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1ST SESSION

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IN THE SENATE OF THE UNITED STATES

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Received

AN ACT

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

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''American Recovery and Reinvestment Act of 2009''.

SEC. 2. TABLE OF CONTENTS.

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SEC. 3. PURPOSES AND PRINCIPLES.

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

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

(2) To assist those most impacted by the recession.

(3) To provide investments needed to increase economic efficiency by spurring technological advances in science and health.

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

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

(b) GENERAL PRINCIPLES CONCERNING USE OF FUNDS.—The President and the heads of Federal departments and agencies shall manage and expend the funds made available in this Act so as to achieve the purposes specified in subsection (a), including commencing expenditures and activities as quickly as possible consistent with prudent management.

SEC. 4. REFERENCES.

Except as expressly provided otherwise, any reference to ''this Act'' contained in any division of this Act shall be treated as referring only to the provisions of that division.

SEC. 5. EMERGENCY DESIGNATIONS.

(a) IN GENERAL.—Each amount in this Act is designated as an emergency requirement and necessary to

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

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

DIVISION A—APPROPRIATION PROVISIONS

SEC. 1001. STATEMENT OF APPROPRIATIONS.

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

TITLE I—GENERAL PROVISIONS

Subtitle A—Use of Funds

SEC. 1101. RELATIONSHIP TO OTHER APPROPRIATIONS.

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

SEC. 1102. PREFERENCE FOR QUICK-START ACTIVITIES.

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

SEC. 1103. REQUIREMENT OF TIMELY AWARD OF GRANTS.

(a) FORMULA GRANTS.—Formula grants using funds made available in this Act shall be awarded not later than 30 days after the date of the enactment of this Act (or, in the case of appropriations not available upon enactment, not later than 30 days after the appropriation becomes available for obligation), unless expressly provided otherwise in this Act.

(b) COMPETITIVE GRANTS.—Competitive grants using funds made available in this Act shall be awarded not later than 90 days after the date of the enactment of this Act (or, in the case of appropriations not available upon enactment, not later than 90 days after the appropriation becomes available for obligation), unless expressly provided otherwise in this Act.

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

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

SEC. 1104. USE IT OR LOSE IT REQUIREMENTS FOR GRANTEES.

(a) DEADLINE FOR BINDING COMMITMENTS.—Each recipient of a grant made using amounts made available in this Act in any account listed in subsection (c) shall enter into contracts or other binding commitments not later than 1 year after the date of the enactment of this Act (or not later than 9 months after the grant is awarded, if later) to make use of 50 percent of the funds awarded, and shall enter into contracts or other binding commitments not later than 2 years after the date of the enactment of this Act (or not later than 21 months after the grant is awarded, if later) to make use of the remaining funds. In the case of activities to be carried out directly by a grant recipient (rather than by contracts, subgrants, or other arrangements with third parties), a certification by the recipient specifying the amounts, planned timing, and purpose of such expenditures shall be deemed a binding commitment for purposes of this section.

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

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

(c) APPROPRIATIONS TO WHICH THIS SECTION APPLIES.—This section shall apply to grants made using amounts appropriated in any of the following accounts within this Act:

(1) ''Environmental Protection Agency—State and Tribal Assistance Grants''.

(2) ''Department of Transportation—Federal Aviation Administration—Grants-in-Aid for Airports''.

(3) ''Department of Transportation—Federal Railroad Administration—Capital Assistance for Intercity Passenger Rail Service''.

(4) ''Department of Transportation—Federal Transit Administration—Capital Investment Grants''.

(5) ''Department of Transportation—Federal Transit Administration—Fixed Guideway Infrastructure Investment''.

(6) ''Department of Transportation—Federal Transit Administration—Transit Capital Assistance''.

(7) ''Department of Housing and Urban Development—Public and Indian Housing—Public Housing Capital Fund''.

(8) ''Department of Housing and Urban Development—Public and Indian Housing—Elderly, Disabled, and Section 8 Assisted Housing Energy Retrofit''.

(9) ''Department of Housing and Urban Development—Public and Indian Housing—Native American Housing Block Grants''.

(10) ''Department of Housing and Urban Development—Community Planning and Development—HOME Investment Partnerships Program''.

(11) ''Department of Housing and Urban Development—Community Planning and Development—Self-Help and Assisted Homeownership Opportunity Program''.

SEC. 1105. PERIOD OF AVAILABILITY.

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

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

section (a), reobligated for other activities that have received funding from the same account or appropriation in such title.

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

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

SEC. 1107. APPROPRIATIONS FOR INSPECTORS GENERAL.

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

(1) ''Department of Agriculture—Office of Inspector General'', $22,500,000.

(2) ''Department of Commerce—Office of Inspector General'', $10,000,000.

(3) ''Department of Defense—Office of the Inspector General'', $15,000,000.

(4) ''Department of Education—Departmental Management—Office of the Inspector General'', $14,000,000.

(5) ''Department of Energy—Office of Inspector General'', $15,000,000.

(6) ''Department of Health and Human Services—Office of the Secretary—Office of Inspector General'', $19,000,000.

(7) ''Department of Homeland Security—Office of Inspector General'', $2,000,000.

(8) ''Department of Housing and Urban Development—Management and Administration—Office of Inspector General'', $15,000,000.

(9) ''Department of the Interior—Office of Inspector General'', $15,000,000.

(10) ''Department of Justice—Office of Inspector General'', $2,000,000.

(11) ''Department of Labor—Departmental Management—Office of Inspector General'', $6,000,000.

(12) ''Department of Transportation—Office of Inspector General'', $20,000,000.

(13) ''Department of Veterans Affairs—Office of Inspector General'', $1,000,000.

(14) ''Environmental Protection Agency—Office of Inspector General'', $20,000,000.

(15) ''General Services Administration—General Activities—Office of Inspector General'', $15,000,000.

(16) ''National Aeronautics and Space Administration—Office of Inspector General'', $2,000,000.

(17) ''National Science Foundation—Office of Inspector General'', $2,000,000.

(18) ''Small Business Administration—Office of Inspector General'', $10,000,000.

(19) ''Social Security Administration—Office of Inspector General'', $2,000,000.

(20) ''Corporation for National and Community Service—Office of Inspector General'', $1,000,000.

SEC. 1108. APPROPRIATION FOR GOVERNMENT ACCOUNTABILITY OFFICE.

There is hereby appropriated as an additional amount for ''Government Accountability Office—Salaries and Expenses'' $25,000,000, for oversight activities relating to this Act.

SEC. 1109. PROHIBITED USES.

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

SEC. 1110. USE OF AMERICAN IRON AND STEEL.

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

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

(1) applying subsection (a) would be inconsistent with the public interest;

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

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

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

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

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

SEC. 1111. WAGE RATE REQUIREMENTS.

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

SEC. 1112. ADDITIONAL ASSURANCE OF APPROPRIATE USE OF FUNDS.

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

SEC. 1113. PERSISTENT POVERTY COUNTIES.

(a) ALLOCATION REQUIREMENT.—Of the amount appropriated in this Act for ''Department of Agriculture—Rural Development Programs—Rural Community Advancement Program'', at least 10 percent shall be allocated for assistance in persistent poverty counties.

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

SEC. 1114. REQUIRED PARTICIPATION IN E-VERIFY PROGRAM.

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

SEC. 1115. ADDITIONAL FUNDING DISTRIBUTION AND ASSURANCE OF APPROPRIATE USE OF FUNDS.

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

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

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

Subtitle B—Accountability in Recovery Act Spending

PART 1—TRANSPARENCY AND OVERSIGHT REQUIREMENTS

SEC. 1201. TRANSPARENCY REQUIREMENTS.

(a) REQUIREMENTS FOR FEDERAL AGENCIES.—Each Federal agency shall publish on the website Recovery.gov (as established under section 1226 of this subtitle)—

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

(2) all announcements for grant competitions, allocations of formula grants, and awards of competitive grants using those funds.

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

(1) INFRASTRUCTURE INVESTMENT FUNDING.—With respect to funds made available under this Act for infrastructure investments to Federal, State, or local government agencies, the following requirements apply:

(A) Each such agency shall notify the public of funds obligated to particular infrastructure investments by posting the notification on the website Recovery.gov.

(B) The notification required by subparagraph (A) shall include the following:

(i) A description of the infrastructure investment funded.

(ii) The purpose of the infrastructure investment.

(iii) The total cost of the infrastructure investment.

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

(v) The name of the person to contact at the agency if there are concerns with the infrastructure investment and, with respect to Federal agencies, an email address for the Federal official in the agency whom the public can contact.

(vi) In the case of State or local agencies, a certification from the Governor, mayor, or other chief executive, as appropriate, that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of

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

(2) OPERATIONAL FUNDING.—With respect to funds made available under this Act in the form of grants for operational purposes to State or local government agencies or other organizations, the agency or organization shall publish on the website Recovery.gov a description of the intended use of the funds, including the number of jobs sustained or created.

(c) AVAILABILITY ON INTERNET OF CONTRACTS AND GRANTS.—Each contract awarded or grant issued using funds made available in this Act shall be posted on the Internet and linked to the website Recovery.gov. Proprietary data that is required to be kept confidential under applicable Federal or State law or regulation shall be redacted before posting.

SEC. 1202. INSPECTOR GENERAL REVIEWS.

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

view shall be relayed immediately to the head of each department and agency. In addition, the findings of such reviews, along with any audits conducted by any inspector general of funds made available in this Act, shall be posted on the Internet and linked to the website Recovery.gov.

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

SEC. 1203. GOVERNMENT ACCOUNTABILITY OFFICE REVIEWS AND REPORTS.

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

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

SEC. 1204. COUNCIL OF ECONOMIC ADVISERS REPORTS.

The Chairman of the Council of Economic Advisers, in consultation with the Director of the Office of Management and Budget and the Secretary of the Treasury, shall submit quarterly reports to Congress detailing the esti-

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

SEC. 1205. SPECIAL CONTRACTING PROVISIONS.

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

PART 2—ACCOUNTABILITY AND TRANSPARENCY BOARD

SEC. 1221. ESTABLISHMENT OF THE ACCOUNTABILITY AND TRANSPARENCY BOARD.

There is established a board to be known as the ''Recovery Act Accountability and Transparency Board'' (hereafter in this subtitle referred to as the ''Board'') to coordinate and conduct oversight of Federal spending under this Act to prevent waste, fraud, and abuse.

SEC. 1222. COMPOSITION OF BOARD.

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

(1) The Chief Performance Officer of the President, who shall chair the Board.

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

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

SEC. 1223. FUNCTIONS OF THE BOARD.

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

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

(2) Verifying that competition requirements applicable to contracts and grants under this Act and other applicable Federal law have been satisfied.

(3) Investigating spending under this Act to determine whether wasteful spending, poor contract or grant management, or other abuses are occurring.

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

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

(b) REPORTS.—

(1) FLASH AND OTHER REPORTS.—The Board shall submit to Congress reports, to be known as ''flash reports'', on potential management and funding problems that require immediate attention. The Board also shall submit to Congress such other reports as the Board considers appropriate on the use and benefits of funds made available in this Act.

