost reporting period beginning during a payment
24 year after 2015 and in no case may a critical access hos-

1 pital receive payment under this paragraph with respect
2 to more than 4 consecutive payment years.

3 “(C) The costs described in this subparagraph are
4 costs for the purchase of certified EHR technology to
5 which purchase depreciation (excluding interest) would
6 apply if payment was made under paragraph (1) and not
7 under this paragraph.

8 “(D) For purposes of this paragraph, paragraph (4),
9 and paragraph (5), the terms ‘certified EHR technology’,
10 ‘eligible hospital’, ‘EHR reporting period’, and ‘payment
11 year’ have the meanings given such terms in sections
12 1886(n).”.

13 (b) INCENTIVE MARKET BASKET ADJUSTMENT.—

14 (1) IN GENERAL.—Section 1886(b)(3)(B) of
15 the Social Security Act (42 U.S.C.
16 1395ww(b)(3)(B)) is amended—

17 (A) in clause (viii)(I), by inserting “(or,
18 beginning with fiscal year 2015, by one-quarter
19 ter)” after “2.0 percentage points”; and

20 (B) by adding at the end the following new
21 clause:

22 “(ix)(I) For purposes of clause (i) for fiscal year
23 2015 and each subsequent fiscal year, in the case of an
24 eligible hospital (as defined in subsection (n)(6)(A)) that
25 is not a meaningful EHR user (as defined in subsection

1 (n)(3)) for an EHR reporting period for such fiscal year,
2 three-quarters of the applicable percentage increase other-
3 wise applicable under clause (i) for such fiscal year shall
4 be reduced by 33 $\frac{1}{3}$ percent for fiscal year 2015, 66 $\frac{2}{3}$ per-
5 cent for fiscal year 2016, and 100 percent for fiscal year
6 2017 and each subsequent fiscal year. Such reduction
7 shall apply only with respect to the fiscal year involved
8 and the Secretary shall not take into account such reduc-
9 tion in computing the applicable percentage increase under
10 clause (i) for a subsequent fiscal year.

11 “(II) The Secretary may, on a case-by-case basis, ex-
12 empt a subsection (d) hospital from the application of sub-
13 clause (I) with respect to a fiscal year if the Secretary
14 determines, subject to annual renewal, that requiring such
15 hospital to be a meaningful EHR user during such fiscal
16 year would result in a significant hardship, such as in the
17 case of a hospital in a rural area without sufficient Inter-
18 net access. In no case may a hospital be granted an ex-
19 emption under this subclause for more than 5 years.

20 “(III) For fiscal year 2015 and each subsequent fis-
21 cal year, a State in which hospitals are paid for services
22 under section 1814(b)(3) shall adjust the payments to
23 each subsection (d) hospital in the State that is not a
24 meaningful EHR user (as defined in subsection (n)(3))
25 in a manner that is designed to result in an aggregate

1 reduction in payments to hospitals in the State that is
2 equivalent to the aggregate reduction that would have oc-
3 curred if payments had been reduced to each subsection
4 (d) hospital in the State in a manner comparable to the
5 reduction under the previous provisions of this clause. The
6 State shall report to the Secretary the methodology it will
7 use to make the payment adjustment under the previous
8 sentence.

9 “(IV) For purposes of this clause, the term ‘EHR
10 reporting period’ means, with respect to a fiscal year, any
11 period (or periods) as specified by the Secretary.”.

12 (2) CRITICAL ACCESS HOSPITALS.—Section
13 1814(l) of the Social Security Act (42 U.S.C.
14 1395f(1)), as amended by subsection (a)(2), is fur-
15 ther amended by adding at the end the following
16 new paragraphs:

17 “(4)(A) Subject to subparagraph (C), for cost report-
18 ing periods beginning in fiscal year 2015 or a subsequent
19 fiscal year, in the case of a critical access hospital that
20 is not a meaningful EHR user (as would be determined
21 under paragraph (3) of section 1886(n) if such critical ac-
22 cess hospital was treated as an eligible hospital under such
23 section) for an EHR reporting period with respect to such
24 fiscal year, paragraph (1) shall be applied by substituting

1 the applicable percent under subparagraph (B) for the
2 percent described in such paragraph (1).

3 “(B) The percent described in this subparagraph is—

4 “(i) for fiscal year 2015, 100.66 percent;

5 “(ii) for fiscal year 2016, 100.33 percent; and

6 “(iii) for fiscal year 2017 and each subsequent
7 fiscal year, 100 percent.

8 “(C) The provisions of subclause (II) of section
9 1886(b)(3)(B)(ix) shall apply with respect to subpara-
10 graph (A) for a critical access hospital with respect to a
11 cost reporting period beginning in a fiscal year in the same
12 manner as such subclause applies with respect to sub-
13 clause (I) of such section for a subsection (d) hospital with
14 respect to such fiscal year.

15 “(5) There shall be no administrative or judicial re-
16 view under section 1869, section 1878, or otherwise, of—

17 “(A) the methodology and standards for deter-
18 mining the amount of payment and reasonable cost
19 under paragraph (3) and payment adjustments
20 under paragraph (4), including selection of periods
21 under section 1886(n)(2) for determining, and mak-
22 ing estimates or using proxies of, inpatient-bed-days,
23 hospital charges, charity charges, and Medicare
24 share under subparagraph (D) of section
25 1886(n)(2);

1 “(B) the methodology and standards for deter-
2 mining a meaningful EHR user under section
3 1886(n)(3) as would apply if the hospital was treat-
4 ed as an eligible hospital under section 1886(n), and
5 the hardship exception under paragraph (4)(C);

6 “(C) the specification of EHR reporting periods
7 under section 1886(n)(6)(B) as applied under para-
8 graphs (3) and (4); and

9 “(D) the identification of costs for purposes of
10 paragraph (3)(C).”.

11 (c) APPLICATION TO CERTAIN MA-AFFILIATED ELI-
12 GIBLE HOSPITALS.—Section 1853 of the Social Security
13 Act (42 U.S.C. 1395w-23), as amended by section
14 4101(c), is further amended by adding at the end the fol-
15 lowing new subsection:

16 “(m) APPLICATION OF ELIGIBLE HOSPITAL INCEN-
17 TIVES FOR CERTAIN MA ORGANIZATIONS FOR ADOPTION
18 AND MEANINGFUL USE OF CERTIFIED EHR TECH-
19 NOLOGY.—

20 “(1) APPLICATION.—Subject to paragraphs (3)
21 and (4), in the case of a qualifying MA organization,
22 the provisions of sections 1886(n) and
23 1886(b)(3)(B)(ix) shall apply with respect to eligible
24 hospitals described in paragraph (2) of the organiza-
25 tion which the organization attests under subsection

1 (l)(6) to be meaningful EHR users in a similar man-
2 ner as they apply to eligible hospitals under such
3 sections. Incentive payments under paragraph (3)
4 shall be made to and payment adjustments under
5 paragraph (4) shall apply to such qualifying organi-
6 zations.

7 “(2) ELIGIBLE HOSPITAL DESCRIBED.—With
8 respect to a qualifying MA organization, an eligible
9 hospital described in this paragraph is an eligible
10 hospital (as defined in section 1886(n)(6)(A)) that is
11 under common corporate governance with such orga-
12 nization and serves individuals enrolled under an
13 MA plan offered by such organization.

14 “(3) ELIGIBLE HOSPITAL INCENTIVE PAY-
15 MENTS.—

16 “(A) IN GENERAL.—In applying section
17 1886(n)(2) under paragraph (1), instead of the
18 additional payment amount under section
19 1886(n)(2), there shall be substituted an
20 amount determined by the Secretary to be simi-
21 lar to the estimated amount in the aggregate
22 that would be payable if payment for services
23 furnished by such hospitals was payable under
24 part A instead of this part. In implementing the
25 previous sentence, the Secretary—

1 “(i) shall, insofar as data to deter-
2 mine the discharge related amount under
3 section 1886(n)(2)(C) for an eligible hos-
4 pital are not available to the Secretary, use
5 such alternative data and methodology to
6 estimate such discharge related amount as
7 the Secretary determines appropriate; and
8 “(ii) shall, insofar as data to deter-
9 mine the medicare share described in sec-
10 tion 1886(n)(2)(D) for an eligible hospital
11 are not available to the Secretary, use such
12 alternative data and methodology to esti-
13 mate such share, which data and method-
14 ology may include use of the inpatient-bed-
15 days (or discharges) with respect to an eli-
16 gible hospital during the appropriate pe-
17 riod which are attributable to both individ-
18 uals for whom payment may be made
19 under part A or individuals enrolled in an
20 MA plan under a Medicare Advantage or-
21 ganization under this part as a proportion
22 of the estimated total number of patient-
23 bed-days (or discharges) with respect to
24 such hospital during such period.

1 “(B) AVOIDING DUPLICATION OF PAY-
2 MENTS.—

3 “(i) IN GENERAL.—In the case of a
4 hospital that for a payment year is an eli-
5 gible hospital described in paragraph (2)
6 and for which at least one-third of their
7 discharges (or bed-days) of Medicare pa-
8 tients for the year are covered under part
9 A, payment for the payment year shall be
10 made only under section 1886(n) and not
11 under this subsection.

12 “(ii) METHODS.—In the case of a
13 hospital that is an eligible hospital de-
14 scribed in paragraph (2) and also is eligi-
15 ble for an incentive payment under section
16 1886(n) but is not described in clause (i)
17 for the same payment period, the Secretary
18 shall develop a process—

19 “(I) to ensure that duplicate pay-
20 ments are not made with respect to
21 an eligible hospital both under this
22 subsection and under section 1886(n);
23 and

1 “(II) to collect data from Medi-
2 care Advantage organizations to en-
3 sure against such duplicate payments.

4 “(4) PAYMENT ADJUSTMENT.—

5 “(A) Subject to paragraph (3), in the case
6 of a qualifying MA organization (as defined in
7 section 1853(l)(5)), if, according to the attesta-
8 tion of the organization submitted under sub-
9 section (l)(6) for an applicable period, one or
10 more eligible hospitals (as defined in section
11 1886(n)(6)(A)) that are under common cor-
12 porate governance with such organization and
13 that serve individuals enrolled under a plan of-
14 fered by such organization are not meaningful
15 EHR users (as defined in section 1886(n)(3))
16 with respect to a period, the payment amount
17 payable under this section for such organization
18 for such period shall be the percent specified in
19 subparagraph (B) for such period of the pay-
20 ment amount otherwise provided under this sec-
21 tion for such period.

22 “(B) SPECIFIED PERCENT.—The percent
23 specified under this subparagraph for a year is
24 100 percent minus a number of percentage
25 points equal to the product of—

1 “(i) the number of the percentage
2 point reduction effected under section
3 1886(b)(3)(B)(ix)(I) for the period; and

4 “(ii) the Medicare hospital expendi-
5 ture proportion specified in subparagraph
6 (C) for the year.

7 “(C) MEDICARE HOSPITAL EXPENDITURE
8 PROPORTION.—The Medicare hospital expendi-
9 ture proportion under this subparagraph for a
10 year is the Secretary’s estimate of the propor-
11 tion, of the expenditures under parts A and B
12 that are not attributable to this part, that are
13 attributable to expenditures for inpatient hos-
14 pital services.

15 “(D) APPLICATION OF PAYMENT ADJUST-
16 MENT.—In the case that a qualifying MA orga-
17 nization attests that not all eligible hospitals
18 are meaningful EHR users with respect to an
19 applicable period, the Secretary shall apply the
20 payment adjustment under this paragraph
21 based on a methodology specified by the Sec-
22 retary, taking into account the proportion of
23 such eligible hospitals, or discharges from such
24 hospitals, that are not meaningful EHR users
25 for such period.

1 “(5) POSTING ON WEBSITE.—The Secretary
2 shall post on the Internet website of the Centers for
3 Medicare & Medicaid Services, in an easily under-
4 standable format—

5 “(A) a list of the names, business address-
6 es, and business phone numbers of each quali-
7 fying MA organization receiving an incentive
8 payment under this subsection for eligible hos-
9 pitals described in paragraph (2); and

10 “(B) a list of the names of the eligible hos-
11 pitals for which such incentive payment is
12 based.

13 “(6) LIMITATIONS ON REVIEW.—There shall be
14 no administrative or judicial review under section
15 1869, section 1878, or otherwise, of—

16 “(A) the methodology and standards for
17 determining payment amounts and payment ad-
18 justments under this subsection, including
19 avoiding duplication of payments under para-
20 graph (3)(B);

21 “(B) the methodology and standards for
22 determining eligible hospitals under paragraph
23 (2); and

24 “(C) the methodology and standards for
25 determining a meaningful EHR user under sec-

1 tion 1886(n)(3), including specification of the
2 means of demonstrating meaningful EHR use
3 under subparagraph (C) of such section and se-
4 lection of measures under subparagraph (B) of
5 such section.”.

6 (d) CONFORMING AMENDMENTS.—

7 (1) Section 1814(b) of the Social Security Act
8 (42 U.S.C. 1395f(b)) is amended—

9 (A) in paragraph (3), in the matter pre-
10 ceding subparagraph (A), by inserting “, sub-
11 ject to section 1886(d)(3)(B)(ix)(III),” after
12 “then”; and

13 (B) by adding at the end the following:
14 “For purposes of applying paragraph (3), there
15 shall be taken into account incentive payments,
16 and payment adjustments under subsection
17 (b)(3)(B)(ix) or (n) of section 1886.”.

18 (2) Section 1851(i)(1) of the Social Security
19 Act (42 U.S.C. 1395w-21(i)(1)) is amended by
20 striking “and 1886(h)(3)(D)” and inserting
21 “1886(h)(3)(D), and 1853(m)”.

22 (3) Section 1853 of the Social Security Act (42
23 U.S.C. 1395w-23), as amended by section 4101(d),
24 is amended—

25 (A) in subsection (c)—

1 (i) in paragraph (1)(D)(i), by striking
2 “1848(o)” and inserting “, 1848(o), and
3 1886(n)”; and

4 (ii) in paragraph (6)(A), by inserting
5 “and subsections (b)(3)(B)(ix) and (n) of
6 section 1886” after “section 1848”; and

7 (B) in subsection (f), by inserting “and
8 subsection (m)” after “under subsection (l)”.

