

108TH CONGRESS
1ST SESSION

S. 1409

To provide funding for infrastructure investment to restore the United States economy and to enhance the security of transportation and environmental facilities throughout the United States.

IN THE SENATE OF THE UNITED STATES

JULY 15, 2003

Mrs. FEINSTEIN (for herself and Mr. DURBIN) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To provide funding for infrastructure investment to restore the United States economy and to enhance the security of transportation and environmental facilities throughout the United States.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Rebuild America Act of 2003”.

6 (b) **TABLE OF CONTENTS.**—

Sec. 1. Short title; table of contents.

Sec. 2. Findings and purposes.

TITLE I—HIGHWAY INFRASTRUCTURE INVESTMENT

Sec. 101. Federal-aid highway program obligation ceiling.

TITLE II—TRANSIT INFRASTRUCTURE INVESTMENT

Sec. 201. Additional authorizations for formula grants.

Sec. 202. Federal transit program obligation ceiling.

TITLE III—AVIATION INFRASTRUCTURE INVESTMENT

Sec. 301. Increased funding for airport planning and development.

Sec. 302. Airport security improvement projects.

TITLE IV—RAIL INFRASTRUCTURE INVESTMENT

Subtitle A—Credit for Amtrak Bonds

Sec. 401. Credit to holders of qualified Amtrak bonds.

Subtitle B—High-Speed Rail Provisions

Sec. 411. Department of Transportation approval for qualified Amtrak projects.

Sec. 412. Multiyear capital spending plan and oversight.

Sec. 413. Issuance of regulations.

Sec. 414. Sense of Congress regarding effect on Amtrak funding.

Sec. 415. Effective date.

Subtitle C—Amtrak Capital Investment

Sec. 421. Authorization of appropriations.

Subtitle D—Capital Investment for Railroad Rehabilitation

Sec. 431. Capital grants for railroad track.

Sec. 432. Regulatory procedure amendments.

TITLE V—PORT SECURITY INFRASTRUCTURE INVESTMENT

Sec. 501. Authorization of appropriations for grants to implement security plans.

TITLE VI—ENVIRONMENTAL INFRASTRUCTURE INVESTMENT

Sec. 601. General authority for capitalization grants.

Sec. 602. Capitalization grants agreements.

Sec. 603. Water pollution control revolving funds.

Sec. 604. Authorization of appropriations for clean water State revolving funds.

Sec. 605. Wet weather.

Sec. 606. Safe drinking water State revolving funds.

TITLE VII—WATER RESOURCES INFRASTRUCTURE INVESTMENT

Sec. 701. Increased funding for Corps of Engineers projects.

TITLE VIII—ECONOMIC DEVELOPMENT INFRASTRUCTURE INVESTMENT

Sec. 801. Public works and economic development.

Sec. 802. Appalachian regional development.

Sec. 803. Delta regional development.

Sec. 804. Northern Great Plains regional development.

TITLE IX—PUBLIC BUILDINGS INFRASTRUCTURE INVESTMENT

Sec. 901. Security enhancements for GSA properties.

TITLE X—GENERAL PROVISIONS

Sec. 1001. Priority consideration for security projects.

Sec. 1002. Temporary waiver of non-Federal share.

Sec. 1003. Maintenance of effort.

Sec. 1004. Labor standards.

Sec. 1005. Buy America.

TITLE XI—REVENUE OFFSETS

Sec. 1100. Amendment of 1986 code.

Subtitle A—Provisions Designed To Curtail Tax Shelters

Sec. 1101. Clarification of economic substance doctrine.

Sec. 1102. Penalty for failing to disclose reportable transaction.

Sec. 1103. Accuracy-related penalty for listed transactions and other reportable transactions having a significant tax avoidance purpose.

Sec. 1104. Penalty for understatements attributable to transactions lacking economic substance, etc.

Sec. 1105. Modifications of substantial understatement penalty for nonreportable transactions.

Sec. 1106. Tax shelter exception to confidentiality privileges relating to taxpayer communications.

Sec. 1107. Disclosure of reportable transactions.

Sec. 1108. Modifications to penalty for failure to register tax shelters.

Sec. 1109. Modification of penalty for failure to maintain lists of investors.

Sec. 1110. Modification of actions to enjoin certain conduct related to tax shelters and reportable transactions.

Sec. 1111. Understatement of taxpayer's liability by income tax return preparer.

Sec. 1112. Penalty on failure to report interests in foreign financial accounts.

Sec. 1113. Frivolous tax submissions.

Sec. 1114. Regulation of individuals practicing before the Department of Treasury.

Sec. 1115. Penalty on promoters of tax shelters.

Sec. 1116. Statute of limitations for taxable years for which listed transactions not reported.

Sec. 1117. Denial of deduction for interest on underpayments attributable to nondisclosed reportable and noneconomic substance transactions.

Subtitle B—Other Provisions

Sec. 1121. Limitation on transfer or importation of built-in losses.

Sec. 1122. Disallowance of certain partnership loss transfers.

Sec. 1123. No reduction of basis under section 734 in stock held by partnership in corporate partner.

Sec. 1124. Repeal of special rules for FASITs.

Sec. 1125. Expanded disallowance of deduction for interest on convertible debt.

Sec. 1126. Expanded authority to disallow tax benefits under section 269.

Sec. 1127. Modifications of certain rules relating to controlled foreign corporations.

Sec. 1128. Basis for determining loss always reduced by nontaxed portion of dividends.

Sec. 1129. Affirmation of consolidated return regulation authority.

Sec. 1130. Extension of customs user fees.

Subtitle C—Prevention of Corporate Expatriation To Avoid United States
Income Tax

Sec. 1131. Prevention of corporate expatriation to avoid United States income tax.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—Congress finds the following:

3 (1) Since January 2001, the unemployment
4 rate has increased from 4.2 percent to 6.1 percent,
5 the highest level since July 1994.

6 (2) Since January 2001, the number of unem-
7 ployed people increased from 5,950,000 people to
8 9,000,000, an increase of more than 3,000,000, or
9 more than 50 percent.

10 (3) The increase in unemployment of the last
11 two and one-half years has had a disproportionate
12 effect on people of color. The rate of unemployment
13 for African Americans is 10.8 percent, twice the rate
14 for whites. The unemployment rate for Hispanic
15 Americans is 8.2 percent, more than 50 percent
16 higher than the rate for whites.

17 (4) The number of unemployed private con-
18 struction workers is 715,000, an 80 percent increase
19 over the comparable period in calendar year 2000.
20 The unemployment rate for construction workers is

1 8.4 percent, 68 percent higher than the rate in May
2 2000.

3 (5) Similarly, the number of unemployed manu-
4 facturing workers is nearly 1,200,000, an increase of
5 more than 25 percent since January 2001. In Janu-
6 ary 2003, the number of production workers in man-
7 ufacturing dropped below 11,000,000 for the first
8 time since February 1946, and the number con-
9 tinues to fall.

10 (6) Moreover, after workers have lost their jobs,
11 they have had more trouble finding new jobs. The
12 average length of unemployment is almost 20 weeks,
13 the longest it has been in almost 2 decades. In the
14 past 2 years, the number of workers who are unem-
15 ployed for longer than 6 months has increased by
16 1,300,000 to more than 1,900,000, an increase of
17 more than 206 percent. One-half of the unemployed
18 are out of work for more than 10 weeks and one in
19 5 have been out of work for more than 6 months.

20 (7) In addition, 4,600,000 people seeking full-
21 time employment are working only part-time. An ad-
22 ditional 5,500,000 have completely dropped out of
23 the labor force because they cannot find work, and
24 therefore are not counted as unemployed.

1 (8) As labor markets tightened in the late
2 1990's, even low- and middle-income workers seemed
3 to gain some wage bargaining power. But, with the
4 Bush recession, family incomes are falling across the
5 board, and falling most rapidly among lower-income
6 workers.

7 (9) In 75 urban areas, highway congestion
8 alone costs travelers 3,600,000,000 hours of delay,
9 5,700,000,000 gallons of wasted fuel, and
10 \$67,500,000,000 in lost productivity and wasted fuel
11 each year (more than three times the
12 \$22,000,000,000 cost in 1982).

13 (10) Similarly, States indicate that 40 percent
14 of assessed waters, or 20,000 discrete areas of the
15 Nation's lakes, rivers, streams, and coastal waters,
16 do not meet State water quality standards.

17 (11) States, cities, transit authorities, airport
18 authorities, and other entities have thousands of
19 ready-to-go infrastructure projects, which will create
20 long-term capital assets for the United States and
21 which can help stimulate the Nation's economy.

22 (12) Each \$1,000,000,000 of Federal funding
23 invested in infrastructure construction creates ap-
24 proximately 47,500 jobs and \$6,200,000,000 in eco-
25 nomic activity.

1 (b) PURPOSES.—The purposes of this Act are as fol-
2 lows:

3 (1) To invest in the Nation’s infrastructure to
4 enhance the safety, security, and efficiency of high-
5 way, transit, aviation, rail, port, environmental,
6 water resources, and public buildings infrastructure.

7 (2) To create jobs and economic activity to put
8 people back to work and stimulate the Nation’s
9 economy.

10 (3) To create long-term capital assets for the
11 Nation that will help the United States address its
12 enormous infrastructure needs and improve its eco-
13 nomic productivity.

14 (4) To demonstrate the commitment of the
15 Federal Government to economic recovery, thereby
16 increasing the confidence of consumers and busi-
17 nesses.

18 **TITLE I—HIGHWAY**
19 **INFRASTRUCTURE INVESTMENT**

20 **SEC. 101. FEDERAL-AID HIGHWAY PROGRAM OBLIGATION**
21 **CEILING.**

22 Section 1102 of the Transportation Equity Act for
23 the 21st Century (112 Stat. 115) is amended by adding
24 at the end the following:

1 “(j) INCREASE IN OBLIGATION LIMIT FOR FISCAL
 2 YEAR 2003.—Notwithstanding any other provision of law,
 3 limitations on obligations imposed by subsection (a) for
 4 fiscal year 2003 shall be \$36,600,000,000. Such sum shall
 5 be distributed in accordance with this section, except that
 6 a program subject to a reduction in funds under sub-
 7 section (f) shall receive an amount of obligation authority
 8 equal to the amount of contract authority available for
 9 such program in such fiscal year.”.

10 **TITLE II—TRANSIT**
 11 **INFRASTRUCTURE INVESTMENT**

12 **SEC. 201. ADDITIONAL AUTHORIZATIONS FOR FORMULA**
 13 **GRANTS.**

14 (a) FROM THE TRUST FUND.—Section
 15 5338(a)(2)(A)(v) of title 49, United States Code, is
 16 amended by striking “\$3,071,200,000” and inserting
 17 “\$5,471,200,000”.

18 (b) FROM THE GENERAL FUND.—Section
 19 5338(a)(2)(B)(v) of title 49, United States Code, is
 20 amended by striking “\$767,800,000” and inserting
 21 “\$1,367,800,000”.

22 (c) AVAILABILITY OF AMOUNTS.—Notwithstanding
 23 sections 5307(k)(2) and section 5336(i), any increase in
 24 the amounts apportioned to a recipient attributable to the
 25 amendments made by subsections (a) and (b) of this sec-

1 tion may be obligated by the recipient for 1 year after
 2 the last day of the fiscal year in which the amount is ap-
 3 portioned. Not later than 30 days after the end of the
 4 1-year period, an amount that is not obligated at the end
 5 of that period shall be added to the amount that may be
 6 apportioned under the urbanized area formula program of
 7 section 5336 of title 49, United States Code.

8 **SEC. 202. FEDERAL TRANSIT PROGRAM OBLIGATION CEIL-**
 9 **ING.**

10 Section 3040(5) of the Transportation Equity Act for
 11 the 21st Century (112 Stat. 394) is amended by striking
 12 “\$7,226,000,000” and inserting “\$10,226,000,000”.

13 **TITLE III—AVIATION**
 14 **INFRASTRUCTURE INVESTMENT**

15 **SEC. 301. INCREASED FUNDING FOR AIRPORT PLANNING**
 16 **AND DEVELOPMENT.**

17 (a) IN GENERAL.—Section 48103(5) of title 49,
 18 United States Code, is amended by striking
 19 “\$3,400,000,000” and inserting “\$5,400,000,000.”

20 **SEC. 302. AIRPORT SECURITY IMPROVEMENT PROJECTS.**

21 (a) GRANT AUTHORITY.—Subject to the require-
 22 ments of this section, the Under Secretary for Border and
 23 Transportation Security shall make grants to airport
 24 sponsors—

1 (1) for projects to replace baggage conveyer
2 systems related to aviation security;

3 (2) for projects to reconfigure terminal baggage
4 areas as needed to install explosive detection sys-
5 tems; and

6 (3) for such other airport security improvement
7 projects as the Under Secretary determines appro-
8 priate.

9 (b) APPLICATIONS.—A sponsor seeking a grant
10 under this section shall submit to the Under Secretary an
11 application in such form and containing such information
12 as the Under Secretary prescribes.

13 (c) APPROVAL.—The Under Secretary may approve
14 an application of a sponsor for a grant under this section
15 only if the Under Secretary determines that the project
16 will improve security at an airport or improve the effi-
17 ciency of the airport without lessening security.

18 (d) LETTERS OF INTENT.—

19 (1) ISSUANCE.—The Under Secretary may
20 issue a letter of intent to a sponsor committing to
21 obligate from future budget authority an amount,
22 not more than the Federal Government's share of
23 the project's cost, for an airport security improve-
24 ment project (including interest costs and costs of
25 formulating the project).

1 (2) SCHEDULE.—A letter of intent under this
2 subsection shall establish a schedule under which the
3 Under Secretary will reimburse the sponsor for the
4 Government’s share of the project’s costs, as
5 amounts become available, if the sponsor, after the
6 Under Secretary issues the letter, carries out the
7 project without receiving amounts under this section.

8 (3) PRIORITY.—In making grants under this
9 section in a fiscal year, the Under Secretary shall
10 fulfill intentions to obligate under this subsection.

11 (4) NOTICE TO UNDER SECRETARY.—A sponsor
12 that has been issued a letter of intent under this
13 subsection shall notify the Under Secretary of the
14 sponsors’s intent to carry out an airport security im-
15 provement project before the project begins.

16 (5) NOTICE TO CONGRESS.—The Under Sec-
17 retary shall transmit to the Committees on Appro-
18 priations and Transportation and Infrastructure of
19 the House of Representatives and the Committees
20 on Appropriations and Commerce, Science and
21 Transportation of the Senate a written notification
22 at least 3 days before the issuance of a letter of in-
23 tent under this section.

24 (6) LIMITATIONS.—A letter of intent issued
25 under this subsection is not an obligation of the

1 Government under section 1501 of title 31, and the
2 letter is not deemed to be an administrative commit-
3 ment for financing. An obligation or administrative
4 commitment may be made only as amounts are pro-
5 vided in authorization and appropriations laws.

6 (7) APPLICABILITY OF CERTAIN REQUIRE-
7 MENTS.—The requirements that apply to grants and
8 letters of intent issued under chapter 471 shall
9 apply to grants and letters of intent issued under
10 this section.

11 (8) STATUTORY CONSTRUCTION.—Nothing in
12 this subsection shall be construed to prohibit the ob-
13 ligation of amounts pursuant to a letter of intent
14 under this subsection in the same fiscal year as the
15 letter of intent is issued.

16 (e) FEDERAL SHARE.—The Government’s share of
17 the cost of a project under this section shall be 90 percent
18 for a project at an airport having at least 0.25 percent
19 of the total number of passenger boardings each year at
20 all airports and 95 percent for a project at any other air-
21 port.

22 (f) SPONSOR DEFINED.—In this section, the term
23 “sponsor” has the meaning given that term in section
24 47102.

1 (g) AUTHORIZATION OF APPROPRIATIONS.—There is
 2 authorized to be appropriated \$1,000,000,000 for fiscal
 3 year 2003 to carry out this section.

4 **TITLE IV—RAIL**
 5 **INFRASTRUCTURE INVESTMENT**
 6 **Subtitle A—Credit for Amtrak**
 7 **Bonds**

8 **SEC. 401. CREDIT TO HOLDERS OF QUALIFIED AMTRAK**
 9 **BONDS.**

10 (a) IN GENERAL.—Part IV of subchapter A of chap-
 11 ter 1 of the Internal Revenue Code of 1986 (relating to
 12 credits against tax) is amended by adding at the end the
 13 following new subpart:

14 **“Subpart H—Nonrefundable Credit for Holders of**
 15 **Qualified Amtrak Bonds**

“Sec. 54. Credit to holders of qualified Amtrak bonds.

16 **“SEC. 54. CREDIT TO HOLDERS OF QUALIFIED AMTRAK**
 17 **BONDS.**

18 “(a) ALLOWANCE OF CREDIT.—In the case of a tax-
 19 payer who holds a qualified Amtrak bond on a credit al-
 20 lowance date of such bond which occurs during the taxable
 21 year, there shall be allowed as a credit against the tax
 22 imposed by this chapter for such taxable year an amount
 23 equal to the sum of the credits determined under sub-

1 section (b) with respect to credit allowance dates during
2 such year on which the taxpayer holds such bond.

3 “(b) AMOUNT OF CREDIT.—

4 “(1) IN GENERAL.—The amount of the credit
5 determined under this subsection with respect to any
6 credit allowance date for a qualified Amtrak bond is
7 25 percent of the annual credit determined with re-
8 spect to such bond.

9 “(2) ANNUAL CREDIT.—The annual credit de-
10 termined with respect to any qualified Amtrak bond
11 is the product of—

12 “(A) the applicable credit rate, multiplied
13 by

14 “(B) the outstanding face amount of the
15 bond.

16 “(3) APPLICABLE CREDIT RATE.—For purposes
17 of paragraph (2), the applicable credit rate with re-
18 spect to an issue is the rate equal to an average
19 market yield (as of the day before the date of sale
20 of the issue) on outstanding long-term corporate
21 debt obligations (determined under regulations pre-
22 scribed by the Secretary).

23 “(4) CREDIT ALLOWANCE DATE.—For purposes
24 of this section, the term ‘credit allowance date’
25 means—

- 1 “(A) March 15,
2 “(B) June 15,
3 “(C) September 15, and
4 “(D) December 15.

5 Such term includes the last day on which the bond
6 is outstanding.

7 “(5) SPECIAL RULE FOR ISSUANCE AND RE-
8 DEMPTION.—In the case of a bond which is issued
9 during the 3-month period ending on a credit allow-
10 ance date, the amount of the credit determined
11 under this subsection with respect to such credit al-
12 lowance date shall be a ratable portion of the credit
13 otherwise determined based on the portion of the 3-
14 month period during which the bond is outstanding.
15 A similar rule shall apply when the bond is re-
16 deemed.

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

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

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

1 “(B) the sum of the credits allowable
2 under this part (other than this subpart and
3 subpart C).

4 “(2) CARRYOVER OF UNUSED CREDIT.—If the
5 credit allowable under subsection (a) exceeds the
6 limitation imposed by paragraph (1) for such taxable
7 year, such excess shall be carried to the succeeding
8 taxable year and added to the credit allowable under
9 subsection (a) for such taxable year.