(2) QUARTERLY.—The Board shall submit to the President and Congress quarterly reports summarizing its findings and the findings of agency inspectors general and may issue additional reports as appropriate.

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

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

(c) RECOMMENDATIONS TO AGENCIES.—The Board shall make recommendations to Federal agencies on measures to prevent waste, fraud, and abuse. A Federal agency shall, within 30 days after receipt of any such recommendation, submit to the Board, the President, and the congressional committees of jurisdiction a report on whether the agency agrees or disagrees with the recommendations and what steps, if any, the agency plans to take to implement the recommendations.

SEC. 1224. POWERS OF THE BOARD.

(a) COORDINATION OF AUDITS AND INVESTIGATIONS BY AGENCY INSPECTORS GENERAL.—The Board shall coordinate the audits and investigations of spending under this Act by agency inspectors general.

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

(c) MEETINGS.—The Board may, for the purpose of carrying out its duties under this Act, hold public meetings, sit and act at times and places, and receive information as the Board considers appropriate. The Board shall meet at least once a month.

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

(e) CONTRACTS.—The Board may enter into contracts to enable the Board to discharge its duties under this Act.

SEC. 1225. STAFFING.

(a) EXECUTIVE DIRECTOR.—The Chairman of the Board may appoint and fix the compensation of an executive director and other personnel as may be required to carry out the functions of the Board. The Director shall be paid at the rate of basic pay for level IV of the Executive Schedule.

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

the Board without reimbursement from the Board, and such detailed staff shall retain the rights, status, and privileges of his or her regular employment without interruption.

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

SEC. 1226. RECOVERY.GOV.

(a) REQUIREMENT TO ESTABLISH WEBSITE.—The Board shall establish and maintain a website on the Internet to be named Recovery.gov, to foster greater accountability and transparency in the use of funds made available in this Act.

(b) PURPOSE.—Recovery.gov shall be a portal or gateway to key information related to this Act and provide a window to other Government websites with related information.

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

(1) The website shall provide materials explaining what this Act means for citizens. The materials shall be easy to understand and regularly updated.

(2) The website shall provide accountability information, including a database of findings from audits, inspectors general, and the Government Accountability Office.

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

(4) The website shall provide detailed data on contracts awarded by the Government for purposes of carrying out this Act, including information about the competitiveness of the contracting process, notification of solicitations for contracts to be awarded, and information about the process that was used for the award of contracts.

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

(6) The website shall provide a means for the public to give feedback on the performance of contracts awarded for purposes of carrying out this Act.

(7) The website shall be enhanced and updated as necessary to carry out the purposes of this subtitle.

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

tion about local employment agencies; state, local and other public agencies receiving funding; and private firms contracted to perform work funded by this Act.

SEC. 1227. PRESERVATION OF THE INDEPENDENCE OF INSPECTORS GENERAL.

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

SEC. 1228. COORDINATION WITH THE COMPTROLLER GENERAL AND STATE AUDITORS.

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

SEC. 1229. INDEPENDENT ADVISORY PANEL.

(a) ESTABLISHMENT.—There is established a panel to be known as the ''Independent Advisory Panel'' to advise the Board.

(b) MEMBERSHIP.—The Panel shall be composed of five members appointed by the President from among individuals with expertise in economics, public finance, contracting, accounting, or other relevant fields.

(c) FUNCTIONS.—The Panel shall make recommendations to the Board on actions the Board could take to prevent waste, fraud, and abuse in Federal spending under this Act.

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

SEC. 1230. FUNDING.

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

SEC. 1231. BOARD TERMINATION.

The Board shall terminate 12 months after 90 percent of the funds made available under this Act have been expended, as determined by the Director of the Office of Management and Budget.

PART 3—ADDITIONAL ACCOUNTABILITY AND TRANSPARENCY PROVISIONS

SEC. 1241. LIMITATION ON THE LENGTH OF CERTAIN NON-COMPETITIVE CONTRACTS.

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

(1) may exceed the time necessary—

(A) to meet the unusual and compelling requirements of the work to be performed under the contract; and

(B) for the executive agency to enter into another contract for the required goods or services through the use of competitive procedures; and

(2) may exceed one year unless the head of the executive agency entering into such contract determines that exceptional circumstances apply.

SEC. 1242. ACCESS OF GOVERNMENT ACCOUNTABILITY OFFICE AND OFFICES OF INSPECTOR GENERAL TO CERTAIN EMPLOYEES.

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

(1) to examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and

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

(b) RELATIONSHIP TO EXISTING AUTHORITY.—Nothing in this section shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General or an Inspector General.

SEC. 1243. PROTECTING STATE AND LOCAL GOVERNMENT AND CONTRACTOR WHISTLEBLOWERS.

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

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

(1) gross mismanagement of an executive agency contract or grant;

(2) a gross waste of executive agency funds;

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

(4) a violation of law related to an executive agency contract (including the competition for or negotiation of a contract) or grant awarded or issued to carry out this Act.

(b) INVESTIGATION OF COMPLAINTS.—

(1) A person who believes that the person has been subjected to a reprisal prohibited by subsection (a) may submit a complaint to the inspector general of the executive agency that awarded the contract or issued the grant. Unless the inspector general determines that the complaint is frivolous, the inspector general shall investigate the complaint and, upon completion of such investigation, submit a report of the findings of the investigation to the person, the person's employer, the head of the Federal agency

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

(2)(A) Except as provided under subparagraph (B), the inspector general shall make a determination that a complaint is frivolous or submit a report under paragraph (1) within 180 days after receiving the complaint.

(B) If the inspector general is unable to complete an investigation in time to submit a report within the 180-day period specified in subparagraph (A) and the person submitting the complaint agrees to an extension of time, the inspector general shall submit a report under paragraph (1) within such additional period of time as shall be agreed upon between the inspector general and the person submitting the complaint.

(c) REMEDY AND ENFORCEMENT AUTHORITY.—

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

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

(B) Order the employer to reinstate the person to the position that the person held before the reprisal, together with the compensation (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

(C) Order the employer to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal, as determined by the head of the agency.

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

complainant shall be deemed to have exhausted all administrative remedies with respect to the complaint, and the complainant may bring a de novo action at law or equity against the employer to seek compensatory damages and other relief available under this section in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy. Such an action shall, at the request of either party to the action, be tried by the court with a jury.

(3) An inspector general determination and an agency head order denying relief under paragraph (2) shall be admissible in evidence in any de novo action at law or equity brought pursuant to this subsection.

(4) Whenever a person fails to comply with an order issued under paragraph (1), the head of the agency shall file an action for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this paragraph, the court may grant appropriate relief, including injunctive relief and compensatory and exemplary damages.

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

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

(e) DEFINITIONS.—

(1) NON-FEDERAL EMPLOYER RECEIVING FUNDS UNDER THIS ACT.—The term ''non-Federal employer receiving funds made available in this Act'' means—

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

may be, if the contractor or grantee is an employer; or

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

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

(3) STATE OR LOCAL GOVERNMENT.—The term ''State or local government'' means—

(A) the government of each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or any other territory or possession of the United States; or

(B) the government of any political subdivision of a government listed in subparagraph (A).

PART 4—FURTHER ACCOUNTABILITY AND TRANSPARENCY PROVISIONS

SEC. 1261. SHORT TITLE; TABLE OF CONTENTS.

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

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

PART 4—FURTHER ACCOUNTABILITY AND TRANSPARENCY PROVISIONS

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

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

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

6 (1) in subparagraph (A)—

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

(B) in clause (i), by striking ''a violation'' and inserting ''any violation''; and

(2) in subparagraph (B)—

(A) by striking ''which the employee or applicant reasonably believes evidences'' and inserting '', without restriction as to time, place, form, motive, context, forum, or prior disclosure made to any person by an employee or applicant, including a disclosure made in the ordinary course of an employee's duties, of information that the employee or applicant reasonably believes is evidence of''; and

(B) in clause (i), by striking ''a violation'' and inserting ''any violation (other than a violation of this section)''.

(b) PROHIBITED PERSONNEL PRACTICES UNDER SECTION 2302(b)(9).—Title 5, United States Code, is amended in subsections (a)(3), (b)(4)(A), and (b)(4)(B)(i) of section 1214 and in subsections (a) and (e)(1) of section 1221 by inserting ''or 2302(b)(9)(B)–(D)'' after ''section 2302(b)(8)'' each place it appears.

SEC. 1263. DEFINITIONAL AMENDMENTS.

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

(1) in subparagraph (B)(ii), by striking ''and'' at the end;

(2) in subparagraph (C)(iii), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(D) 'disclosure' means a formal or informal communication, but does not include a communication concerning policy decisions that lawfully exercise discretionary authority unless the employee or applicant providing the disclosure reasonably believes that the disclosure evidences—

''(i) any violation of any law, rule, or regulation; or

''(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.''.

(b) CLEAR AND CONVINCING EVIDENCE.—Sections 1214(b)(4)(B)(ii) and 1221(e)(2) of title 5, United States Code, are amended by adding at the end the following: ''For purposes of the preceding sentence, 'clear and convincing evidence' means evidence indicating that the matter to be proved is highly probable or reasonably certain.''.

SEC. 1264. REBUTTABLE PRESUMPTION.

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

poses of paragraph (8), any presumption relating to the performance of a duty by an employee who has authority to take, direct others to take, recommend, or approve any personnel action may be rebutted by substantial evidence. For purposes of paragraph (8), a determination as to whether an employee or applicant reasonably believes that such employee or applicant has disclosed information that evidences any violation of law, rule, regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety shall be made by determining whether a disinterested observer with knowledge of the essential facts known to or readily ascertainable by the employee or applicant could reasonably conclude that the actions of the Government evidence such violations, mismanagement, waste, abuse, or danger.''.

SEC. 1265. NONDISCLOSURE POLICIES, FORMS, AND AGREEMENTS.

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

(1) in clause (x), by striking ''and'' at the end;

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

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

"(xi) the implementation or enforcement of any nondisclosure policy, form, or agreement; and".

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

(1) in paragraph (11), by striking "or" at the end;

(2) by redesignating paragraph (12) as paragraph (14); and

(3) by inserting after paragraph (11) the following:

"(12) implement or enforce any nondisclosure policy, form, or agreement, if such policy, form, or agreement does not contain the following statement: 'These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12958; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code (governing disclosures to Congress by members of the military); section 2302(b)(8) of title 5, United States Code (governing disclosures of illegality, waste, fraud, abuse, or public health or safety threats); the Intelligence Identities Protection Act of

1982 (50 U.S.C. 421 and following) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosures that could compromise national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Control Act of 1950 (50 U.S.C. 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by such Executive order and such statutory provisions are incorporated into this agreement and are controlling.';

''(13) conduct, or cause to be conducted, an investigation, other than any ministerial or nondiscretionary factfinding activities necessary for the agency to perform its mission, of an employee or applicant for employment because of any activity protected under this section; or''.

SEC. 1266. EXCLUSION OF AGENCIES BY THE PRESIDENT.