9 **SEC. 4103. TREATMENT OF PAYMENTS AND SAVINGS; IM-**
10 **PLEMENTATION FUNDING.**

11 (a) PREMIUM HOLD HARMLESS.—

12 (1) IN GENERAL.—Section 1839(a)(1) of the
13 Social Security Act (42 U.S.C. 1395r(a)(1)) is
14 amended by adding at the end the following: “In ap-
15 plying this paragraph there shall not be taken into
16 account additional payments under section 1848(o)
17 and section 1853(l)(3) and the Government con-
18 tribution under section 1844(a)(3).”.

19 (2) PAYMENT.—Section 1844(a) of such Act
20 (42 U.S.C. 1395w(a)) is amended—

21 (A) in paragraph (2), by striking the pe-
22 riod at the end and inserting “; plus”; and

23 (B) by adding at the end the following new
24 paragraph:

1 “(3) a Government contribution equal to the
2 amount of payment incentives payable under sec-
3 tions 1848(o) and 1853(l)(3).”.

4 (b) MEDICARE IMPROVEMENT FUND.—Section 1898
5 of the Social Security Act (42 U.S.C. 1395iii), as added
6 by section 7002(a) of the Supplemental Appropriations
7 Act, 2008 (Public Law 110–252) and as amended by sec-
8 tion 188(a)(2) of the Medicare Improvements for Patients
9 and Providers Act of 2008 (Public Law 110–275; 122
10 Stat. 2589) and by section 6 of the QI Program Supple-
11 mental Funding Act of 2008, is amended—

12 (1) in subsection (a)—

13 (A) by inserting “medicare” before “fee-
14 for-service”; and

15 (B) by inserting before the period at the
16 end the following: “including, but not limited
17 to, an increase in the conversion factor under
18 section 1848(d) to address, in whole or in part,
19 any projected shortfall in the conversion factor
20 for 2014 relative to the conversion factor for
21 2008 and adjustments to payments for items
22 and services furnished by providers of services
23 and suppliers under such original medicare fee-
24 for-service program”; and

25 (2) in subsection (b)—

1 (A) in paragraph (1), by striking “during
2 fiscal year 2014,” and all that follows and in-
3 serting the following: “during—

4 “(A) fiscal year 2014, \$22,290,000,000;
5 and

6 “(B) fiscal year 2020 and each subsequent
7 fiscal year, the Secretary’s estimate, as of July
8 1 of the fiscal year, of the aggregate reduction
9 in expenditures under this title during the pre-
10 ceeding fiscal year directly resulting from the re-
11 duction in payment amounts under sections
12 1848(a)(7), 1853(l)(4), 1853(m)(4), and
13 1886(b)(3)(B)(ix).”; and

14 (B) by adding at the end the following new
15 paragraph:

16 “(4) NO EFFECT ON PAYMENTS IN SUBSE-
17 QUENT YEARS.—In the case that expenditures from
18 the Fund are applied to, or otherwise affect, a pay-
19 ment rate for an item or service under this title for
20 a year, the payment rate for such item or service
21 shall be computed for a subsequent year as if such
22 application or effect had never occurred.”.

23 (c) IMPLEMENTATION FUNDING.—In addition to
24 funds otherwise available, out of any funds in the Treas-
25 ury not otherwise appropriated, there are appropriated to

1 the Secretary of Health and Human Services for the Cen-
2 ter for Medicare & Medicaid Services Program Manage-
3 ment Account, \$100,000,000 for each of fiscal years 2009
4 through 2015 and \$45,000,000 for fiscal year 2016, which
5 shall be available for purposes of carrying out the provi-
6 sions of (and amendments made by) this subtitle.
7 Amounts appropriated under this subsection for a fiscal
8 year shall be available until expended.

9 **SEC. 4104. STUDIES AND REPORTS ON HEALTH INFORMA-**
10 **TION TECHNOLOGY.**

11 (a) STUDY AND REPORT ON APPLICATION OF EHR
12 PAYMENT INCENTIVES FOR PROVIDERS NOT RECEIVING
13 OTHER INCENTIVE PAYMENTS.—

14 (1) STUDY.—

15 (A) IN GENERAL.—The Secretary of
16 Health and Human Services shall conduct a
17 study to determine the extent to which and
18 manner in which payment incentives (such as
19 under title XVIII or XIX of the Social Security
20 Act) and other funding for purposes of imple-
21 menting and using certified EHR technology
22 (as defined in section 1848(o)(4) of the Social
23 Security Act, as added by section 4101(a))
24 should be made available to health care pro-
25 viders who are receiving minimal or no payment

1 incentives or other funding under this Act,
2 under title XIII of division A, under title XVIII
3 or XIX of such Act, or otherwise, for such pur-
4 poses.

5 (B) DETAILS OF STUDY.—Such study shall
6 include an examination of—

7 (i) the adoption rates of certified
8 EHR technology by such health care pro-
9 viders;

10 (ii) the clinical utility of such tech-
11 nology by such health care providers;

12 (iii) whether the services furnished by
13 such health care providers are appropriate
14 for or would benefit from the use of such
15 technology;

16 (iv) the extent to which such health
17 care providers work in settings that might
18 otherwise receive an incentive payment or
19 other funding under this Act, under title
20 XIII of division A, under title XVIII or
21 XIX of the Social Security Act, or other-
22 wise;

23 (v) the potential costs and the poten-
24 tial benefits of making payment incentives

1 and other funding available to such health
2 care providers; and

3 (vi) any other issues the Secretary
4 deems to be appropriate.

5 (2) REPORT.—Not later than June 30, 2010,
6 the Secretary shall submit to Congress a report on
7 the findings and conclusions of the study conducted
8 under paragraph (1).

9 (b) STUDY AND REPORT ON AVAILABILITY OF OPEN
10 SOURCE HEALTH INFORMATION TECHNOLOGY SYS-
11 TEMS.—

12 (1) STUDY.—

13 (A) IN GENERAL.—The Secretary of
14 Health and Human Services shall, in consulta-
15 tion with the Under Secretary for Health of the
16 Veterans Health Administration, the Director
17 of the Indian Health Service, the Secretary of
18 Defense, the Director of the Agency for
19 Healthcare Research and Quality, the Adminis-
20 trator of the Health Resources and Services Ad-
21 ministration, and the Chairman of the Federal
22 Communications Commission, conduct a study
23 on—

24 (i) the current availability of open
25 source health information technology sys-

1 tems to Federal safety net providers (in-
2 cluding small, rural providers);

3 (ii) the total cost of ownership of such
4 systems in comparison to the cost of pro-
5 prietary commercial products available;

6 (iii) the ability of such systems to re-
7 spond to the needs of, and be applied to,
8 various populations (including children and
9 disabled individuals); and

10 (iv) the capacity of such systems to
11 facilitate interoperability.

12 (B) CONSIDERATIONS.—In conducting the
13 study under subparagraph (A), the Secretary of
14 Health and Human Services shall take into ac-
15 count the circumstances of smaller health care
16 providers, health care providers located in rural
17 or other medically underserved areas, and safe-
18 ty net providers that deliver a significant level
19 of health care to uninsured individuals, Med-
20 icaid beneficiaries, SCHIP beneficiaries, and
21 other vulnerable individuals.

22 (2) REPORT.—Not later than October 1, 2010,
23 the Secretary of Health and Human Services shall
24 submit to Congress a report on the findings and the
25 conclusions of the study conducted under paragraph

1 (1), together with recommendations for such legisla-
2 tion and administrative action as the Secretary de-
3 termines appropriate.

4 **Subtitle B—Medicaid Incentives**

5 **SEC. 4201. MEDICAID PROVIDER HIT ADOPTION AND OPER-** 6 **ATION PAYMENTS; IMPLEMENTATION FUND-** 7 **ING.**

8 (a) IN GENERAL.—Section 1903 of the Social Secu-
9 rity Act (42 U.S.C. 1396b) is amended—

10 (1) in subsection (a)(3)—

11 (A) by striking “and” at the end of sub-
12 paragraph (D);

13 (B) by striking “plus” at the end of sub-
14 paragraph (E) and inserting “and”; and

15 (C) by adding at the end the following new
16 subparagraph:

17 “(F)(i) 100 percent of so much of the
18 sums expended during such quarter as are at-
19 tributable to payments to Medicaid providers
20 described in subsection (t)(1) to encourage the
21 adoption and use of certified EHR technology;
22 and

23 “(ii) 90 percent of so much of the sums ex-
24 pended during such quarter as are attributable
25 to payments for reasonable administrative ex-

1 penses related to the administration of pay-
2 ments described in clause (i) if the State meets
3 the condition described in subsection (t)(9);
4 plus”; and

5 (2) by inserting after subsection (s) the fol-
6 lowing new subsection:

7 “(t)(1) For purposes of subsection (a)(3)(F), the pay-
8 ments described in this paragraph to encourage the adop-
9 tion and use of certified EHR technology are payments
10 made by the State in accordance with this subsection —

11 “(A) to Medicaid providers described in para-
12 graph (2)(A) not in excess of 85 percent of net aver-
13 age allowable costs (as defined in paragraph (3)(E))
14 for certified EHR technology (and support services
15 including maintenance and training that is for, or is
16 necessary for the adoption and operation of, such
17 technology) with respect to such providers; and

18 “(B) to Medicaid providers described in para-
19 graph (2)(B) not in excess of the maximum amount
20 permitted under paragraph (5) for the provider in-
21 volved.

22 “(2) In this subsection and subsection (a)(3)(F), the
23 term ‘Medicaid provider’ means—

24 “(A) an eligible professional (as defined in
25 paragraph (3)(B))—

1 “(i) who is not hospital-based and has at
2 least 30 percent of the professional’s patient
3 volume (as estimated in accordance with a
4 methodology established by the Secretary) at-
5 tributable to individuals who are receiving med-
6 ical assistance under this title;

7 “(ii) who is not described in clause (i), who
8 is a pediatrician, who is not hospital-based, and
9 who has at least 20 percent of the profes-
10 sional’s patient volume (as estimated in accord-
11 ance with a methodology established by the Sec-
12 retary) attributable to individuals who are re-
13 ceiving medical assistance under this title; and

14 “(iii) who practices predominantly in a
15 Federally qualified health center or rural health
16 clinic and has at least 30 percent of the profes-
17 sional’s patient volume (as estimated in accord-
18 ance with a methodology established by the Sec-
19 retary) attributable to needy individuals (as de-
20 fined in paragraph (3)(F)); and

21 “(B)(i) a children’s hospital, or

22 “(ii) an acute-care hospital that is not described
23 in clause (i) and that has at least 10 percent of the
24 hospital’s patient volume (as estimated in accord-
25 ance with a methodology established by the Sec-

1 retary) attributable to individuals who are receiving
2 medical assistance under this title.

3 An eligible professional shall not qualify as a Medicaid
4 provider under this subsection unless any right to payment
5 under sections 1848(o) and 1853(l) with respect to the
6 eligible professional has been waived in a manner specified
7 by the Secretary. For purposes of calculating patient vol-
8 ume under subparagraph (A)(iii), insofar as it is related
9 to uncompensated care, the Secretary may require the ad-
10 justment of such uncompensated care data so that it
11 would be an appropriate proxy for charity care, including
12 a downward adjustment to eliminate bad debt data from
13 uncompensated care. In applying subparagraphs (A) and
14 (B)(ii), the methodology established by the Secretary for
15 patient volume shall include individuals enrolled in a Med-
16 icaid managed care plan (under section 1903(m) or sec-
17 tion 1932).

18 “(3) In this subsection and subsection (a)(3)(F):

19 “(A) The term ‘certified EHR technology’
20 means a qualified electronic health record (as de-
21 fined in 3000(13) of the Public Health Service Act)
22 that is certified pursuant to section 3001(c)(5) of
23 such Act as meeting standards adopted under sec-
24 tion 3004 of such Act that are applicable to the type
25 of record involved (as determined by the Secretary,

1 such as an ambulatory electronic health record for
2 office-based physicians or an inpatient hospital elec-
3 tronic health record for hospitals).

4 “(B) The term ‘eligible professional’ means a—

5 “(i) physician;

6 “(ii) dentist;

7 “(iii) certified nurse mid-wife;

8 “(iv) nurse practitioner; and

9 “(v) physician assistant insofar as the as-
10 sistant is practicing in a rural health clinic that
11 is led by a physician assistant or is practicing
12 in a Federally qualified health center that is so
13 led.

14 “(C) The term ‘average allowable costs’ means,
15 with respect to certified EHR technology of Med-
16 icaid providers described in paragraph (2)(A) for—

17 “(i) the first year of payment with respect
18 to such a provider, the average costs for the
19 purchase and initial implementation or upgrade
20 of such technology (and support services includ-
21 ing training that is for, or is necessary for the
22 adoption and initial operation of, such tech-
23 nology) for such providers, as determined by
24 the Secretary based upon studies conducted
25 under paragraph (4)(C); and

1 “(ii) a subsequent year of payment with
2 respect to such a provider, the average costs
3 not described in clause (i) relating to the oper-
4 ation, maintenance, and use of such technology
5 for such providers, as determined by the Sec-
6 retary based upon studies conducted under
7 paragraph (4)(C).

8 “(D) The term ‘hospital-based’ means, with re-
9 spect to an eligible professional, a professional (such
10 as a pathologist, anesthesiologist, or emergency phy-
11 sician) who furnishes substantially all of the individ-
12 ual’s professional services in a hospital setting
13 (whether inpatient or outpatient) and through the
14 use of the facilities and equipment, including quali-
15 fied electronic health records, of the hospital. The
16 determination of whether an eligible professional is
17 a hospital-based eligible professional shall be made
18 on the basis of the site of service (as defined by the
19 Secretary) and without regard to any employment or
20 billing arrangement between the eligible professional
21 and any other provider.

22 “(E) The term ‘net average allowable costs’
23 means, with respect to a Medicaid provider described
24 in paragraph (2)(A), average allowable costs reduced
25 by any payment that is made to such Medicaid pro-

1 vider from any other source (other than under this
2 subsection or by a State or local government) that
3 is directly attributable to payment for certified EHR
4 technology or support services described in subpara-
5 graph (C).