10 “(d) CREDIT INCLUDED IN GROSS INCOME.—Gross
11 income includes the amount of the credit allowed to the
12 taxpayer under this section (determined without regard to
13 subsection (c)) and the amount so included shall be treat-
14 ed as interest income.

15 “(e) QUALIFIED AMTRAK BOND.—For purposes of
16 this part, the term ‘qualified Amtrak bond’ means any
17 bond issued as part of an issue if—

18 “(1) 95 percent or more of the proceeds from
19 the sale of such issue are to be used for expenditures
20 incurred after the date of the enactment of this sec-
21 tion for any qualified project,

22 “(2) the bond is issued by the National Rail-
23 road Passenger Corporation, is in registered form,
24 and meets the bond limitation requirements under
25 subsection (f),

1 “(3) the issuer designates such bond for pur-
2 poses of this section,

3 “(4) the issuer certifies that it meets the State
4 contribution requirement of subsection (k) with re-
5 spect to such project, as in effect on the date of the
6 enactment of this section,

7 “(5) the issuer certifies that it has obtained the
8 written approval of the Secretary of Transportation
9 for such project in accordance with section 26301 of
10 title 49, United States Code, as in effect on the date
11 of the enactment of this section,

12 “(6) the term of each bond which is part of
13 such issue does not exceed 20 years,

14 “(7) the payment of principal with respect to
15 such bond is the obligation of the National Railroad
16 Passenger Corporation, and

17 “(8) the issue meets the requirements of sub-
18 section (g) (relating to arbitrage).

19 “(f) LIMITATIONS ON AMOUNT OF BONDS DES-
20 IGNATED.—

21 “(1) IN GENERAL.—There is a qualified Am-
22 trak bond limitation for each fiscal year. Such limi-
23 tation is—

24 “(A) \$1,400,000,000 for each of the fiscal
25 years 2003 through 2012, and

1 “(B) zero after fiscal year 2012.

2 “(2) LIMITS ON BONDS FOR NORTHEAST RAIL
3 CORRIDOR AND INDIVIDUAL STATES.—

4 “(A) NORTHEAST RAIL CORRIDOR.—Not
5 more than \$3,000,000,000 of the limitation
6 under paragraph (1) may be designated for
7 qualified projects on the northeast rail corridor
8 between Washington, D.C., and Boston, Massa-
9 chusetts.

10 “(B) INDIVIDUAL STATES.—Not more
11 than \$3,000,000,000 of the limitation under
12 paragraph (1) may be designated for any indi-
13 vidual State. The dollar limitation under this
14 subparagraph is in addition to the dollar limita-
15 tion for the qualified projects described in sub-
16 paragraph (A).

17 “(3) LIMIT ON BONDS FOR OTHER
18 PROJECTS.—Not more than \$100,000,000 of the
19 limitation under paragraph (1) for any fiscal year
20 may be designated for all qualified projects described
21 in subsection (j)(1)(C).

22 “(4) CARRYOVER OF UNUSED LIMITATION.—If
23 for any fiscal year—

24 “(A) the limitation amount under para-
25 graph (1), exceeds

1 “(B) the amount of bonds issued during
2 such year which are designated under sub-
3 section (e)(3),
4 the limitation amount under paragraph (1) for the
5 following fiscal year (through fiscal year 2016) shall
6 be increased by the amount of such excess.

7 “(g) SPECIAL RULES RELATING TO ARBITRAGE.—

8 “(1) IN GENERAL.—Subject to paragraph (2),
9 an issue shall be treated as meeting the require-
10 ments of this subsection if as of the date of
11 issuance, the issuer reasonably expects—

12 “(A) to spend at least 95 percent of the
13 proceeds from the sale of the issue for 1 or
14 more qualified projects within the 3-year period
15 beginning on such date,

16 “(B) to incur a binding commitment with
17 a third party to spend at least 10 percent of the
18 proceeds from the sale of the issue, or to com-
19 mence construction, with respect to such
20 projects within the 6-month period beginning on
21 such date, and

22 “(C) to proceed with due diligence to com-
23 plete such projects and to spend the proceeds
24 from the sale of the issue.

1 “(2) RULES REGARDING CONTINUING COMPLI-
2 ANCE AFTER 3-YEAR DETERMINATION.—If at least
3 95 percent of the proceeds from the sale of the issue
4 is not expended for 1 or more qualified projects
5 within the 3-year period beginning on the date of
6 issuance, but the requirements of paragraph (1) are
7 otherwise met, an issue shall be treated as con-
8 tinuing to meet the requirements of this subsection
9 if either—

10 “(A) the issuer uses all unspent proceeds
11 from the sale of the issue to redeem bonds of
12 the issue within 90 days after the end of such
13 3-year period, or

14 “(B) the following requirements are met:

15 “(i) The issuer spends at least 75 per-
16 cent of the proceeds from the sale of the
17 issue for 1 or more qualified projects with-
18 in the 3-year period beginning on the date
19 of issuance.

20 “(ii) Either—

21 “(I) the issuer spends at least 95
22 percent of the proceeds from the sale
23 of the issue for 1 or more qualified
24 projects within the 4-year period be-
25 ginning on the date of issuance, or

1 “(II) the issuer pays to the Fed-
2 eral Government any earnings on the
3 proceeds from the sale of the issue
4 that accrue after the end of the 3-year
5 period beginning on the date of
6 issuance and uses all unspent pro-
7 ceeds from the sale of the issue to re-
8 deem bonds of the issue within 90
9 days after the end of the 4-year pe-
10 riod beginning on the date of
11 issuance.

12 “(h) RECAPTURE OF PORTION OF CREDIT WHERE
13 CESSATION OF COMPLIANCE.—

14 “(1) IN GENERAL.—If any bond which when
15 issued purported to be a qualified Amtrak bond
16 ceases to be such a qualified bond, the issuer shall
17 pay to the United States (at the time required by
18 the Secretary) an amount equal to the sum of—

19 “(A) the aggregate of the credits allowable
20 under this section with respect to such bond
21 (determined without regard to subsection (c))
22 for taxable years ending during the calendar
23 year in which such cessation occurs and the 2
24 preceding calendar years, and

1 “(B) interest at the underpayment rate
2 under section 6621 on the amount determined
3 under subparagraph (A) for each calendar year
4 for the period beginning on the first day of
5 such calendar year.

6 “(2) FAILURE TO PAY.—If the issuer fails to
7 timely pay the amount required by paragraph (1)
8 with respect to such bond, the tax imposed by this
9 chapter on each holder of any such bond which is
10 part of such issue shall be increased (for the taxable
11 year of the holder in which such cessation occurs) by
12 the aggregate decrease in the credits allowed under
13 this section to such holder for taxable years begin-
14 ning in such 3 calendar years which would have re-
15 sulted solely from denying any credit under this sec-
16 tion with respect to such issue for such taxable
17 years.

18 “(3) SPECIAL RULES.—

19 “(A) TAX BENEFIT RULE.—The tax for
20 the taxable year shall be increased under para-
21 graph (2) only with respect to credits allowed
22 by reason of this section which were used to re-
23 duce tax liability. In the case of credits not so
24 used to reduce tax liability, the carryforwards

1 and carrybacks under section 39 shall be appro-
2 priately adjusted.

3 “(B) NO CREDITS AGAINST TAX.—Any in-
4 crease in tax under paragraph (2) shall not be
5 treated as a tax imposed by this chapter for
6 purposes of determining—

7 “(i) the amount of any credit allow-
8 able under this part, or

9 “(ii) the amount of the tax imposed
10 by section 55.

11 “(i) TRUST ACCOUNT.—

12 “(1) IN GENERAL.—The following amounts
13 shall be held in a trust account by a trustee inde-
14 pendent of the National Railroad Passenger Cor-
15 poration:

16 “(A) The proceeds from the sale of all
17 bonds designated for purposes of this section.

18 “(B) The amount of any matching con-
19 tributions with respect to such bonds.

20 “(C) The temporary period investment
21 earnings on proceeds from the sale of such
22 bonds.

23 “(D) Any earnings on any amounts de-
24 scribed in subparagraph (A), (B), or (C).

1 “(2) USE OF FUNDS.—Amounts in the trust ac-
2 count may be used only to pay costs of qualified
3 projects and redeem qualified Amtrak bonds, except
4 that amounts withdrawn from the trust account to
5 pay costs of qualified projects may not exceed the
6 aggregate proceeds from the sale of all qualified Am-
7 trak bonds issued under this section.

8 “(3) USE OF REMAINING FUNDS IN TRUST AC-
9 COUNT.—Upon the redemption of all qualified Am-
10 trak bonds issued under this section, any remaining
11 amounts in the trust account described in paragraph
12 (1) shall be available to the issuer for any qualified
13 project.

14 “(j) QUALIFIED PROJECT.—For purposes of this sec-
15 tion—

16 “(1) IN GENERAL.—The term ‘qualified project’
17 means—

18 “(A) the acquisition, financing, or refi-
19 nancing of equipment, rolling stock, and other
20 capital improvements (including the introduc-
21 tion of new high-speed technologies such as
22 magnetic levitation systems), including track or
23 signal improvements or the elimination of grade
24 crossings, for the northeast rail corridor be-

1 tween Washington, D.C., and Boston, Massa-
2 chusetts,

3 “(B) the acquisition, financing, or refi-
4 nancing of equipment, rolling stock, and other
5 capital improvements (including the introduc-
6 tion of new high-speed technologies such as
7 magnetic levitation systems), including develop-
8 ment of intermodal facilities, track or signal im-
9 provements, or the elimination of grade cross-
10 ings, for the improvement of train speeds or
11 safety (or both) on the high-speed rail corridors
12 designated under section 104(d)(2) of title 23,
13 United States Code, as in effect on the date of
14 the enactment of this section, and

15 “(C) the acquisition, financing, or refi-
16 nancing of equipment, rolling stock, and other
17 capital improvements, including station rehabili-
18 tation or construction, development of inter-
19 modal facilities, track or signal improvements,
20 or the elimination of grade crossings, for the
21 improvement of train speeds or safety (or both)
22 for other intercity passenger rail corridors and
23 for the Alaska Railroad.

24 “(2) REFINANCING RULES.—For purposes of
25 paragraph (1), a refinancing shall constitute a quali-

1 fied project only if the indebtedness being refinanced
2 (including any obligation directly or indirectly refi-
3 nanced by such indebtedness) was originally incurred
4 by the issuer—

5 “(A) after the date of the enactment of
6 this section,

7 “(B) for a term of not more than 3 years,

8 “(C) to finance or acquire capital improve-
9 ments described in paragraph (1), and

10 “(D) in anticipation of being refinanced
11 with proceeds of a qualified Amtrak bond.

12 “(k) STATE CONTRIBUTION REQUIREMENTS.—

13 “(1) IN GENERAL.—For purposes of subsection
14 (e)(4), the State contribution requirement of this
15 subsection is met with respect to any qualified
16 project if the National Railroad Passenger Corpora-
17 tion has received from 1 or more States, not later
18 than the date of issuance of the bond, matching con-
19 tributions of not less than 20 percent of the cost of
20 the qualified project.

21 “(2) NO STATE CONTRIBUTION REQUIREMENT
22 FOR CERTAIN QUALIFIED PROJECTS.—The State
23 contribution requirement of this subsection is zero
24 with respect to the following projects:

1 “(A) Any qualified project for the acqui-
2 sition and installation of platform facilities, per-
3 formance of railroad force account work nec-
4 essary to complete improvements below street
5 grade, and any other necessary improvements
6 related to construction at the railroad station at
7 the James A. Farley Post Office Building in
8 New York City, New York.

9 “(B) Any project described in subsection
10 (j)(1)(C) for the Alaska Railroad.

11 “(3) STATE MATCHING CONTRIBUTIONS MAY
12 NOT INCLUDE FEDERAL FUNDS.—For purposes of
13 this subsection, State matching contributions shall
14 not be derived, directly or indirectly, from Federal
15 funds, including any transfers from the Highway
16 Trust Fund under section 9503.

17 “(1) OTHER DEFINITIONS AND SPECIAL RULES.—
18 For purposes of this section—

19 “(1) BOND.—The term ‘bond’ includes any ob-
20 ligation.

21 “(2) TREATMENT OF CHANGES IN USE.—For
22 purposes of subsection (e)(1), the proceeds from the
23 sale of an issue shall not be treated as used for a
24 qualified project to the extent that the issuer takes
25 any action within its control which causes such pro-

1 ceeds not to be used for a qualified project. The Sec-
2 retary shall prescribe regulations specifying remedial
3 actions that may be taken (including conditions to
4 taking such remedial actions) to prevent an action
5 described in the preceding sentence from causing a
6 bond to fail to be a qualified Amtrak bond.

7 “(3) PARTNERSHIP; S CORPORATION; AND
8 OTHER PASS-THRU ENTITIES.—Under regulations
9 prescribed by the Secretary, in the case of a partner-
10 ship, trust, S corporation, or other pass-thru entity,
11 rules similar to the rules of section 41(g) shall apply
12 with respect to the credit allowable under subsection
13 (a).

14 “(4) BONDS HELD BY REGULATED INVEST-
15 MENT COMPANIES.—If any qualified Amtrak bond is
16 held by a regulated investment company, the credit
17 determined under subsection (a) shall be allowed to
18 shareholders of such company under procedures pre-
19 scribed by the Secretary.

20 “(5) REPORTING.—Issuers of qualified Amtrak
21 bonds shall submit reports similar to the reports re-
22 quired under section 149(e).”.

23 (b) AMENDMENTS TO OTHER CODE SECTIONS.—

24 (1) REPORTING.—Subsection (d) of section
25 6049 of the Internal Revenue Code of 1986 (relating

1 to returns regarding payments of interest) is amend-
2 ed by adding at the end the following new para-
3 graph:

4 “(8) REPORTING OF CREDIT ON QUALIFIED AM-
5 TRAK BONDS.—

6 “(A) IN GENERAL.—For purposes of sub-
7 section (a), the term ‘interest’ includes amounts
8 includible in gross income under section 54(d)
9 and such amounts shall be treated as paid on
10 the credit allowance date (as defined in section
11 54(b)(4)).

12 “(B) REPORTING TO CORPORATIONS,
13 ETC.—Except as otherwise provided in regula-
14 tions, in the case of any interest described in
15 subparagraph (A), subsection (b)(4) shall be
16 applied without regard to subparagraphs (A),
17 (H), (I), (J), (K), and (L)(i) of such subsection.

18 “(C) REGULATORY AUTHORITY.—The Sec-
19 retary may prescribe such regulations as are
20 necessary or appropriate to carry out the pur-
21 poses of this paragraph, including regulations
22 which require more frequent or more detailed
23 reporting.”.

24 (2) TREATMENT FOR ESTIMATED TAX PUR-
25 POSES.—

1 (A) INDIVIDUAL.—Section 6654 of such
2 Code (relating to failure by individual to pay es-
3 timated income tax) is amended by redesignig-
4 nating subsection (m) as subsection (n) and by
5 inserting after subsection (l) the following new
6 subsection:

7 “(m) SPECIAL RULE FOR HOLDERS OF QUALIFIED
8 AMTRAK BONDS.—For purposes of this section, the credit
9 allowed by section 54 to a taxpayer by reason of holding
10 a qualified Amtrak bond on a credit allowance date shall
11 be treated as if it were a payment of estimated tax made
12 by the taxpayer on such date.”.

13 (B) CORPORATE.—Section 6655 of such
14 Code (relating to failure by corporation to pay
15 estimated income tax) is amended by adding at
16 the end of subsection (g) the following new
17 paragraph:

18 “(5) SPECIAL RULE FOR HOLDERS OF QUALI-
19 FIED AMTRAK BONDS.—For purposes of this section,
20 the credit allowed by section 54 to a taxpayer by
21 reason of holding a qualified Amtrak bond on a
22 credit allowance date shall be treated as if it were
23 a payment of estimated tax made by the taxpayer on
24 such date.”.

1 (3) EXCLUSION FROM GROSS INCOME OF CON-
2 TRIBUTIONS BY AMTRAK TO OTHER RAIL CAR-
3 RIERS.—

4 (A) IN GENERAL.—Section 118 of the In-
5 ternal Revenue Code of 1986 (relating to con-
6 tributions to the capital of a corporation) is
7 amended by redesignating subsections (d) and
8 (e) as subsections (e) and (f), respectively, and
9 by inserting after subsection (c) the following
10 new subsection:

11 “(d) SPECIAL RULE FOR CONTRIBUTIONS BY AM-
12 TRAK TO OTHER RAIL CARRIERS.—For purposes of this
13 section, the term ‘contribution to the capital of the tax-
14 payer’ does not include any contribution by the National
15 Railroad Passenger Corporation of personal or real prop-
16 erty funded by the proceeds of qualified Amtrak bonds
17 under section 54.”.

18 (B) CONFORMING AMENDMENT.—Sub-
19 section (b) of such section 118 is amended by
20 striking “subsection (c)” and inserting “sub-
21 sections (c) and (d)”.

22 (4) PROTECTION OF HIGHWAY TRUST FUND.—
23 Section 9503 of such Code (relating to Highway
24 Trust Fund) is amended by adding at the end the
25 following new subsection:

1 “(g) SPECIAL RULE RELATING TO NATIONAL RAIL-
 2 ROAD PASSENGER CORPORATION.—Except as provided in
 3 subsection (c), as in effect on the date of the enactment
 4 of this subsection, amounts in the Highway Trust Fund
 5 may not be used to provide funds to the National Railroad
 6 Passenger Corporation for any purpose, including issuance
 7 of any qualified Amtrak bond pursuant to section 54. The
 8 preceding sentence may not be waived by any provision
 9 of law which is not contained or referenced in this title,
 10 whether such provision of law is a subsequently enacted
 11 provision or directly or indirectly seeks to waive the appli-
 12 cation of such sentence.”.

13 (c) CLERICAL AMENDMENTS.—

14 (1) The table of subparts for part IV of sub-
 15 chapter A of chapter 1 is amended by adding at the
 16 end the following new item:

“Subpart H. Nonrefundable Credit for Holders of Qualified Am-
 trak Bonds.”.

17 (2) Section 6401(b)(1) is amended by striking
 18 “and G” and inserting “G, and H”.

19 (d) ANNUAL REPORT BY TREASURY ON AMTRAK
 20 TRUST ACCOUNT.—The Secretary of the Treasury shall
 21 annually report to Congress as to whether the amount de-
 22 posited in the trust account established by the National
 23 Railroad Passenger Corporation under section 54(i) of the
 24 Internal Revenue Code of 1986, as added by this section,

1 is sufficient to fully repay at maturity the principal of any
 2 outstanding qualified Amtrak bonds issued pursuant to
 3 section 54 of such Code (as so added), together with
 4 amounts expected to be deposited into such account, as
 5 certified by the National Railroad Passenger Corporation
 6 in accordance with procedures prescribed by the Secretary
 7 of the Treasury.

8 (e) ISSUANCE OF REGULATIONS.—The Secretary of
 9 the Treasury shall issue regulations required under section
 10 54 of the Internal Revenue Code of 1986 (as added by
 11 this section) not later than 90 days after the date of the
 12 enactment of this Act.