Section 2302(a)(2)(C) of title 5, United States Code, is amended by striking clause (ii) and inserting the following:

''(ii)(I) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National

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

"(II) as determined by the President, any Executive agency or unit thereof the principal function of which is the conduct of foreign intelligence or counterintelligence activities, if the determination (as that determination relates to a personnel action) is made before that personnel action; or".

SEC. 1267. DISCIPLINARY ACTION.

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

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

"(i) disciplinary action consisting of removal, reduction in grade, debarment from Federal employment for a period not to exceed 5 years, suspension, or reprimand;

"(ii) an assessment of a civil penalty not to exceed $1,000; or

"(iii) any combination of disciplinary actions described under clause (i) and an assessment described under clause (ii).

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

shall impose disciplinary action if the Board finds that the activity protected under such paragraph (8) or (9) (as the case may be) was the primary motivating factor, unless that employee demonstrates, by a preponderance of the evidence, that the employee would have taken, failed to take, or threatened to take or fail to take the same personnel action, in the absence of such protected activity.''.

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

(a) REQUIREMENT.—The Comptroller General shall conduct a study of security clearance revocations, taking effect after 1996, with respect to personnel that filed claims under chapter 12 of title 5, United States Code, in connection therewith. The study shall consist of an examination of the number of such clearances revoked, the number restored, and the relationship, if any, between the resolution of claims filed under such chapter and the restoration of such clearances.

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

SEC. 1269. ALTERNATIVE RECOURSE.

(a) IN GENERAL.—Section 1221 of title 5, United States Code, is amended by adding at the end the following:

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

''(A) such employee, former employee, or applicant may, after providing written notice to the Board, bring an action at law or equity for de novo review in the appropriate United States district court, which shall have jurisdiction over such action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury; and

"(B) in any such action, the court—

"(i) shall apply the standards set forth in subsection (e); and

"(ii) may award any relief which the court considers appropriate, including any relief described in subsection (g).

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

"(2) For purposes of this subsection, the term 'appropriate United States district court', as used with respect to an alleged prohibited personnel practice, means the United States district court for the district in which the prohibited personnel practice is alleged to have been committed, the judicial district in which the employment records relevant to such practice are maintained and administered, or the judicial district in which resides the employee, former employee, or applicant for employment allegedly affected by such practice.

"(3) This subsection applies with respect to any appeal, petition, or other request for corrective action duly submitted to the Board, whether pursuant to section

1214(b)(2), the preceding provisions of this section, section 7513(d), or any otherwise applicable provisions of law, rule, or regulation.''.

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

(1) in the first sentence of paragraph (1), by striking ''the United States Court of Appeals for the Federal Circuit'' and inserting ''the appropriate United States court of appeals''; and

(2) by adding at the end the following:

''(3) For purposes of the first sentence of paragraph (1), the term 'appropriate United States court of appeals' means the United States Court of Appeals for the Federal Circuit, except that in the case of a prohibited personnel practice described in section 2302(b)(8) or 2302(b)(9)(B)–(D) (other than a case that, disregarding this paragraph, would otherwise be subject to paragraph (2)), such term means the United States Court of Appeals for the Federal Circuit and any United States court of appeals having jurisdiction over appeals from any United States district court which, under section 1221(k)(2), would be an appropriate United States district court for purposes of such prohibited personnel practice.''.

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

all after ''travel expenses,'' and inserting ''any other reasonable and foreseeable consequential damages, and compensatory damages (including attorney's fees, interest, reasonable expert witness fees, and costs).''.

(d) CONFORMING AMENDMENTS.—

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

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

(2) Section 7703(c) of such title 5 is amended by striking ''court.'' and inserting ''court, and in the case of a prohibited personnel practice described in section 2302(b)(8) or 2302(b)(9)(B)–(D) brought under any provision of law, rule, or regulation described in section 1221(k)(3), the employee or applicant shall have the right to de novo review in accordance with section 1221(k).''.

SEC. 1270. NATIONAL SECURITY WHISTLEBLOWER RIGHTS.

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

''§ 2303a. National security whistleblower rights

''(a) PROHIBITION OF REPRISALS.—

"(1) IN GENERAL.—In addition to any rights provided in section 2303 of this title, title VII of Public Law 105–272, or any other provision of law, an employee or former employee in a covered agency may not be discharged, demoted, or otherwise discriminated against (including by denying, suspending, or revoking a security clearance, or by otherwise restricting access to classified or sensitive information) as a reprisal for making a disclosure described in paragraph (2).

"(2) DISCLOSURES DESCRIBED.—A disclosure described in this paragraph is any disclosure of covered information which is made—

"(A) by an employee or former employee in a covered agency (without restriction as to time, place, form, motive, context, or prior disclosure made to any person by an employee or former employee, including a disclosure made in the course of an employee's duties); and

"(B) to an authorized Member of Congress, an authorized official of an Executive agency, or the Inspector General of the covered agency in which such employee or former employee is or was employed.

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

12 "(c) REMEDY.—

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

sitive information that constituted a reprisal, as well as providing back pay and related benefits, medical costs incurred, travel expenses, any other reasonable and foreseeable consequential damages, and compensatory damages (including attorney's fees, interest, reasonable expert witness fees, and costs). If the head of the covered agency issues an order denying relief, he shall issue a report to the employee or former employee detailing the reasons for the denial.

"(2)(A) If the head of the covered agency, in the process of implementing corrective action under paragraph (1), voids a directive or order denying, suspending, or revoking a security clearance or otherwise restricting access to classified or sensitive information that constituted a reprisal, the head of the covered agency may re-initiate procedures to issue a directive or order denying, suspending, or revoking a security clearance or otherwise restricting access to classified or sensitive information only if those re-initiated procedures are based exclusively on national security concerns and are unrelated to the actions constituting the original reprisal.

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

unclassified report to its Inspector General and to authorized Members of Congress (with a classified annex, if necessary), detailing the circumstances of the agency's re-initiated procedures and describing the manner in which those procedures are based exclusively on national security concerns and are unrelated to the actions constituting the original reprisal. The head of the covered agency shall also provide periodic updates to the Inspector General and authorized Members of Congress detailing any significant actions taken as a result of those procedures, and shall respond promptly to inquiries from authorized Members of Congress regarding the status of those procedures.

"(3) If the head of the covered agency has not made a determination under paragraph (1) within 180 days of the filing of the complaint (or he has issued an order denying relief, in whole or in part, whether within that 180-day period or thereafter, then, within 90 days after such order is issued), the employee or former employee may bring an action at law or equity for de novo review to seek any corrective action described in paragraph (1) in the appropriate United States district court (as defined by section 1221(k)(2)), which shall have jurisdiction

over such action without regard to the amount in controversy. An appeal from a final decision of a district court in an action under this paragraph may, at the election of the appellant, be taken to the Court of Appeals for the Federal Circuit (which shall have jurisdiction of such appeal), in lieu of the United States court of appeals for the circuit embracing the district in which the action was brought.

"(4) An employee or former employee adversely affected or aggrieved by an order issued under paragraph (1), or who seeks review of any corrective action determined under paragraph (1), may obtain judicial review of such order or determination in the United States Court of Appeals for the Federal Circuit or any United States court of appeals having jurisdiction over appeals from any United States district court which, under section 1221(k)(2), would be an appropriate United States district court. No petition seeking such review may be filed more than 60 days after issuance of the order or the determination to implement corrective action by the head of the agency. Review shall conform to chapter 7.

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

on a claim that disclosure would be inimical to national security by asserting the privilege commonly referred to as the 'state secrets privilege', and if the assertion of such privilege prevents the employee or former employee from establishing an element in support of the employee's or former employee's claim, the court shall resolve the disputed issue of fact or law in favor of the employee or former employee, provided that an Inspector General investigation under subsection (b) has resulted in substantial confirmation of that element, or those elements, of the employee's or former employee's claim.

''(B) In any case in which an Executive agency asserts the privilege commonly referred to as the 'state secrets privilege', whether or not an Inspector General has conducted an investigation under subsection (b), the head of that agency shall, at the same time it asserts the privilege, issue a report to authorized Members of Congress, accompanied by a classified annex if necessary, describing the reasons for the assertion, explaining why the court hearing the matter does not have the ability to maintain the protection of classified information related to the assertion, detailing the steps the agency has taken to arrive at a mutually agreeable settlement with the

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

"(d) APPLICABILITY TO NON-COVERED AGENCIES.—An employee or former employee in an Executive agency (or element or unit thereof) that is not a covered agency shall, for purposes of any disclosure of covered information (as described in subsection (a)(2)) which consists in whole or in part of classified or sensitive information, be entitled to the same protections, rights, and remedies under this section as if that Executive agency (or element or unit thereof) were a covered agency.

"(e) CONSTRUCTION.—Nothing in this section may be construed—

"(1) to authorize the discharge of, demotion of, or discrimination against an employee or former employee for a disclosure other than a disclosure protected by subsection (a) or (d) of this section or to modify or derogate from a right or remedy otherwise available to an employee or former employee; or

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

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

No court or administrative agency may require the exhaustion of any right or remedy under this section as a condition for pursuing any other right or remedy otherwise available to an employee or former employee under any other provision of law, rule, or regulation (as referred to in paragraph (2)).

"(f) DEFINITIONS.—For purposes of this section—

"(1) the term 'covered information', as used with respect to an employee or former employee, means any information (including classified or sensitive information) which the employee or former employee reasonably believes evidences—

"(A) any violation of any law, rule, or regulation; or

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

"(2) the term 'covered agency' means—

"(A) the Federal Bureau of Investigation, the Office of the Director of National Intelligence, the Central Intelligence Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, the National Se-

curity Agency, and the National Reconnaissance Office; and

"(B) any other Executive agency, or element or unit thereof, determined by the President under section 2302(a)(2)(C)(ii)(II) to have as its principal function the conduct of foreign intelligence or counterintelligence activities;

"(3) the term 'authorized Member of Congress' means—

"(A) with respect to covered information about sources and methods of the Central Intelligence Agency, the Director of National Intelligence, and the National Intelligence Program (as defined in section 3(6) of the National Security Act of 1947), a member of the House Permanent Select Committee on Intelligence, the Senate Select Committee on Intelligence, or any other committees of the House of Representatives or Senate to which this type of information is customarily provided;

"(B) with respect to special access programs specified in section 119 of title 10, an appropriate member of the Congressional defense committees (as defined in such section); and

"(C) with respect to other covered information, a member of the House Permanent Select Committee on Intelligence, the Senate Select Committee on Intelligence, the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, or any other committees of the House of Representatives or the Senate that have oversight over the program which the covered information concerns; and

"(4) the term 'authorized official of an Executive agency' shall have such meaning as the Office of Personnel Management shall by regulation prescribe, except that such term shall, with respect to any employee or former employee in an agency, include the head, the general counsel, and the ombudsman of such agency.".

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

"2303a. National security whistleblower rights.".

SEC. 1271. ENHANCEMENT OF CONTRACTOR EMPLOYEE WHISTLEBLOWER PROTECTIONS.