6 “(F) The term ‘needy individual’ means, with
7 respect to a Medicaid provider, an individual—

8 “(i) who is receiving assistance under this
9 title;

10 “(ii) who is receiving assistance under title
11 XXI;

12 “(iii) who is furnished uncompensated care
13 by the provider; or

14 “(iv) for whom charges are reduced by the
15 provider on a sliding scale basis based on an in-
16 dividual’s ability to pay.

17 “(4)(A) With respect to a Medicaid provider de-
18 scribed in paragraph (2)(A), subject to subparagraph (B),
19 in no case shall—

20 “(i) the net average allowable costs under
21 this subsection for the first year of payment
22 (which may not be later than 2016), which is
23 intended to cover the costs described in para-
24 graph (3)(C)(i), exceed \$25,000 (or such lesser

1 amount as the Secretary determines based on
2 studies conducted under subparagraph (C));

3 “(ii) the net average allowable costs under
4 this subsection for a subsequent year of pay-
5 ment, which is intended to cover costs described
6 in paragraph (3)(C)(ii), exceed \$10,000; and

7 “(iii) payments be made for costs described
8 in clause (ii) after 2021 or over a period of
9 longer than 5 years.

10 “(B) In the case of Medicaid provider described in
11 paragraph (2)(A)(ii), the dollar amounts specified in sub-
12 paragraph (A) shall be $\frac{2}{3}$ of the dollar amounts otherwise
13 specified.

14 “(C) For the purposes of determining average allow-
15 able costs under this subsection, the Secretary shall study
16 the average costs to Medicaid providers described in para-
17 graph (2)(A) of purchase and initial implementation and
18 upgrade of certified EHR technology described in para-
19 graph (3)(C)(i) and the average costs to such providers
20 of operations, maintenance, and use of such technology de-
21 scribed in paragraph (3)(C)(ii). In determining such costs
22 for such providers, the Secretary may utilize studies of
23 such amounts submitted by States.

1 “(5)(A) In no case shall the payments described in
2 paragraph (1)(B) with respect to a Medicaid provider de-
3 scribed in paragraph (2)(B) exceed—

4 “(i) in the aggregate the product of—

5 “(I) the overall hospital EHR amount
6 for the provider computed under subpara-
7 graph (B); and

8 “(II) the Medicaid share for such pro-
9 vider computed under subparagraph (C);

10 “(ii) in any year 50 percent of the product de-
11 scribed in clause (i); and

12 “(iii) in any 2-year period 90 percent of such
13 product.

14 “(B) For purposes of this paragraph, the overall hos-
15 pital EHR amount, with respect to a Medicaid provider,
16 is the sum of the applicable amounts specified in section
17 1886(n)(2)(A) for such provider for the first 4 payment
18 years (as estimated by the Secretary) determined as if the
19 Medicare share specified in clause (ii) of such section were
20 1. The Secretary shall establish, in consultation with the
21 State, the overall hospital EHR amount for each such
22 Medicaid provider eligible for payments under paragraph
23 (1)(B). For purposes of this subparagraph in computing
24 the amounts under section 1886(n)(2)(C) for payment
25 years after the first payment year, the Secretary shall as-

1 sume that in subsequent payment years discharges in-
2 crease at the average annual rate of growth of the most
3 recent 3 years for which discharge data are available per
4 year.

5 “(C) The Medicaid share computed under this sub-
6 paragraph, for a Medicaid provider for a period specified
7 by the Secretary, shall be calculated in the same manner
8 as the Medicare share under section 1886(n)(2)(D) for
9 such a hospital and period, except that there shall be sub-
10 stituted for the numerator under clause (i) of such section
11 the amount that is equal to the number of inpatient-bed-
12 days (as established by the Secretary) which are attrib-
13 utable to individuals who are receiving medical assistance
14 under this title and who are not described in section
15 1886(n)(2)(D)(i). In computing inpatient-bed-days under
16 the previous sentence, the Secretary shall take into ac-
17 count inpatient-bed-days attributable to inpatient-bed-
18 days that are paid for individuals enrolled in a Medicaid
19 managed care plan (under section 1903(m) or section
20 1932).

21 “(D) In no case may the payments described in para-
22 graph (1)(B) with respect to a Medicaid provider de-
23 scribed in paragraph (2)(B) be paid—

1 “(i) for any year beginning after 2016 unless
2 the provider has been provided payment under para-
3 graph (1)(B) for the previous year; and

4 “(ii) over a period of more than 6 years of pay-
5 ment.

6 “(6) Payments described in paragraph (1) are not in
7 accordance with this subsection unless the following re-
8 quirements are met:

9 “(A)(i) The State provides assurances satisfac-
10 tory to the Secretary that amounts received under
11 subsection (a)(3)(F) with respect to payments to a
12 Medicaid provider are paid, subject to clause (ii), di-
13 rectly to such provider (or to an employer or facility
14 to which such provider has assigned payments) with-
15 out any deduction or rebate.

16 “(ii) Amounts described in clause (i) may also
17 be paid to an entity promoting the adoption of cer-
18 tified EHR technology, as designated by the State,
19 if participation in such a payment arrangement is
20 voluntary for the eligible professional involved and if
21 such entity does not retain more than 5 percent of
22 such payments for costs not related to certified
23 EHR technology (and support services including
24 maintenance and training) that is for, or is nec-
25 essary for the operation of, such technology.

1 “(B) A Medicaid provider described in para-
2 graph (2)(A) is responsible for payment of the re-
3 maining 15 percent of the net average allowable
4 cost.

5 “(C)(i) Subject to clause (ii), with respect to
6 payments to a Medicaid provider—

7 “(I) for the first year of payment to the
8 Medicaid provider under this subsection, the
9 Medicaid provider demonstrates that it is en-
10 gaged in efforts to adopt, implement, or up-
11 grade certified EHR technology; and

12 “(II) for a year of payment, other than the
13 first year of payment to the Medicaid provider
14 under this subsection, the Medicaid provider
15 demonstrates meaningful use of certified EHR
16 technology through a means that is approved by
17 the State and acceptable to the Secretary, and
18 that may be based upon the methodologies ap-
19 plied under section 1848(o) or 1886(n).

20 “(ii) In the case of a Medicaid provider who has
21 completed adopting, implementing, or upgrading
22 such technology prior to the first year of payment to
23 the Medicaid provider under this subsection, clause
24 (i)(I) shall not apply and clause (i)(II) shall apply
25 to each year of payment to the Medicaid provider

1 under this subsection, including the first year of
2 payment.

3 “(D) To the extent specified by the Secretary,
4 the certified EHR technology is compatible with
5 State or Federal administrative management sys-
6 tems.

7 For purposes of subparagraph (B), a Medicaid provider
8 described in paragraph (2)(A) may accept payments for
9 the costs described in such subparagraph from a State or
10 local government. For purposes of subparagraph (C), in
11 establishing the means described in such subparagraph,
12 which may include clinical quality reporting to the State,
13 the State shall ensure that populations with unique needs,
14 such as children, are appropriately addressed.

15 “(7) With respect to Medicaid providers described in
16 paragraph (2)(A), the Secretary shall ensure coordination
17 of payment with respect to such providers under sections
18 1848(o) and 1853(l) and under this subsection to assure
19 no duplication of funding. Such coordination shall include,
20 to the extent practicable, a data matching process between
21 State Medicaid agencies and the Centers for Medicare &
22 Medicaid Services using national provider identifiers. For
23 such purposes, the Secretary may require the submission
24 of such data relating to payments to such Medicaid pro-
25 viders as the Secretary may specify.

1 “(8) In carrying out paragraph (6)(C), the State and
2 Secretary shall seek, to the maximum extent practicable,
3 to avoid duplicative requirements from Federal and State
4 governments to demonstrate meaningful use of certified
5 EHR technology under this title and title XVIII. In doing
6 so, the Secretary may deem satisfaction of requirements
7 for such meaningful use for a payment year under title
8 XVIII to be sufficient to qualify as meaningful use under
9 this subsection. The Secretary may also specify the report-
10 ing periods under this subsection in order to carry out this
11 paragraph.

12 “(9) In order to be provided Federal financial partici-
13 pation under subsection (a)(3)(F)(ii), a State must dem-
14 onstrate to the satisfaction of the Secretary, that the
15 State—

16 “(A) is using the funds provided for the pur-
17 poses of administering payments under this sub-
18 section, including tracking of meaningful use by
19 Medicaid providers;

20 “(B) is conducting adequate oversight of the
21 program under this subsection, including routine
22 tracking of meaningful use attestations and report-
23 ing mechanisms; and

24 “(C) is pursuing initiatives to encourage the
25 adoption of certified EHR technology to promote

1 health care quality and the exchange of health care
2 information under this title, subject to applicable
3 laws and regulations governing such exchange.

4 “(10) The Secretary shall periodically submit reports
5 to the Committee on Energy and Commerce of the House
6 of Representatives and the Committee on Finance of the
7 Senate on status, progress, and oversight of payments de-
8 scribed in paragraph (1), including steps taken to carry
9 out paragraph (7). Such reports shall also describe the
10 extent of adoption of certified EHR technology among
11 Medicaid providers resulting from the provisions of this
12 subsection and any improvements in health outcomes, clin-
13 ical quality, or efficiency resulting from such adoption.”.

14 (b) IMPLEMENTATION FUNDING.—In addition to
15 funds otherwise available, out of any funds in the Treas-
16 ury not otherwise appropriated, there are appropriated to
17 the Secretary of Health and Human Services for the Cen-
18 ters for Medicare & Medicaid Services Program Manage-
19 ment Account, \$40,000,000 for each of fiscal years 2009
20 through 2015 and \$20,000,000 for fiscal year 2016, which
21 shall be available for purposes of carrying out the provi-
22 sions of (and the amendments made by) this section.
23 Amounts appropriated under this subsection for a fiscal
24 year shall be available until expended.

1 **Subtitle C—Miscellaneous**
2 **Medicare Provisions**

3 **SEC. 4301. MORATORIA ON CERTAIN MEDICARE REGULA-**
4 **TIONS.**

5 (a) DELAY IN PHASE OUT OF MEDICARE HOSPICE
6 BUDGET NEUTRALITY ADJUSTMENT FACTOR DURING
7 FISCAL YEAR 2009.—Notwithstanding any other provi-
8 sion of law, including the final rule published on August
9 8, 2008, 73 Federal Register 46464 et seq., relating to
10 Medicare Program; Hospice Wage Index for Fiscal Year
11 2009, the Secretary of Health and Human Services shall
12 not phase out or eliminate the budget neutrality adjust-
13 ment factor in the Medicare hospice wage index before Oc-
14 tober 1, 2009, and the Secretary shall recompute and
15 apply the final Medicare hospice wage index for fiscal year
16 2009 as if there had been no reduction in the budget neu-
17 trality adjustment factor.

18 (b) NON-APPLICATION OF PHASED-OUT INDIRECT
19 MEDICAL EDUCATION (IME) ADJUSTMENT FACTOR FOR
20 FISCAL YEAR 2009.—

21 (1) IN GENERAL.—Section 412.322 of title 42,
22 Code of Federal Regulations, shall be applied with-
23 out regard to paragraph (c) of such section, and the
24 Secretary of Health and Human Services shall re-
25 compute payments for discharges occurring on or

1 after October 1, 2008, as if such paragraph had
2 never been in effect.

3 (2) NO EFFECT ON SUBSEQUENT YEARS.—
4 Nothing in paragraph (1) shall be construed as hav-
5 ing any effect on the application of paragraph (d) of
6 section 412.322 of title 42, Code of Federal Regula-
7 tions.

8 (c) FUNDING FOR IMPLEMENTATION.—In addition to
9 funds otherwise available, for purposes of implementing
10 the provisions of subsections (a) and (b), including costs
11 incurred in reprocessing claims in carrying out such provi-
12 sions, the Secretary of Health and Human Services shall
13 provide for the transfer from the Federal Hospital Insur-
14 ance Trust Fund established under section 1817 of the
15 Social Security Act (42 U.S.C. 1395i) to the Centers for
16 Medicare & Medicaid Services Program Management Ac-
17 count of \$2,000,000 for fiscal year 2009.

18 **SEC. 4302. LONG-TERM CARE HOSPITAL TECHNICAL COR-**
19 **RECTIONS.**

20 (a) PAYMENT.—Subsection (c) of section 114 of the
21 Medicare, Medicaid, and SCHIP Extension Act of 2007
22 (Public Law 110–173) is amended—

23 (1) in paragraph (1)—

24 (A) by amending the heading to read as
25 follows: “DELAY IN APPLICATION OF 25 PER-

1 CENT PATIENT THRESHOLD PAYMENT ADJUST-
2 MENT”;

3 (B) by striking “the date of the enactment
4 of this Act” and inserting “July 1, 2007,”; and

5 (C) in subparagraph (A), by inserting “or
6 to a long-term care hospital, or satellite facility,
7 that as of December 29, 2007, was co-located
8 with an entity that is a provider-based, off-cam-
9 pus location of a subsection (d) hospital which
10 did not provide services payable under section
11 1886(d) of the Social Security Act at the off-
12 campus location” after “freestanding long-term
13 care hospitals”; and

14 (2) in paragraph (2)—

15 (A) in subparagraph (B)(ii), by inserting
16 “or that is described in section 412.22(h)(3)(i)
17 of such title” before the period; and

18 (B) in subparagraph (C), by striking “the
19 date of the enactment of this Act” and insert-
20 ing “October 1, 2007 (or July 1, 2007, in the
21 case of a satellite facility described in section
22 412.22(h)(3)(i) of title 42, Code of Federal
23 Regulations)”.

24 (b) MORATORIUM.—Subsection (d)(3)(A) of such sec-
25 tion is amended by striking “if the hospital or facility”

1 and inserting “if the hospital or facility obtained a certifi-
2 cate of need for an increase in beds that is in a State
3 for which such certificate of need is required and that was
4 issued on or after April 1, 2005, and before December
5 29, 2007, or if the hospital or facility”.

6 (c) EFFECTIVE DATE.—The amendments made by
7 this section shall be effective and apply as if included in
8 the enactment of the Medicare, Medicaid, and SCHIP Ex-
9 tension Act of 2007 (Public Law 110–173).