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

16 **Subtitle B—High-Speed Rail** 17 **Provisions**

18 **SEC. 411. DEPARTMENT OF TRANSPORTATION APPROVAL** 19 **FOR QUALIFIED AMTRAK PROJECTS.**

20 (a) AMENDMENT.—Part D of subtitle V of title 49,
 21 United States Code, is amended by adding at the end the
 22 following new chapter:

23 **“CHAPTER 263—HIGH-SPEED RAIL** 24 **INITIATIVES**

“Sec.

“26301. Department of Transportation approval for qualified high-speed rail projects.

“26302. Qualified projects.

“26303. State contribution requirements.”.

1 **“§ 26301. Department of Transportation approval for**
 2 **qualified high-speed rail projects**

3 “(a) IN GENERAL.—The written approval of a quali-
 4 fied project by the Secretary of Transportation required
 5 for purposes of subsection (e)(5) of section 54 of the Inter-
 6 nal Revenue Code of 1986 (relating to credit to holders
 7 of qualified Amtrak bonds) shall include—

8 “(1) the finding by the Inspector General of the
 9 Department of Transportation described in sub-
 10 section (b);

11 “(2) the certification by the Secretary of Trans-
 12 portation described in subsection (c); and

13 “(3) the agreement by the National Railroad
 14 Passenger Corporation described in subsection (d).

15 “(b) FINDING BY INSPECTOR GENERAL.—For pur-
 16 poses of subsection (a), the finding described in this sub-
 17 section is a finding by the Inspector General of the De-
 18 partment of Transportation that there is a reasonable like-
 19 lihood that the proposed project will result in a positive
 20 financial contribution to the National Railroad Passenger
 21 Corporation and that the investment evaluation process
 22 includes consideration of a return on investment,
 23 leveraging of funds (including State capital and operating

1 contributions), cost effectiveness, safety improvement, mo-
2 bility improvement, and feasibility.

3 “(c) CERTIFICATION.—For purposes of subsection
4 (a), the certification described in this subsection is a cer-
5 tification by the Secretary of Transportation that the
6 issuer of the qualified Amtrak bond—

7 “(1) except with respect to projects described in
8 section 54(j)(1)(C) of the Internal Revenue Code of
9 1986, has entered into a written agreement with the
10 owners of rail properties which are to be improved
11 by the project to be funded by the qualified Amtrak
12 bond, as to the scope and estimated cost of such
13 project and the impact on rail freight capacity; and

14 “(2) has met the State contribution require-
15 ments described in section 26303.

16 The National Railroad Passenger Corporation shall not
17 exercise its rights under section 24308(a)(2) to resolve
18 disputes with respect to a project to be funded by a quali-
19 fied Amtrak bond, or with respect to the cost of such a
20 project, unless the project is intended to result in railroad
21 speeds of 79 miles per hour or less.

22 “(d) AGREEMENT BY AMTRAK TO ISSUE ADDI-
23 TIONAL BONDS FOR PROJECTS OF OTHER CARRIERS.—

24 “(1) IN GENERAL.—For purposes of subsection
25 (a), the agreement described in this subsection is an

1 agreement by the National Railroad Passenger Cor-
2 poration with the Secretary of Transportation to
3 issue bonds which meet the requirements of section
4 54 of the Internal Revenue Code of 1986 for use in
5 financing projects described in paragraph (2).

6 “(2) PROJECTS COVERED.—For purposes of
7 paragraph (1), the projects described in this para-
8 graph are any project described in subsection
9 (j)(1)(B) or (j)(1)(C) of section 54 of the Internal
10 Revenue Code of 1986 for an intercity rail passenger
11 carrier other than the National Railroad Passenger
12 Corporation or for the Alaska Railroad.

13 “(3) ADDITIONAL REQUIREMENTS.—Any
14 project financed by bonds referred to in paragraph
15 (1) shall be carried out by the intercity rail pas-
16 senger carrier other than the National Railroad Pas-
17 senger Corporation, through a contract entered into
18 by the National Railroad Passenger Corporation
19 with such carrier. Such other intercity rail passenger
20 carrier, in carrying out the project, shall be subject
21 to the provisions of this subtitle governing the Na-
22 tional Railroad Passenger Corporation.

23 “(4) DEFINITION.—For purposes of this sub-
24 section, the term ‘intercity rail passenger carrier’
25 means any rail carrier (as such term is defined in

1 section 24102(7)) that is part of the interstate sys-
2 tem of rail transportation and that provides intercity
3 rail passenger transportation (as such term is de-
4 fined in section 24102(5)).

5 “(e) ADDITIONAL SELECTION CRITERIA.—In deter-
6 mining projects to be approved under this section (other
7 than projects for the Alaska Railroad), or to be included
8 in an agreement under subsection (d), the Secretary of
9 Transportation shall give preference to—

10 “(1) any project with a State matching con-
11 tribution rate exceeding 20 percent;

12 “(2) projects expected to have a significant im-
13 pact on air traffic congestion;

14 “(3) projects expected to also improve com-
15 muter rail operations;

16 “(4) projects that anticipate fares designed to
17 recover costs and generate a return on investment;
18 and

19 “(5) projects that promote regional balance in
20 infrastructure investment and the national interest
21 in ensuring the development of a nationwide high-
22 speed rail transportation network.

23 **“§ 26302. Qualified projects**

24 “For purposes of this chapter:

1 “(1) IN GENERAL.—The term ‘qualified project’
2 means—

3 “(A) the acquisition, financing, or refi-
4 nancing of equipment, rolling stock, and other
5 capital improvements (including the introduc-
6 tion of new high-speed technologies such as
7 magnetic levitation systems), including track or
8 signal improvements or the elimination of grade
9 crossings, for the northeast rail corridor be-
10 tween Washington, D.C., and Boston, Massa-
11 chusetts;

12 “(B) the acquisition, financing, or refi-
13 nancing of equipment, rolling stock, and other
14 capital improvements (including the introduc-
15 tion of new high-speed technologies such as
16 magnetic levitation systems), including develop-
17 ment of intermodal facilities, track or signal im-
18 provements, or the elimination of grade cross-
19 ings, for the improvement of train speeds or
20 safety (or both) on the high-speed rail corridors
21 designated under section 104(d)(2) of title 23,
22 United States Code, as in effect on the date of
23 the enactment of this section; and

24 “(C) the acquisition, financing, or refi-
25 nancing of equipment, rolling stock, and other

1 capital improvements, including station rehabili-
 2 tation or construction, development of inter-
 3 modal facilities, track or signal improvements,
 4 or the elimination of grade crossings, for the
 5 improvement of train speeds or safety (or both)
 6 for other intercity passenger rail corridors and
 7 for the Alaska Railroad.

8 “(2) REFINANCING RULES.—For purposes of
 9 paragraph (1), a refinancing shall constitute a quali-
 10 fied project only if the indebtedness being refinanced
 11 (including any obligation directly or indirectly refi-
 12 nanced by such indebtedness) was originally incurred
 13 by the issuer—

14 “(A) after the date of the enactment of
 15 this section;

16 “(B) for a term of not more than 3 years;

17 “(C) to finance or acquire capital improve-
 18 ments described in paragraph (1); and

19 “(D) in anticipation of being refinanced
 20 with proceeds of a qualified Amtrak bond.

21 **“§ 26303. State contribution requirements**

22 “(a) IN GENERAL.—For purposes of section
 23 26301(c)(2), the State contribution requirement of this
 24 section is met with respect to any qualified project if the
 25 National Railroad Passenger Corporation has received

1 from 1 or more States, not later than the date of issuance
2 of the bond, matching contributions of not less than 20
3 percent of the cost of the qualified project.

4 “(b) NO STATE CONTRIBUTION REQUIREMENT FOR
5 CERTAIN QUALIFIED PROJECTS.—The State contribution
6 requirement of this section is zero with respect to the fol-
7 lowing projects:

8 “(1) Any qualified project for the acquisition
9 and installation of platform facilities, performance of
10 railroad force account work necessary to complete
11 improvements below street grade, and any other nec-
12 essary improvements related to construction at the
13 railroad station at the James A. Farley Post Office
14 Building in New York City, New York.

15 “(2) Any project described in subsection
16 (j)(1)(C) of section 54 of the Internal Revenue Code
17 of 1986 for the Alaska Railroad.

18 “(c) STATE MATCHING CONTRIBUTIONS MAY NOT
19 INCLUDE FEDERAL FUNDS.—For purposes of this sec-
20 tion, State matching contributions shall not be derived, di-
21 rectly or indirectly, from Federal funds, including any
22 transfers from the Highway Trust Fund under section
23 9503 of the Internal Revenue Code of 1986.”.

24 (b) TABLE OF CHAPTERS AMENDMENT.—The table
25 of chapters of subtitle V of title 49, United States Code,

1 is amended by inserting after the item relating to chapter
2 261 the following new item:

“263. HIGH-SPEED RAIL INITIATIVES 26301”.

3 **SEC. 412. MULTIYEAR CAPITAL SPENDING PLAN AND OVER-**
4 **SIGHT.**

5 (a) AMENDMENT.—Chapter 243 of title 49, United
6 States Code, is amended by adding at the end the fol-
7 lowing new section:

8 **“§ 24316. Multiyear capital spending plan and over-**
9 **sight**

10 “(a) AMTRAK CAPITAL SPENDING PLAN.—

11 “(1) IN GENERAL.—The National Railroad
12 Passenger Corporation shall annually submit to the
13 President and Congress a multiyear capital spending
14 plan, as approved by the Board of Directors of the
15 Corporation.

16 “(2) CONTENTS OF PLAN.—Such plan shall
17 identify the capital investment needs of the Corpora-
18 tion over a period of not less than 5 years and the
19 funding sources available to finance such needs and
20 shall prioritize such needs according to corporate
21 goals and strategies.

22 “(3) INITIAL SUBMISSION DATE.—The first
23 plan shall be submitted before the issuance of any
24 qualified Amtrak bonds by the National Railroad

1 Passenger Corporation pursuant to section 54 of the
2 Internal Revenue Code of 1986.

3 “(b) OVERSIGHT OF QUALIFIED PROJECTS.—The
4 Secretary of Transportation shall contract for an annual
5 independent assessment of the costs and benefits of the
6 qualified projects financed by qualified Amtrak bonds pur-
7 suant to section 54 of the Internal Revenue Code of 1986,
8 including an assessment of the investment evaluation proc-
9 ess of the Corporation. The annual assessment shall be
10 included in the plan submitted under subsection (a).”.

11 (b) TABLE OF SECTIONS AMENDMENT.—The table of
12 sections of chapter 243 of title 49, United States Code,
13 is amended by adding after the item relating to section
14 24315 the following new item:

“24316. Multiyear capital spending plan and oversight.”.

15 **SEC. 413. ISSUANCE OF REGULATIONS.**

16 The Secretary of Transportation shall issue regula-
17 tions for carrying out chapter 263 of title 49, United
18 States Code (as added by section 411 of this Act), not
19 later than 90 days after the date of the enactment of this
20 Act.

21 **SEC. 414. SENSE OF CONGRESS REGARDING EFFECT ON**
22 **AMTRAK FUNDING.**

23 It is the sense of the Congress that the proceeds of
24 qualified Amtrak bonds issued under section 54 of the In-
25 ternal Revenue Code of 1986 are intended to finance the

1 construction of qualified projects (as defined in section
2 26302 of title 49, United States Code, as added by section
3 411 of this Act) and are not intended to meet the regular,
4 ongoing capital funding needs of the National Railroad
5 Passenger Corporation.

6 **SEC. 415. EFFECTIVE DATE.**

7 The amendments made by this subtitle shall apply to
8 obligations issued after the date of the enactment of this
9 Act.

10 **Subtitle C—Amtrak Capital**
11 **Investment**

12 **SEC. 421. AUTHORIZATION OF APPROPRIATIONS.**

13 Section 24104(a) of title 49, United States Code, is
14 amended—

15 (1) by inserting “(1)” after “IN GENERAL.—”;

16 (2) by redesignating paragraphs (1) through
17 (5) as subparagraphs (A) through (E), respectively;

18 and

19 (3) by adding at the end the following new
20 paragraph:

21 “(2) There are authorized to be appropriated to the
22 Secretary of Transportation \$2,500,000,000 for fiscal
23 year 2003 for the benefit of Amtrak for capital expendi-
24 tures including—

1 “(A) New York, Washington, D.C., and Balti-
2 more tunnel life safety projects;

3 “(B) bridges, tracks, and other improvements
4 to increase the capacity and reliability of rail pas-
5 senger transportation; and

6 “(C) equipment, including acquisition of
7 trainsets and rolling stock, for operation in federally
8 designated corridors.

9 At least $\frac{2}{3}$ of amounts expended under subparagraph (C)
10 shall be for operations outside the Northeast Corridor.”.

11 **Subtitle D—Capital Investment for** 12 **Railroad Rehabilitation**

13 **SEC. 431. CAPITAL GRANTS FOR RAILROAD TRACK.**

14 (a) CHAPTER 223.—

15 (1) AMENDMENT.—Chapter 223 of title 49,
16 United States Code, is amended to read as follows:

17 **“CHAPTER 223—CAPITAL GRANTS FOR** 18 **RAILROAD TRACK**

“Sec.

“22301. Capital grants for railroad track.

19 **“§ 22301. Capital grants for railroad track**

20 “(a) ESTABLISHMENT OF PROGRAM.—

21 “(1) ESTABLISHMENT.—The Secretary of
22 Transportation shall establish a program of capital
23 grants for the rehabilitation, preservation, or im-
24 provement of railroad track (including roadbed,

1 bridges, and related track structures) of class II and
2 class III railroads. Such grants shall be for rehabili-
3 tating, preserving, or improving track used primarily
4 for freight transportation to a standard ensuring
5 that the track can be operated safely and efficiently,
6 including grants for rehabilitating, preserving, or im-
7 proving track to handle 286,000 pound rail cars.
8 Grants may be provided under this chapter—

9 “(A) directly to the class II or class III
10 railroad; or

11 “(B) with the concurrence of the class II
12 or class III railroad, to a State or local govern-
13 ment.

14 “(2) STATE COOPERATION.—Class II and class
15 III railroad applicants for a grant under this chap-
16 ter are encouraged to utilize the expertise and assist-
17 ance of State transportation agencies in applying for
18 and administering such grants. State transportation
19 agencies are encouraged to provide such expertise
20 and assistance to such railroads.

21 “(3) INTERIM REGULATIONS.—Not later than
22 December 31, 2003, the Secretary shall issue tem-
23 porary regulations to implement the program under
24 this section. Subchapter II of chapter 5 of title 5
25 does not apply to a temporary regulation issued

1 under this paragraph or to an amendment to such
2 a temporary regulation.

3 “(4) FINAL REGULATIONS.—Not later than Oc-
4 tober 1, 2004, the Secretary shall issue final regula-
5 tions to implement the program under this section.

6 “(b) MAXIMUM FEDERAL SHARE.—The maximum
7 Federal share for carrying out a project under this section
8 shall be 80 percent of the project cost. The non-Federal
9 share may be provided by any non-Federal source in cash,
10 equipment, or supplies. Other in-kind contributions may
11 be approved by the Secretary on a case by case basis con-
12 sistent with this chapter.

13 “(c) PROJECT ELIGIBILITY.—For a project to be eli-
14 gible for assistance under this section the track must have
15 been operated or owned by a class II or class III railroad
16 as of the date of the enactment of this section.

17 “(d) USE OF FUNDS.—Grants provided under this
18 section shall be used to implement track capital projects
19 as soon as possible. In no event shall grant funds be con-
20 tractually obligated for a project later than the end of the
21 third Federal fiscal year following the year in which the
22 grant was awarded. Any funds not so obligated by the end
23 of such fiscal year shall be returned to the Secretary for
24 reallocation.

1 “(e) ADDITIONAL PURPOSE.—In addition to making
2 grants for projects as provided in subsection (a), the Sec-
3 retary may also make grants to supplement direct loans
4 or loan guarantees made under title V of the Railroad Re-
5 vitalization and Regulatory Reform Act of 1976 (45
6 U.S.C. 821 et seq.), for projects described in the last sen-
7 tence of section 502(d) of such title. Grants made under
8 this subsection may be used, in whole or in part, for pay-
9 ing credit risk premiums, lowering rates of interest, or
10 providing for a holiday on principal payments. Credit risk
11 premiums funded under this section shall be exempt from
12 the non-Federal source requirement of section 502(f)(1)
13 of the Railroad Revitalization and Regulatory Reform Act
14 of 1976 (45 U.S.C. 822(f)(1)).

15 “(f) EMPLOYEE PROTECTION.—The Secretary shall
16 require as a condition of any grant made under this sec-
17 tion that the recipient railroad provide a fair arrangement
18 at least as protective of the interests of employees who
19 are affected by the project to be funded with the grant
20 as the terms imposed under section 11326(a), as in effect
21 on the date of the enactment of this section.

22 “(g) LABOR STANDARDS.—

23 “(1) PREVAILING WAGES.—The Secretary shall
24 ensure that laborers and mechanics employed by
25 contractors and subcontractors in construction work

1 financed by a grant made under this section will be
 2 paid wages not less than those prevailing on similar
 3 construction in the locality, as determined by the
 4 Secretary of Labor under section 3142 of title 40
 5 (known as the Davis-Bacon Act). The Secretary
 6 shall make a grant under this section only after
 7 being assured that required labor standards will be
 8 maintained on the construction work.

9 “(2) WAGE RATES.—Wage rates in a collective
 10 bargaining agreement negotiated under the Railway
 11 Labor Act (45 U.S.C. 151 et seq.) are deemed for
 12 purposes of this subsection to comply with section
 13 3142 of title 40 (known as the Davis-Bacon Act).

14 “(h) AUTHORIZATION OF APPROPRIATIONS.—There
 15 is authorized to be appropriated to the Secretary of Trans-
 16 portation \$500,000,000 for fiscal year 2003 for carrying
 17 out this section.”.

18 (2) CONFORMING AMENDMENT.—The item re-
 19 lating to chapter 223 in the table of chapters of sub-
 20 title V of title 49, United States Code, is amended
 21 to read as follows:

“223. CAPITAL GRANTS FOR RAILROAD TRACK 22301”.

22 (b) RAILROAD REHABILITATION AND IMPROVEMENT
 23 FINANCING.—Section 502 of the Railroad Revitalization
 24 and Regulatory Reform Act of 1976 (45 U.S.C. 822(d))
 25 is amended—

1 (1) in subsection (d)—

2 (A) by striking “\$3,500,000,000” and in-
3 serting “\$5,000,000,000”; and

4 (B) by striking “\$1,000,000,000” and in-
5 serting “\$1,500,000,000”; and

6 (2) by adding at the end the following new sub-
7 section:

8 “(i) GRANTS.—The Secretary may make grants to
9 supplement direct loans or loan guarantees made under
10 this title. Grants made under this subsection may be used,
11 in whole or in part, for paying credit risk premiums, low-
12 ering rates of interest, or providing for a holiday on prin-
13 cipal payments. Credit risk premiums funded under this
14 subsection shall be exempt from the non-Federal source
15 requirement of subsection (f)(1). There is authorized to
16 be appropriated to the Secretary for fiscal year 2003 for
17 carrying out this subsection \$250,000,000.”.