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

(1) in paragraph (1), by striking ''If the head'' and all that follows through ''actions:'' and inserting the following: ''Not later than 180 days after submission of a complaint under subsection (b), the head of the executive agency concerned shall determine whether the contractor concerned has subjected the complainant to a reprisal prohibited by subsection (a) and shall either issue an order denying relief or shall take one or more of the following actions:''; and

(2) by redesignating paragraph (3) as paragraph (4) and adding after paragraph (2) the following new paragraph (3):

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

lief available under this section in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury.''.

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

(1) in paragraph (1), by striking ''If the head'' and all that follows through ''actions:'' and inserting the following: ''Not later than 180 days after submission of a complaint under subsection (b), the head of the agency concerned shall determine whether the contractor concerned has subjected the complainant to a reprisal prohibited by subsection (a) and shall either issue an order denying relief or shall take one or more of the following actions:''; and

(2) by redesignating paragraph (3) as paragraph (4) and adding after paragraph (2) the following new paragraph (3):

''(3) If the head of an agency has not issued an order within 180 days after the submission of a complaint under subsection (b) and there is no showing that such delay is due to the bad faith of the complainant, the complainant shall be deemed to have exhausted his administrative remedies with respect to the complaint, and the complainant

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

SEC. 1272. PROHIBITED PERSONNEL PRACTICES AFFECTING THE TRANSPORTATION SECURITY ADMINISTRATION.

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

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

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

''§ 2304. Prohibited personnel practices affecting the Transportation Security Administration

''(a) IN GENERAL.—Notwithstanding any other provision of law, any individual holding or applying for a position within the Transportation Security Administration shall be covered by—

''(1) the provisions of section 2302(b)(1), (8), and (9);

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

"(3) any rule or regulation prescribed under any provision of law referred to in paragraph (1) or (2).

"(b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect any rights, apart from those described in subsection (a), to which an individual described in subsection (a) might otherwise be entitled under law.

"(c) EFFECTIVE DATE.—This section shall take effect as of the date of the enactment of this section.".

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

"2304. Prohibited personnel practices affecting the Transportation Security Administration.
"2305. Responsibility of the Government Accountability Office.
"2306. Coordination with certain other provisions of law.".

SEC. 1273. CLARIFICATION OF WHISTLEBLOWER RIGHTS RELATING TO SCIENTIFIC AND OTHER RESEARCH.

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

''(f) As used in section 2302(b)(8), the term 'abuse of authority' includes—

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

''(2) the dissemination of false or misleading scientific, medical, or technical information;

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

''(4) any action that discriminates for or against any employee or applicant for employment on the basis of religion, as defined by section 1273(b) of the Whistleblower Protection Enhancement Act of 2009.''.

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

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

(2) requiring religious participation or non-participation as a condition of employment, or permitting religious harassment;

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

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

(5) restricting personal religious expression by employees in the Federal workplace except where the employee's interest in the expression is outweighed by the government's interest in the efficient provision of public services or where the expression intrudes upon the legitimate rights of other employees or creates the appearance, to a reasonable observer, of an official endorsement of religion;

(6) regulating employees' personal religious expression on the basis of its content or viewpoint, or suppressing employees' private religious speech in the workplace while leaving unregulated other private employee speech that has a comparable effect

on the efficiency of the workplace, including ideological speech on politics and other topics;

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

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

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

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

(11) inhibiting an employee from urging a colleague to participate or not to participate in religious activities to the same extent that, consistent with concerns of workplace efficiency, they may urge their colleagues to engage in or refrain from other personal endeavors, except that the employee must refrain from such expression when a fellow employee asks that it stop or otherwise demonstrates that it is unwelcome;

(12) failing to prohibit expression that is part of a larger pattern of verbal attacks on fellow employees (or a specific employee) not sharing the faith of the speaker;

(13) preventing an employee from—

(A) wearing personal religious jewelry absent special circumstances (such as safety concerns) that might require a ban on all similar nonreligious jewelry; or

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

(14) prohibiting an employee from using their private time to discuss religion with willing coworkers in public spaces to the same extent as they may discuss other subjects, so long as the public would reasonably understand the religious expression to be that of the employees acting in their personal capacities;

(15) discriminating against an employee on the basis of their religion, religious beliefs, or views concerning their religion by promoting, refusing to promote, hiring, refusing to hire, or otherwise favoring or disfavoring, an employee or potential employee because of his or her religion, religious beliefs, or views concerning religion, or by explicitly or implicitly, insisting that the employee participate in religious activities as a condition of continued employment, promotion, salary increases, preferred job assignments, or any other incidents of employment or insisting that an employee refrain from participating in religious activities outside the workplace except pursuant to otherwise legal, neutral restrictions that apply to employees' off-duty conduct and expression in general (such as restrictions on political activities prohibited by the Hatch Act);

(16) prohibiting a supervisor's religious expression where it is not coercive and is understood to be his or her personal view, in the same way and to the same extent as other constitutionally valued speech;

(17) permitting a hostile environment, or religious harassment, in the form of religiously discriminatory intimidation, or pervasive or severe religious ridicule or insult, whether by supervisors or fellow workers, as determined by its frequency or repetitiveness, and severity;

(18) failing to accommodate an employee's exercise of their religion unless such accommodation would impose an undue hardship on the conduct of the agency's operations, based on real rather than speculative or hypothetical cost and without disfavoring other, nonreligious accommodations; and

(19) in those cases where an agency's work rule imposes a substantial burden on a particular employee's exercise of religion, failing to grant the employee an exemption from that rule, absent a compelling interest in denying the exemption and where there is no less restrictive means of furthering that interest.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to create any new right, benefit,

or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person.

SEC. 1274. EFFECTIVE DATE.

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

TITLE II—AGRICULTURE, NUTRITION, AND RURAL DEVELOPMENT

DEPARTMENT OF AGRICULTURE

AGRICULTURE BUILDINGS AND FACILITIES AND RENTAL PAYMENTS

For an additional amount for ''Agriculture Buildings and Facilities and Rental Payments'', $44,000,000, for necessary construction, repair, and improvement activities: *Provided*, That section 1106 of this Act shall not apply to this appropriation.

AGRICULTURAL RESEARCH SERVICE

BUILDINGS AND FACILITIES

For an additional amount for ''Buildings and Facilities'', $209,000,000, for work on deferred maintenance at Agricultural Research Service facilities: *Provided*, That priority in the use of such funds shall be given to critical deferred maintenance, to projects that can be completed,

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

FARM SERVICE AGENCY

SALARIES AND EXPENSES

For an additional amount for ''Salaries and Expenses,'' $245,000,000, for the purpose of maintaining and modernizing the information technology system: *Provided*, That section 1106 of this Act shall not apply to this appropriation.

NATURAL RESOURCES CONSERVATION SERVICE

WATERSHED AND FLOOD PREVENTION OPERATIONS

For an additional amount for ''Watershed and Flood Prevention Operations'', $350,000,000, of which $175,000,000 is for necessary expenses to purchase and restore floodplain easements as authorized by section 403 of the Agricultural Credit Act of 1978 (16 U.S.C. 2203) (except that no more than $50,000,000 of the amount provided for the purchase of floodplain easements may be obligated for projects in any one State): *Provided*, That section 1106 of this Act shall not apply to this appropriation: *Provided further*, That priority in the use of such funds shall be given to projects that can be fully funded and completed with the funds appropriated in this Act, and to activities that can commence promptly following enactment of this Act.

WATERSHED REHABILITATION PROGRAM

For an additional amount for ''Watershed Rehabilitation Program'', $50,000,000, for necessary expenses to carry out rehabilitation of structural measures: *Provided*, That section 1106 of this Act shall not apply to this appropriation: *Provided further*, That priority in the use of such funds shall be given to projects that can be fully funded and completed with the funds appropriated in this Act, and to activities that can commence promptly following enactment of this Act.

RURAL DEVELOPMENT PROGRAMS

RURAL COMMUNITY ADVANCEMENT PROGRAM

(INCLUDING TRANSFERS OF FUNDS)

For an additional amount for gross obligations for the principal amount of direct and guaranteed loans as authorized by sections 306 and 310B and described in sections 381E(d)(1), 381E(d)(2), and 381E(d)(3) of the Consolidated Farm and Rural Development Act, to be available from the rural community advancement program, as follows: $5,838,000,000, of which $1,102,000,000 is for rural community facilities direct loans, of which $2,000,000,000 is for business and industry guaranteed loans, and of which $2,736,000,000 is for rural water and waste disposal direct loans.

For an additional amount for the cost of direct loans, loan guarantees, and grants, including the cost of modifying loans, as defined in section 502 of the Congressional Budget Act of 1974, as follows: $1,800,000,000, of which $63,000,000 is for rural community facilities direct loans, of which $137,000,000 is for rural community facilities grants authorized under section 306(a) of the Consolidated Farm and Rural Development Act, of which $87,000,000 is for business and industry guaranteed loans, of which $13,000,000 is for rural business enterprise grants authorized under section 310B of the Consolidated Farm and Rural Development Act, of which $400,000,000 is for rural water and waste disposal direct loans, and of which $1,100,000,000 is for rural water and waste disposal grants authorized under section 306(a): *Provided*, That the amounts appropriated under this heading shall be transferred to, and merged with, the appropriation for ''Rural Housing Service, Rural Community Facilities Program Account'', the appropriation for ''Rural Business-Cooperative Service, Rural Business Program Account'', and the appropriation for ''Rural Utilities Service, Rural Water and Waste Disposal Program Account'': *Provided further*, That priority for awarding such funds shall be given to project applications that demonstrate that, if the application is approved, all project

elements will be fully funded: *Provided further*, That priority for awarding such funds shall be given to project applications for activities that can be completed if the requested funds are provided: *Provided further*, That priority for awarding such funds shall be given to activities that can commence promptly following enactment of this Act.

In addition to other available funds, the Secretary of Agriculture may use not more than 3 percent of the funds made available under this account for administrative costs to carry out loans, loan guarantees, and grants funded under this account, which shall be transferred and merged with the appropriation for ''Rural Development, Salaries and Expenses'' and shall remain available until September 30, 2012: *Provided*, That the authority provided in this paragraph shall apply to appropriations under this heading in lieu of the provisions of section 1106 of this Act.

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

RURAL HOUSING SERVICE

RURAL HOUSING INSURANCE FUND PROGRAM ACCOUNT

(INCLUDING TRANSFERS OF FUNDS)

For an additional amount of gross obligations for the principal amount of direct and guaranteed loans as authorized by title V of the Housing Act of 1949, to be available from funds in the rural housing insurance fund, as follows: $22,129,000,000 for loans to section 502 borrowers, of which $4,018,000,000 shall be for direct loans, and of which $18,111,000,000 shall be for unsubsidized guaranteed loans.

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

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

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

Funds appropriated by this Act to the Rural Housing Insurance Fund Program account for section 502 direct loans and unsubsidized guaranteed loans may be transferred between these programs: *Provided*, That the Committees on Appropriations of the House of Representatives and the Senate shall be notified at least 15 days in advance of any transfer.