10 **TITLE V—STATE FISCAL RELIEF**

11 **SEC. 5000. PURPOSES; TABLE OF CONTENTS.**

12 (a) PURPOSES.—The purposes of this title are as fol-
13 lows:

14 (1) To provide fiscal relief to States in a period
15 of economic downturn.

16 (2) To protect and maintain State Medicaid
17 programs during a period of economic downturn, in-
18 cluding by helping to avert cuts to provider payment
19 rates and benefits or services, and to prevent con-
20 strictions of income eligibility requirements for such
21 programs, but not to promote increases in such re-
22 quirements.

23 (b) TABLE OF CONTENTS.—The table of contents for
24 this title is as follows:

TITLE V—STATE FISCAL RELIEF

Sec. 5000. Purposes; table of contents.

- Sec. 5001. Temporary increase of Medicaid FMAP.
- Sec. 5002. Temporary increase in DSH allotments during recession.
- Sec. 5003. Extension of moratoria on certain Medicaid final regulations.
- Sec. 5004. Extension of transitional medical assistance (TMA).
- Sec. 5005. Extension of the qualifying individual (QI) program.
- Sec. 5006. Protections for Indians under Medicaid and CHIP.
- Sec. 5007. Funding for oversight and implementation.
- Sec. 5008. GAO study and report regarding State needs during periods of national economic downturn.

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

1 year 2008, fiscal year 2009, or fiscal year 2010 shall
2 be substituted for the State's FMAP for fiscal year
3 2011, before the application of this section, but only
4 for the first calendar quarter in fiscal year 2011.

5 (b) GENERAL 6.2 PERCENTAGE POINT INCREASE.—

6 (1) IN GENERAL.—Subject to subsections (e),
7 (f), and (g) and paragraph (2), for each State for
8 calendar quarters during the recession adjustment
9 period (as defined in subsection (h)(3)), the FMAP
10 (after the application of subsection (a)) shall be in-
11 creased (without regard to any limitation otherwise
12 specified in section 1905(b) of the Social Security
13 Act (42 U.S.C. 1396d(b))) by 6.2 percentage points.

14 (2) SPECIAL ELECTION FOR TERRITORIES.—In
15 the case of a State that is not one of the 50 States
16 or the District of Columbia, paragraph (1) shall only
17 apply if the State makes a one-time election, in a
18 form and manner specified by the Secretary and for
19 the entire recession adjustment period, to apply the
20 increase in FMAP under paragraph (1) and a 15
21 percent increase under subsection (d) instead of ap-
22 plying a 30 percent increase under subsection (d).

23 (c) ADDITIONAL RELIEF BASED ON INCREASE IN
24 UNEMPLOYMENT.—

1 for the quarter is at least 1.5 percentage
2 points but less than 2.5 percentage points.

3 (ii) The State unemployment increase
4 percentage for the quarter is at least 2.5
5 percentage points but less than 3.5 per-
6 centage points.

7 (iii) The State unemployment increase
8 percentage for the quarter is at least 3.5
9 percentage points.

10 (B) MAINTENANCE OF STATUS.—If a
11 State qualifies for additional relief under this
12 subsection for a calendar quarter, it shall be
13 deemed to have qualified for such relief for each
14 subsequent calendar quarter ending before July
15 1, 2010.

16 (3) APPLICABLE PERCENT.—

17 (A) IN GENERAL.—For purposes of para-
18 graph (1), subject to subparagraph (B), the ap-
19 plicable percent is—

20 (i) 5.5 percent, if the State satisfies
21 the criteria described in paragraph
22 (2)(A)(i) for the calendar quarter;

23 (ii) 8.5 percent if the State satisfies
24 the criteria described in paragraph
25 (2)(A)(ii) for the calendar quarter; and

1 (iii) 11.5 percent if the State satisfies
2 the criteria described in paragraph
3 (2)(A)(iii) for the calendar quarter.

4 (B) MAINTENANCE OF HIGHER APPLICA-
5 BLE PERCENT.—

6 (i) HOLD HARMLESS PERIOD.—If the
7 percent applied to a State under subpara-
8 graph (A) for any calendar quarter in the
9 recession adjustment period beginning on
10 or after January 1, 2009, and ending be-
11 fore July 1, 2010, (determined without re-
12 gard to this subparagraph) is less than the
13 percent applied for the preceding quarter
14 (as so determined), the higher applicable
15 percent shall continue in effect for each
16 subsequent calendar quarter ending before
17 July 1, 2010.

18 (ii) NOTICE OF LOWER APPLICABLE
19 PERCENT.—The Secretary shall notify a
20 State at least 60 days prior to applying
21 any lower applicable percent to the State
22 under this paragraph.

23 (4) COMPUTATION OF STATE UNEMPLOYMENT
24 INCREASE PERCENTAGE.—

1 (A) IN GENERAL.—In this subsection, the
2 “State unemployment increase percentage” for
3 a State for a calendar quarter is equal to the
4 number of percentage points (if any) by
5 which—

6 (i) the average monthly unemployment
7 rate for the State for months in the most
8 recent previous 3-consecutive-month period
9 for which data are available, subject to
10 subparagraph (C); exceeds

11 (ii) the lowest average monthly unem-
12 ployment rate for the State for any 3-con-
13 secutive-month period preceding the period
14 described in clause (i) and beginning on or
15 after January 1, 2006.

16 (B) AVERAGE MONTHLY UNEMPLOYMENT
17 RATE DEFINED.—In this paragraph, the term
18 “average monthly unemployment rate” means
19 the average of the monthly number unemployed,
20 divided by the average of the monthly civilian
21 labor force, seasonally adjusted, as determined
22 based on the most recent monthly publications
23 of the Bureau of Labor Statistics of the De-
24 partment of Labor.

25 (C) SPECIAL RULE.—With respect to—

1 (i) the first 2 calendar quarters of the
2 recession adjustment period, the most re-
3 cent previous 3-consecutive-month period
4 described in subparagraph (A)(i) shall be
5 the 3-consecutive-month period beginning
6 with October 2008; and

7 (ii) the last 2 calendar quarters of the
8 recession adjustment period, the most re-
9 cent previous 3-consecutive-month period
10 described in such subparagraph shall be
11 the 3-consecutive-month period beginning
12 with December 2009, or, if it results in a
13 higher applicable percent under paragraph
14 (3), the 3-consecutive-month period begin-
15 ning with January 2010.

16 (d) INCREASE IN CAP ON MEDICAID PAYMENTS TO
17 TERRITORIES.—Subject to subsections (f) and (g), with
18 respect to entire fiscal years occurring during the reces-
19 sion adjustment period and with respect to fiscal years
20 only a portion of which occurs during such period (and
21 in proportion to the portion of the fiscal year that occurs
22 during such period), the amounts otherwise determined for
23 Puerto Rico, the Virgin Islands, Guam, the Northern Mar-
24 iana Islands, and American Samoa under subsections (f)
25 and (g) of section 1108 of the Social Security Act (42

1 6 U.S.C. 1308) shall each be increased by 30 percent (or,
2 in the case of an election under subsection (b)(2), 15 per-
3 cent). In the case of such an election by a territory, sub-
4 section (a)(1) of such section shall be applied without re-
5 gard to any increase in payment made to the territory
6 under part E of title IV of such Act that is attributable
7 to the increase in FMAP effected under subsection (b) for
8 the territory.

9 (e) SCOPE OF APPLICATION.—The increases in the
10 FMAP for a State under this section shall apply for pur-
11 poses of title XIX of the Social Security Act and shall
12 not apply with respect to—

13 (1) disproportionate share hospital payments
14 described in section 1923 of such Act (42 U.S.C.
15 1396r-4);

16 (2) payments under title IV of such Act (42
17 U.S.C. 601 et seq.) (except that the increases under
18 subsections (a) and (b) shall apply to payments
19 under part E of title IV of such Act (42 U.S.C. 670
20 et seq.) and, for purposes of the application of this
21 section to the District of Columbia, payments under
22 such part shall be deemed to be made on the basis
23 of the FMAP applied with respect to such District
24 for purposes of title XIX and as increased under
25 subsection (b));

1 (3) payments under title XXI of such Act (42
2 U.S.C. 1397aa et seq.);

3 (4) any payments under title XIX of such Act
4 that are based on the enhanced FMAP described in
5 section 2105(b) of such Act (42 U.S.C. 1397ee(b));
6 or

7 (5) any payments under title XIX of such Act
8 that are attributable to expenditures for medical as-
9 sistance provided to individuals made eligible under
10 a State plan under title XIX of the Social Security
11 Act (including under any waiver under such title or
12 under section 1115 of such Act (42 U.S.C. 1315))
13 because of income standards (expressed as a per-
14 centage of the poverty line) for eligibility for medical
15 assistance that are higher than the income stand-
16 ards (as so expressed) for such eligibility as in effect
17 on July 1, 2008, (including as such standards were
18 proposed to be in effect under a State law enacted
19 but not effective as of such date or a State plan
20 amendment or waiver request under title XIX of
21 such Act that was pending approval on such date).

22 (f) STATE INELIGIBILITY; LIMITATION; SPECIAL
23 RULES.—

24 (1) MAINTENANCE OF ELIGIBILITY REQUIRE-
25 MENTS.—

1 (A) IN GENERAL.—Subject to subpara-
2 graphs (B) and (C), a State is not eligible for
3 an increase in its FMAP under subsection (a),
4 (b), or (c), or an increase in a cap amount
5 under subsection (d), if eligibility standards,
6 methodologies, or procedures under its State
7 plan under title XIX of the Social Security Act
8 (including any waiver under such title or under
9 section 1115 of such Act (42 U.S.C. 1315)) are
10 more restrictive than the eligibility standards,
11 methodologies, or procedures, respectively,
12 under such plan (or waiver) as in effect on July
13 1, 2008.

14 (B) STATE REINSTATEMENT OF ELIGI-
15 BILITY PERMITTED.—Subject to subparagraph
16 (C), a State that has restricted eligibility stand-
17 ards, methodologies, or procedures under its
18 State plan under title XIX of the Social Secu-
19 rity Act (including any waiver under such title
20 or under section 1115 of such Act (42 U.S.C.
21 1315)) after July 1, 2008, is no longer ineli-
22 gible under subparagraph (A) beginning with
23 the first calendar quarter in which the State
24 has reinstated eligibility standards, methodolo-
25 gies, or procedures that are no more restrictive

1 than the eligibility standards, methodologies, or
2 procedures, respectively, under such plan (or
3 waiver) as in effect on July 1, 2008.

4 (C) SPECIAL RULES.—A State shall not be
5 ineligible under subparagraph (A)—

6 (i) for the calendar quarters before
7 July 1, 2009, on the basis of a restriction
8 that was applied after July 1, 2008, and
9 before the date of the enactment of this
10 Act, if the State prior to July 1, 2009, has
11 reinstated eligibility standards, methodolo-
12 gies, or procedures that are no more re-
13 strictive than the eligibility standards,
14 methodologies, or procedures, respectively,
15 under such plan (or waiver) as in effect on
16 July 1, 2008; or

17 (ii) on the basis of a restriction that
18 was directed to be made under State law
19 as in effect on July 1, 2008, and would
20 have been in effect as of such date, but for
21 a delay in the effective date of a waiver
22 under section 1115 of such Act with re-
23 spect to such restriction.

24 (2) COMPLIANCE WITH PROMPT PAY REQUIRE-
25 MENTS.—

1 (A) APPLICATION TO PRACTITIONERS.—

2 (i) IN GENERAL.—Subject to the suc-
3 ceeding provisions of this subparagraph, no
4 State shall be eligible for an increased
5 FMAP rate as provided under this section
6 for any claim received by a State from a
7 practitioner subject to the terms of section
8 1902(a)(37)(A) of the Social Security Act
9 (42 U.S.C. 1396a(a)(37)(A)) for such days
10 during any period in which that State has
11 failed to pay claims in accordance with
12 such section as applied under title XIX of
13 such Act.

14 (ii) REPORTING REQUIREMENT.—
15 Each State shall report to the Secretary,
16 on a quarterly basis, its compliance with
17 the requirements of clause (i) as such re-
18 quirements pertain to claims made for cov-
19 ered services during each month of the
20 preceding quarter.

21 (iii) WAIVER AUTHORITY.—The Sec-
22 retary may waive the application of clause
23 (i) to a State, or the reporting requirement
24 imposed under clause (ii), during any pe-
25 riod in which there are exigent cir-

1 cumstances, including natural disasters,
2 that prevent the timely processing of
3 claims or the submission of such a report.

4 (iv) APPLICATION TO CLAIMS.—
5 Clauses (i) and (ii) shall only apply to
6 claims made for covered services after the
7 date of enactment of this Act.

8 (B) APPLICATION TO NURSING FACILITIES
9 AND HOSPITALS.—

10 (i) IN GENERAL.—Subject to clause
11 (ii), the provisions of subparagraph (A)
12 shall apply with respect to a nursing facil-
13 ity or hospital, insofar as it is paid under
14 title XIX of the Social Security Act on the
15 basis of submission of claims, in the same
16 or similar manner (but within the same
17 timeframe) as such provisions apply to
18 practitioners described in such subpara-
19 graph.

20 (ii) GRACE PERIOD.—Notwithstanding
21 clause (i), no period of ineligibility shall be
22 imposed against a State prior to June 1,
23 2009, on the basis of the State failing to
24 pay a claim in accordance with such
25 clause.

1 (3) STATE'S APPLICATION TOWARD RAINY DAY
2 FUND.—A State is not eligible for an increase in its
3 FMAP under subsection (b) or (c), or an increase in
4 a cap amount under subsection (d), if any amounts
5 attributable (directly or indirectly) to such increase
6 are deposited or credited into any reserve or rainy
7 day fund of the State.

8 (4) NO WAIVER AUTHORITY.—Except as pro-
9 vided in paragraph (2)(A)(iii), the Secretary may
10 not waive the application of this subsection or sub-
11 section (g) under section 1115 of the Social Security
12 Act or otherwise.

13 (5) LIMITATION OF FMAP TO 100 PERCENT.—In
14 no case shall an increase in FMAP under this sec-
15 tion result in an FMAP that exceeds 100 percent.