18 **SEC. 432. REGULATORY PROCEDURE AMENDMENTS.**

19 (a) COHORTS OF LOANS.—Section 502(f) of the Rail-
20 road Revitalization and Regulatory Reform Act of 1976
21 (45 U.S.C. 822(f)) is amended—

22 (1) in paragraph (2)—

23 (A) by striking “and” at the end of sub-
24 paragraph (D);

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

3 (C) by adding after subparagraph (D) the
4 following new subparagraph:

5 “(E) the size and characteristics of the co-
6 hort of which the loan or loan guarantee is a
7 member; and”; and

8 (2) by adding at the end of paragraph (4) the
9 following: “A cohort may include loans and loan
10 guarantees. The Secretary shall not establish any
11 limit on the proportion of a cohort that may be used
12 for 1 loan or loan guarantee.”.

13 (b) CONDITIONS OF ASSISTANCE.—Section 502 of
14 the Railroad Revitalization and Regulatory Reform Act of
15 1976 (45 U.S.C. 822) is amended—

16 (1) in subsection (f)(2)(A), by inserting “, if
17 any” after “collateral offered”; and

18 (2) by adding at the end of subsection (h) the
19 following:

20 “The Secretary shall not require an applicant for a direct
21 loan or loan guarantee under this section to provide collat-
22 eral. The Secretary shall not require that an applicant for
23 a direct loan or loan guarantee under this section have
24 previously sought the financial assistance requested from
25 another source. The Secretary shall require recipients of

1 direct loans or loan guarantees under this section to apply
2 the standards of section 26106(a)(5) of title 49, United
3 States Code, to their projects, except for projects primarily
4 benefiting Class III freight railroads.”.

5 (c) TIME LIMIT FOR APPROVAL OR DISAPPROVAL.—
6 Section 502 of the Railroad Revitalization and Regulatory
7 Reform Act of 1976 (45 U.S.C. 822), as amended by this
8 Act, is further amended by adding at the end the following
9 new subsection:

10 “(j) TIME LIMIT FOR APPROVAL OR DISAPPROVAL.—
11 Not later than 30 days after receiving a complete applica-
12 tion for a direct loan or loan guarantee under this section,
13 the Secretary shall approve or disapprove the applica-
14 tion.”.

15 (d) FEES AND CHARGES.—Section 503 of the Rail-
16 road Revitalization and Regulatory Reform Act of 1976
17 (45 U.S.C. 823) is amended by adding at the end the fol-
18 lowing new subsection:

19 “(l) FEES AND CHARGES.—Except as provided in
20 this title, the Secretary may not assess any fees, including
21 user fees, or charges in connection with a direct loan or
22 loan guarantee provided under section 502.”.

23 (e) SUBSTANTIVE CRITERIA AND STANDARDS.—Not
24 later than 30 days after the date of the enactment of this
25 Act, the Secretary of Transportation shall publish in the

1 Federal Register and post on the Department of Trans-
2 portation web site the substantive criteria and standards
3 used by the Secretary to determine whether to approve
4 or disapprove applications submitted under section 502 of
5 the Railroad Revitalization and Regulatory Reform Act of
6 1976 (45 U.S.C. 822).

7 **TITLE V—PORT SECURITY**
8 **INFRASTRUCTURE INVESTMENT**
9 **SEC. 501. AUTHORIZATION OF APPROPRIATIONS FOR**
10 **GRANTS TO IMPLEMENT SECURITY PLANS.**

11 For grants under section 70107 of title 46, United
12 States Code, there is authorized to be appropriated to the
13 Secretary of Transportation (in addition to any amounts
14 appropriated before the date of the enactment of this Act)
15 \$2,500,000,000 for fiscal year 2003.

16 **TITLE VI—ENVIRONMENTAL**
17 **INFRASTRUCTURE INVESTMENT**
18 **SEC. 601. GENERAL AUTHORITY FOR CAPITALIZATION**
19 **GRANTS.**

20 Section 601(a) of the Federal Water Pollution Con-
21 trol Act (33 U.S.C. 1381(a)) is amended by striking “(1)
22 for construction” and all that follows through the period
23 at the end and inserting “to accomplish the objectives,
24 goals, and policies of this Act.”.

1 **SEC. 602. CAPITALIZATION GRANTS AGREEMENTS.**

2 (a) REQUIREMENTS FOR CONSTRUCTION OF TREAT-
3 MENT WORKS.—Section 602(b)(6) of the Federal Water
4 Pollution Control Act (33 U.S.C. 1382(b)(6)) is amend-
5 ed—

6 (1) by striking “treatment works” the first
7 place it appears and inserting “activities”;

8 (2) by striking “before fiscal year 1995” and all
9 that follows through “section 205(m) of this Act”
10 and inserting “with funds made available from a
11 State water pollution control revolving fund under
12 this title”; and

13 (3) by striking “201(b)” and all that follows
14 through “218” and inserting “204(b)(1), 211”.

15 (b) ASSISTANCE FOR SMALL TREATMENT WORKS.—
16 Section 602 of the Federal Water Pollution Control Act
17 (33 U.S.C. 1382) is amended by adding at the end the
18 following:

19 “(c) ASSISTANCE FOR SMALL TREATMENT
20 WORKS.—

21 “(1) SIMPLIFIED PROCEDURES.—Not later than
22 1 year after the date of the enactment of this sub-
23 section, the Administrator shall assist the States in
24 establishing simplified procedures for small treat-
25 ment works to obtain assistance under this title.

1 “(2) PUBLICATION OF MANUAL.—Not later
2 than 2 years after the date of the enactment of this
3 subsection, and after providing notice and oppor-
4 tunity for public comment, the Administrator shall
5 publish a manual to assist small treatment works in
6 obtaining assistance under this title and publish in
7 the Federal Register notice of the availability of the
8 manual.

9 “(3) SMALL TREATMENT WORKS DEFINED.—
10 For purposes of this title, the term ‘small treatment
11 works’ means treatment works for which a munici-
12 pality or intermunicipal, interstate, or State agency
13 seeks assistance under this title and which serves a
14 population of 20,000 or fewer.”.

15 **SEC. 603. WATER POLLUTION CONTROL REVOLVING**
16 **FUNDS.**

17 (a) PROJECTS AND ACTIVITIES ELIGIBLE FOR AS-
18 SISTANCE.—Section 603(c) of the Federal Water Pollution
19 Control Act (33 U.S.C. 1383(c)) is amended to read as
20 follows:

21 “(c) PROJECTS AND ACTIVITIES ELIGIBLE FOR AS-
22 SISTANCE.—

23 “(1) IN GENERAL.—The amounts of funds
24 available to each State water pollution control re-

1 volving fund shall be used only for providing finan-
2 cial assistance—

3 “(A) to a municipality, intermunicipal
4 agency, interstate agency, or State agency for
5 construction of a publicly owned treatment
6 works (as defined in section 212 of this Act);

7 “(B) for implementation of lake protection
8 programs and projects under section 314;

9 “(C) for implementation of a management
10 program established under section 319;

11 “(D) for implementation of a conservation
12 and management plan established under section
13 320;

14 “(E) for restoration or protection of pub-
15 licly or privately owned riparian areas, includ-
16 ing acquisition of property rights;

17 “(F) to a municipality, intermunicipal
18 agency, interstate agency, or State agency for
19 implementation of measures to improve the effi-
20 ciency of public water use;

21 “(G) for development and implementation
22 of plans by a public recipient to prevent water
23 pollution;

24 “(H) for acquisition of lands necessary to
25 meet any mitigation requirements related to

1 construction of a publicly owned treatment
2 works; and

3 “(I) for measures to increase the security
4 of publicly owned treatment works.

5 “(2) FUND AMOUNTS.—The water pollution
6 control revolving fund of a State shall be established,
7 maintained, and credited with repayments, and the
8 fund balance shall be available in perpetuity for pro-
9 viding financial assistance for activities described in
10 paragraph (1). Fees charged by a State to recipients
11 of such assistance may be deposited in the fund for
12 the purpose of financing the cost of administration
13 of this title.”.

14 (b) EXTENDED REPAYMENT PERIOD.—Section
15 603(d)(1) of the Federal Water Pollution Control Act (33
16 U.S.C. 1383(d)(1)) is amended—

17 (1) in subparagraph (A) by striking “20 years”
18 and inserting “the lesser of 30 years or the expected
19 life of the project to be financed with the proceeds
20 of the loan”; and

21 (2) in subparagraph (B) by striking “not later
22 than 20 years after project completion” and insert-
23 ing “upon the expiration of the term of the loan”.

24 (c) ADMINISTRATIVE EXPENSES.—Section 603(d)(7)
25 of the Federal Water Pollution Control Act (33 U.S.C.

1 1383(d)(7) is amended by inserting before the period at
2 the end the following: “or \$400,000 per year, or $\frac{1}{5}$ per-
3 cent per year of the current valuation of the fund, which-
4 ever is greatest, plus the amount of any fees collected by
5 the State for such purpose regardless of the source”.

6 (d) TECHNICAL AND PLANNING ASSISTANCE FOR
7 SMALL SYSTEMS.—Section 603(d) of the Federal Water
8 Pollution Control Act (33 U.S.C. 1383(d)) is amended—

9 (1) by striking “and” at the end of paragraph
10 (6);

11 (2) by striking the period at the end of para-
12 graph (7) and inserting “; and”; and

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

14 “(8) to provide to owners and operators of
15 small treatment works (as defined in section 602(e))
16 with technical and planning assistance and assist-
17 ance in financial management, user fee analysis,
18 budgeting, capital improvement planning, facility op-
19 eration and maintenance, repair schedules, and other
20 activities to improve wastewater treatment plant op-
21 erations; except that such amounts shall not exceed
22 2 percent of all grant awards to such fund under
23 this title.”.

1 (e) ADDITIONAL SUBSIDIZATION.—Section 603 of
2 the Federal Water Pollution Control Act is amended by
3 adding at the end the following:

4 “(i) ADDITIONAL SUBSIDIZATION.—

5 “(1) IN GENERAL.—In any case in which a
6 State provides assistance to a municipality or inter-
7 municipal, interstate, or State agency under sub-
8 section (d), the State may provide additional sub-
9 sidization, including forgiveness of principal and
10 negative interest loans—

11 “(A) to benefit a municipality that—

12 “(i) meets the State’s affordability
13 criteria established under paragraph (2);

14 or

15 “(ii) does not meet the State’s afford-
16 ability criteria if the recipient—

17 “(I) seeks additional subsidiza-
18 tion to benefit individual ratepayers in
19 the residential user rate class;

20 “(II) demonstrates to the State
21 that such ratepayers will experience a
22 significant hardship from the increase
23 in rates necessary to finance the
24 project or activity for which assistance
25 is sought; and

1 “(III) ensures, as part of an as-
2 sistance agreement between the State
3 and the recipient, that the additional
4 subsidization provided under this
5 paragraph is directed through a user
6 charge rate system (or other appro-
7 priate method) to such ratepayers; or

8 “(B) to implement alternative processes,
9 materials, and techniques (including non-
10 structural protection of surface waters, new or
11 improved methods of waste treatment, and pol-
12 lutant trading) that may result in increased en-
13 vironmental benefit when compared to standard
14 processes, materials, and techniques.

15 “(2) AFFORDABILITY CRITERIA.—

16 “(A) ESTABLISHMENT.—On or before Sep-
17 tember 30, 2004, and after providing notice
18 and an opportunity for public comment, a State
19 shall establish affordability criteria to assist in
20 identifying municipalities that would experience
21 a significant hardship raising the revenue nec-
22 essary to finance a project or activity eligible
23 for assistance under section 603(c)(1) if addi-
24 tional subsidization is not provided. Such cri-
25 teria shall be based on income data, population

1 trends, and other data determined relevant by
2 the State.

3 “(B) EXISTING CRITERIA.—If a State has
4 previously established, after providing notice
5 and an opportunity for public comment, afford-
6 ability criteria that meet the requirements of
7 subparagraph (A), the State may use the cri-
8 teria for the purposes of this subsection. For
9 purposes of this Act, any such criteria shall be
10 treated as affordability criteria established
11 under this paragraph.

12 “(C) INFORMATION TO ASSIST STATES.—
13 The Administrator may publish information to
14 assist States in establishing affordability cri-
15 teria under subparagraph (A).

16 “(3) PRIORITY.—A State may give priority to a
17 recipient for a project or activity eligible for funding
18 under section 603(c)(1) if the recipient meets the
19 State’s affordability criteria.”.

20 **SEC. 604. AUTHORIZATION OF APPROPRIATIONS FOR**
21 **CLEAN WATER STATE REVOLVING FUNDS.**

22 Section 607 of the Federal Water Pollution Control
23 Act (33 U.S.C. 1387) is amended—

24 (1) by striking “and” at the end of paragraph
25 (4);

1 Secretary of the Army \$1,500,000,000 for fiscal year
2 2003, of which such sums as are necessary may be derived
3 from the Harbor Maintenance Trust Fund and the Inland
4 Waterways Trust Fund, to carry out construction, oper-
5 ation, and maintenance activities for authorized civil func-
6 tions under the supervision of the Chief of Engineers.
7 Such sums shall remain available until September 30,
8 2004.

9 **TITLE VIII—ECONOMIC DEVEL-**
10 **OPMENT INFRASTRUCTURE**
11 **INVESTMENT**

12 **SEC. 801. PUBLIC WORKS AND ECONOMIC DEVELOPMENT.**

13 Section 701 of the Public Works and Economic De-
14 velopment Act of 1965 (42 U.S.C. 3231) is amended—

15 (1) by inserting “(a) IN GENERAL.—” before
16 “There are authorized”; and

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

18 “(b) ADDITIONAL AUTHORIZATION.—In addition to
19 amounts authorized by subsection (a), there are author-
20 ized to be appropriated to carry out this Act
21 \$1,025,000,000 for fiscal year 2003. Such sums shall re-
22 main available until September 30, 2004.”.

1 **SEC. 802. APPALACHIAN REGIONAL DEVELOPMENT.**

2 Section 401 of the Appalachian Regional Develop-
3 ment Act of 1965 (40 U.S.C. App.) is amended by adding
4 at the end the following:

5 “(c) **ADDITIONAL AUTHORIZATION.**—In addition to
6 amounts authorized by subsection (a), there are author-
7 ized to be appropriated to the Commission to carry out
8 this Act \$175,000,000 for fiscal year 2003. Such sums
9 shall remain available until September 30, 2004.”.

10 **SEC. 803. DELTA REGIONAL DEVELOPMENT.**

11 Section 382M of the Consolidated Farm and Rural
12 Development Act (7 U.S.C. 2009aa–12) is amended—

13 (1) by redesignating subsection (b) as sub-
14 section (c);

15 (2) by inserting after subsection (a) the fol-
16 lowing:

17 “(b) **ADDITIONAL AUTHORIZATION.**—In addition to
18 amounts authorized by subsection (a), there are author-
19 ized to be appropriated to the Authority to carry out this
20 subtitle \$175,000,000 for fiscal year 2003. Such sums
21 shall remain available until September 30, 2004.”; and

22 (3) in subsection (c) (as so redesignated) by
23 striking “subsection (a)” and inserting “subsections
24 (a) and (b)”.

1 **SEC. 804. NORTHERN GREAT PLAINS REGIONAL DEVELOP-**
 2 **MENT.**

3 Section 383M of the Consolidated Farm and Rural
 4 Development Act (7 U.S.C. 2009bb–12) is amended—

5 (1) in subsection (b) by striking “subsection
 6 (a)” and inserting “this section”; and

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

8 “(d) **ADDITIONAL AUTHORIZATION FOR FISCAL**
 9 **YEAR 2003.**—In addition to amounts authorized by sub-
 10 section (a), there is authorized to be appropriated to the
 11 Authority to carry out this subtitle \$175,000,000 for fiscal
 12 year 2003. Such sums shall remain available until Sep-
 13 tember 30, 2004.”.

14 **TITLE IX—PUBLIC BUILDINGS**
 15 **INFRASTRUCTURE INVESTMENT**

16 **SEC. 901. SECURITY ENHANCEMENTS FOR GSA PROP-**
 17 **ERTIES.**

18 (a) **AUTHORIZATION OF APPROPRIATIONS.**—In addi-
 19 tion to other amounts credited to the Federal Buildings
 20 Fund established pursuant to section 210(f) of the Fed-
 21 eral Property and Administrative Services Act of 1949 (40
 22 U.S.C. 490(f)), there is authorized to be appropriated
 23 \$500,000,000 for fiscal year 2003 to be credited to the
 24 Fund. Such sums shall remain available until September
 25 30, 2004.

1 (b) USE OF FUNDS.—Amounts credited to the Fund
2 under this section shall be available to the Administrator
3 of General Services to carry out projects and activities for
4 enhancing the security of properties under the control of
5 the General Services Administration, including general
6 purpose office space, courthouses, and border crossing sta-
7 tions, and for other repair and alteration purposes.

8 **TITLE X—GENERAL PROVISIONS**

9 **SEC. 1001. PRIORITY CONSIDERATION FOR SECURITY** 10 **PROJECTS.**

11 The head of a Federal department or agency may
12 provide financial assistance with any increase in funds au-
13 thorized or made available by, or with any increase in obli-
14 gation authority made available by, this Act (including the
15 amendments made by this Act) only if the recipient of
16 such assistance certifies to the head of such department
17 or agency that the recipient will give priority consideration
18 to programs or projects that enhance security, to the ex-
19 tent that such programs or projects are immediately ready
20 to be implemented.

21 **SEC. 1002. TEMPORARY WAIVER OF NON-FEDERAL SHARE.**

22 (a) IN GENERAL.—Notwithstanding any other provi-
23 sion of law and subject to subsection (b), in providing fi-
24 nancial assistance for a program or project with any in-
25 crease in funds authorized or made available by, or with

1 any increase in obligation authority made available by, this
2 Act (including the amendments made by this Act (other
3 than subtitle A of title I of this Act)), the head of a Fed-
4 eral department or agency, upon request of the recipient
5 of such assistance, may increase the Federal share of the
6 cost of the program or project to not to exceed 100 percent
7 of such cost.

8 (b) REPAYMENTS.—Before increasing the Federal
9 share of the cost of a program or project under subsection
10 (a), the head of a Federal department or agency shall
11 enter into a legally binding agreement with the recipient
12 of financial assistance for the program or project under
13 which the recipient agrees to repay the United States for
14 the increased Federal share of the program or project on
15 or before September 30, 2005.

16 **SEC. 1003. MAINTENANCE OF EFFORT.**

17 The head of a Federal department or agency may
18 provide financial assistance for a program or project with
19 any increase in funds authorized or made available by, or
20 with any increase in obligation authority made available
21 by, this Act (including the amendments made by this Act)
22 for a fiscal year only if the recipient of such assistance
23 certifies to the head of such department or agency that
24 the aggregate expenditure of funds of the recipient, exclu-
25 sive of Federal funds, for such program or project will be

1 maintained at a level that does not fall below the average
2 level of such expenditure for the preceding 2 fiscal years
3 of the recipient.