RURAL UTILITIES SERVICE

DISTANCE LEARNING, TELEMEDICINE, AND BROADBAND PROGRAM

(INCLUDING TRANSFERS OF FUNDS)

For an additional amount for the cost of broadband loans and loan guarantees, as authorized by the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) and for grants, $2,825,000,000: *Provided*, That the cost of direct and guaranteed loans shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further*, That, notwithstanding title VI of the Rural Electrification Act of 1936, this amount is available for grants,

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

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

In addition to other available funds, the Secretary may use not more than 3 percent of the funds made available under this account for administrative costs to carry out loans, loan guarantees, and grants funded under this account, which shall be transferred and merged with the appropriation for ''Rural Development, Salaries and Expenses'' and shall remain available until September 30, 2012: *Provided*, That the authority provided in this paragraph shall apply to appropriations under this heading in lieu of the provisions of section 1106 of this Act.

FOOD AND NUTRITION SERVICE

SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC)

For an additional amount for the special supplemental nutrition program as authorized by section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), $100,000,000, for the purposes specified in section 17(h)(10)(B)(ii) for the Secretary of Agriculture to provide assistance to State agencies to implement new management information systems or improve existing management information systems for the program.

EMERGENCY FOOD ASSISTANCE PROGRAM

For an additional amount for the emergency food assistance program as authorized by section 27(a) of the Food and Nutrition Act of 2008 (7 U.S.C. 2036(a)) and section 204(a)(1) of the Emergency Food Assistance Act of 1983 (7 U.S.C. 7508(a)(1)), $150,000,000, of which $100,000,000 is for the purchase of commodities and of which $50,000,000 is for costs associated with the distribution of commodities.

GENERAL PROVISIONS, THIS TITLE

SEC. 2001. TEMPORARY INCREASE IN BENEFITS UNDER THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM.

(a) MAXIMUM BENEFIT INCREASE.—

(1) IN GENERAL.—Beginning the first month that begins not less than 25 days after the date of enactment of this Act, the value of benefits determined under section 8(a) of the Food and Nutrition Act of 2008 and consolidated block grants for Puerto Rico and American Samoa determined under section 19(a) of such Act shall be calculated using 113.6 percent of the June 2008 value of the thrifty food plan as specified under section 3(o) of such Act.

(2) TERMINATION.—

(A) The authority provided by this subsection shall terminate after September 30, 2009.

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

(b) REQUIREMENTS FOR THE SECRETARY.—In carrying out this section, the Secretary shall—

(1) consider the benefit increases described in subsection (a) to be a ''mass change'';

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

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

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

(c) ADMINISTRATIVE EXPENSES.—

(1) IN GENERAL.—For the costs of State administrative expenses associated with carrying out this section, the Secretary shall make available $150,000,000 in each of fiscal years 2009 and 2010, to remain available through September 30, 2012, of which $4,500,000 is for necessary expenses of the Food and Nutrition Service for management and oversight of the program and for monitoring the integrity and evaluating the effects of the payments made under this section.

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

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

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

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

SEC. 2002. AFTERSCHOOL FEEDING PROGRAM FOR AT-RISK CHILDREN.

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

TITLE III—COMMERCE, JUSTICE, AND SCIENCE

Subtitle A—Commerce

DEPARTMENT OF COMMERCE

ECONOMIC DEVELOPMENT ADMINISTRATION

ECONOMIC DEVELOPMENT ASSISTANCE PROGRAMS

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for ''Economic Development Assistance Programs'', $250,000,000: *Provided*, That the amount set aside from this appropriation pursuant to section 1106 of this Act shall not exceed 2 percent instead of the percentage specified in such section: *Provided further*, That the amount set aside pursuant to the previous proviso shall be transferred to and merged with the appropriation for ''Salaries and Expenses'' for purposes of program administration and oversight: *Provided further*, That up to $50,000,000 may be transferred to federally authorized regional economic development commissions.

BUREAU OF THE CENSUS

PERIODIC CENSUSES AND PROGRAMS

For an additional amount for ''Periodic Censuses and Programs'', $1,000,000,000: *Provided*, That section 1106 of this Act shall not apply to funds provided under this heading.

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

SALARIES AND EXPENSES

For an additional amount for ''Salaries and Expenses'', $350,000,000, to remain available until September 30, 2011: *Provided*, That funds shall be available to establish the State Broadband Data and Development Grant Program, as authorized by Public Law 110–385, for the development and implementation of statewide initiatives to identify and track the availability and adoption of broadband services within each State, and to develop and maintain a nationwide broadband inventory map, as authorized by section 6001 of division B of this Act.

WIRELESS AND BROADBAND DEPLOYMENT GRANT PROGRAMS

(INCLUDING TRANSFER OF FUNDS)

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

of which $1,000,000,000 shall be for Wireless Deployment Grants and $1,825,000,000 shall be for Broadband Deployment Grants: *Provided*, That the National Telecommunications and Information Administration shall submit a report on planned spending and actual obligations describing the use of these funds not later than 120 days after the date of enactment of this Act, and an update report not later than 60 days following the initial report, to the Committees on Appropriations of the House of Representatives and the Senate, the Committee on Energy and Commerce of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate: *Provided further*, That notwithstanding section 1103 of this Act, 50 percent of the grants made available under this heading shall be awarded not later than September 30, 2009: *Provided further*, That up to 20 percent of the funds provided under this heading for Wireless Deployment Grants and Broadband Deployment Grants may be transferred between these programs: *Provided further*, That the Committees on Appropriations of the House of Representatives and the Senate shall be notified at least 15 days in advance of any transfer.

DIGITAL-TO-ANALOG CONVERTER BOX PROGRAM

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

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

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

SCIENTIFIC AND TECHNICAL RESEARCH AND SERVICES

For an additional amount for ''Scientific and Technical Research and Services'', $100,000,000.

INDUSTRIAL TECHNOLOGY SERVICES

For an additional amount for ''Industrial Technology Services'', $100,000,000, of which $70,000,000 shall be available for the necessary expenses of the Technology Innovation Program and $30,000,000 shall be available for the necessary expenses of the Hollings Manufacturing Extension Partnership.

CONSTRUCTION OF RESEARCH FACILITIES

For an additional amount for ''Construction of Research Facilities'', as authorized by sections 13 through 15 of the Act of March 13, 1901 (15 U.S.C. 278c–278e), $300,000,000, for a competitive construction grant program for research science buildings: *Provided further*, That for peer-reviewed grants made under this heading,

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

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

OPERATIONS, RESEARCH, AND FACILITIES

For an additional amount for ''Operations, Research, and Facilities'', $400,000,000, for habitat restoration and mitigation activities.

PROCUREMENT, ACQUISITION AND CONSTRUCTION

For an additional amount for ''Procurement, Acquisition and Construction'', $600,000,000, for accelerating satellite development and acquisition, acquiring climate sensors and climate modeling capacity, and establishing climate data records: *Provided further*, That not less than $140,000,000 shall be available for climate data modeling.

Subtitle B—Justice

DEPARTMENT OF JUSTICE

STATE AND LOCAL LAW ENFORCEMENT ACTIVITIES

OFFICE OF JUSTICE PROGRAMS

STATE AND LOCAL LAW ENFORCEMENT ASSISTANCE

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

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

COMMUNITY ORIENTED POLICING SERVICES

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

GENERAL PROVISIONS, THIS SUBTITLE

SEC. 3201. WAIVER OF MATCHING REQUIREMENT AND SALARY LIMIT UNDER COPS PROGRAM.

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

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

Subtitle C—Science

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

SCIENCE

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

AERONAUTICS

For an additional amount for ''Aeronautics'', $150,000,000.

CROSS AGENCY SUPPORT PROGRAMS

For an additional amount for ''Cross Agency Support Programs'', for necessary expenses for restoration and mitigation of National Aeronautics and Space Administration owned infrastructure and facilities related to the consequences of hurricanes, floods, and other natural disasters occurring during 2008 for which the President declared a major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974, $50,000,000.

NATIONAL SCIENCE FOUNDATION

RESEARCH AND RELATED ACTIVITIES

For an additional amount for ''Research and Related Activities'', $2,500,000,000: *Provided*, That $300,000,000 shall be available solely for the Major Research Instrumentation program and $200,000,000 shall be for activities authorized by title II of Public Law 100–570 for academic research facilities modernization: *Provided*, That for peer-reviewed grants made under this heading, the time limitation provided in section 1103(b) of this Act shall be 120 days.

EDUCATION AND HUMAN RESOURCES

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

MAJOR RESEARCH EQUIPMENT AND FACILITIES CONSTRUCTION

For an additional amount for ''Major Research Equipment and Facilities Construction'', $400,000,000, which shall be available only for approved projects.

TITLE IV—DEFENSE

DEPARTMENT OF DEFENSE

FACILITY INFRASTRUCTURE INVESTMENTS, DEFENSE

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

(1) ''Operation and Maintenance, Army'', $1,490,804,000.

(2) ''Operation and Maintenance, Navy'', $624,380,000.

(3) ''Operation and Maintenance, Marine Corps'', $128,499,000.

(4) ''Operation and Maintenance, Air Force'', $1,236,810,000.

(5) ''Defense Health Program'', $454,658,000.

(6) ''Operation and Maintenance, Army Reserve'', $110,899,000.

(7) ''Operation and Maintenance, Navy Reserve'', $62,162,000.

(8) ''Operation and Maintenance, Marine Corps Reserve'', $45,038,000.

(9) ''Operation and Maintenance, Air Force Reserve'', $14,881,000.

(10) ''Operation and Maintenance, Army National Guard'', $302,700,000.

(11) ''Operation and Maintenance, Air National Guard'', $29,169,000.

ENERGY RESEARCH AND DEVELOPMENT, DEFENSE

For expenses, not otherwise provided for, for research, development, test and evaluation programs for improvements in energy generation, transmission, regulation, use, and storage, for military installations, military vehicles, and other military equipment, $350,000,000, which shall be available as follows:

(1) ''Research, Development, Test and Evaluation, Army'', $87,500,000.

(2) ''Research, Development, Test and Evaluation, Navy'', $87,500,000.

(3) ''Research, Development, Test and Evaluation, Air Force'', $87,500,000.

(4) ''Research, Development, Test and Evaluation, Defense-Wide'', $87,500,000

TITLE V—ENERGY AND WATER

DEPARTMENT OF THE ARMY

CORPS OF ENGINEERS—CIVIL

CONSTRUCTION

For an additional amount for ''Construction'', $2,000,000,000: *Provided*, That section 102 of Public Law 109–103 (33 U.S.C. 2221) shall not apply to funds provided in this paragraph: *Provided further,* That notwithstanding any other provision of law, funds provided in this paragraph shall not be cost shared with the Inland Waterways Trust Fund as authorized in Public Law 99–662: *Provided further*, That funds provided in this paragraph may only be used for programs, projects or activities previously funded: *Provided further*, That the Corps of Engineers is directed to prioritize funding for activities based on the ability to accelerate existing contracts or fully fund project elements and contracts for such elements in a time period of 2 years after the date of enactment of this Act giving preference to projects and activities that are labor intensive: *Provided further*, That funds provided in this paragraph shall be used for elements of projects, programs or activities that can be completed using funds provided herein: *Provided further*, That funds appropriated in this paragraph may be used by the Secretary of the Army, acting through the Chief of Engineers, to undertake work au-

thorized to be carried out in accordance with one or more of section 14 of the Flood Control Act of 1946 (33 U.S.C. 701r), section 205 of the Flood Control Act of 1948 (33 U.S.C. 701s), section 206 of the Water Resources Development Act of 1996 (33 U.S.C. 2330), and section 1135 of the Water Resources Development Act of 1986 (33 U.S.C. 2309a), notwithstanding the program cost limitations set forth in those sections: *Provided further*, That the limitation concerning total project costs in section 902 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 2280), shall not apply during fiscal year 2009 to any project that received funds provided in this title: *Provided further*, That for projects that are being completed with funds appropriated in this Act that are otherwise expired or lapsed for obligation, expired or lapsed funds appropriated in this Act may be used to pay the cost of associated supervision, inspection, overhead, engineering and design on those projects and on subsequent claims, if any: *Provided further*, That the Secretary of the Army shall submit a quarterly report to the Committees on Appropriations of the House of Representatives and the Senate detailing the allocation, obligation and expenditures of these funds, beginning not later than 45 days after enactment of this Act.