16 (6) TREATMENT OF CERTAIN EXPENDI-
17 TURES.—With respect to expenditures described in
18 section 2105(a)(1)(B) of the Social Security Act (42
19 U.S.C. 1397ee(a)(1)(B)), as in effect before April 1,
20 2009, that are made during the period beginning on
21 October 1, 2008, and ending on March 31, 2009,
22 any additional Federal funds that are paid to a
23 State as a result of this section that are attributable
24 to such expenditures shall not be counted against

1 any allotment under section 2104 of such Act (42
2 U.S.C. 1397dd).

3 (g) REQUIREMENTS.—

4 (1) STATE REPORTS.—Each State that is paid
5 additional Federal funds as a result of this section
6 shall, not later than September 30, 2011, submit a
7 report to the Secretary, in such form and such man-
8 ner as the Secretary shall determine, regarding how
9 the additional Federal funds were expended.

10 (2) ADDITIONAL REQUIREMENT FOR CERTAIN
11 STATES.—In the case of a State that requires polit-
12 ical subdivisions within the State to contribute to-
13 ward the non-Federal share of expenditures under
14 the State Medicaid plan required under section
15 1902(a)(2) of the Social Security Act (42 U.S.C.
16 1396a(a)(2)), the State is not eligible for an in-
17 crease in its FMAP under subsection (b) or (c), or
18 an increase in a cap amount under subsection (d),
19 if it requires that such political subdivisions pay for
20 quarters during the recession adjustment period a
21 greater percentage of the non-Federal share of such
22 expenditures, or a greater percentage of the non-
23 Federal share of payments under section 1923, than
24 the respective percentage that would have been re-

1 quired by the State under such plan on September
2 30, 2008, prior to application of this section.

3 (h) DEFINITIONS.—In this section, except as other-
4 wise provided:

5 (1) FMAP.—The term “FMAP” means the
6 Federal medical assistance percentage, as defined in
7 section 1905(b) of the Social Security Act (42
8 U.S.C. 1396d(b)), as determined without regard to
9 this section except as otherwise specified.

10 (2) POVERTY LINE.—The term “poverty line”
11 has the meaning given such term in section 673(2)
12 of the Community Services Block Grant Act (42
13 U.S.C. 9902(2)), including any revision required by
14 such section.

15 (3) RECESSION ADJUSTMENT PERIOD.—The
16 term “recession adjustment period” means the pe-
17 riod beginning on October 1, 2008, and ending on
18 December 31, 2010.

19 (4) SECRETARY.—The term “Secretary” means
20 the Secretary of Health and Human Services.

21 (5) STATE.—The term “State” has the mean-
22 ing given such term in section 1101(a)(1) of the So-
23 cial Security Act (42 U.S.C. 1301(a)(1)) for pur-
24 poses of title XIX of the Social Security Act (42
25 U.S.C. 1396 et seq.).

1 (i) SUNSET.—This section shall not apply to items
2 and services furnished after the end of the recession ad-
3 justment period.

4 (j) LIMITATION ON FMAP CHANGE.—The increase
5 in FMAP effected under section 614 of the Children’s
6 Health Insurance Program Reauthorization Act of 2009
7 shall not apply in the computation of the enhanced FMAP
8 under title XXI or XIX of the Social Security Act for any
9 period (notwithstanding subsection (i)).

10 **SEC. 5002. TEMPORARY INCREASE IN DSH ALLOTMENTS**
11 **DURING RECESSION.**

12 Section 1923(f)(3) of the Social Security Act (42
13 U.S.C. 1396r-4(f)(3)) is amended—

14 (1) in subparagraph (A), by striking “para-
15 graph (6)” and inserting “paragraph (6) and sub-
16 paragraph (E)”; and

17 (2) by adding at the end the following new sub-
18 paragraph:

19 “(E) TEMPORARY INCREASE IN ALLOT-
20 MENTS DURING RECESSION.—

21 “(i) IN GENERAL.—Subject to clause
22 (ii), the DSH allotment for any State—

23 “(I) for fiscal year 2009 is equal
24 to 102.5 percent of the DSH allot-
25 ment that would be determined under

1 this paragraph for the State for fiscal
2 year 2009 without application of this
3 subparagraph, notwithstanding sub-
4 paragraphs (B) and (C);

5 “(II) for fiscal year 2010 is equal
6 to 102.5 percent of the DSH allot-
7 ment for the State for fiscal year
8 2009, as determined under subclause
9 (I); and

10 “(III) for each succeeding fiscal
11 year is equal to the DSH allotment
12 for the State under this paragraph de-
13 termined without applying subclauses
14 (I) and (II).

15 “(ii) APPLICATION.—Clause (i) shall
16 not apply to a State for a year in the case
17 that the DSH allotment for such State for
18 such year under this paragraph determined
19 without applying clause (i) would grow
20 higher than the DSH allotment specified
21 under clause (i) for the State for such
22 year.”.

1 **SEC. 5003. EXTENSION OF MORATORIA ON CERTAIN MED-**
2 **ICAID FINAL REGULATIONS.**

3 (a) FINAL REGULATIONS RELATING TO OPTIONAL
4 CASE MANAGEMENT SERVICES AND ALLOWABLE PRO-
5 VIDER TAXES.—Section 7001(a)(3)(A) of the Supple-
6 mental Appropriations Act, 2008 (Public Law 110–252)
7 is amended by striking “April 1, 2009” and inserting
8 “July 1, 2009”.

9 (b) FINAL REGULATION RELATING TO SCHOOL-
10 BASED ADMINISTRATION AND SCHOOL-BASED TRANS-
11 PORTATION.—Section 206 of the Medicare, Medicaid, and
12 SCHIP Extension Act of 2007 (Public Law 110–173), as
13 amended by section 7001(a)(2) of the Supplemental Ap-
14 propriations Act, 2008 (Public Law 110–252), is amended
15 by inserting “(July 1, 2009, in the case of the final regula-
16 tion relating to school-based administration and school-
17 based transportation)” after “April 1, 2009,”.

18 (c) FINAL REGULATION RELATING TO OUTPATIENT
19 HOSPITAL FACILITY SERVICES.—Notwithstanding any
20 other provision of law, with respect to expenditures for
21 services furnished during the period beginning on Decem-
22 ber 8, 2008, and ending on June 30, 2009, the Secretary
23 of Health and Human Services shall not take any action
24 (through promulgation of regulation, issuance of regu-
25 latory guidance, use of Federal payment audit procedures,
26 or other administrative action, policy, or practice, includ-

1 ing a Medical Assistance Manual transmittal or letter to
2 State Medicaid directors) to implement the final regula-
3 tion relating to clarification of the definition of outpatient
4 hospital facility services under the Medicaid program pub-
5 lished on November 7, 2008 (73 Federal Register 66187).

6 (d) SENSE OF CONGRESS.—It is the sense of Con-
7 gress that the Secretary of Health and Human Services
8 should not promulgate as final regulations any of the fol-
9 lowing proposed Medicaid regulations:

10 (1) COST LIMITS FOR CERTAIN PROVIDERS.—

11 The proposed regulation published on January 18,
12 2007, (72 Federal Register 2236) (and the pur-
13 ported final regulation published on May 29, 2007
14 (72 Federal Register 29748) and determined by the
15 United States District Court for the District of Co-
16 lumbia to have been “improperly promulgated”, *Ala-*
17 *meda County Medical Center, et al., v. Leavitt, et al.*,
18 Civil Action No. 08-0422, Mem. at 4 (D.D.C. May
19 23, 2008)).

20 (2) PAYMENTS FOR GRADUATE MEDICAL EDU-

21 CATION.—The proposed regulation published on May
22 23, 2007 (72 Federal Register 28930).

23 (3) REHABILITATIVE SERVICES.—The proposed
24 regulation published on August 13, 2007 (72 Fed-
25 eral Register 45201).

1 **SEC. 5004. EXTENSION OF TRANSITIONAL MEDICAL ASSIST-**
2 **ANCE (TMA).**

3 (a) 18-MONTH EXTENSION.—

4 (1) IN GENERAL.—Sections 1902(e)(1)(B) and
5 1925(f) of the Social Security Act (42 U.S.C.
6 1396a(e)(1)(B), 1396r–6(f)) are each amended by
7 striking “September 30, 2003” and inserting “De-
8 cember 31, 2010”.

9 (2) EFFECTIVE DATE.—The amendments made
10 by this subsection shall take effect on July 1, 2009.

11 (b) STATE OPTION OF INITIAL 12-MONTH ELIGI-
12 BILITY.—Section 1925 of the Social Security Act (42
13 U.S.C. 1396r–6) is amended—

14 (1) in subsection (a)(1), by inserting “but sub-
15 ject to paragraph (5)” after “Notwithstanding any
16 other provision of this title”;

17 (2) by adding at the end of subsection (a) the
18 following:

19 “(5) OPTION OF 12-MONTH INITIAL ELIGIBILITY
20 PERIOD.—A State may elect to treat any reference
21 in this subsection to a 6-month period (or 6 months)
22 as a reference to a 12-month period (or 12 months).
23 In the case of such an election, subsection (b) shall
24 not apply.”; and

1 (3) in subsection (b)(1), by inserting “but sub-
2 ject to subsection (a)(5)” after “Notwithstanding
3 any other provision of this title”.

4 (c) REMOVAL OF REQUIREMENT FOR PREVIOUS RE-
5 CEIPT OF MEDICAL ASSISTANCE.—Section 1925(a)(1) of
6 such Act (42 U.S.C. 1396r–6(a)(1)), as amended by sub-
7 section (b)(1), is further amended—

8 (1) by inserting “subparagraph (B) and” before
9 “paragraph (5)”;

10 (2) by redesignating the matter after “RE-
11 QUIREMENT.—” as a subparagraph (A) with the
12 heading “IN GENERAL.—” and with the same inden-
13 tation as subparagraph (B) (as added by paragraph
14 (3)); and

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

16 “(B) STATE OPTION TO WAIVE REQUIRE-
17 MENT FOR 3 MONTHS BEFORE RECEIPT OF
18 MEDICAL ASSISTANCE.—A State may, at its op-
19 tion, elect also to apply subparagraph (A) in
20 the case of a family that was receiving such aid
21 for fewer than three months or that had applied
22 for and was eligible for such aid for fewer than
23 3 months during the 6 immediately preceding
24 months described in such subparagraph.”.

1 (d) CMS REPORT ON ENROLLMENT AND PARTICIPA-
2 TION RATES UNDER TMA.—Section 1925 of such Act (42
3 U.S.C. 1396r-6), as amended by this section, is further
4 amended by adding at the end the following new sub-
5 section:

6 “(g) COLLECTION AND REPORTING OF PARTICIPA-
7 TION INFORMATION.—

8 “(1) COLLECTION OF INFORMATION FROM
9 STATES.—Each State shall collect and submit to the
10 Secretary (and make publicly available), in a format
11 specified by the Secretary, information on average
12 monthly enrollment and average monthly participa-
13 tion rates for adults and children under this section
14 and of the number and percentage of children who
15 become ineligible for medical assistance under this
16 section whose medical assistance is continued under
17 another eligibility category or who are enrolled under
18 the State’s child health plan under title XXI. Such
19 information shall be submitted at the same time and
20 frequency in which other enrollment information
21 under this title is submitted to the Secretary.

22 “(2) ANNUAL REPORTS TO CONGRESS.—Using
23 the information submitted under paragraph (1), the
24 Secretary shall submit to Congress annual reports

1 concerning enrollment and participation rates de-
2 scribed in such paragraph.”.

3 (e) EFFECTIVE DATE.—The amendments made by
4 subsections (b) through (d) shall take effect on July 1,
5 2009.

6 **SEC. 5005. EXTENSION OF THE QUALIFYING INDIVIDUAL**
7 **(QI) PROGRAM.**

8 (a) EXTENSION.—Section 1902(a)(10)(E)(iv) of the
9 Social Security Act (42 U.S.C. 1396a(a)(10)(E)(iv)) is
10 amended by striking “December 2009” and inserting “De-
11 cember 2010”.

12 (b) EXTENDING TOTAL AMOUNT AVAILABLE FOR
13 ALLOCATION.—Section 1933(g) of such Act (42 U.S.C.
14 1396u-3(g)) is amended—

15 (1) in paragraph (2)—

16 (A) by striking “and” at the end of sub-
17 paragraph (K);

18 (B) in subparagraph (L), by striking the
19 period at the end and inserting a semicolon;
20 and

21 (C) by adding at the end the following new
22 subparagraphs:

23 “(M) for the period that begins on Janu-
24 ary 1, 2010, and ends on September 30, 2010,

1 the total allocation amount is \$412,500,000;
2 and

3 “(N) for the period that begins on October
4 1, 2010, and ends on December 31, 2010, the
5 total allocation amount is \$150,000,000.”; and

6 (2) in paragraph (3), in the matter preceding
7 subparagraph (A), by striking “or (L)” and insert-
8 ing “(L), or (N)”.

9 **SEC. 5006. PROTECTIONS FOR INDIANS UNDER MEDICAID**
10 **AND CHIP.**

11 (a) **PREMIUMS AND COST SHARING PROTECTION**
12 **UNDER MEDICAID.—**

13 (1) **IN GENERAL.—**Section 1916 of the Social
14 Security Act (42 U.S.C. 1396o) is amended—

15 (A) in subsection (a), in the matter pre-
16 ceding paragraph (1), by striking “and (i)” and
17 inserting “, (i), and (j)”; and

18 (B) by adding at the end the following new
19 subsection:

20 “(j) **NO PREMIUMS OR COST SHARING FOR INDIANS**
21 **FURNISHED ITEMS OR SERVICES DIRECTLY BY INDIAN**
22 **HEALTH PROGRAMS OR THROUGH REFERRAL UNDER**
23 **CONTRACT HEALTH SERVICES.—**

1 “(1) NO COST SHARING FOR ITEMS OR SERV-
2 ICES FURNISHED TO INDIANS THROUGH INDIAN
3 HEALTH PROGRAMS.—

4 “(A) IN GENERAL.—No enrollment fee,
5 premium, or similar charge, and no deduction,
6 copayment, cost sharing, or similar charge shall
7 be imposed against an Indian who is furnished
8 an item or service directly by the Indian Health
9 Service, an Indian Tribe, Tribal Organization,
10 or Urban Indian Organization or through refer-
11 ral under contract health services for which
12 payment may be made under this title.