4 **SEC. 1004. LABOR STANDARDS.**

5 (a) PREVAILING WAGES.—The head of a Federal de-
6 partment or agency providing financial assistance with
7 any increase in funds authorized or made available by, or
8 with any increase in obligation authority made available
9 by, this Act (including the amendments made by this Act)
10 shall ensure that laborers and mechanics employed by con-
11 tractors and subcontractors in construction work financed
12 by such financial assistance will be paid wages not less
13 than those prevailing on similar construction in the local-
14 ity, as determined by section 3142 of title 40, United
15 States Code (known as the Davis-Bacon Act). The head
16 of the department or agency shall provide such financial
17 assistance only after being assured that required labor
18 standards will be maintained on the construction work.

19 (b) WAGE RATES.—Wage rates in a collective bar-
20 gaining agreement negotiated under the Railway Labor
21 Act (45 U.S.C. 151 et seq.) are deemed for purposes of
22 this section to comply with section 3142 of title 40, United
23 States Code (known as the Davis-Bacon Act).

1 **SEC. 1005. BUY AMERICA.**

2 (a) PREFERENCE.—The head of a Federal depart-
3 ment or agency may provide financial assistance for a
4 project with any increase in funds authorized or made
5 available by, or with any increase in obligation authority
6 made available by, this Act (including the amendments
7 made by this Act) only if steel and manufactured goods
8 used in the project are produced in the United States.

9 (b) WAIVER.—The head of a Federal department or
10 agency may waive subsection (a) if the head of the Federal
11 department or agency finds that—

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

14 (2) the steel and goods produced in the United
15 States are not produced in a sufficient and reason-
16 ably available amount or are not of a satisfactory
17 quality;

18 (3) when procuring a facility or equipment with
19 any increase in funds or obligation authority de-
20 scribed in subsection (a)—

21 (A) the cost of components and subcompo-
22 nents produced in the United States is more
23 than 60 percent of the cost of all components
24 of the facility or equipment; and

25 (B) final assembly of the facility or equip-
26 ment has occurred in the United States; or

1 whether a transaction has economic substance
2 shall be made as provided in this paragraph.

3 “(B) DEFINITION OF ECONOMIC SUB-
4 STANCE.—For purposes of subparagraph (A)—

5 “(i) IN GENERAL.—A transaction has
6 economic substance only if—

7 “(I) the transaction changes in a
8 meaningful way (apart from Federal
9 tax effects and, if there are any Fed-
10 eral tax effects, also apart from any
11 foreign, State, or local tax effects) the
12 taxpayer’s economic position, and

13 “(II) the taxpayer has a substan-
14 tial nontax purpose for entering into
15 such transaction and the transaction
16 is a reasonable means of accom-
17 plishing such purpose.

18 “(ii) SPECIAL RULE WHERE TAX-
19 PAYER RELIES ON PROFIT POTENTIAL.—A
20 transaction shall not be treated as having
21 economic substance by reason of having a
22 potential for profit unless—

23 “(I) the present value of the rea-
24 sonably expected pre-tax profit from
25 the transaction is substantial in rela-

1 tion to the present value of the ex-
2 pected net tax benefits that would be
3 allowed if the transaction were re-
4 spected, and

5 “(II) the reasonably expected
6 pre-tax profit from the transaction ex-
7 ceeds a risk-free rate of return.

8 “(C) TREATMENT OF FEES AND FOREIGN
9 TAXES.—Fees and other transaction expenses
10 and foreign taxes shall be taken into account as
11 expenses in determining pre-tax profit under
12 subparagraph (B)(ii).

13 “(2) SPECIAL RULES FOR TRANSACTIONS WITH
14 TAX-INDIFFERENT PARTIES.—

15 “(A) SPECIAL RULES FOR FINANCING
16 TRANSACTIONS.—The form of a transaction
17 which is in substance the borrowing of money
18 or the acquisition of financial capital directly or
19 indirectly from a tax-indifferent party shall not
20 be respected if the present value of the deduc-
21 tions to be claimed with respect to the trans-
22 action is substantially in excess of the present
23 value of the anticipated economic returns of the
24 person lending the money or providing the fi-
25 nancial capital. A public offering shall be treat-

1 ed as a borrowing, or an acquisition of financial
2 capital, from a tax-indifferent party if it is rea-
3 sonably expected that at least 50 percent of the
4 offering will be placed with tax-indifferent par-
5 ties.

6 “(B) ARTIFICIAL INCOME SHIFTING AND
7 BASIS ADJUSTMENTS.—The form of a trans-
8 action with a tax-indifferent party shall not be
9 respected if—

10 “(i) it results in an allocation of in-
11 come or gain to the tax-indifferent party in
12 excess of such party’s economic income or
13 gain, or

14 “(ii) it results in a basis adjustment
15 or shifting of basis on account of over-
16 stating the income or gain of the tax-indif-
17 ferent party.

18 “(3) DEFINITIONS AND SPECIAL RULES.—For
19 purposes of this subsection—

20 “(A) ECONOMIC SUBSTANCE DOCTRINE.—
21 The term ‘economic substance doctrine’ means
22 the common law doctrine under which tax bene-
23 fits under subtitle A with respect to a trans-
24 action are not allowable if the transaction does

1 not have economic substance or lacks a business
2 purpose.

3 “(B) TAX-INDIFFERENT PARTY.—The
4 term ‘tax-indifferent party’ means any person
5 or entity not subject to tax imposed by subtitle
6 A. A person shall be treated as a tax-indifferent
7 party with respect to a transaction if the items
8 taken into account with respect to the trans-
9 action have no substantial impact on such per-
10 son’s liability under subtitle A.

11 “(C) SUBSTANTIAL NONTAX PURPOSE.—In
12 applying subclause (II) of paragraph (1)(B)(i),
13 a purpose of achieving a financial accounting
14 benefit shall not be taken into account in deter-
15 mining whether a transaction has a substantial
16 nontax purpose if the origin of such financial
17 accounting benefit is a reduction of income tax.

18 “(D) EXCEPTION FOR PERSONAL TRANS-
19 ACTIONS OF INDIVIDUALS.—In the case of an
20 individual, this subsection shall apply only to
21 transactions entered into in connection with a
22 trade or business or an activity engaged in for
23 the production of income.

24 “(E) TREATMENT OF LESSORS.—In apply-
25 ing subclause (I) of paragraph (1)(B)(ii) to the

1 lessor of tangible property subject to a lease,
2 the expected net tax benefits shall not include
3 the benefits of depreciation, or any tax credit,
4 with respect to the leased property and sub-
5 clause (II) of paragraph (1)(B)(ii) shall be dis-
6 regarded in determining whether any of such
7 benefits are allowable.

8 “(4) OTHER COMMON LAW DOCTRINES NOT AF-
9 FECTED.—Except as specifically provided in this
10 subsection, the provisions of this subsection shall not
11 be construed as altering or supplanting any other
12 rule of law, and the requirements of this subsection
13 shall be construed as being in addition to any such
14 other rule of law.

15 “(5) REGULATIONS.—The Secretary shall pre-
16 scribe such regulations as may be necessary or ap-
17 propriate to carry out the purposes of this sub-
18 section. Such regulations may include exemptions
19 from the application of this subsection.”

20 (b) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to transactions entered into after
22 February 13, 2003.

1 **SEC. 1102. PENALTY FOR FAILING TO DISCLOSE REPORT-**
 2 **ABLE TRANSACTION.**

3 (a) IN GENERAL.—Part I of subchapter B of chapter
 4 68 (relating to assessable penalties) is amended by insert-
 5 ing after section 6707 the following new section:

6 **“SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORT-**
 7 **ABLE TRANSACTION INFORMATION WITH RE-**
 8 **TURN OR STATEMENT.**

9 “(a) IMPOSITION OF PENALTY.—Any person who
 10 fails to include on any return or statement any informa-
 11 tion with respect to a reportable transaction which is re-
 12 quired under section 6011 to be included with such return
 13 or statement shall pay a penalty in the amount determined
 14 under subsection (b).

15 “(b) AMOUNT OF PENALTY.—

16 “(1) IN GENERAL.—Except as provided in para-
 17 graphs (2) and (3), the amount of the penalty under
 18 subsection (a) shall be \$50,000.

19 “(2) LISTED TRANSACTION.—The amount of
 20 the penalty under subsection (a) with respect to a
 21 listed transaction shall be \$100,000.

22 “(3) INCREASE IN PENALTY FOR LARGE ENTI-
 23 TIES AND HIGH NET WORTH INDIVIDUALS.—

24 “(A) IN GENERAL.—In the case of a fail-
 25 ure under subsection (a) by—

26 “(i) a large entity, or

1 “(ii) a high net worth individual,
2 the penalty under paragraph (1) or (2) shall be
3 twice the amount determined without regard to
4 this paragraph.

5 “(B) LARGE ENTITY.—For purposes of
6 subparagraph (A), the term ‘large entity’
7 means, with respect to any taxable year, a per-
8 son (other than a natural person) with gross re-
9 ceipts in excess of \$10,000,000 for the taxable
10 year in which the reportable transaction occurs
11 or the preceding taxable year. Rules similar to
12 the rules of paragraph (2) and subparagraphs
13 (B), (C), and (D) of paragraph (3) of section
14 448(c) shall apply for purposes of this subpara-
15 graph.

16 “(C) HIGH NET WORTH INDIVIDUAL.—For
17 purposes of subparagraph (A), the term ‘high
18 net worth individual’ means, with respect to a
19 reportable transaction, a natural person whose
20 net worth exceeds \$2,000,000 immediately be-
21 fore the transaction.

22 “(c) DEFINITIONS.—For purposes of this section—

23 “(1) REPORTABLE TRANSACTION.—The term
24 ‘reportable transaction’ means any transaction with
25 respect to which information is required to be in-

1 cluded with a return or statement because, as deter-
2 mined under regulations prescribed under section
3 6011, such transaction is of a type which the Sec-
4 retary determines as having a potential for tax
5 avoidance or evasion.

6 “(2) LISTED TRANSACTION.—Except as pro-
7 vided in regulations, the term ‘listed transaction’
8 means a reportable transaction which is the same as,
9 or substantially similar to, a transaction specifically
10 identified by the Secretary as a tax avoidance trans-
11 action for purposes of section 6011.

12 “(d) AUTHORITY TO RESCIND PENALTY.—

13 “(1) IN GENERAL.—The Commissioner of In-
14 ternal Revenue may rescind all or any portion of any
15 penalty imposed by this section with respect to any
16 violation if—

17 “(A) the violation is with respect to a re-
18 portable transaction other than a listed trans-
19 action,

20 “(B) the person on whom the penalty is
21 imposed has a history of complying with the re-
22 quirements of this title,

23 “(C) it is shown that the violation is due
24 to an unintentional mistake of fact;

1 “(D) imposing the penalty would be
2 against equity and good conscience, and

3 “(E) rescinding the penalty would promote
4 compliance with the requirements of this title
5 and effective tax administration.

6 “(2) DISCRETION.—The exercise of authority
7 under paragraph (1) shall be at the sole discretion
8 of the Commissioner and may be delegated only to
9 the head of the Office of Tax Shelter Analysis. The
10 Commissioner, in the Commissioner’s sole discretion,
11 may establish a procedure to determine if a penalty
12 should be referred to the Commissioner or the head
13 of such Office for a determination under paragraph
14 (1).

15 “(3) NO APPEAL.—Notwithstanding any other
16 provision of law, any determination under this sub-
17 section may not be reviewed in any administrative or
18 judicial proceeding.

19 “(4) RECORDS.—If a penalty is rescinded under
20 paragraph (1), the Commissioner shall place in the
21 file in the Office of the Commissioner the opinion of
22 the Commissioner or the head of the Office of Tax
23 Shelter Analysis with respect to the determination,
24 including—

1 “(A) the facts and circumstances of the
2 transaction,

3 “(B) the reasons for the rescission, and

4 “(C) the amount of the penalty rescinded.

5 “(5) REPORT.—The Commissioner shall each
6 year report to the Committee on Ways and Means
7 of the House of Representatives and the Committee
8 on Finance of the Senate—

9 “(A) a summary of the total number and
10 aggregate amount of penalties imposed, and re-
11 scinded, under this section, and

12 “(B) a description of each penalty re-
13 scinded under this subsection and the reasons
14 therefor.

15 “(e) PENALTY REPORTED TO SEC.—In the case of
16 a person—

17 “(1) which is required to file periodic reports
18 under section 13 or 15(d) of the Securities Ex-
19 change Act of 1934 or is required to be consolidated
20 with another person for purposes of such reports,
21 and

22 “(2) which—

23 “(A) is required to pay a penalty under
24 this section with respect to a listed transaction,

1 “(B) is required to pay a penalty under
2 section 6662A with respect to any reportable
3 transaction at a rate prescribed under section
4 6662A(c), or

5 “(C) is required to pay a penalty under
6 section 6662B with respect to any noneconomic
7 substance transaction,

8 the requirement to pay such penalty shall be disclosed in
9 such reports filed by such person for such periods as the
10 Secretary shall specify. Failure to make a disclosure in
11 accordance with the preceding sentence shall be treated
12 as a failure to which the penalty under subsection (b)(2)
13 applies.

14 “(f) COORDINATION WITH OTHER PENALTIES.—The
15 penalty imposed by this section is in addition to any pen-
16 alty imposed under this title.”.

17 (b) CONFORMING AMENDMENT.—The table of sec-
18 tions for part I of subchapter B of chapter 68 is amended
19 by inserting after the item relating to section 6707 the
20 following:

“Sec. 6707A. Penalty for failure to include reportable transaction
information with return or statement.”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to returns and statements the due
23 date for which is after the date of the enactment of this
24 Act.

1 **SEC. 1103. ACCURACY-RELATED PENALTY FOR LISTED**
2 **TRANSACTIONS AND OTHER REPORTABLE**
3 **TRANSACTIONS HAVING A SIGNIFICANT TAX**
4 **AVOIDANCE PURPOSE.**

5 (a) IN GENERAL.—Subchapter A of chapter 68 is
6 amended by inserting after section 6662 the following new
7 section:

8 **“SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PEN-**
9 **ALTY ON UNDERSTATEMENTS WITH RESPECT**
10 **TO REPORTABLE TRANSACTIONS.**

11 “(a) IMPOSITION OF PENALTY.—If a taxpayer has a
12 reportable transaction understatement for any taxable
13 year, there shall be added to the tax an amount equal to
14 20 percent of the amount of such understatement.

15 “(b) REPORTABLE TRANSACTION UNDERSTATE-
16 MENT.—For purposes of this section—

17 “(1) IN GENERAL.—The term ‘reportable trans-
18 action understatement’ means the sum of—

19 “(A) the product of—

20 “(i) the amount of the increase (if
21 any) in taxable income which results from
22 a difference between the proper tax treat-
23 ment of an item to which this section ap-
24 plies and the taxpayer’s treatment of such
25 item (as shown on the taxpayer’s return of
26 tax), and

1 “(ii) the highest rate of tax imposed
2 by section 1 (section 11 in the case of a
3 taxpayer which is a corporation), and

4 “(B) the amount of the decrease (if any)
5 in the aggregate amount of credits determined
6 under subtitle A which results from a difference
7 between the taxpayer’s treatment of an item to
8 which this section applies (as shown on the tax-
9 payer’s return of tax) and the proper tax treat-
10 ment of such item.

11 For purposes of subparagraph (A), any reduction of
12 the excess of deductions allowed for the taxable year
13 over gross income for such year, and any reduction
14 in the amount of capital losses which would (without
15 regard to section 1211) be allowed for such year,
16 shall be treated as an increase in taxable income.

17 “(2) ITEMS TO WHICH SECTION APPLIES.—This
18 section shall apply to any item which is attributable
19 to—

20 “(A) any listed transaction, and

21 “(B) any reportable transaction (other
22 than a listed transaction) if a significant pur-
23 pose of such transaction is the avoidance or
24 evasion of Federal income tax.

1 “(c) HIGHER PENALTY FOR NONDISCLOSED LISTED
2 AND OTHER AVOIDANCE TRANSACTIONS.—

3 “(1) IN GENERAL.—Subsection (a) shall be ap-
4 plied by substituting ‘30 percent’ for ‘20 percent’
5 with respect to the portion of any reportable trans-
6 action understatement with respect to which the re-
7 quirement of section 6664(d)(2)(A) is not met.

8 “(2) RULES APPLICABLE TO COMPROMISE OF
9 PENALTY.—

10 “(A) IN GENERAL.—If the 1st letter of
11 proposed deficiency which allows the taxpayer
12 an opportunity for administrative review in the
13 Internal Revenue Service Office of Appeals has
14 been sent with respect to a penalty to which
15 paragraph (1) applies, only the Commissioner
16 of Internal Revenue may compromise all or any
17 portion of such penalty.

18 “(B) APPLICABLE RULES.—The rules of
19 paragraphs (3), (4), and (5) of section
20 6707A(d) shall apply for purposes of subpara-
21 graph (A).

22 “(d) DEFINITIONS OF REPORTABLE AND LISTED
23 TRANSACTIONS.—For purposes of this section, the terms
24 ‘reportable transaction’ and ‘listed transaction’ have the

1 respective meanings given to such terms by section
2 6707A(e).

3 “(e) SPECIAL RULES.—

4 “(1) COORDINATION WITH PENALTIES, ETC.,
5 ON OTHER UNDERSTATEMENTS.—In the case of an
6 understatement (as defined in section 6662(d)(2))—

7 “(A) the amount of such understatement
8 (determined without regard to this paragraph)
9 shall be increased by the aggregate amount of
10 reportable transaction understatements and
11 noneconomic substance transaction understate-
12 ments for purposes of determining whether
13 such understatement is a substantial under-
14 statement under section 6662(d)(1), and

15 “(B) the addition to tax under section
16 6662(a) shall apply only to the excess of the
17 amount of the substantial understatement (if
18 any) after the application of subparagraph (A)
19 over the aggregate amount of reportable trans-
20 action understatements and noneconomic sub-
21 stance transaction understatements.

22 “(2) COORDINATION WITH OTHER PEN-
23 ALTIES.—

24 “(A) APPLICATION OF FRAUD PENALTY.—

25 References to an underpayment in section 6663

1 shall be treated as including references to a re-
2 reportable transaction understatement and a non-
3 economic substance transaction understatement.

4 “(B) NO DOUBLE PENALTY.—This section
5 shall not apply to any portion of an understate-
6 ment on which a penalty is imposed under sec-
7 tion 6662B or 6663.

8 “(3) SPECIAL RULE FOR AMENDED RE-
9 TURNS.—Except as provided in regulations, in no
10 event shall any tax treatment included with an
11 amendment or supplement to a return of tax be
12 taken into account in determining the amount of any
13 reportable transaction understatement or non-
14 economic substance transaction understatement if
15 the amendment or supplement is filed after the ear-
16 lier of the date the taxpayer is first contacted by the
17 Secretary regarding the examination of the return or
18 such other date as is specified by the Secretary.

19 “(4) NONECONOMIC SUBSTANCE TRANSACTION
20 UNDERSTATEMENT.—For purposes of this sub-
21 section, the term ‘noneconomic substance trans-
22 action understatement’ has the meaning given such
23 term by section 6662B(c).

1 “(5) CROSS REFERENCE.—

“For reporting of section 6662A(c) penalty to the Securities and Exchange Commission, see section 6707A(e).”

2 (b) DETERMINATION OF OTHER UNDERSTATE-
3 MENTS.—Subparagraph (A) of section 6662(d)(2) is
4 amended by adding at the end the following flush sen-
5 tence:

6 “The excess under the preceding sentence shall
7 be determined without regard to items to which
8 section 6662A applies and without regard to
9 items with respect to which a penalty is im-
10 posed by section 6662B.”