MISSISSIPPI RIVER AND TRIBUTARIES

For an additional amount for ''Mississippi River and Tributaries'', $250,000,000: *Provided*, That funds provided in this paragraph may only be used for programs, projects, or activities previously funded: *Provided further*, That the Corps of Engineers is directed to prioritize funding for activities based on the ability to accelerate existing contracts or fully fund project elements and contracts for such elements in a time period of 2 years after the date of enactment of this Act giving preference to projects and activities that are labor intensive: *Provided further*, That funds provided in this paragraph shall be used for elements of projects, programs, or activities that can be completed using funds provided herein: *Provided further*, That for projects that are being completed with funds appropriated in this Act that are otherwise expired or lapsed for obligation, expired or lapsed funds appropriated in this Act may be used to pay the cost of associated supervision, inspection, overhead, engineering and design on those projects and on subsequent claims, if any: *Provided further*, That the Secretary of the Army shall submit a quarterly report to the Committees on Appropriations of the House of Representatives and the Senate detailing the allocation, obligation and expenditures of these funds, beginning not later than 45 days after enactment of this Act.

OPERATION AND MAINTENANCE

For an additional amount for ''Operation and Maintenance'', $2,225,000,000: *Provided*, That the Corps of Engineers is directed to prioritize funding for activities based on the ability to accelerate existing contracts or fully fund project elements and contracts for such elements in a time period of 2 years after the date of enactment of this Act giving preference to projects and activities that are labor intensive: *Provided further*, That funds provided in this paragraph shall be used for elements of projects, programs, or activities that can be completed using funds provided herein: *Provided further*, That for projects that are being completed with funds appropriated in this Act that are otherwise expired or lapsed for obligation, expired or lapsed funds appropriated in this Act may be used to pay the cost of associated supervision, inspection, overhead, engineering and design on those projects and on subsequent claims, if any: *Provided further*, That the Secretary of the Army shall submit a quarterly report to the Committees on Appropriations of the House of Representatives and the Senate detailing the allocation, obligation and expenditures of these funds, beginning not later than 45 days after enactment of this Act.

REGULATORY PROGRAM

For an additional amount for ''Regulatory Program'', $25,000,000.

DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION

WATER AND RELATED RESOURCES

For an additional amount for ''Water and Related Resources'', $500,000,000: *Provided*, That of the amount appropriated under this heading, not less than $126,000,000 shall be used for water reclamation and reuse projects authorized under title XVI of Public Law 102–575: *Provided further*, That of the amount appropriated under this heading, not less than $80,000,000 shall be used for rural water projects and these funds shall be expended primarily on water intake and treatment facilities of such projects: *Provided further*, That the costs of reimbursable activities, other than for maintenance and rehabilitation, carried out with funds made available under this heading shall be repaid pursuant to existing authorities and agreements: *Provided further*, That the costs of maintenance and rehabilitation activities carried out with funds provided in this Act shall be repaid pursuant to existing authority, except the length of repayment period shall be determined on needs-based criteria to be established and adopted by the Commissioner of the Bureau

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

DEPARTMENT OF ENERGY

ENERGY PROGRAMS

ENERGY EFFICIENCY AND RENEWABLE ENERGY

For an additional amount for ''Energy Efficiency and Renewable Energy'', $18,500,000,000, which shall be used as follows:

(1) $2,000,000,000 shall be for expenses necessary for energy efficiency and renewable energy research, development, demonstration and deployment activities, to accelerate the development of technologies, to include advanced batteries, of which not less than $800,000,000 is for biomass and $400,000,000 is for geothermal technologies.

(2) $500,000,000 shall be for expenses necessary to implement the programs authorized under part E of title III of the Energy Policy and Conservation Act (42 U.S.C. 6341 et seq.).

(3) $1,000,000,000 shall be for the cost of grants to institutional entities for energy sustainability and efficiency under section 399A of the Energy Policy and Conservation Act (42 U.S.C. 6371h–1).

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

(5) $3,500,000,000 shall be for Energy Efficiency and Conservation Block Grants, for implementation of programs authorized under subtitle E of title V of the Energy Independence and Security Act of 2007 (42 U.S.C. 17151 et seq.).

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

(7) $200,000,000 shall be for expenses necessary to implement the programs authorized under section 131 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17011).

(8) $300,000,000 shall be for expenses necessary to implement the program authorized under section 124 of the Energy Policy Act of 2005 (42 U.S.C. 15821) and the Energy Star program.

(9) $400,000,000 shall be for expenses necessary to implement the program authorized under section 721 of the Energy Policy Act of 2005 (42 U.S.C. 16071).

(10) $1,000,000,000 shall be for expenses necessary for the manufacturing of advanced batteries authorized under section 136(b)(1)(B) of the Energy Independence and Security Act of 2007 (42 U.S.C. 17013(b)(1)(B)):

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

ELECTRICITY DELIVERY AND ENERGY RELIABILITY

For an additional amount for ''Electricity Delivery and Energy Reliability,'' $4,500,000,000: *Provided*, That funds shall be available for expenses necessary for electricity delivery and energy reliability activities to modernize the electric grid, enhance security and reliability of

the energy infrastructure, energy storage research, development, demonstration and deployment, and facilitate recovery from disruptions to the energy supply, and for implementation of programs authorized under title XIII of the Energy Independence and Security Act of 2007 (42 U.S.C. 17381 et seq.): *Provided further*, That of such amounts, $100,000,000 shall be for worker training: *Provided further*, That the Secretary of Energy may use or transfer amounts provided under this heading to carry out new authority for transmission improvements, if such authority is enacted in any subsequent Act, consistent with existing fiscal management practices and procedures.

ADVANCED BATTERY LOAN GUARANTEE PROGRAM

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

INSTITUTIONAL LOAN GUARANTEE PROGRAM

For the cost of guaranteed loans as authorized by section 399A of the Energy Policy and Conservation Act (42 U.S.C. 6371h–1), $500,000,000: *Provided*, That of such amount, $10,000,000 shall be used for administrative expenses in carrying out the guaranteed loan program, and shall be in lieu of the amount set aside under section 1106 of this Act: *Provided further*, That the cost of such loans, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974.

INNOVATIVE TECHNOLOGY LOAN GUARANTEE PROGRAM

For an additional amount for ''Innovative Technology Loan Guarantee Program'' for the cost of guaranteed loans authorized by section 1705 of the Energy Policy Act of 2005, $8,000,000,000: *Provided*, That of such amount, $25,000,000 shall be used for administrative expenses in carrying out the guaranteed loan program, and shall be in lieu of the amount set aside under section 1106 of this Act: *Provided further*, That the cost of such loans, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974.

FOSSIL ENERGY

For an additional amount for ''Fossil Energy'', $2,400,000,000 for necessary expenses to demonstrate

carbon capture and sequestration technologies as authorized under section 702 of the Energy Independence and Security Act of 2007.

SCIENCE

For an additional amount for ''Science'', $2,000,000,000: *Provided*, That of such amounts, not less than $400,000,000 shall be used for the Advanced Research Projects Agency—Energy authorized under section 5012 of the America COMPETES Act (42 U.S.C. 16538): *Provided further*, That of such amounts, not less than $100,000,000 shall be used for advanced scientific computing.

ENVIRONMENTAL AND OTHER DEFENSE ACTIVITIES

DEFENSE ENVIRONMENTAL CLEANUP

For an additional amount for ''Defense Environmental Cleanup,'' $500,000,000: *Provided*, That such amounts shall be used for elements of projects, programs, or activities that can be completed using funds provided herein.

GENERAL PROVISIONS, THIS TITLE

SEC. 5001. WESTERN AREA POWER ADMINISTRATION BORROWING AUTHORITY.

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

"TITLE III—BORROWING AUTHORITY

"SEC. 301. WESTERN AREA POWER ADMINISTRATION BORROWING AUTHORITY.

''(a) DEFINITIONS.—In this section—

''(1) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Western Area Power Administration.

''(2) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury.

''(b) AUTHORITY.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, subject to paragraphs (2) through (5)—

''(A) the Western Area Power Administration may borrow funds from the Treasury; and

''(B) the Secretary shall, without further appropriation and without fiscal year limitation, loan to the Western Area Power Administration, on such terms as may be fixed by the Administrator and the Secretary, such sums (not to exceed, in the aggregate (including deferred interest), $3,250,000,000 in outstanding repayable balances at any 1 time) as, in the judg-

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

"(i) constructing, financing, facilitating, or studying construction of new or upgraded electric power transmission lines and related facilities with at least 1 terminus within the area served by the Western Area Power Administration; and

"(ii) delivering or facilitating the delivery of power generated by renewable energy resources constructed or reasonably expected to be constructed after the date of enactment of this section.

"(2) INTEREST.—The rate of interest to be charged in connection with any loan made pursuant to this subsection shall be fixed by the Secretary, taking into consideration market yields on outstanding marketable obligations of the United States of comparable maturities as of the date of the loan.

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

"(4) PARTICIPATION.—The Administrator may permit other entities to participate in projects financed under this section.

"(5) CONGRESSIONAL REVIEW OF DISBURSEMENT.—Effective upon the date of enactment of this section, the Administrator shall have the authority to have utilized $1,750,000,000 at any one time. If the Administrator seeks to borrow funds above $1,750,000,000, the funds will be disbursed unless there is enacted, within 90 calendar days of the first such request, a joint resolution that rescinds the remainder of the balance of the borrowing authority provided in this section.

"(c) TRANSMISSION LINE AND RELATED FACILITY PROJECTS.—

"(1) IN GENERAL.—For repayment purposes, each transmission line and related facility project in which the Western Area Power Administration participates pursuant to this section shall be treated as separate and distinct from—

"(A) each other such project; and

"(B) all other Western Area Power Administration power and transmission facilities.

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

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

"(A) to pay for any ancillary services that are provided; and

"(B) to meet the costs of operating and maintaining the new project from which the revenues are derived.

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

"(A) repayment of the associated loan for the project; and

"(B) payment of expenses for ancillary services and operation and maintenance.

"(4) LIMITATION ON AUTHORITY.—Nothing in this section confers on the Administrator any obligation to provide ancillary services to users of transmission facilities developed under this section.