13 “(B) NO REDUCTION IN AMOUNT OF PAY-
14 MENT TO INDIAN HEALTH PROVIDERS.—Pay-
15 ment due under this title to the Indian Health
16 Service, an Indian Tribe, Tribal Organization,
17 or Urban Indian Organization, or a health care
18 provider through referral under contract health
19 services for the furnishing of an item or service
20 to an Indian who is eligible for assistance under
21 such title, may not be reduced by the amount
22 of any enrollment fee, premium, or similar
23 charge, or any deduction, copayment, cost shar-
24 ing, or similar charge that would be due from

1 through referral under contract health
2 services.”.

3 (b) TREATMENT OF CERTAIN PROPERTY FROM RE-
4 SOURCES FOR MEDICAID AND CHIP ELIGIBILITY.—

5 (1) MEDICAID.—Section 1902 of the Social Se-
6 curity Act (42 U.S.C. 1396a), as amended by sec-
7 tions 203(c) and 211(a)(1)(A)(ii) of the Children’s
8 Health Insurance Program Reauthorization Act of
9 2009 (Public Law 111–3), is amended by adding at
10 the end the following new subsection:

11 “(ff) Notwithstanding any other requirement of this
12 title or any other provision of Federal or State law, a State
13 shall disregard the following property from resources for
14 purposes of determining the eligibility of an individual who
15 is an Indian for medical assistance under this title:

16 “(1) Property, including real property and im-
17 provements, that is held in trust, subject to Federal
18 restrictions, or otherwise under the supervision of
19 the Secretary of the Interior, located on a reserva-
20 tion, including any federally recognized Indian
21 Tribe’s reservation, pueblo, or colony, including
22 former reservations in Oklahoma, Alaska Native re-
23 gions established by the Alaska Native Claims Set-
24 tlement Act, and Indian allotments on or near a res-

1 ervation as designated and approved by the Bureau
2 of Indian Affairs of the Department of the Interior.

3 “(2) For any federally recognized Tribe not de-
4 scribed in paragraph (1), property located within the
5 most recent boundaries of a prior Federal reserva-
6 tion.

7 “(3) Ownership interests in rents, leases, royalti-
8 ties, or usage rights related to natural resources (in-
9 cluding extraction of natural resources or harvesting
10 of timber, other plants and plant products, animals,
11 fish, and shellfish) resulting from the exercise of fed-
12 erally protected rights.

13 “(4) Ownership interests in or usage rights to
14 items not covered by paragraphs (1) through (3)
15 that have unique religious, spiritual, traditional, or
16 cultural significance or rights that support subsist-
17 ence or a traditional lifestyle according to applicable
18 tribal law or custom.”.

19 (2) APPLICATION TO CHIP.—Section 2107(e)(1)
20 of such Act (42 U.S.C. 1397gg(e)(1)), as amended
21 by sections 203(a)(2), 203(d)(2), 214(b), 501(d)(2),
22 and 503(a)(1) of the Children’s Health Insurance
23 Program Reauthorization Act of 2009 (Public Law
24 111–3), is amended—

1 (A) by redesignating subparagraphs (C)
2 through (I), as subparagraphs (D) through (J),
3 respectively; and

4 (B) by inserting after subparagraph (B),
5 the following new subparagraph:

6 “(C) 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 this subparagraph shall be construed as pre-
2 venting the Secretary from providing additional
3 estate recovery exemptions under this title for
4 Indians.”.

5 (d) RULES APPLICABLE UNDER MEDICAID AND
6 CHIP TO MANAGED CARE ENTITIES WITH RESPECT TO
7 INDIAN ENROLLEES AND INDIAN HEALTH CARE PRO-
8 VIDERS AND INDIAN MANAGED CARE ENTITIES.—

9 (1) IN GENERAL.—Section 1932 of the Social
10 Security Act (42 U.S.C. 1396u–2) is amended by
11 adding at the end the following new subsection:

12 “(h) SPECIAL RULES WITH RESPECT TO INDIAN EN-
13 ROLLEES, INDIAN HEALTH CARE PROVIDERS, AND IN-
14 DIAN MANAGED CARE ENTITIES.—

15 “(1) ENROLLEE OPTION TO SELECT AN INDIAN
16 HEALTH CARE PROVIDER AS PRIMARY CARE PRO-
17 VIDER.—In the case of a non-Indian Medicaid man-
18 aged care entity that—

19 “(A) has an Indian enrolled with the enti-
20 ty; and

21 “(B) has an Indian health care provider
22 that is participating as a primary care provider
23 within the network of the entity,

24 insofar as the Indian is otherwise eligible to receive
25 services from such Indian health care provider and

1 the Indian health care provider has the capacity to
2 provide primary care services to such Indian, the
3 contract with the entity under section 1903(m) or
4 under section 1905(t)(3) shall require, as a condi-
5 tion of receiving payment under such contract, that
6 the Indian shall be allowed to choose such Indian
7 health care provider as the Indian's primary care
8 provider under the entity.

9 “(2) ASSURANCE OF PAYMENT TO INDIAN
10 HEALTH CARE PROVIDERS FOR PROVISION OF COV-
11 ERED SERVICES.—Each contract with a managed
12 care entity under section 1903(m) or under section
13 1905(t)(3) shall require any such entity, as a condi-
14 tion of receiving payment under such contract, to
15 satisfy the following requirements:

16 “(A) DEMONSTRATION OF ACCESS TO IN-
17 DIAN HEALTH CARE PROVIDERS AND APPLICA-
18 TION OF ALTERNATIVE PAYMENT ARRANGE-
19 MENTS.—Subject to subparagraph (C), to—

20 “(i) demonstrate that the number of
21 Indian health care providers that are par-
22 ticipating providers with respect to such
23 entity are sufficient to ensure timely access
24 to covered Medicaid managed care services

1 for those Indian enrollees who are eligible
2 to receive services from such providers; and
3 “(ii) agree to pay Indian health care
4 providers, whether such providers are par-
5 ticipating or nonparticipating providers
6 with respect to the entity, for covered Med-
7 icaid managed care services provided to
8 those Indian enrollees who are eligible to
9 receive services from such providers at a
10 rate equal to the rate negotiated between
11 such entity and the provider involved or, if
12 such a rate has not been negotiated, at a
13 rate that is not less than the level and
14 amount of payment which the entity would
15 make for the services if the services were
16 furnished by a participating provider which
17 is not an Indian health care provider.

18 The Secretary shall establish procedures for ap-
19 plying the requirements of clause (i) in States
20 where there are no or few Indian health pro-
21 viders.

22 “(B) PROMPT PAYMENT.—To agree to
23 make prompt payment (consistent with rule for
24 prompt payment of providers under section
25 1932(f)) to Indian health care providers that

1 are participating providers with respect to such
2 entity or, in the case of an entity to which sub-
3 paragraph (A)(ii) or (C) applies, that the entity
4 is required to pay in accordance with that sub-
5 paragraph.

6 “(C) APPLICATION OF SPECIAL PAYMENT
7 REQUIREMENTS FOR FEDERALLY-QUALIFIED
8 HEALTH CENTERS AND FOR SERVICES PRO-
9 VIDED BY CERTAIN INDIAN HEALTH CARE PRO-
10 VIDERS.—

11 “(i) FEDERALLY-QUALIFIED HEALTH
12 CENTERS.—

13 “(I) MANAGED CARE ENTITY
14 PAYMENT REQUIREMENT.—To agree
15 to pay any Indian health care provider
16 that is a federally-qualified health
17 center under this title but not a par-
18 ticipating provider with respect to the
19 entity, for the provision of covered
20 Medicaid managed care services by
21 such provider to an Indian enrollee of
22 the entity at a rate equal to the
23 amount of payment that the entity
24 would pay a federally-qualified health
25 center that is a participating provider

1 with respect to the entity but is not
2 an Indian health care provider for
3 such services.

4 “(II) CONTINUED APPLICATION
5 OF STATE REQUIREMENT TO MAKE
6 SUPPLEMENTAL PAYMENT.—Nothing
7 in subclause (I) or subparagraph (A)
8 or (B) shall be construed as waiving
9 the application of section 1902(bb)(5)
10 regarding the State plan requirement
11 to make any supplemental payment
12 due under such section to a federally-
13 qualified health center for services
14 furnished by such center to an en-
15 rollee of a managed care entity (re-
16 gardless of whether the federally-
17 qualified health center is or is not a
18 participating provider with the entity).

19 “(ii) PAYMENT RATE FOR SERVICES
20 PROVIDED BY CERTAIN INDIAN HEALTH
21 CARE PROVIDERS.—If the amount paid by
22 a managed care entity to an Indian health
23 care provider that is not a federally-quali-
24 fied health center for services provided by
25 the provider to an Indian enrollee with the

1 managed care entity is less than the rate
2 that applies to the provision of such serv-
3 ices by the provider under the State plan,
4 the plan shall provide for payment to the
5 Indian health care provider, whether the
6 provider is a participating or nonpartici-
7 pating provider with respect to the entity,
8 of the difference between such applicable
9 rate and the amount paid by the managed
10 care entity to the provider for such serv-
11 ices.

12 “(D) CONSTRUCTION.—Nothing in this
13 paragraph shall be construed as waiving the ap-
14 plication of section 1902(a)(30)(A) (relating to
15 application of standards to assure that pay-
16 ments are consistent with efficiency, economy,
17 and quality of care).

18 “(3) SPECIAL RULE FOR ENROLLMENT FOR IN-
19 DIAN MANAGED CARE ENTITIES.—Regarding the ap-
20 plication of a Medicaid managed care program to In-
21 dian Medicaid managed care entities, an Indian
22 Medicaid managed care entity may restrict enroll-
23 ment under such program to Indians in the same
24 manner as Indian Health Programs may restrict the
25 delivery of services to Indians.

1 “(4) DEFINITIONS.—For purposes of this sub-
2 section:

3 “(A) INDIAN HEALTH CARE PROVIDER.—
4 The term ‘Indian health care provider’ means
5 an Indian Health Program or an Urban Indian
6 Organization.

7 “(B) INDIAN MEDICAID MANAGED CARE
8 ENTITY.—The term ‘Indian Medicaid managed
9 care entity’ means a managed care entity that
10 is controlled (within the meaning of the last
11 sentence of section 1903(m)(1)(C)) by the In-
12 dian Health Service, a Tribe, Tribal Organiza-
13 tion, or Urban Indian Organization, or a con-
14 sortium, which may be composed of 1 or more
15 Tribes, Tribal Organizations, or Urban Indian
16 Organizations, and which also may include the
17 Service.

18 “(C) NON-INDIAN MEDICAID MANAGED
19 CARE ENTITY.—The term ‘non-Indian Medicaid
20 managed care entity’ means a managed care en-
21 tity that is not an Indian Medicaid managed
22 care entity.

23 “(D) COVERED MEDICAID MANAGED CARE
24 SERVICES.—The term ‘covered Medicaid man-
25 aged care services’ means, with respect to an

1 individual enrolled with a managed care entity,
2 items and services for which benefits are avail-
3 able with respect to the individual under the
4 contract between the entity and the State in-
5 volved.

6 “(E) MEDICAID MANAGED CARE PRO-
7 GRAM.—The term ‘Medicaid managed care pro-
8 gram’ means a program under sections
9 1903(m), 1905(t), and 1932 and includes a
10 managed care program operating under a waiv-
11 er under section 1915(b) or 1115 or other-
12 wise.”.

13 (2) APPLICATION TO CHIP.—Section 2107(e)(1)
14 of such Act (42 U.S.C. 1397gg(1)), as amended by
15 subsection (b)(2), is amended—

16 (A) by redesignating subparagraph (J) as
17 subparagraph (K); and

18 (B) by inserting after subparagraph (I) the
19 following new subparagraph:

20 “(J) Subsections (a)(2)(C) and (h) of sec-
21 tion 1932.”.

22 (e) CONSULTATION ON MEDICAID, CHIP, AND OTHER
23 HEALTH CARE PROGRAMS FUNDED UNDER THE SOCIAL
24 SECURITY ACT INVOLVING INDIAN HEALTH PROGRAMS
25 AND URBAN INDIAN ORGANIZATIONS.—

1 (1) CONSULTATION WITH TRIBAL TECHNICAL
2 ADVISORY GROUP (TTAG).—The Secretary of Health
3 and Human Services shall maintain within the Cen-
4 ters for Medicaid & Medicare Services (CMS) a
5 Tribal Technical Advisory Group (TTAG), which
6 was first established in accordance with require-
7 ments of the charter dated September 30, 2003, and
8 the Secretary of Health and Human Services shall
9 include in such Group a representative of a national
10 urban Indian health organization and a representa-
11 tive of the Indian Health Service. The inclusion of
12 a representative of a national urban Indian health
13 organization in such Group shall not affect the non-
14 application of the Federal Advisory Committee Act
15 (5 U.S.C. App.) to such Group.

16 (2) SOLICITATION OF ADVICE UNDER MEDICAID
17 AND CHIP.—

18 (A) MEDICAID STATE PLAN AMEND-
19 MENT.—Section 1902(a) of the Social Security
20 Act (42 U.S.C. 1396a(a)), as amended by sec-
21 tion 501(d)(1) of the Children’s Health Insur-
22 ance Program Reauthorization Act of 2009
23 (Public Law 111–3), (42 U.S.C. 1396a(a)) is
24 amended—

1 (i) in paragraph (71), by striking
2 “and” at the end;

3 (ii) in paragraph (72), by striking the
4 period at the end and inserting “; and”;
5 and

6 (iii) by inserting after paragraph (72),
7 the following new paragraph:

8 “(73) in the case of any State in which 1 or
9 more Indian Health Programs or Urban Indian Or-
10 ganizations furnishes health care services, provide
11 for a process under which the State seeks advice on
12 a regular, ongoing basis from designees of such In-
13 dian Health Programs and Urban Indian Organiza-
14 tions on matters relating to the application of this
15 title that are likely to have a direct effect on such
16 Indian Health Programs and Urban Indian Organi-
17 zations and that—

18 “(A) shall include solicitation of advice
19 prior to submission of any plan amendments,
20 waiver requests, and proposals for demonstra-
21 tion projects likely to have a direct effect on In-
22 dians, Indian Health Programs, or Urban In-
23 dian Organizations; and

24 “(B) may include appointment of an advi-
25 sory committee and of a designee of such In-

1 dian Health Programs and Urban Indian Orga-
2 nizations to the medical care advisory com-
3 mittee advising the State on its State plan
4 under this title.”.