11 (c) REASONABLE CAUSE EXCEPTION.—

12 (1) IN GENERAL.—Section 6664 is amended by
13 adding at the end the following new subsection:

14 “(d) REASONABLE CAUSE EXCEPTION FOR REPORT-
15 ABLE TRANSACTION UNDERSTATEMENTS.—

16 “(1) IN GENERAL.—No penalty shall be im-
17 posed under section 6662A with respect to any por-
18 tion of a reportable transaction understatement if it
19 is shown that there was a reasonable cause for such
20 portion and that the taxpayer acted in good faith
21 with respect to such portion.

22 “(2) SPECIAL RULES.—Paragraph (1) shall not
23 apply to any reportable transaction understatement
24 unless—

1 “(A) the relevant facts affecting the tax
2 treatment of the item are adequately disclosed
3 in accordance with the regulations prescribed
4 under section 6011,

5 “(B) there is or was substantial authority
6 for such treatment, and

7 “(C) the taxpayer reasonably believed that
8 such treatment was more likely than not the
9 proper treatment.

10 A taxpayer failing to adequately disclose in accord-
11 ance with section 6011 shall be treated as meeting
12 the requirements of subparagraph (A) if the penalty
13 for such failure was rescinded under section
14 6707A(d).

15 “(3) RULES RELATING TO REASONABLE BE-
16 LIEF.—For purposes of paragraph (2)(C)—

17 “(A) IN GENERAL.—A taxpayer shall be
18 treated as having a reasonable belief with re-
19 spect to the tax treatment of an item only if
20 such belief—

21 “(i) is based on the facts and law that
22 exist at the time the return of tax which
23 includes such tax treatment is filed, and

24 “(ii) relates solely to the taxpayer’s
25 chances of success on the merits of such

1 treatment and does not take into account
2 the possibility that a return will not be au-
3 dited, such treatment will not be raised on
4 audit, or such treatment will be resolved
5 through settlement if it is raised.

6 “(B) CERTAIN OPINIONS MAY NOT BE RE-
7 LIED UPON.—

8 “(i) IN GENERAL.—An opinion of a
9 tax advisor may not be relied upon to es-
10 tablish the reasonable belief of a taxpayer
11 if—

12 “(I) the tax advisor is described
13 in clause (ii), or

14 “(II) the opinion is described in
15 clause (iii).

16 “(ii) DISQUALIFIED TAX ADVISORS.—
17 A tax advisor is described in this clause if
18 the tax advisor—

19 “(I) is a material advisor (within
20 the meaning of section 6111(b)(1))
21 who participates in the organization,
22 management, promotion, or sale of
23 the transaction or who is related
24 (within the meaning of section 267(b)

1 or 707(b)(1)) to any person who so
2 participates,

3 “(II) is compensated directly or
4 indirectly by a material advisor with
5 respect to the transaction,

6 “(III) has a fee arrangement
7 with respect to the transaction which
8 is contingent on all or part of the in-
9 tended tax benefits from the trans-
10 action being sustained, or

11 “(IV) as determined under regu-
12 lations prescribed by the Secretary,
13 has a continuing financial interest
14 with respect to the transaction.

15 “(iii) DISQUALIFIED OPINIONS.—For
16 purposes of clause (i), an opinion is dis-
17 qualified if the opinion—

18 “(I) is based on unreasonable
19 factual or legal assumptions (includ-
20 ing assumptions as to future events),

21 “(II) unreasonably relies on rep-
22 resentations, statements, findings, or
23 agreements of the taxpayer or any
24 other person,

1 “(III) does not identify and con-
2 sider all relevant facts, or

3 “(IV) fails to meet any other re-
4 quirement as the Secretary may pre-
5 scribe.”

6 (2) CONFORMING AMENDMENT.—The heading
7 for subsection (c) of section 6664 is amended by in-
8 serting “FOR UNDERPAYMENTS” after “EXCEP-
9 TION”.

10 (d) CONFORMING AMENDMENTS.—

11 (1) Subparagraph (C) of section 461(i)(3) is
12 amended by striking “section 6662(d)(2)(C)(iii)”
13 and inserting “section 1274(b)(3)(C)”.

14 (2) Paragraph (3) of section 1274(b) is amend-
15 ed—

16 (A) by striking “(as defined in section
17 6662(d)(2)(C)(iii))” in subparagraph (B)(i),
18 and

19 (B) by adding at the end the following new
20 subparagraph:

21 “(C) TAX SHELTER.—For purposes of sub-
22 paragraph (B), the term ‘tax shelter’ means—

23 “(i) a partnership or other entity,

24 “(ii) any investment plan or arrange-
25 ment, or

1 “(iii) any other plan or arrangement,
 2 if a significant purpose of such partnership, en-
 3 tity, plan, or arrangement is the avoidance or
 4 evasion of Federal income tax.”

5 (3) Section 6662(d)(2) is amended by striking
 6 subparagraphs (C) and (D).

7 (4) Section 6664(c)(1) is amended by striking
 8 “this part” and inserting “section 6662 or 6663”.

9 (5) Subsection (b) of section 7525 is amended
 10 by striking “section 6662(d)(2)(C)(iii)” and insert-
 11 ing “section 1274(b)(3)(C)”.

12 (6)(A) The heading for section 6662 is amend-
 13 ed to read as follows:

14 **“SEC. 6662. IMPOSITION OF ACCURACY-RELATED PENALTY**
 15 **ON UNDERPAYMENTS.”**

16 (B) The table of sections for part II of sub-
 17 chapter A of chapter 68 is amended by striking the
 18 item relating to section 6662 and inserting the fol-
 19 lowing new items:

“Sec. 6662. Imposition of accuracy-related penalty on underpay-
 ments.

“Sec. 6662A. Imposition of accuracy-related penalty on under-
 statements with respect to reportable transactions.”

20 (e) **EFFECTIVE DATE.**—The amendments made by
 21 this section shall apply to taxable years ending after the
 22 date of the enactment of this Act.

1 **SEC. 1104. PENALTY FOR UNDERSTATEMENTS ATTRIB-**
2 **UTABLE TO TRANSACTIONS LACKING ECO-**
3 **NOMIC SUBSTANCE, ETC.**

4 (a) IN GENERAL.—Subchapter A of chapter 68 is
5 amended by inserting after section 6662A the following
6 new section:

7 **“SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIB-**
8 **UTABLE TO TRANSACTIONS LACKING ECO-**
9 **NOMIC SUBSTANCE, ETC.**

10 “(a) IMPOSITION OF PENALTY.—If a taxpayer has an
11 noneconomic substance transaction understatement for
12 any taxable year, there shall be added to the tax an
13 amount equal to 40 percent of the amount of such under-
14 statement.

15 “(b) REDUCTION OF PENALTY FOR DISCLOSED
16 TRANSACTIONS.—Subsection (a) shall be applied by sub-
17 stituting ‘20 percent’ for ‘40 percent’ with respect to the
18 portion of any noneconomic substance transaction under-
19 statement with respect to which the relevant facts affect-
20 ing the tax treatment of the item are adequately disclosed
21 in the return or a statement attached to the return.

22 “(c) NONECONOMIC SUBSTANCE TRANSACTION UN-
23 DERSTATEMENT.—For purposes of this section—

24 “(1) IN GENERAL.—The term ‘noneconomic
25 substance transaction understatement’ means any
26 amount which would be an understatement under

1 section 6662A(b)(1) if section 6662A were applied
2 by taking into account items attributable to non-
3 economic substance transactions rather than items
4 to which section 6662A would apply without regard
5 to this paragraph.

6 “(2) NONECONOMIC SUBSTANCE TRANS-
7 ACTION.—The term ‘noneconomic substance trans-
8 action’ means any transaction if—

9 “(A) there is a lack of economic substance
10 (within the meaning of section 7701(m)(1)) for
11 the transaction giving rise to the claimed tax
12 benefit or the transaction was not respected
13 under section 7701(m)(2), or

14 “(B) the transaction fails to meet the re-
15 quirements of any similar rule of law.

16 “(d) RULES APPLICABLE TO COMPROMISE OF PEN-
17 ALTY.—

18 “(1) IN GENERAL.—If the 1st letter of pro-
19 posed deficiency which allows the taxpayer an oppor-
20 tunity for administrative review in the Internal Rev-
21 enue Service Office of Appeals has been sent with
22 respect to a penalty to which this section applies,
23 only the Commissioner of Internal Revenue may
24 compromise all or any portion of such penalty.

1 “(B) SPECIAL RULE FOR CORPORA-
2 TIONS.—In the case of a corporation other than
3 an S corporation or a personal holding company
4 (as defined in section 542), there is a substan-
5 tial understatement of income tax for any tax-
6 able year if the amount of the understatement
7 for the taxable year exceeds the lesser of—

8 “(i) 10 percent of the tax required to
9 be shown on the return for the taxable
10 year (or, if greater, \$10,000), or

11 “(ii) \$10,000,000.”

12 (b) REDUCTION FOR UNDERSTATEMENT OF TAX-
13 PAYER DUE TO POSITION OF TAXPAYER OR DISCLOSED
14 ITEM.—

15 (1) IN GENERAL.—Section 6662(d)(2)(B)(i)
16 (relating to substantial authority) is amended to
17 read as follows:

18 “(i) the tax treatment of any item by
19 the taxpayer if the taxpayer had reason-
20 able belief that the tax treatment was more
21 likely than not the proper treatment, or”.

22 (2) CONFORMING AMENDMENT.—Section
23 6662(d) is amended by adding at the end the fol-
24 lowing new paragraph:

1 “(3) SECRETARIAL LIST.—For purposes of this
2 subsection, section 6664(d)(2), and section
3 6694(a)(1), the Secretary may prescribe a list of po-
4 sitions for which the Secretary believes there is not
5 substantial authority or there is no reasonable belief
6 that the tax treatment is more likely than not the
7 proper tax treatment. Such list (and any revisions
8 thereof) shall be published in the Federal Register
9 or the Internal Revenue Bulletin.”

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to taxable years beginning after
12 the date of the enactment of this Act.

13 **SEC. 1106. TAX SHELTER EXCEPTION TO CONFIDENTIALITY**
14 **PRIVILEGES RELATING TO TAXPAYER COM-**
15 **MUNICATIONS.**

16 (a) IN GENERAL.—Section 7525(b) (relating to sec-
17 tion not to apply to communications regarding corporate
18 tax shelters) is amended to read as follows:

19 “(b) SECTION NOT TO APPLY TO COMMUNICATIONS
20 REGARDING TAX SHELTERS.—The privilege under sub-
21 section (a) shall not apply to any written communication
22 which is—

23 “(1) between a federally authorized tax practi-
24 tioner and—

25 “(A) any person,

1 “(B) any director, officer, employee, agent,
2 or representative of the person, or

3 “(C) any other person holding a capital or
4 profits interest in the person, and

5 “(2) in connection with the promotion of the di-
6 rect or indirect participation of the person in any
7 tax shelter (as defined in section 1274(b)(3)(C)).”

8 (b) EFFECTIVE DATE.—The amendment made by
9 this section shall apply to communications made on or
10 after the date of the enactment of this Act.

11 **SEC. 1107. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

12 (a) IN GENERAL.—Section 6111 (relating to registra-
13 tion of tax shelters) is amended to read as follows:

14 **“SEC. 6111. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

15 “(a) IN GENERAL.—Each material advisor with re-
16 spect to any reportable transaction shall make a return
17 (in such form as the Secretary may prescribe) setting
18 forth—

19 “(1) information identifying and describing the
20 transaction,

21 “(2) information describing any potential tax
22 benefits expected to result from the transaction, and

23 “(3) such other information as the Secretary
24 may prescribe.

1 Such return shall be filed not later than the date specified
2 by the Secretary.

3 “(b) DEFINITIONS.—For purposes of this section—

4 “(1) MATERIAL ADVISOR.—

5 “(A) IN GENERAL.—The term ‘material
6 advisor’ means any person—

7 “(i) who provides any material aid,
8 assistance, or advice with respect to orga-
9 nizing, promoting, selling, implementing,
10 or carrying out any reportable transaction,
11 and

12 “(ii) who directly or indirectly derives
13 gross income in excess of the threshold
14 amount for such aid, assistance, or advice.

15 “(B) THRESHOLD AMOUNT.—For purposes
16 of subparagraph (A), the threshold amount is—

17 “(i) \$50,000 in the case of a report-
18 able transaction substantially all of the tax
19 benefits from which are provided to nat-
20 ural persons, and

21 “(ii) \$250,000 in any other case.

22 “(2) REPORTABLE TRANSACTION.—The term
23 ‘reportable transaction’ has the meaning given to
24 such term by section 6707A(c).

1 “(c) REGULATIONS.—The Secretary may prescribe
2 regulations which provide—

3 “(1) that only 1 person shall be required to
4 meet the requirements of subsection (a) in cases in
5 which 2 or more persons would otherwise be re-
6 quired to meet such requirements,

7 “(2) exemptions from the requirements of this
8 section, and

9 “(3) such rules as may be necessary or appro-
10 priate to carry out the purposes of this section.”

11 (b) CONFORMING AMENDMENTS.—

12 (1) The item relating to section 6111 in the
13 table of sections for subchapter B of chapter 61 is
14 amended to read as follows:

 “Sec. 6111. Disclosure of reportable transactions.”

15 (2)(A) So much of section 6112 as precedes
16 subsection (c) thereof is amended to read as follows:

17 **“SEC. 6112. MATERIAL ADVISORS OF REPORTABLE TRANS-**
18 **ACTIONS MUST KEEP LISTS OF ADVISEES.**

19 “(a) IN GENERAL.—Each material advisor (as de-
20 fined in section 6111) with respect to any reportable
21 transaction (as defined in section 6707A(e)) shall main-
22 tain, in such manner as the Secretary may by regulations
23 prescribe, a list—

1 “(1) identifying each person with respect to
2 whom such advisor acted as such a material advisor
3 with respect to such transaction, and

4 “(2) containing such other information as the
5 Secretary may by regulations require.

6 This section shall apply without regard to whether a mate-
7 rial advisor is required to file a return under section 6111
8 with respect to such transaction.”

9 (B) Section 6112 is amended by redesignating
10 subsection (c) as subsection (b).

11 (C) Section 6112(b), as redesignated by sub-
12 paragraph (B), is amended—

13 (i) by inserting “written” before “request”
14 in paragraph (1)(A), and

15 (ii) by striking “shall prescribe” in para-
16 graph (2) and inserting “may prescribe”.

17 (D) The item relating to section 6112 in the
18 table of sections for subchapter B of chapter 61 is
19 amended to read as follows:

 “Sec. 6112. Material advisors of reportable transactions must
 keep lists of advisees.”

20 (3)(A) The heading for section 6708 is amend-
21 ed to read as follows:

1 **“SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISEES**
2 **WITH RESPECT TO REPORTABLE TRANS-**
3 **ACTIONS.”**

4 (B) The item relating to section 6708 in the
5 table of sections for part I of subchapter B of chap-
6 ter 68 is amended to read as follows:

“Sec. 6708. Failure to maintain lists of advisees with respect to
reportable transactions.”

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to transactions with respect to
9 which material aid, assistance, or advice referred to in sec-
10 tion 6111(b)(1)(A)(i) of the Internal Revenue Code of
11 1986 (as added by this section) is provided after the date
12 of the enactment of this Act.

13 **SEC. 1108. MODIFICATIONS TO PENALTY FOR FAILURE TO**
14 **REGISTER TAX SHELTERS.**

15 (a) IN GENERAL.—Section 6707 (relating to failure
16 to furnish information regarding tax shelters) is amended
17 to read as follows:

18 **“SEC. 6707. FAILURE TO FURNISH INFORMATION REGARD-**
19 **ING REPORTABLE TRANSACTIONS.**

20 “(a) IN GENERAL.—If a person who is required to
21 file a return under section 6111(a) with respect to any
22 reportable transaction—

23 “(1) fails to file such return on or before the
24 date prescribed therefor, or

1 “(2) files false or incomplete information with
2 the Secretary with respect to such transaction,
3 such person shall pay a penalty with respect to such return
4 in the amount determined under subsection (b).

5 “(b) AMOUNT OF PENALTY.—

6 “(1) IN GENERAL.—Except as provided in para-
7 graph (2), the penalty imposed under subsection (a)
8 with respect to any failure shall be \$50,000.

9 “(2) LISTED TRANSACTIONS.—The penalty im-
10 posed under subsection (a) with respect to any listed
11 transaction shall be an amount equal to the greater
12 of—

13 “(A) \$200,000, or

14 “(B) 50 percent of the gross income de-
15 rived by such person with respect to aid, assist-
16 ance, or advice which is provided with respect
17 to the reportable transaction before the date the
18 return including the transaction is filed under
19 section 6111.

20 Subparagraph (B) shall be applied by substituting
21 ‘75 percent’ for ‘50 percent’ in the case of an inten-
22 tional failure or act described in subsection (a).

23 “(c) RESCISSION AUTHORITY.—The provisions of
24 section 6707A(d) (relating to authority of Commissioner

1 to rescind penalty) shall apply to any penalty imposed
2 under this section.

3 “(d) REPORTABLE AND LISTED TRANSACTIONS.—
4 The terms ‘reportable transaction’ and ‘listed transaction’
5 have the respective meanings given to such terms by sec-
6 tion 6707A(c).”.

7 (b) CLERICAL AMENDMENT.—The item relating to
8 section 6707 in the table of sections for part I of sub-
9 chapter B of chapter 68 is amended by striking “tax shel-
10 ters” and inserting “reportable transactions”.

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to returns the due date for which
13 is after the date of the enactment of this Act.

14 **SEC. 1109. MODIFICATION OF PENALTY FOR FAILURE TO**
15 **MAINTAIN LISTS OF INVESTORS.**

16 (a) IN GENERAL.—Subsection (a) of section 6708 is
17 amended to read as follows:

18 “(a) IMPOSITION OF PENALTY.—

19 “(1) IN GENERAL.—If any person who is re-
20 quired to maintain a list under section 6112(a) fails
21 to make such list available upon written request to
22 the Secretary in accordance with section
23 6112(b)(1)(A) within 20 business days after the
24 date of the Secretary’s request, such person shall

1 pay a penalty of \$10,000 for each day of such fail-
2 ure after such 20th day.

3 “(2) REASONABLE CAUSE EXCEPTION.—No
4 penalty shall be imposed by paragraph (1) with re-
5 spect to the failure on any day if such failure is due
6 to reasonable cause.”

7 (b) EFFECTIVE DATE.—The amendment made by
8 this section shall apply to requests made after the date
9 of the enactment of this Act.