"(d) CERTIFICATION.—

"(1) IN GENERAL.—For each project in which the Western Area Power Administration participates pursuant to this section, the Administrator shall certify, prior to committing funds for any such project, that—

"(A) the project is in the public interest;

"(B) the project will not adversely impact system reliability or operations, or other statutory obligations; and

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

"(2) FORGIVENESS OF BALANCES.—

"(A) IN GENERAL.—If, at the end of the useful life of a project, there is a remaining balance owed to the Treasury under this section, the balance shall be forgiven.

"(B) UNCONSTRUCTED PROJECTS.—Funds expended to study projects that are considered pursuant to this section but that are not constructed shall be forgiven.

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

"(e) PUBLIC PROCESSES.—

"(1) POLICIES AND PRACTICES.—Prior to requesting any loans under this section, the Administrator shall use a public process to develop practices and policies that implement the authority granted by this section.

"(2) REQUESTS FOR INTERESTS.—In the course of selecting potential projects to be funded under this section, the Administrator shall seek requests for interest from entities interested in identifying potential projects through one or more notices published in the Federal Register.".

SEC. 5002. BONNEVILLE POWER ADMINISTRATION.

For the purposes of providing funds to assist in financing the construction, acquisition, and replacement of the transmission system of the Bonneville Power Administration and to implement the authority of the Administrator under the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839 et seq.), an additional $3,250,000,000 in borrowing authority is made available under the Federal Columbia River Transmission System Act (16 U.S.C. 838 et seq.), to remain outstanding at any time.

SEC. 5003. APPROPRIATIONS TRANSFER AUTHORITY.

Not to exceed 20 percent of the amounts made available in this Act to the Department of Energy for "Energy Efficiency and Renewable Energy", "Electricity Delivery and Energy Reliability", and "Advanced Battery Loan Guarantee Program" may be transferred within and between such accounts, except that no amount specified under any such heading may be increased or decreased

by more than a total of 20 percent by such transfers, and notification of such transfers shall be submitted promptly to the Committees on Appropriations of the House of Representatives and the Senate.

TITLE VI—FINANCIAL SERVICES AND GENERAL GOVERNMENT

Subtitle A—General Services

GENERAL SERVICES ADMINISTRATION

FEDERAL BUILDINGS FUND

LIMITATIONS ON AVAILABILITY OF REVENUE

(INCLUDING TRANSFER OF FUNDS)

For an additional amount to be deposited in the Federal Buildings Fund, $7,700,000,000 for real property activities with priority given to activities that can commence promptly following enactment of this Act; of which up to $1,000,000,000 shall be used for construction, repair, and alteration of border facilities and land ports of entry; of which not less than $6,000,000,000 shall be used for construction, repair, and alteration of Federal buildings for projects that will create the greatest impact on energy efficiency and conservation; of which $108,000,000 shall remain available until September 30, 2012, and shall be used for rental of space costs associated with the construction, repair, and alteration of these projects; *Provided*, That of the amounts provided, $160,000,000 shall remain

available until September 30, 2012, and shall be for building operations in support of the activities described in this paragraph: *Provided further*, That the preceding proviso shall apply to this appropriation in lieu of the provisions of section 1106 of this Act: *Provided further*, That the Administrator of General Services is authorized to initiate design, construction, repair, alteration, leasing, and other projects through existing authorities of the Administrator: *Provided further*, That the Administrator shall submit a detailed plan, by project, regarding the use of funds to the Committees on Appropriations of the House of Representatives and the Senate within 30 days after enactment of this Act, and shall provide notification to the Committees within 15 days prior to any changes regarding the use of these funds: *Provided further*, That the Administrator shall report to the Committees on the obligation of these funds on a quarterly basis beginning on June 30, 2009: *Provided further*, That of the amounts provided, $4,000,000 shall be transferred to and merged with ''Government-Wide Policy'', for the Office of Federal High-Performance Green Buildings as authorized in the Energy Independence and Security Act of 2007 (Public Law 110–140).

ENERGY EFFICIENT FEDERAL MOTOR VEHICLE FLEET PROCUREMENT

For capital expenditures and necessary expenses of the General Services Administration's Motor Vehicle Acquisition and Motor Vehicle Leasing programs for the acquisition of motor vehicles, including plug-in and alternative fuel vehicles, $600,000,000: *Provided*, That the amount set aside from this appropriation pursuant to section 1106 of this Act shall be 1 percent instead of the percentage specified in such section: *Provided further*, That none of these funds may be obligated until the Administrator of General Services submits to the Committees on Appropriations of the House of Representatives and the Senate, within 90 days after enactment of this Act, a plan for expenditure of the funds that details the current inventory of the Federal fleet owned by the General Services Administration, as well as other Federal agencies, and the strategy to expend these funds to replace a portion of the Federal fleet with the goal of substantially increasing energy efficiency over the current status, including increasing fuel efficiency and reducing emissions: *Provided further*, That the Administrator shall report to the Committees on the obligation of these funds on a quarterly basis beginning on June 30, 2009.

Subtitle B—Small Business

SMALL BUSINESS ADMINISTRATION

BUSINESS LOANS PROGRAM ACCOUNT

(INCLUDING TRANSFERS OF FUNDS)

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

GENERAL PROVISIONS, THIS SUBTITLE

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

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

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

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

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

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

(c) APPLICATION.—In order to participate in the loan guarantee program under this section a lender shall submit an application to the Administrator for the guarantee of up to 95 percent of the principal amount of a qualifying small business loan. The Administrator shall approve or deny each such application within 5 business days after receipt thereof. The Administrator may not delegate to lenders the authority to approve or disapprove such applications.

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

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

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

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

(2) The Prime Rate.

(f) QUALIFIED BORROWERS.—

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

(A) has an ownership interest in that concern; or

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

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

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

(g) CRIMINAL BACKGROUND CHECKS.—Prior to the approval of any loan guarantee under this section, the Administrator may verify the applicant's criminal background, or lack thereof, through the best available means, including, if possible, use of the National Crime Information Center computer system at the Federal Bureau of Investigation.

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

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

(j) SMALL BUSINESS ACT PROVISIONS.—The provisions of the Small Business Act applicable to loan guarantees under section 7 of that Act shall apply to loan guarantees under this section except as otherwise provided in this section.

(k) AUTHORIZATION.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 6202. ESTABLISHMENT OF SBA SECONDARY MARKET LENDING AUTHORITY.

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

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

(1) The term ''Administrator'' means the Administrator of the SBA.

(2) The term ''SBA'' means the Small Business Administration.

(3) The terms ''Secondary Market Lending Authority'' and ''Authority'' mean the office established under subsection (c).

(4) The term ''SBA secondary market'' means the market for the purchase and sale of loans originated, underwritten, and closed under the Small Business Act.

(5) The term ''Systemically Important Secondary Market Broker-Dealers'' mean those entities

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

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

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

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

18 (A) ORGANIZATION.—

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

1 nated, underwritten, and closed under the
2 Small Business Act or pools of such loans.
3 (ii) The Administrator shall appoint a
4 Director of the Authority who shall report
5 to the Administrator.
6 (iii) The Administrator is authorized
7 to hire such personnel as are necessary to
8 operate the Authority.
9 (iv) The Administrator may contract
10 such Authority operations as he determines
11 necessary to qualified third-party compa-
12 nies or individuals.
13 (v) The Administrator is authorized to
14 contract with private sector fiduciary and
15 custodial agents as necessary to operate
16 the Authority.
17 (B) LOANS.—
18 (i) The Administrator shall establish
19 by rule a process under which Systemically
20 Important SBA Secondary Market Broker-
21 Dealers designated under paragraph (1)
22 may apply to the Administrator for loans
23 under this section.
24 (ii) The rule under clause (i) shall
25 provide a process for the Administrator to

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

(I) That loans made under this section are for the sole purpose of financing the inventory of the government guaranteed portion of loans, originated, underwritten, and closed under the Small Business Act or pools of such loans.

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

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

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

(iii) Interest on loans under this section shall not exceed the Federal Funds

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

(iv) The rule under this section shall provide for such loan documents, legal covenants, collateral requirements and other required documentation as necessary to protect the interests of the agency, the United States, and the taxpayer.

(v) The Administrator shall establish custodial accounts to safeguard any collateral pledged to the SBA in connection with a loan under this section.

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

(C) LIMITATIONS ON USE OF LOAN PROCEEDS BY SYSTEMICALLY IMPORTANT SECONDARY MARKET BROKER-DEALERS.—The Administrator shall ensure that borrowers under this section are using funds provided under this section only for the purpose specified in subparagraph (B)(ii)(I). If the Administrator finds that such funds were used for any other purpose, the Administrator shall—

(i) require immediate repayment of outstanding loans;

(ii) prohibit the borrower, its affiliates, or any future corporate manifestation of the borrower from using the Authority; and

(iii) take any other actions the Administrator, in consultation with the Attorney General of the United States, deems appropriate.

(d) REPORT TO CONGRESS.—The Administrator shall submit a report to Congress not later than the third business day of each month containing a statement of each of the following:

(1) The aggregate loan amounts extended during the preceding month under this section.

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

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

(4) The aggregate value of assets held as collateral under this section.

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

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

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

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

(f) FUNDING.—Such sums as necessary are authorized to be appropriated to carry out the provisions of this section.

(g) BUDGET TREATMENT.—Nothing in this section shall be construed to exempt any activity of the Administrator under this section from the Federal Credit Reform Act of 1990 (title V of the Congressional Budget and Impoundment Control Act of 1974; 2 U.S.C. 661 and following).

(h) EMERGENCY RULEMAKING AUTHORITY.—The Administrator shall promulgate regulations under this section within 15 days after the date of enactment of enactment of this section. In promulgating these regulations, the Administrator the notice requirements of section 553(b) of title 5 of the United States Code shall not apply.

SEC. 6203. ESTABLISHMENT OF SBA SECONDARY MARKET GUARANTEE AUTHORITY.

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

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

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

(2) The term ''first lien position 504 loan'' means the first mortgage position, non-federally guaranteed loans made by private sector lenders made under title V of the Small Business Investment Act.

(c) ESTABLISHMENT OF AUTHORITY.—

(1) ORGANIZATION.—

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

(B) The Administrator shall appoint a Director of the Authority who shall report to the Administrator.

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

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

(D) The Administrator is authorized to contract with private sector fiduciary and custodial agents as necessary to operate the Authority.

(2) GUARANTEE PROCESS.—

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

(B) The Administrator shall appoint a Director of the Authority who shall report to the Administrator.

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

(D) The Administrator is authorized to contract with private sector fiduciary and custodial agents as necessary to operate the Authority.

(3) RESPONSIBILITIES.—

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

(B) The rule under this section shall provide for a process for the Administrator to consider and make decisions regarding whether to extend a Federal guarantee referred to in clause (i). Such rule shall also provide that:

(i) The seller of the pools purchasing a guarantee under this section retains not less than 5 percent of the dollar amount of the pools to be sold to third-party investors.

(ii) The seller of such pools shall absorb any and all losses resulting from a shortage or excess of monthly cash flows.