5 (B) APPLICATION TO CHIP.—Section
6 2107(e)(1) of such Act (42 U.S.C. 1397gg(1)),
7 as amended by subsections (b)(2) and (d) (2),
8 is amended—

9 (i) by redesignating subparagraphs
10 (B), (C), (D), (E), (F), (G), (H), (I), (J),
11 and (K) as subparagraphs (D), (F), (B),
12 (E), (G), (I), (H), (J), (K), and (L), re-
13 spectively;

14 (ii) by moving such subparagraphs so
15 as to appear in alphabetical order; and

16 (iii) by inserting after subparagraph
17 (B) (as so redesignated and moved) the
18 following new subparagraph:

19 “(C) Section 1902(a)(73) (relating to re-
20 quiring certain States to seek advice from des-
21 ignees of Indian Health Programs and Urban
22 Indian Organizations).”.

23 (3) RULE OF CONSTRUCTION.—Nothing in the
24 amendments made by this subsection shall be con-
25 strued as superseding existing advisory committees,

1 working groups, guidance, or other advisory proce-
2 dures established by the Secretary of Health and
3 Human Services or by any State with respect to the
4 provision of health care to Indians.

5 (f) EFFECTIVE DATE.—The amendments made by
6 this section shall take effect on July 1, 2009.

7 **SEC. 5007. FUNDING FOR OVERSIGHT AND IMPLEMENTA-**
8 **TION.**

9 (a) OVERSIGHT.—For purposes of ensuring the prop-
10 er expenditure of Federal funds under title XIX of the
11 Social Security Act (42 U.S.C. 1396 et seq.), there is ap-
12 propriated to the Office of the Inspector General of the
13 Department of Health and Human Services, out of any
14 money in the Treasury not otherwise appropriated and
15 without further appropriation, \$31,250,000 for fiscal year
16 2009, which shall remain available for expenditure until
17 September 30, 2011, and shall be in addition to any other
18 amounts appropriated or made available to such Office for
19 such purposes.

20 (b) IMPLEMENTATION OF INCREASED FMAP.—For
21 purposes of carrying out section 5001, there is appro-
22 priated to the Secretary of Health and Human Services,
23 out of any money in the Treasury not otherwise appro-
24 priated and without further appropriation, \$5,000,000 for
25 fiscal year 2009, which shall remain available for expendi-

1 ture until September 30, 2011, and shall be in addition
2 to any other amounts appropriated or made available to
3 such Secretary for such purposes.

4 **SEC. 5008. GAO STUDY AND REPORT REGARDING STATE**
5 **NEEDS DURING PERIODS OF NATIONAL ECO-**
6 **NOMIC DOWNTURN.**

7 (a) IN GENERAL.—The Comptroller General of the
8 United States shall study the period of national economic
9 downturn in effect on the date of enactment of this Act,
10 as well as previous periods of national economic downturn
11 since 1974, for the purpose of developing recommenda-
12 tions for addressing the needs of States during such peri-
13 ods. As part of such analysis, the Comptroller General
14 shall study the past and projected effects of temporary in-
15 creases in the Federal medical assistance percentage
16 under the Medicaid program with respect to such periods.

17 (b) REPORT.—Not later than April 1, 2011, the
18 Comptroller General of the United States shall submit a
19 report to the appropriate committees of Congress on the
20 results of the study conducted under paragraph (1). Such
21 report shall include the following:

22 (1) Such recommendations as the Comptroller
23 General determines appropriate for modifying the
24 national economic downturn assistance formula for
25 temporary adjustment of the Federal medical assist-

1 ance percentage under Medicaid (also referred to as
2 a “countercyclical FMAP”) described in GAO report
3 number GAO–07–97 to improve the effectiveness of
4 the application of such percentage in addressing the
5 needs of States during periods of national economic
6 downturn, including recommendations for—

7 (A) improvements to the factors that would
8 begin and end the application of such percent-
9 age;

10 (B) how the determination of the amount
11 of such percentage could be adjusted to address
12 State and regional economic variations during
13 such periods; and

14 (C) how the determination of the amount
15 of such percentage could be adjusted to be more
16 responsive to actual Medicaid costs incurred by
17 States during such periods.

18 (2) An analysis of the impact on States during
19 such periods of—

20 (A) declines in private health benefits cov-
21 erage;

22 (B) declines in State revenues; and

23 (C) caseload maintenance and growth
24 under Medicaid, the Children’s Health Insur-
25 ance Program, or any other publicly-funded

1 programs to provide health benefits coverage
2 for State residents.

3 (3) Identification of, and recommendations for
4 addressing, the effects on States of any other spe-
5 cific economic indicators that the Comptroller Gen-
6 eral determines appropriate.

7 **TITLE VI—BROADBAND TECH-**
8 **NOLOGY OPPORTUNITIES**
9 **PROGRAM**

10 **SEC. 6000. TABLE OF CONTENTS.**

11 The table of contents of this title is as follows:

TITLE VI—BROADBAND TECHNOLOGY OPPORTUNITIES PROGRAM

Sec. 6000. Table of contents.

Sec. 6001. Broadband Technology Opportunities Program.

12 **SEC. 6001. BROADBAND TECHNOLOGY OPPORTUNITIES**
13 **PROGRAM.**

14 (a) The Assistant Secretary of Commerce for Com-
15 munications and Information (Assistant Secretary), in
16 consultation with the Federal Communications Commis-
17 sion (Commission), shall establish a national broadband
18 service development and expansion program in conjunction
19 with the technology opportunities program, which shall be
20 referred to as the Broadband Technology Opportunities
21 Program. The Assistant Secretary shall ensure that the
22 program complements and enhances and does not conflict
23 with other Federal broadband initiatives and programs.

1 (b) The purposes of the program are to—

2 (1) provide access to broadband service to con-
3 sumers residing in unserved areas of the United
4 States;

5 (2) provide improved access to broadband serv-
6 ice to consumers residing in underserved areas of
7 the United States;

8 (3) provide broadband education, awareness,
9 training, access, equipment, and support to—

10 (A) schools, libraries, medical and
11 healthcare providers, community colleges and
12 other institutions of higher education, and other
13 community support organizations and entities
14 to facilitate greater use of broadband service by
15 or through these organizations;

16 (B) organizations and agencies that pro-
17 vide outreach, access, equipment, and support
18 services to facilitate greater use of broadband
19 service by low-income, unemployed, aged, and
20 otherwise vulnerable populations; and

21 (C) job-creating strategic facilities located
22 within a State-designated economic zone, Eco-
23 nomic Development District designated by the
24 Department of Commerce, Renewal Community
25 or Empowerment Zone designated by the De-

1 partment of Housing and Urban Development,
2 or Enterprise Community designated by the De-
3 partment of Agriculture;

4 (4) improve access to, and use of, broadband
5 service by public safety agencies; and

6 (5) stimulate the demand for broadband, eco-
7 nomic growth, and job creation.

8 (c) The Assistant Secretary may consult a State, the
9 District of Columbia, or territory or possession of the
10 United States with respect to—

11 (1) the identification of areas described in sub-
12 section (b)(1) or (2) located in that State; and

13 (2) the allocation of grant funds within that
14 State for projects in or affecting the State.

15 (d) The Assistant Secretary shall—

16 (1) establish and implement the grant program
17 as expeditiously as practicable;

18 (2) ensure that all awards are made before the
19 end of fiscal year 2010;

20 (3) seek such assurances as may be necessary
21 or appropriate from grantees under the program
22 that they will substantially complete projects sup-
23 ported by the program in accordance with project
24 timelines, not to exceed 2 years following an award;
25 and

1 (4) report on the status of the program to the
2 Committees on Appropriations of the House of Rep-
3 resentatives and the Senate, the Committee on En-
4 ergy and Commerce of the House of Representa-
5 tives, and the Committee on Commerce, Science, and
6 Transportation of the Senate, every 90 days.

7 (e) To be eligible for a grant under the program, an
8 applicant shall—

9 (1)(A) be a State or political subdivision there-
10 of, the District of Columbia, a territory or posses-
11 sion of the United States, an Indian tribe (as de-
12 fined in section 4 of the Indian Self-Determination
13 and Education Assistance Act (25 U.S.C. 450(b)) or
14 native Hawaiian organization;

15 (B) a nonprofit—

16 (i) foundation,

17 (ii) corporation,

18 (iii) institution, or

19 (iv) association; or

20 (C) any other entity, including a
21 broadband service or infrastructure provider,
22 that the Assistant Secretary finds by rule to be
23 in the public interest. In establishing such rule,
24 the Assistant Secretary shall to the extent prac-

1 ticable promote the purposes of this section in
2 a technologically neutral manner;

3 (2) submit an application, at such time, in such
4 form, and containing such information as the Assist-
5 ant Secretary may require;

6 (3) provide a detailed explanation of how any
7 amount received under the program will be used to
8 carry out the purposes of this section in an efficient
9 and expeditious manner, including a showing that
10 the project would not have been implemented during
11 the grant period without Federal grant assistance;

12 (4) demonstrate, to the satisfaction of the As-
13 sistant Secretary, that it is capable of carrying out
14 the project or function to which the application re-
15 lates in a competent manner in compliance with all
16 applicable Federal, State, and local laws;

17 (5) demonstrate, to the satisfaction of the As-
18 sistant Secretary, that it will appropriate (if the ap-
19 plicant is a State or local government agency) or
20 otherwise unconditionally obligate, from non-Federal
21 sources, funds required to meet the requirements of
22 subsection (f);

23 (6) disclose to the Assistant Secretary the
24 source and amount of other Federal or State fund-
25 ing sources from which the applicant receives, or has

1 applied for, funding for activities or projects to
2 which the application relates; and

3 (7) provide such assurances and procedures as
4 the Assistant Secretary may require to ensure that
5 grant funds are used and accounted for in an appro-
6 priate manner.

7 (f) The Federal share of any project may not exceed
8 80 percent, except that the Assistant Secretary may in-
9 crease the Federal share of a project above 80 percent
10 if—

11 (1) the applicant petitions the Assistant Sec-
12 retary for a waiver; and

13 (2) the Assistant Secretary determines that the
14 petition demonstrates financial need.

15 (g) The Assistant Secretary may make competitive
16 grants under the program to—

17 (1) acquire equipment, instrumentation, net-
18 working capability, hardware and software, digital
19 network technology, and infrastructure for
20 broadband services;

21 (2) construct and deploy broadband service re-
22 lated infrastructure;

23 (3) ensure access to broadband service by com-
24 munity anchor institutions;

1 (4) facilitate access to broadband service by
2 low-income, unemployed, aged, and otherwise vulner-
3 able populations in order to provide educational and
4 employment opportunities to members of such popu-
5 lations;

6 (5) construct and deploy broadband facilities
7 that improve public safety broadband communica-
8 tions services; and

9 (6) undertake such other projects and activities
10 as the Assistant Secretary finds to be consistent
11 with the purposes for which the program is estab-
12 lished.

13 (h) The Assistant Secretary, in awarding grants
14 under this section, shall, to the extent practical—

15 (1) award not less than 1 grant in each State;

16 (2) consider whether an application to deploy
17 infrastructure in an area—

18 (A) will, if approved, increase the afford-
19 ability of, and subscribership to, service to the
20 greatest population of users in the area;

21 (B) will, if approved, provide the greatest
22 broadband speed possible to the greatest popu-
23 lation of users in the area;

24 (C) will, if approved, enhance service for
25 health care delivery, education, or children to

1 the greatest population of users in the area;
2 and

3 (D) will, if approved, not result in unjust
4 enrichment as a result of support for non-recur-
5 ring costs through another Federal program for
6 service in the area; and

7 (3) consider whether the applicant is a socially
8 and economically disadvantaged small business con-
9 cern as defined under section 8(a) of the Small
10 Business Act (15 U.S.C. 637).

11 (i) The Assistant Secretary—

12 (1) shall require any entity receiving a grant
13 pursuant to this section to report quarterly, in a for-
14 mat specified by the Assistant Secretary, on such
15 entity's use of the assistance and progress fulfilling
16 the objectives for which such funds were granted,
17 and the Assistant Secretary shall make these reports
18 available to the public;

19 (2) may establish additional reporting and in-
20 formation requirements for any recipient of any as-
21 sistance made available pursuant to this section;

22 (3) shall establish appropriate mechanisms to
23 ensure appropriate use and compliance with all
24 terms of any use of funds made available pursuant
25 to this section;

1 (4) may, in addition to other authority under
2 applicable law, deobligate awards to grantees that
3 demonstrate an insufficient level of performance, or
4 wasteful or fraudulent spending, as defined in ad-
5 vance by the Assistant Secretary, and award these
6 funds competitively to new or existing applicants
7 consistent with this section; and

8 (5) shall create and maintain a fully searchable
9 database, accessible on the Internet at no cost to the
10 public, that contains at least a list of each entity
11 that has applied for a grant under this section, a de-
12 scription of each application, the status of each such
13 application, the name of each entity receiving funds
14 made available pursuant to this section, the purpose
15 for which such entity is receiving such funds, each
16 quarterly report submitted by the entity pursuant to
17 this section, and such other information sufficient to
18 allow the public to understand and monitor grants
19 awarded under the program.

20 (j) Concurrent with the issuance of the Request for
21 Proposal for grant applications pursuant to this section,
22 the Assistant Secretary shall, in coordination with the
23 Commission, publish the non-discrimination and network
24 interconnection obligations that shall be contractual condi-
25 tions of grants awarded under this section, including, at

1 a minimum, adherence to the principles contained in the
2 Commission's broadband policy statement (FCC 05-15,
3 adopted August 5, 2005).

4 (k)(1) Not later than 1 year after the date of enact-
5 ment of this section, the Commission shall submit to the
6 Committee on Energy and Commerce of the House of
7 Representatives and the Committee on Commerce,
8 Science, and Transportation of the Senate, a report con-
9 taining a national broadband plan.