10 **SEC. 1110. MODIFICATION OF ACTIONS TO ENJOIN CERTAIN**
11 **CONDUCT RELATED TO TAX SHELTERS AND**
12 **REPORTABLE TRANSACTIONS.**

13 (a) IN GENERAL.—Section 7408 (relating to action
14 to enjoin promoters of abusive tax shelters, etc.) is amend-
15 ed by redesignating subsection (c) as subsection (d) and
16 by striking subsections (a) and (b) and inserting the fol-
17 lowing new subsections:

18 “(a) AUTHORITY TO SEEK INJUNCTION.—A civil ac-
19 tion in the name of the United States to enjoin any person
20 from further engaging in specified conduct may be com-
21 menced at the request of the Secretary. Any action under
22 this section shall be brought in the district court of the
23 United States for the district in which such person resides,
24 has his principal place of business, or has engaged in spec-
25 ified conduct. The court may exercise its jurisdiction over

1 such action (as provided in section 7402(a)) separate and
2 apart from any other action brought by the United States
3 against such person.

4 “(b) ADJUDICATION AND DECREE.—In any action
5 under subsection (a), if the court finds—

6 “(1) that the person has engaged in any speci-
7 fied conduct, and

8 “(2) that injunctive relief is appropriate to pre-
9 vent recurrence of such conduct,

10 the court may enjoin such person from engaging in such
11 conduct or in any other activity subject to penalty under
12 this title.

13 “(c) SPECIFIED CONDUCT.—For purposes of this
14 section, the term ‘specified conduct’ means any action, or
15 failure to take action, subject to penalty under section
16 6700, 6701, 6707, or 6708.”

17 (b) CONFORMING AMENDMENTS.—

18 (1) The heading for section 7408 is amended to
19 read as follows:

20 **“SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RE-**
21 **LATED TO TAX SHELTERS AND REPORTABLE**
22 **TRANSACTIONS.”**

23 (2) The table of sections for subchapter A of
24 chapter 67 is amended by striking the item relating
25 to section 7408 and inserting the following new

1 item:

“Sec. 7408. Actions to enjoin specified conduct related to tax shelters and reportable transactions.”

2 (c) EFFECTIVE DATE.—The amendment made by
3 this section shall take effect on the day after the date of
4 the enactment of this Act.

5 **SEC. 1111. UNDERSTATEMENT OF TAXPAYER’S LIABILITY**
6 **BY INCOME TAX RETURN PREPARER.**

7 (a) STANDARDS CONFORMED TO TAXPAYER STAND-
8 ARDS.—Section 6694(a) (relating to understatements due
9 to unrealistic positions) is amended—

10 (1) by striking “realistic possibility of being
11 sustained on its merits” in paragraph (1) and in-
12 serting “reasonable belief that the tax treatment in
13 such position was more likely than not the proper
14 treatment”,

15 (2) by striking “or was frivolous” in paragraph
16 (3) and inserting “or there was no reasonable basis
17 for the tax treatment of such position”, and

18 (3) by striking “UNREALISTIC” in the heading
19 and inserting “IMPROPER”.

20 (b) AMOUNT OF PENALTY.—Section 6694 is amend-
21 ed—

22 (1) by striking “\$250” in subsection (a) and in-
23 serting “\$1,000”, and

1 (2) by striking “\$1,000” in subsection (b) and
2 inserting “\$5,000”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to documents prepared after the
5 date of the enactment of this Act.

6 **SEC. 1112. PENALTY ON FAILURE TO REPORT INTERESTS**
7 **IN FOREIGN FINANCIAL ACCOUNTS.**

8 (a) IN GENERAL.—Section 5321(a)(5) of title 31,
9 United States Code, is amended to read as follows:

10 “(5) FOREIGN FINANCIAL AGENCY TRANS-
11 ACTION VIOLATION.—

12 “(A) PENALTY AUTHORIZED.—The Sec-
13 retary of the Treasury may impose a civil
14 money penalty on any person who violates, or
15 causes any violation of, any provision of section
16 5314.

17 “(B) AMOUNT OF PENALTY.—

18 “(i) IN GENERAL.—Except as pro-
19 vided in subparagraph (C), the amount of
20 any civil penalty imposed under subpara-
21 graph (A) shall not exceed \$5,000.

22 “(ii) REASONABLE CAUSE EXCEP-
23 TION.—No penalty shall be imposed under
24 subparagraph (A) with respect to any vio-
25 lation if—

1 “(I) such violation was due to
2 reasonable cause, and

3 “(II) the amount of the trans-
4 action or the balance in the account
5 at the time of the transaction was
6 properly reported.

7 “(C) WILLFUL VIOLATIONS.—In the case
8 of any person willfully violating, or willfully
9 causing any violation of, any provision of sec-
10 tion 5314—

11 “(i) the maximum penalty under sub-
12 paragraph (B)(i) shall be increased to the
13 greater of—

14 “(I) \$25,000, or

15 “(II) the amount (not exceeding
16 \$100,000) determined under subpara-
17 graph (D), and

18 “(ii) subparagraph (B)(ii) shall not
19 apply.

20 “(D) AMOUNT.—The amount determined
21 under this subparagraph is—

22 “(i) in the case of a violation involving
23 a transaction, the amount of the trans-
24 action, or

1 “(ii) in the case of a violation involv-
2 ing a failure to report the existence of an
3 account or any identifying information re-
4 quired to be provided with respect to an
5 account, the balance in the account at the
6 time of the violation.”

7 (b) EFFECTIVE DATE.—The amendment made by
8 this section shall apply to violations occurring after the
9 date of the enactment of this Act.

10 **SEC. 1113. FRIVOLOUS TAX SUBMISSIONS.**

11 (a) CIVIL PENALTIES.—Section 6702 is amended to
12 read as follows:

13 **“SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.**

14 “(a) CIVIL PENALTY FOR FRIVOLOUS TAX RE-
15 TURNS.—A person shall pay a penalty of \$5,000 if—

16 “(1) such person files what purports to be a re-
17 turn of a tax imposed by this title but which—

18 “(A) does not contain information on
19 which the substantial correctness of the self-as-
20 sessment may be judged, or

21 “(B) contains information that on its face
22 indicates that the self-assessment is substan-
23 tially incorrect; and

24 “(2) the conduct referred to in paragraph (1)—

1 “(A) is based on a position which the Sec-
2 retary has identified as frivolous under sub-
3 section (c), or

4 “(B) reflects a desire to delay or impede
5 the administration of Federal tax laws.

6 “(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS
7 SUBMISSIONS.—

8 “(1) IMPOSITION OF PENALTY.—Except as pro-
9 vided in paragraph (3), any person who submits a
10 specified frivolous submission shall pay a penalty of
11 \$5,000.

12 “(2) SPECIFIED FRIVOLOUS SUBMISSION.—For
13 purposes of this section—

14 “(A) SPECIFIED FRIVOLOUS SUBMIS-
15 SION.—The term ‘specified frivolous submis-
16 sion’ means a specified submission if any por-
17 tion of such submission—

18 “(i) is based on a position which the
19 Secretary has identified as frivolous under
20 subsection (c), or

21 “(ii) reflects a desire to delay or im-
22 pede the administration of Federal tax
23 laws.

24 “(B) SPECIFIED SUBMISSION.—The term
25 ‘specified submission’ means—

1 “(i) a request for a hearing under—

2 “(I) section 6320 (relating to no-
3 tice and opportunity for hearing upon
4 filing of notice of lien), or

5 “(II) section 6330 (relating to
6 notice and opportunity for hearing be-
7 fore levy), and

8 “(ii) an application under—

9 “(I) section 6159 (relating to
10 agreements for payment of tax liabil-
11 ity in installments),

12 “(II) section 7122 (relating to
13 compromises), or

14 “(III) section 7811 (relating to
15 taxpayer assistance orders).

16 “(3) OPPORTUNITY TO WITHDRAW SUBMIS-
17 SION.—If the Secretary provides a person with no-
18 tice that a submission is a specified frivolous sub-
19 mission and such person withdraws such submission
20 within 30 days after such notice, the penalty im-
21 posed under paragraph (1) shall not apply with re-
22 spect to such submission.

23 “(c) LISTING OF FRIVOLOUS POSITIONS.—The Sec-
24 retary shall prescribe (and periodically revise) a list of po-
25 sitions which the Secretary has identified as being frivo-

1 lous for purposes of this subsection. The Secretary shall
2 not include in such list any position that the Secretary
3 determines meets the requirement of section
4 6662(d)(2)(B)(ii)(II).

5 “(d) REDUCTION OF PENALTY.—The Secretary may
6 reduce the amount of any penalty imposed under this sec-
7 tion if the Secretary determines that such reduction would
8 promote compliance with and administration of the Fed-
9 eral tax laws.

10 “(e) PENALTIES IN ADDITION TO OTHER PEN-
11 ALTIES.—The penalties imposed by this section shall be
12 in addition to any other penalty provided by law.”

13 (b) TREATMENT OF FRIVOLOUS REQUESTS FOR
14 HEARINGS BEFORE LEVY.—

15 (1) FRIVOLOUS REQUESTS DISREGARDED.—
16 Section 6330 (relating to notice and opportunity for
17 hearing before levy) is amended by adding at the
18 end the following new subsection:

19 “(g) FRIVOLOUS REQUESTS FOR HEARING, ETC.—
20 Notwithstanding any other provision of this section, if the
21 Secretary determines that any portion of a request for a
22 hearing under this section or section 6320 meets the re-
23 quirement of clause (i) or (ii) of section 6702(b)(2)(A),
24 then the Secretary may treat such portion as if it were

1 never submitted and such portion shall not be subject to
 2 any further administrative or judicial review.”

3 (2) PRECLUSION FROM RAISING FRIVOLOUS
 4 ISSUES AT HEARING.—Section 6330(c)(4) is amend-
 5 ed—

6 (A) by striking “(A)” and inserting
 7 “(A)(i)”;

8 (B) by striking “(B)” and inserting “(ii)”;

9 (C) by striking the period at the end of the
 10 first sentence and inserting “; or”; and

11 (D) by inserting after subparagraph (A)(ii)
 12 (as so redesignated) the following:

13 “(B) the issue meets the requirement of
 14 clause (i) or (ii) of section 6702(b)(2)(A).”

15 (3) STATEMENT OF GROUNDS.—Section
 16 6330(b)(1) is amended by striking “under sub-
 17 section (a)(3)(B)” and inserting “in writing under
 18 subsection (a)(3)(B) and states the grounds for the
 19 requested hearing”.

20 (c) TREATMENT OF FRIVOLOUS REQUESTS FOR
 21 HEARINGS UPON FILING OF NOTICE OF LIEN.—Section
 22 6320 is amended—

23 (1) in subsection (b)(1), by striking “under sub-
 24 section (a)(3)(B)” and inserting “in writing under

1 subsection (a)(3)(B) and states the grounds for the
2 requested hearing”, and

3 (2) in subsection (c), by striking “and (e)” and
4 inserting “(e), and (g)”.

5 (d) TREATMENT OF FRIVOLOUS APPLICATIONS FOR
6 OFFERS-IN-COMPROMISE AND INSTALLMENT AGREE-
7 MENTS.—Section 7122 is amended by adding at the end
8 the following new subsection:

9 “(e) FRIVOLOUS SUBMISSIONS, ETC.—Notwith-
10 standing any other provision of this section, if the Sec-
11 retary determines that any portion of an application for
12 an offer-in-compromise or installment agreement sub-
13 mitted under this section or section 6159 meets the re-
14 quirement of clause (i) or (ii) of section 6702(b)(2)(A),
15 then the Secretary may treat such portion as if it were
16 never submitted and such portion shall not be subject to
17 any further administrative or judicial review.”

18 (e) CLERICAL AMENDMENT.—The table of sections
19 for part I of subchapter B of chapter 68 is amended by
20 striking the item relating to section 6702 and inserting
21 the following new item:

“Sec. 6702. Frivolous tax submissions.”

22 (f) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to submissions made and issues
24 raised after the date on which the Secretary first pre-

1 scribes a list under section 6702(e) of the Internal Rev-
2 enue Code of 1986, as amended by subsection (a).

3 **SEC. 1114. REGULATION OF INDIVIDUALS PRACTICING BE-**
4 **FORE THE DEPARTMENT OF TREASURY.**

5 (a) CENSURE; IMPOSITION OF PENALTY.—

6 (1) IN GENERAL.—Section 330(b) of title 31,
7 United States Code, is amended—

8 (A) by inserting “, or censure,” after “De-
9 partment”, and

10 (B) by adding at the end the following new
11 flush sentence:

12 “The Secretary may impose a monetary penalty on any
13 representative described in the preceding sentence. If the
14 representative was acting on behalf of an employer or any
15 firm or other entity in connection with the conduct giving
16 rise to such penalty, the Secretary may impose a monetary
17 penalty on such employer, firm, or entity if it knew, or
18 reasonably should have known, of such conduct. Such pen-
19 alty shall not exceed the gross income derived (or to be
20 derived) from the conduct giving rise to the penalty and
21 may be in addition to, or in lieu of, any suspension, disbar-
22 ment, or censure.”

23 (2) EFFECTIVE DATE.—The amendments made
24 by this subsection shall apply to actions taken after
25 the date of the enactment of this Act.

1 (b) TAX SHELTER OPINIONS, ETC.—Section 330 of
2 such title 31 is amended by adding at the end the fol-
3 lowing new subsection:

4 “(d) Nothing in this section or in any other provision
5 of law shall be construed to limit the authority of the Sec-
6 retary of the Treasury to impose standards applicable to
7 the rendering of written advice with respect to any entity,
8 transaction plan or arrangement, or other plan or arrange-
9 ment, which is of a type which the Secretary determines
10 as having a potential for tax avoidance or evasion.”

11 **SEC. 1115. PENALTY ON PROMOTERS OF TAX SHELTERS.**

12 (a) PENALTY ON PROMOTING ABUSIVE TAX SHEL-
13 TERS.—Section 6700(a) is amended by adding at the end
14 the following new sentence: “Notwithstanding the first
15 sentence, if an activity with respect to which a penalty
16 imposed under this subsection involves a statement de-
17 scribed in paragraph (2)(A), the amount of the penalty
18 shall be equal to 50 percent of the gross income derived
19 (or to be derived) from such activity by the person on
20 which the penalty is imposed.”

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

1 **SEC. 1116. STATUTE OF LIMITATIONS FOR TAXABLE YEARS**
2 **FOR WHICH LISTED TRANSACTIONS NOT RE-**
3 **PORTED.**

4 (a) IN GENERAL.—Section 6501(e)(1) (relating to
5 substantial omission of items for income taxes) is amended
6 by adding at the end the following new subparagraph:

7 “(C) LISTED TRANSACTIONS.—If a tax-
8 payer fails to include on any return or state-
9 ment for any taxable year any information with
10 respect to a listed transaction (as defined in
11 section 6707A(e)(2)) which is required under
12 section 6011 to be included with such return or
13 statement, the tax for such taxable year may be
14 assessed, or a proceeding in court for collection
15 of such tax may be begun without assessment,
16 at any time within 6 years after the time the
17 return is filed. This subparagraph shall not
18 apply to any taxable year if the time for assess-
19 ment or beginning the proceeding in court has
20 expired before the time a transaction is treated
21 as a listed transaction under section 6011.”

22 (b) EFFECTIVE DATE.—The amendment made by
23 this section shall apply to transactions after the date of
24 the enactment of this Act in taxable years ending after
25 such date.

1 **SEC. 1117. DENIAL OF DEDUCTION FOR INTEREST ON UN-**
2 **DERPAYMENTS ATTRIBUTABLE TO NONDIS-**
3 **CLOSED REPORTABLE AND NONECONOMIC**
4 **SUBSTANCE TRANSACTIONS.**

5 (a) IN GENERAL.—Section 163 (relating to deduction
6 for interest) is amended by redesignating subsection (m)
7 as subsection (n) and by inserting after subsection (l) the
8 following new subsection:

9 “(m) INTEREST ON UNPAID TAXES ATTRIBUTABLE
10 TO NONDISCLOSED REPORTABLE TRANSACTIONS AND
11 NONECONOMIC SUBSTANCE TRANSACTIONS.—No deduc-
12 tion shall be allowed under this chapter for any interest
13 paid or accrued under section 6601 on any underpayment
14 of tax which is attributable to—

15 “(1) the portion of any reportable transaction
16 understatement (as defined in section 6662A(b))
17 with respect to which the requirement of section
18 6664(d)(2)(A) is not met, or

19 “(2) any noneconomic substance transaction
20 understatement (as defined in section 6662B(c)).”

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

1 **Subtitle B—Other Provisions**

2 **SEC. 1121. LIMITATION ON TRANSFER OR IMPORTATION OF**
3 **BUILT-IN LOSSES.**

4 (a) IN GENERAL.—Section 362 (relating to basis to
5 corporations) is amended by adding at the end the fol-
6 lowing new subsection:

7 “(e) LIMITATIONS ON BUILT-IN LOSSES.—

8 “(1) LIMITATION ON IMPORTATION OF BUILT-
9 IN LOSSES.—

10 “(A) IN GENERAL.—If in any transaction
11 described in subsection (a) or (b) there would
12 (but for this subsection) be an importation of a
13 net built-in loss, the basis of each property de-
14 scribed in subparagraph (B) which is acquired
15 in such transaction shall (notwithstanding sub-
16 sections (a) and (b)) be its fair market value
17 immediately after such transaction.

18 “(B) PROPERTY DESCRIBED.—For pur-
19 poses of subparagraph (A), property is de-
20 scribed in this paragraph if—

21 “(i) gain or loss with respect to such
22 property is not subject to tax under this
23 subtitle in the hands of the transferor im-
24 mediately before the transfer, and

1 “(ii) gain or loss with respect to such
2 property is subject to such tax in the
3 hands of the transferee immediately after
4 such transfer.

5 In any case in which the transferor is a part-
6 nership, the preceding sentence shall be applied
7 by treating each partner in such partnership as
8 holding such partner’s proportionate share of
9 the property of such partnership.

10 “(C) IMPORTATION OF NET BUILT-IN
11 LOSS.—For purposes of subparagraph (A),
12 there is an importation of a net built-in loss in
13 a transaction if the transferee’s aggregate ad-
14 justed bases of property described in subpara-
15 graph (B) which is transferred in such trans-
16 action would (but for this paragraph) exceed
17 the fair market value of such property imme-
18 diately after such transaction.”

19 “(2) LIMITATION ON TRANSFER OF BUILT-IN
20 LOSSES IN SECTION 351 TRANSACTIONS.—

21 “(A) IN GENERAL.—If—

22 “(i) property is transferred in any
23 transaction which is described in sub-
24 section (a) and which is not described in
25 paragraph (1) of this subsection, and

1 “(ii) the transferee’s aggregate ad-
2 justed bases of the property so transferred
3 would (but for this paragraph) exceed the
4 fair market value of such property imme-
5 diately after such transaction,
6 then, notwithstanding subsection (a), the trans-
7 feree’s aggregate adjusted bases of the property
8 so transferred shall not exceed the fair market
9 value of such property immediately after such
10 transaction.

11 “(B) ALLOCATION OF BASIS REDUC-
12 TION.—The aggregate reduction in basis by
13 reason of subparagraph (A) shall be allocated
14 among the property so transferred in proportion
15 to their respective built-in losses immediately
16 before the transaction.

17 “(C) EXCEPTION FOR TRANSFERS WITHIN
18 AFFILIATED GROUP.—Subparagraph (A) shall
19 not apply to any transaction if the transferor
20 owns stock in the transferee meeting the re-
21 quirements of section 1504(a)(2). In the case of
22 property to which subparagraph (A) does not
23 apply by reason of the preceding sentence, the
24 transferor’s basis in the stock received for such

1 property shall not exceed its fair market value
2 immediately after the transfer.”

3 (b) COMPARABLE TREATMENT WHERE LIQUIDA-
4 TION.—Paragraph (1) of section 334(b) (relating to liq-
5 uidation of subsidiary) is amended to read as follows:

6 “(1) IN GENERAL.—If property is received by a
7 corporate distributee in a distribution in a complete
8 liquidation to which section 332 applies (or in a
9 transfer described in section 337(b)(1)), the basis of
10 such property in the hands of such distributee shall
11 be the same as it would be in the hands of the trans-
12 feror; except that the basis of such property in the
13 hands of such distributee shall be the fair market
14 value of the property at the time of the distribu-
15 tion—

16 “(A) in any case in which gain or loss is
17 recognized by the liquidating corporation with
18 respect to such property, or

19 “(B) in any case in which the liquidating
20 corporation is a foreign corporation, the cor-
21 porate distributee is a domestic corporation,
22 and the corporate distributee’s aggregate ad-
23 justed bases of property described in section
24 362(e)(1)(B) which is distributed in such liq-
25 uidation would (but for this subparagraph) ex-

1 ceed the fair market value of such property im-
2 mediately after such liquidation.”

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

6 **SEC. 1122. DISALLOWANCE OF CERTAIN PARTNERSHIP**
7 **LOSS TRANSFERS.**

8 (a) TREATMENT OF CONTRIBUTED PROPERTY WITH
9 BUILT-IN LOSS.—Paragraph (1) of section 704(c) is
10 amended by striking “and” at the end of subparagraph
11 (A), by striking the period at the end of subparagraph
12 (B) and inserting “, and”, and by adding at the end the
13 following:

14 “(C) if any property so contributed has a
15 built-in loss—

16 “(i) such built-in loss shall be taken
17 into account only in determining the
18 amount of items allocated to the contrib-
19 uting partner, and

20 “(ii) except as provided in regulations,
21 in determining the amount of items allo-
22 cated to other partners, the basis of the
23 contributed property in the hands of the
24 partnership shall be treated as being equal

1 to its fair market value immediately after
2 the contribution.

3 For purposes of subparagraph (C), the term ‘built-
4 in loss’ means the excess of the adjusted basis of the
5 property (determined without regard to subpara-
6 graph (C)(ii)) over its fair market value immediately
7 after the contribution.”

8 (b) ADJUSTMENT TO BASIS OF PARTNERSHIP PROP-
9 ERTY ON TRANSFER OF PARTNERSHIP INTEREST IF
10 THERE IS SUBSTANTIAL BUILT-IN LOSS.—

11 (1) ADJUSTMENT REQUIRED.—Subsection (a)
12 of section 743 (relating to optional adjustment to
13 basis of partnership property) is amended by insert-
14 ing before the period “or unless the partnership has
15 a substantial built-in loss immediately after such
16 transfer”.

17 (2) ADJUSTMENT.—Subsection (b) of section
18 743 is amended by inserting “or with respect to
19 which there is a substantial built-in loss immediately
20 after such transfer” after “section 754 is in effect”.

21 (3) SUBSTANTIAL BUILT-IN LOSS.—Section 743
22 is amended by adding at the end the following new
23 subsection:

24 “(d) SUBSTANTIAL BUILT-IN LOSS.—

1 “(1) IN GENERAL.—For purposes of this sec-
 2 tion, a partnership has a substantial built-in loss
 3 with respect to a transfer of an interest in a part-
 4 nership if the transferee partner’s proportionate
 5 share of the adjusted basis of the partnership prop-
 6 erty exceeds by more than \$250,000 the basis of
 7 such partner’s interest in the partnership.

8 “(2) REGULATIONS.—The Secretary shall pre-
 9 scribe such regulations as may be appropriate to
 10 carry out the purposes of paragraph (1) and section
 11 734(d), including regulations aggregating related
 12 partnerships and disregarding property acquired by
 13 the partnership in an attempt to avoid such pur-
 14 poses.”

15 (4) CLERICAL AMENDMENTS.—

16 (A) The section heading for section 743 is
 17 amended to read as follows:

18 **“SEC. 743. ADJUSTMENT TO BASIS OF PARTNERSHIP PROP-**
 19 **ERTY WHERE SECTION 754 ELECTION OR**
 20 **SUBSTANTIAL BUILT-IN LOSS.”**

21 (B) The table of sections for subpart C of
 22 part II of subchapter K of chapter 1 is amend-
 23 ed by striking the item relating to section 743
 24 and inserting the following new item:

 “Sec. 743. Adjustment to basis of partnership property where sec-
 tion 754 election or substantial built-in loss.”

1 (c) ADJUSTMENT TO BASIS OF UNDISTRIBUTED
2 PARTNERSHIP PROPERTY IF THERE IS SUBSTANTIAL
3 BASIS REDUCTION.—

4 (1) ADJUSTMENT REQUIRED.—Subsection (a)
5 of section 734 (relating to optional adjustment to
6 basis of undistributed partnership property) is
7 amended by inserting before the period “or unless
8 there is a substantial basis reduction”.

9 (2) ADJUSTMENT.—Subsection (b) of section
10 734 is amended by inserting “or unless there is a
11 substantial basis reduction” after “section 754 is in
12 effect”.

13 (3) SUBSTANTIAL BASIS REDUCTION.—Section
14 734 is amended by adding at the end the following
15 new subsection:

16 “(d) SUBSTANTIAL BASIS REDUCTION.—

17 “(1) IN GENERAL.—For purposes of this sec-
18 tion, there is a substantial basis reduction with re-
19 spect to a distribution if the sum of the amounts de-
20 scribed in subparagraphs (A) and (B) of subsection
21 (b)(2) exceeds \$250,000.

22 “(2) REGULATIONS.—

“For regulations to carry out this subsection, see
section 743(d)(2).”

23 (4) CLERICAL AMENDMENTS.—

1 (A) The section heading for section 734 is
 2 amended to read as follows:

3 **“SEC. 734. ADJUSTMENT TO BASIS OF UNDISTRIBUTED**
 4 **PARTNERSHIP PROPERTY WHERE SECTION**
 5 **754 ELECTION OR SUBSTANTIAL BASIS RE-**
 6 **DUCTION.”**

7 (B) The table of sections for subpart B of
 8 part II of subchapter K of chapter 1 is amend-
 9 ed by striking the item relating to section 734
 10 and inserting the following new item:

“Sec. 734. Adjustment to basis of undistributed partnership prop-
 erty where section 754 election or substantial basis
 reduction.”

11 (d) EFFECTIVE DATES.—

12 (1) SUBSECTION (a).—The amendment made
 13 by subsection (a) shall apply to contributions made
 14 after the date of the enactment of this Act.

15 (2) SUBSECTION (b).—The amendments made
 16 by subsection (b) shall apply to transfers after the
 17 date of the enactment of this Act.

18 (3) SUBSECTION (c).—The amendments made
 19 by subsection (c) shall apply to distributions after
 20 the date of the enactment of this Act.

1 **SEC. 1123. NO REDUCTION OF BASIS UNDER SECTION 734 IN**
2 **STOCK HELD BY PARTNERSHIP IN COR-**
3 **PORATE PARTNER.**

4 (a) IN GENERAL.—Section 755 is amended by adding
5 at the end the following new subsection:

6 “(c) NO ALLOCATION OF BASIS DECREASE TO
7 STOCK OF CORPORATE PARTNER.—In making an alloca-
8 tion under subsection (a) of any decrease in the adjusted
9 basis of partnership property under section 734(b)—

10 “(1) no allocation may be made to stock in a
11 corporation which is a partner in the partnership,
12 and

13 “(2) any amount not allocable to stock by rea-
14 son of paragraph (1) shall be allocated under sub-
15 section (a) to other partnership property.

16 Gain shall be recognized to the partnership to the extent
17 that the amount required to be allocated under paragraph
18 (2) to other partnership property exceeds the aggregate
19 adjusted basis of such other property immediately before
20 the allocation required by paragraph (2).”

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

1 **SEC. 1124. REPEAL OF SPECIAL RULES FOR FASITS.**

2 (a) IN GENERAL.—Part V of subchapter M of chap-
3 ter 1 (relating to financial asset securitization investment
4 trusts) is hereby repealed.

5 (b) CONFORMING AMENDMENTS.—

6 (1) Paragraph (6) of section 56(g) is amended
7 by striking “REMIC, or FASIT” and inserting “or
8 REMIC”.

9 (2) Clause (ii) of section 382(l)(4)(B) is amend-
10 ed by striking “a REMIC to which part IV of sub-
11 chapter M applies, or a FASIT to which part V of
12 subchapter M applies,” and inserting “or a REMIC
13 to which part IV of subchapter M applies,”.

14 (3) Paragraph (1) of section 582(e) is amended
15 by striking “, and any regular interest in a
16 FASIT,”.

17 (4) Subparagraph (E) of section 856(e)(5) is
18 amended by striking the last sentence.

19 (5) Paragraph (5) of section 860G(a) is amend-
20 ed by adding “and” at the end of subparagraph (B),
21 by striking “, and” at the end of subparagraph (C)
22 and inserting a period, and by striking subparagraph
23 (D).

24 (6) Subparagraph (C) of section 1202(e)(4) is
25 amended by striking “REMIC, or FASIT” and in-
26 serting “or REMIC”.

1 (7) Subparagraph (C) of section 7701(a)(19) is
2 amended by adding “and” at the end of clause (ix),
3 by striking “, and” at the end of clause (x) and in-
4 serting a period, and by striking clause (xi).

5 (8) The table of parts for subchapter M of
6 chapter 1 is amended by striking the item relating
7 to part V.

8 (c) EFFECTIVE DATE.—

9 (1) IN GENERAL.—Except as provided in para-
10 graph (2), the amendments made by this section
11 shall apply to taxable years beginning after Decem-
12 ber 31, 2003.

13 (2) EXCEPTION FOR EXISTING FASITS.—

14 (A) IN GENERAL.—Paragraph (1) shall not
15 apply to any FASIT in existence on the date of
16 the enactment of this Act.

17 (B) TRANSFER OF ADDITIONAL ASSETS
18 NOT PERMITTED.—Except as provided in regu-
19 lations prescribed by the Secretary of the
20 Treasury or the Secretary’s delegate, subpara-
21 graph (A) shall cease to apply as of the earliest
22 date after the date of the enactment of this Act
23 that any property is transferred to the FASIT.

1 **SEC. 1125. EXPANDED DISALLOWANCE OF DEDUCTION FOR**
2 **INTEREST ON CONVERTIBLE DEBT.**

3 (a) IN GENERAL.—Paragraph (2) of section 163(l)
4 is amended by striking “or a related party” and inserting
5 “or equity held by the issuer (or any related party) in any
6 other person”.

7 (b) CONFORMING AMENDMENT.—Paragraph (3) of
8 section 163(l) is amended by striking “or a related party”
9 in the material preceding subparagraph (A) and inserting
10 “or any other person”.

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to debt instruments issued after
13 the date of the enactment of this Act.

14 **SEC. 1126. EXPANDED AUTHORITY TO DISALLOW TAX BENE-**
15 **FITS UNDER SECTION 269.**

16 (a) IN GENERAL.—Subsection (a) of section 269 (re-
17 lating to acquisitions made to evade or avoid income tax)
18 is amended to read as follows:

19 “(a) IN GENERAL.—If—

20 “(1)(A) any person acquires stock in a corpora-
21 tion, or

22 “(B) any corporation acquires, directly or indi-
23 rectly, property of another corporation and the basis
24 of such property, in the hands of the acquiring cor-
25 poration, is determined by reference to the basis in
26 the hands of the transferor corporation, and

1 “(2) the principal purpose for which such acqui-
2 sition was made is evasion or avoidance of Federal
3 income tax by securing the benefit of a deduction,
4 credit, or other allowance,
5 then the Secretary may disallow such deduction, credit,
6 or other allowance.”

7 (b) EFFECTIVE DATE.—The amendment made by
8 this section shall apply to stock and property acquired
9 after February 13, 2003.

10 **SEC. 1127. MODIFICATIONS OF CERTAIN RULES RELATING**
11 **TO CONTROLLED FOREIGN CORPORATIONS.**

12 (a) LIMITATION ON EXCEPTION FROM PFIC RULES
13 FOR UNITED STATES SHAREHOLDERS OF CONTROLLED
14 FOREIGN CORPORATIONS.—Paragraph (2) of section
15 1297(e) (relating to passive investment company) is
16 amended by adding at the end the following flush sen-
17 tence:

18 “Such term shall not include any period if there is
19 only a remote likelihood of an inclusion in gross in-
20 come under section 951(a)(1)(A)(i) of subpart F in-
21 come of such corporation for such period.”

22 (b) DETERMINATION OF PRO RATA SHARE OF SUB-
23 PART F INCOME.—Subsection (a) of section 951 (relating
24 to amounts included in gross income of United States

1 shareholders) is amended by adding at the end the fol-
2 lowing new paragraph:

3 “(4) SPECIAL RULES FOR DETERMINING PRO
4 RATA SHARE OF SUBPART F INCOME.—The pro rata
5 share under paragraph (2) shall be determined by
6 disregarding—

7 “(A) any rights lacking substantial eco-
8 nomic effect, and

9 “(B) stock owned by a shareholder who is
10 a tax-indifferent party (as defined in section
11 7701(m)(3)) if the amount which would (but
12 for this paragraph) be allocated to such share-
13 holder does not reflect such shareholder’s eco-
14 nomic share of the earnings and profits of the
15 corporation.”

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to taxable years on controlled for-
18 eign corporation beginning after February 13, 2003, and
19 to taxable years of United States shareholder in which or
20 with which such taxable years of controlled foreign cor-
21 porations end.

1 (b) RESULT NOT OVERTURNED.—Notwithstanding
 2 subsection (a), the Internal Revenue Code of 1986 shall
 3 be construed by treating Treasury regulation § 1.1502–
 4 20(c)(1)(iii) (as in effect on January 1, 2001) as being
 5 inapplicable to the type of factual situation in 255 F.3d
 6 1357 (Fed. Cir. 2001).

7 (c) EFFECTIVE DATE.—The provisions of this section
 8 shall apply to taxable years beginning before, on, or after
 9 the date of the enactment of this Act.

10 **SEC. 1130. EXTENSION OF CUSTOMS USER FEES.**

11 Section 13031(j)(3) of the Consolidated Omnibus
 12 Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3))
 13 is amended by striking “September 30, 2003” and insert-
 14 ing “March 31, 2010”.

15 **Subtitle C—Prevention of Cor-**
 16 **porate Expatriation To Avoid**
 17 **United States Income Tax**

18 **SEC. 1131. PREVENTION OF CORPORATE EXPATRIATION TO**

19 **AVOID UNITED STATES INCOME TAX.**

20 (a) IN GENERAL.—Paragraph (4) of section 7701(a)
 21 (defining domestic) is amended to read as follows:

22 “(4) DOMESTIC.—

23 “(A) IN GENERAL.—Except as provided in
 24 subparagraph (B), the term ‘domestic’ when ap-
 25 plied to a corporation or partnership means cre-

1 ated or organized in the United States or under
2 the law of the United States or of any State
3 unless, in the case of a partnership, the Sec-
4 retary provides otherwise by regulations.

5 “(B) CERTAIN CORPORATIONS TREATED
6 AS DOMESTIC.—

7 “(i) IN GENERAL.—The acquiring cor-
8 poration in a corporate expatriation trans-
9 action shall be treated as a domestic cor-
10 poration.

11 “(ii) CORPORATE EXPATRIATION
12 TRANSACTION.—For purposes of this sub-
13 paragraph, the term ‘corporate expatria-
14 tion transaction’ means any transaction
15 if—

16 “(I) a nominally foreign corpora-
17 tion (referred to in this subparagraph
18 as the ‘acquiring corporation’) ac-
19 quires, as a result of such transaction,
20 directly or indirectly substantially all
21 of the properties held directly or indi-
22 rectly by a domestic corporation, and

23 “(II) immediately after the trans-
24 action, more than 80 percent of the
25 stock (by vote or value) of the acquir-

1 ing corporation is held by former
2 shareholders of the domestic corpora-
3 tion by reason of holding stock in the
4 domestic corporation.

5 “(iii) LOWER STOCK OWNERSHIP RE-
6 QUIREMENT IN CERTAIN CASES.—Sub-
7 clause (II) of clause (ii) shall be applied by
8 substituting ‘50 percent’ for ‘80 percent’
9 with respect to any nominally foreign cor-
10 poration if—

11 “(I) such corporation does not
12 have substantial business activities
13 (when compared to the total business
14 activities of the expanded affiliated
15 group) in the foreign country in which
16 or under the law of which the corpora-
17 tion is created or organized, and

18 “(II) the stock of the corporation
19 is publicly traded and the principal
20 market for the public trading of such
21 stock is in the United States.

22 “(iv) PARTNERSHIP TRANSACTIONS.—
23 The term ‘corporate expatriation trans-
24 action’ includes any transaction if—

1 “(I) a nominally foreign corpora-
2 tion (referred to in this subparagraph
3 as the ‘acquiring corporation’) ac-
4 quires, as a result of such transaction,
5 directly or indirectly properties consti-
6 tuting a trade or business of a domes-
7 tic partnership,

8 “(II) immediately after the trans-
9 action, more than 80 percent of the
10 stock (by vote or value) of the acquir-
11 ing corporation is held by former
12 partners of the domestic partnership
13 or related foreign partnerships (deter-
14 mined without regard to stock of the
15 acquiring corporation which is sold in
16 a public offering related to the trans-
17 action), and

18 “(III) the acquiring corporation
19 meets the requirements of subclauses
20 (I) and (II) of clause (iii).

21 “(v) SPECIAL RULES.—For purposes
22 of this subparagraph—

23 “(I) a series of related trans-
24 actions shall be treated as 1 trans-
25 action, and

1 “(II) stock held by members of
2 the expanded affiliated group which
3 includes the acquiring corporation
4 shall not be taken into account in de-
5 termining ownership.

6 “(vi) OTHER DEFINITIONS.—For pur-
7 poses of this subparagraph—

8 “(I) NOMINALLY FOREIGN COR-
9 PORATION.—The term ‘nominally for-
10 eign corporation’ means any corpora-
11 tion which would (but for this sub-
12 paragraph) be treated as a foreign
13 corporation.

14 “(II) EXPANDED AFFILIATED
15 GROUP.—The term ‘expanded affili-
16 ated group’ means an affiliated group
17 (as defined in section 1504(a) without
18 regard to section 1504(b)).

19 “(III) RELATED FOREIGN PART-
20 NERSHIP.—A foreign partnership is
21 related to a domestic partnership if
22 they are under common control (with-
23 in the meaning of section 482), or
24 they shared the same trademark or
25 tradename.”

1 (b) EFFECTIVE DATES.—

2 (1) IN GENERAL.—The amendment made by
3 this section shall apply to corporate expatriation
4 transactions completed after September 11, 2001.

5 (2) SPECIAL RULE.—The amendment made by
6 this section shall also apply to corporate expatriation
7 transactions completed on or before September 11,
8 2001, but only with respect to taxable years of the
9 acquiring corporation beginning after December 31,
10 2003.

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