10 (2) The national broadband plan required by
11 this section shall seek to ensure that all people of
12 the United States have access to broadband capa-
13 bility and shall establish benchmarks for meeting
14 that goal. The plan shall also include—

15 (A) an analysis of the most effective and
16 efficient mechanisms for ensuring broadband
17 access by all people of the United States;

18 (B) a detailed strategy for achieving af-
19 fordability of such service and maximum utiliza-
20 tion of broadband infrastructure and service by
21 the public;

22 (C) an evaluation of the status of deploy-
23 ment of broadband service, including progress
24 of projects supported by the grants made pur-
25 suant to this section; and

1 (D) a plan for use of broadband infrastruc-
2 ture and services in advancing consumer wel-
3 fare, civic participation, public safety and home-
4 land security, community development, health
5 care delivery, energy independence and effi-
6 ciency, education, worker training, private sec-
7 tor investment, entrepreneurial activity, job cre-
8 ation and economic growth, and other national
9 purposes.

10 (3) In developing the plan, the Commission
11 shall have access to data provided to other Govern-
12 ment agencies under the Broadband Data Improve-
13 ment Act (47 U.S.C. 1301 note).

14 (l) The Assistant Secretary shall develop and main-
15 tain a comprehensive nationwide inventory map of existing
16 broadband service capability and availability in the United
17 States that depicts the geographic extent to which
18 broadband service capability is deployed and available
19 from a commercial provider or public provider throughout
20 each State. Not later than 2 years after the date of the
21 enactment of this Act, the Assistant Secretary shall make
22 the broadband inventory map developed and maintained
23 pursuant to this section accessible by the public on a
24 World Wide Web site of the National Telecommunications

1 and Information Administration in a form that is inter-
2 active and searchable.

3 (m) The Assistant Secretary shall have the authority
4 to prescribe such rules as are necessary to carry out the
5 purposes of this section.

6 **TITLE VII—LIMITS ON**
7 **EXECUTIVE COMPENSATION**

8 **SEC. 7000. TABLE OF CONTENTS.**

9 The table of contents of this title is as follows:

TITLE VII—LIMITS ON EXECUTIVE COMPENSATION

Sec. 7000. Table of contents.

Sec. 7001. Executive compensation and corporate governance.

Sec. 7002. Applicability with respect to loan modifications.

10 **SEC. 7001. EXECUTIVE COMPENSATION AND CORPORATE**
11 **GOVERNANCE.**

12 Section 111 of the Emergency Economic Stabilization
13 Act of 2008 (12 U.S.C. 5221) is amended to read as fol-
14 lows:

15 **“SEC. 111. EXECUTIVE COMPENSATION AND CORPORATE**
16 **GOVERNANCE.**

17 “(a) DEFINITIONS.—For purposes of this section, the
18 following definitions shall apply:

19 “(1) SENIOR EXECUTIVE OFFICER.—The term
20 ‘senior executive officer’ means an individual who is
21 1 of the top 5 most highly paid executives of a pub-
22 lic company, whose compensation is required to be
23 disclosed pursuant to the Securities Exchange Act of

1 1934, and any regulations issued thereunder, and
2 non-public company counterparts.

3 “(2) GOLDEN PARACHUTE PAYMENT.—The
4 term ‘golden parachute payment’ means any pay-
5 ment to a senior executive officer for departure from
6 a company for any reason, except for payments for
7 services performed or benefits accrued.

8 “(3) TARP RECIPIENT.—The term ‘TARP re-
9 cipient’ means any entity that has received or will
10 receive financial assistance under the financial as-
11 sistance provided under the TARP.

12 “(4) COMMISSION.—The term ‘Commission’
13 means the Securities and Exchange Commission.

14 “(5) PERIOD IN WHICH OBLIGATION IS OUT-
15 STANDING; RULE OF CONSTRUCTION.—For purposes
16 of this section, the period in which any obligation
17 arising from financial assistance provided under the
18 TARP remains outstanding does not include any pe-
19 riod during which the Federal Government only
20 holds warrants to purchase common stock of the
21 TARP recipient.

22 “(b) EXECUTIVE COMPENSATION AND CORPORATE
23 GOVERNANCE.—

24 “(1) ESTABLISHMENT OF STANDARDS.—During
25 the period in which any obligation arising from fi-

1 nancial assistance provided under the TARP re-
2 mains outstanding, each TARP recipient shall be
3 subject to—

4 “(A) the standards established by the Sec-
5 retary under this section; and

6 “(B) the provisions of section 162(m)(5) of
7 the Internal Revenue Code of 1986, as applica-
8 ble.

9 “(2) STANDARDS REQUIRED.—The Secretary
10 shall require each TARP recipient to meet appro-
11 priate standards for executive compensation and cor-
12 porate governance.

13 “(3) SPECIFIC REQUIREMENTS.—The standards
14 established under paragraph (2) shall include the
15 following:

16 “(A) Limits on compensation that exclude
17 incentives for senior executive officers of the
18 TARP recipient to take unnecessary and exces-
19 sive risks that threaten the value of such recipi-
20 ent during the period in which any obligation
21 arising from financial assistance provided under
22 the TARP remains outstanding.

23 “(B) A provision for the recovery by such
24 TARP recipient of any bonus, retention award,
25 or incentive compensation paid to a senior exec-

1 utive officer and any of the next 20 most high-
2 ly-compensated employees of the TARP recipi-
3 ent based on statements of earnings, revenues,
4 gains, or other criteria that are later found to
5 be materially inaccurate.

6 “(C) A prohibition on such TARP recipient
7 making any golden parachute payment to a sen-
8 ior executive officer or any of the next 5 most
9 highly-compensated employees of the TARP re-
10 cipient during the period in which any obliga-
11 tion arising from financial assistance provided
12 under the TARP remains outstanding.

13 “(D)(i) A prohibition on such TARP re-
14 cipient paying or accruing any bonus, retention
15 award, or incentive compensation during the pe-
16 riod in which any obligation arising from finan-
17 cial assistance provided under the TARP re-
18 mains outstanding, except that any prohibition
19 developed under this paragraph shall not apply
20 to the payment of long-term restricted stock by
21 such TARP recipient, provided that such long-
22 term restricted stock—

23 “(I) does not fully vest during the pe-
24 riod in which any obligation arising from

1 financial assistance provided to that TARP
2 recipient remains outstanding;

3 “(II) has a value in an amount that
4 is not greater than $\frac{1}{3}$ of the total amount
5 of annual compensation of the employee re-
6 ceiving the stock; and

7 “(III) is subject to such other terms
8 and conditions as the Secretary may deter-
9 mine is in the public interest.

10 “(ii) The prohibition required under clause
11 (i) shall apply as follows:

12 “(I) For any financial institution that
13 received financial assistance provided
14 under the TARP equal to less than
15 \$25,000,000, the prohibition shall apply
16 only to the most highly compensated em-
17 ployee of the financial institution.

18 “(II) For any financial institution
19 that received financial assistance provided
20 under the TARP equal to at least
21 \$25,000,000, but less than \$250,000,000,
22 the prohibition shall apply to at least the
23 5 most highly-compensated employees of
24 the financial institution, or such higher
25 number as the Secretary may determine is

1 in the public interest with respect to any
2 TARP recipient.

3 “(III) For any financial institution
4 that received financial assistance provided
5 under the TARP equal to at
6 least \$250,000,000, but less than
7 \$500,000,000, the prohibition shall apply
8 to the senior executive officers and at least
9 the 10 next most highly-compensated em-
10 ployees, or such higher number as the Sec-
11 retary may determine is in the public inter-
12 est with respect to any TARP recipient.

13 “(IV) For any financial institution
14 that received financial assistance provided
15 under the TARP equal to \$500,000,000 or
16 more, the prohibition shall apply to the
17 senior executive officers and at least the 20
18 next most highly-compensated employees,
19 or such higher number as the Secretary
20 may determine is in the public interest
21 with respect to any TARP recipient.

22 “(iii) The prohibition required under clause
23 (i) shall not be construed to prohibit any bonus
24 payment required to be paid pursuant to a writ-
25 ten employment contract executed on or before

1 February 11, 2009, as such valid employment
2 contracts are determined by the Secretary or
3 the designee of the Secretary.

4 “(E) A prohibition on any compensation
5 plan that would encourage manipulation of the
6 reported earnings of such TARP recipient to
7 enhance the compensation of any of its employ-
8 ees.

9 “(F) A requirement for the establishment
10 of a Board Compensation Committee that
11 meets the requirements of subsection (c).

12 “(4) CERTIFICATION OF COMPLIANCE.—The
13 chief executive officer and chief financial officer (or
14 the equivalents thereof) of each TARP recipient
15 shall provide a written certification of compliance by
16 the TARP recipient with the requirements of this
17 section—

18 “(A) in the case of a TARP recipient, the
19 securities of which are publicly traded, to the
20 Securities and Exchange Commission, together
21 with annual filings required under the securities
22 laws; and

23 “(B) in the case of a TARP recipient that
24 is not a publicly traded company, to the Sec-
25 retary.

1 “(c) BOARD COMPENSATION COMMITTEE.—

2 “(1) ESTABLISHMENT OF BOARD REQUIRED.—

3 Each TARP recipient shall establish a Board Com-
4 pensation Committee, comprised entirely of inde-
5 pendent directors, for the purpose of reviewing em-
6 ployee compensation plans.

7 “(2) MEETINGS.—The Board Compensation
8 Committee of each TARP recipient shall meet at
9 least semiannually to discuss and evaluate employee
10 compensation plans in light of an assessment of any
11 risk posed to the TARP recipient from such plans.

12 “(3) COMPLIANCE BY NON-SEC REG-
13 ISTRANTS.—In the case of any TARP recipient, the
14 common or preferred stock of which is not registered
15 pursuant to the Securities Exchange Act of 1934,
16 and that has received \$25,000,000 or less of TARP
17 assistance, the duties of the Board Compensation
18 Committee under this subsection shall be carried out
19 by the board of directors of such TARP recipient.

20 “(d) LIMITATION ON LUXURY EXPENDITURES.—The
21 board of directors of any TARP recipient shall have in
22 place a company-wide policy regarding excessive or luxury
23 expenditures, as identified by the Secretary, which may
24 include excessive expenditures on—

25 “(1) entertainment or events;

1 “(2) office and facility renovations;

2 “(3) aviation or other transportation services;

3 or

4 “(4) other activities or events that are not rea-
5 sonable expenditures for staff development, reason-
6 able performance incentives, or other similar meas-
7 ures conducted in the normal course of the business
8 operations of the TARP recipient.

9 “(e) SHAREHOLDER APPROVAL OF EXECUTIVE COM-
10 PENSATION.—

11 “(1) ANNUAL SHAREHOLDER APPROVAL OF EX-
12 ECUTIVE COMPENSATION.—Any proxy or consent or
13 authorization for an annual or other meeting of the
14 shareholders of any TARP recipient during the pe-
15 riod in which any obligation arising from financial
16 assistance provided under the TARP remains out-
17 standing shall permit a separate shareholder vote to
18 approve the compensation of executives, as disclosed
19 pursuant to the compensation disclosure rules of the
20 Commission (which disclosure shall include the com-
21 pensation discussion and analysis, the compensation
22 tables, and any related material).

23 “(2) NONBINDING VOTE.—A shareholder vote
24 described in paragraph (1) shall not be binding on
25 the board of directors of a TARP recipient, and may

1 not be construed as overruling a decision by such
2 board, nor to create or imply any additional fidu-
3 ciary duty by such board, nor shall such vote be con-
4 strued to restrict or limit the ability of shareholders
5 to make proposals for inclusion in proxy materials
6 related to executive compensation.

7 “(3) DEADLINE FOR RULEMAKING.—Not later
8 than 1 year after the date of enactment of the
9 American Recovery and Reinvestment Act of 2009,
10 the Commission shall issue any final rules and regu-
11 lations required by this subsection.

12 “(f) REVIEW OF PRIOR PAYMENTS TO EXECU-
13 TIVES.—

14 “(1) IN GENERAL.—The Secretary shall review
15 bonuses, retention awards, and other compensation
16 paid to the senior executive officers and the next 20
17 most highly-compensated employees of each entity
18 receiving TARP assistance before the date of enact-
19 ment of the American Recovery and Reinvestment
20 Act of 2009, to determine whether any such pay-
21 ments were inconsistent with the purposes of this
22 section or the TARP or were otherwise contrary to
23 the public interest.

24 “(2) NEGOTIATIONS FOR REIMBURSEMENT.—If
25 the Secretary makes a determination described in

1 paragraph (1), the Secretary shall seek to negotiate
2 with the TARP recipient and the subject employee
3 for appropriate reimbursements to the Federal Gov-
4 ernment with respect to compensation or bonuses.

5 “(g) NO IMPEDIMENT TO WITHDRAWAL BY TARP
6 RECIPIENTS.—Subject to consultation with the appro-
7 priate Federal banking agency (as that term is defined
8 in section 3 of the Federal Deposit Insurance Act), if any,
9 the Secretary shall permit a TARP recipient to repay any
10 assistance previously provided under the TARP to such
11 financial institution, without regard to whether the finan-
12 cial institution has replaced such funds from any other
13 source or to any waiting period, and when such assistance
14 is repaid, the Secretary shall liquidate warrants associated
15 with such assistance at the current market price.

16 “(h) REGULATIONS.—The Secretary shall promul-
17 gate regulations to implement this section.”

18 **SEC. 7002. APPLICABILITY WITH RESPECT TO LOAN MODI-**
19 **FICATIONS.**

20 Section 109(a) of the Emergency Economic Stabiliza-
21 tion Act of 2008 (12 U.S.C. 5219(a)) is amended—

22 (1) by striking “To the extent” and inserting
23 the following:

24 “(1) IN GENERAL.—To the extent”; and

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

1 “(2) WAIVER OF CERTAIN PROVISIONS IN CON-
2 NECTION WITH LOAN MODIFICATIONS.—The Sec-
3 retary shall not be required to apply executive com-
4 pensation restrictions under section 111, or to re-
5 ceive warrants or debt instruments under section
6 113, solely in connection with any loan modification
7 under this section.”.