(iii) The Administrator shall receive a monthly fee of not more than 50 basis points on the outstanding balance of the dollar amount of the pools that are guaranteed.

(iv) The Administrator may guarantee not more than $3,000,000,0000 of pools under this authority.

(C) The Administrator shall establish documents, legal covenants, and other required documentation to protect the interests of the United States.

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

(d) LIMITATIONS.—

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

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

(A) terminate such guarantee immediately,

(B) prohibit the purchaser of the guarantee or its affiliates (within the meaning of the regulations under 13 CFR 121.103) from using the authority of this section in the future; and

(C) take any other actions the Administrator, in consultation with the Attorney General of the United States deems appropriate.

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

(1) The aggregate amount of guarantees extended under this section during the proceeding month.

(2) The aggregate amount of guarantees outstanding.

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

(4) The identity of each purchaser of a guarantee found by the Administrator to have misused guarantees under this section.

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

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

(g) FUNDING.—Such sums as necessary are authorized to be appropriated to carry out the provisions of this section.

(h) BUDGET TREATMENT.—Nothing in this section shall be construed to exempt any activity of the Administrator under this section from the Federal Credit Reform Act of 1990 (title V of the Congressional Budget and Impoundment Control Act of 1974; 2 U.S.C. 661 and following).

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

SEC. 6204. ECONOMIC RECOVERY PROGRAM.

(a) PURPOSE.—The purpose of this section is to establish a new lending and refinancing authority within the Small Business Administration.

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

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

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

(c) REFINANCING AUTHORITY.—

(1) IN GENERAL.—Upon application from a lender (and with consent of the borrower), the Administrator may refinance existing non-Small Business Administration or Small Business Administration loans (including loans under sections 7(a) and 504 of the Small Business Act) made to small business concerns.

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

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

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

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

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

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

(4) LIMIT.—The Administrator may not refinance amounts under this section that are greater than the amount the lender agrees to accept from the Administrator as full repayment of the loan as provided in paragraph (2)(B).

(d) UNDERWRITING AND OTHER LOAN SERVICES.—

(1) IN GENERAL.—The Administrator is authorized to engage in underwriting, loan closing, funding, and servicing of loans made to small business concerns and to guarantee loans made by other entities to small business concerns.

(2) APPLICATION PROCESS.—The Administrator shall by rule establish a process in which small business concerns may submit applications to the Administrator for the purposes of securing a loan under this subsection. The Administrator shall, at a minimum, collect all information necessary to determine the creditworthiness and repayment ability of the borrower.

(3) PARTICIPATION OF LENDERS.—

(A) The Administrator shall by rule establish a process in which the Administrator makes available loan applications and all accompanying information to lenders for the purpose of such lenders originating, underwriting, closing, and servicing such loans.

(B) Lenders are eligible to receive loan applications and accompanying information under this paragraph if they participate in the programs established in section 7(a) of the Small Business Act (15 U.S.C. 636) or title V of the Small Business Investment Act (15 U.S.C. 695).

(C) The Administrator shall first make available such loan applications and accompanying information to lenders within 100 miles of a loan applicant's principal office.

(D) If a lender described in subparagraph (C) does not agree to originate, underwrite, close, and service such loans within 5 business days of receiving the loan applications, the Administrator shall subsequently make available such loan applications and accompanying information to lenders in the Preferred Lenders Pro-

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

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

(4) ASSET SALES.—The Administrator shall offer to sell loans made or refinanced by the Administrator under this section. Such sales shall be made through semi-annual public solicitation (in the Federal Register and in other media) of offers to purchase. The Administrator may contract with vendors for due diligence, asset valuation, and other services related to such sales. The Administrator may not sell any loan under this section for less than 90 percent of the net present value of the loan, as determined and certified by a qualified third-party.

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

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

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

(g) QUALIFIED LOANS.—

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

(A) has an ownership interest in that concern; or

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

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

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

(h) REPORTS.—The Administrator shall submit a report to Congress semi-annually setting forth the aggregate amount of loans and geographic dispersion of such loans made, underwritten, closed, funded, serviced, sold, guaranteed, or held by the Administrator under the authority of this section. Such report shall also set forth information concerning loan defaults, prepayments, and recoveries related to loans ,made under the authority of this section.

(i) AUTHORIZATION.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 6205. STIMULUS FOR COMMUNITY DEVELOPMENT LENDING.

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

"(7) PERMISSIBLE DEBT REFINANCING.—

"(A) IN GENERAL.—Any financing approved under this title may include a limited amount of debt refinancing.

"(B) EXPANSIONS.—If the project involves expansion of a small business concern which has existing indebtedness collateralized by fixed assets, any amount of existing indebtedness that does not exceed ½ of the project cost of the expansion may be refinanced and added to the expansion cost, if—

"(i) the proceeds of the indebtedness were used to acquire land, including a building situated thereon, to construct a building thereon, or to purchase equipment;

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

"(iii) the financing under section 504 will provide better terms or rate of interest than exists on the debt at the time of refinancing.".

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

SEC. 6206. INCREASING SMALL BUSINESS INVESTMENT.

(a) SIMPLIFIED MAXIMUM LEVERAGE LIMITS.—Section 303(b) of the Small Business Investment Act of 1958 (15 U.S.C. 683(b)) is amended—

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

"(2) MAXIMUM LEVERAGE.—

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

"(i) 300 percent of such company's private capital; or

"(ii) $150,000,000.

"(B) MULTIPLE LICENSES UNDER COMMON CONTROL.—The maximum amount of outstanding leverage made available to two or more companies licensed under section 301(c) of this Act that are commonly controlled (as determined by the Administrator) and not under capital impairment may not exceed $225,000,000."; and

(2) by striking paragraph (4).

(b) SIMPLIFIED AGGREGATE INVESTMENT LIMITATIONS.—Section 306(a) of the Small Business Investment Act of 1958 (15 U.S.C. 686(a)) is amended to read as follows:

"(a) PERCENTAGE LIMITATION ON PRIVATE CAPITAL.—If any small business investment company has obtained financing from the Administrator and such financing remains outstanding, the aggregate amount of securities acquired and for which commitments may be issued by such company under the provisions of this title for any single enterprise shall not, without the approval of the Administrator, exceed 10 percent of the sum of—

"(1) the private capital of such company; and

"(2) the total amount of leverage projected by the company in the company's business plan that was approved by the Administrator at the time of the grant of the company's license.".

SEC. 6207. GAO REPORT.

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

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

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

TITLE VII—HOMELAND SECURITY

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

SALARIES AND EXPENSES

For an additional amount for ''Salaries and Expenses'', $100,000,000, for non-intrusive detection technology to be deployed at sea ports of entry.

CONSTRUCTION

For an additional amount for ''Construction'', $150,000,000, to repair and construct inspection facilities at land border ports of entry.

Transportation Security Administration

AVIATION SECURITY

For an additional amount for ''Aviation Security'', $500,000,000, for the purchase and installation of explosive detection systems and emerging checkpoint technologies: *Provided*, That the Assistant Secretary of Homeland Security (Transportation Security Administration) shall prioritize the award of these funds to accelerate the

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

COAST GUARD

ALTERATION OF BRIDGES

For an additional amount for ''Alteration of Bridges'', $150,000,000, for alteration or removal of obstructive bridges, as authorized by section 6 of the Truman-Hobbs Act (33 U.S.C. 516): *Provided*, That the Coast Guard shall award these funds to those bridges that are ready to proceed to construction.

FEDERAL EMERGENCY MANAGEMENT AGENCY

EMERGENCY FOOD AND SHELTER

For an additional amount for ''Emergency Food and Shelter'', $200,000,000, to carry out the emergency food and shelter program pursuant to title III of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11331 et seq.): *Provided*, That for the purposes of this appropriation, the redistribution required by section 1104(b) shall be carried out by the Federal Emergency Management Agency and the National Board, who may reallocate and obligate any funds that are unclaimed or returned to the program: *Provided further*, That the amount set aside from this appropriation pursuant to section 1106 of this Act shall be 3.5 percent instead of the percentage specified in such section.

GENERAL PROVISIONS, THIS TITLE

SEC. 7001. EXTENSION OF PROGRAMS.

Section 401(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended by striking ''11-year period'' and inserting ''16-year period''.

SEC. 7002. PROTECTION OF SOCIAL SECURITY ADMINISTRATION PROGRAMS.

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

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

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

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

(2) provide such funds quarterly in advance of the applicable quarter based on estimating methodology agreed to by the Commissioner and the Secretary (except in such instances where the delayed enactment of an annual appropriation may preclude such quarterly payments); and

(3) require an annual accounting and reconciliation of the actual costs incurred and the funds provided under the agreement, which shall be reviewed by the Office of Inspector General of the Social Security Administration and the Department of Homeland Security.

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

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

SEC. 7003. GAO STUDY OF BASIC PILOT CONFIRMATION SYSTEM.

(a) IN GENERAL.—As soon as practicable after the date of the enactment of this Act, the Comptroller General of the United States shall conduct a study regarding erroneous tentative nonconfirmations under the basic pilot confirmation system established under section 404(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note).

(b) MATTERS TO BE STUDIED.—In the study required under subsection (a), the Comptroller General shall determine and analyze—

(1) the causes of erroneous tentative nonconfirmations under the basic pilot confirmation system;

(2) the processes by which such erroneous tentative nonconfirmations are remedied; and

(3) the effect of such erroneous tentative nonconfirmations on individuals, employers, and Federal agencies.

(c) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Comptroller General shall submit the results of the study required under subsection (a) to the Committee on Ways and Means and the Committee on the Judiciary of the House of Representatives and the Committee on Finance and the Committee on the Judiciary of the Senate.

SEC. 7004. GAO STUDY OF EFFECTS OF BASIC PILOT PROGRAM ON SMALL ENTITIES.

(a) IN GENERAL.—Not later than 2 years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Committees on the Judiciary of the United States House of Representatives and the Senate a report containing the Comptroller General's analysis of the effects of the basic pilot program described in section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) on small entities (as defined in section 601 of title 5, United States Code). The report shall detail—

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

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

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

(4) factors that impact small entities' enrollment and participation in such program, including access to appropriate technology, geography, entity size, and class of entity; and

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

(b) DIRECT AND INDIRECT EFFECTS.—The report shall cover, and treat separately, direct effects (such as wages, time, and fees spent on compliance) and indirect effects (such as the effect on cash flow, sales, and competitiveness).

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

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

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

SEC. 7005. WAIVER OF MATCHING REQUIREMENT UNDER SAFER PROGRAM.

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

SEC. 7006. PROCUREMENT FOR DEPARTMENT OF HOMELAND SECURITY.

(a) REQUIREMENT.—Except as provided in subsections (c) through (e), funds appropriated or otherwise available to the Department of Homeland Security may not be used for the procurement of an item described in subsection (b) if the item is not grown, reprocessed, reused, or produced in the United States.

(b) COVERED ITEMS.—An item referred to in subsection (a) is any of the following, if the item is directly related to the national security interests of the United States:

(1) An article or item of—

(A) clothing and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing (and the materials and components thereof);

(B) tents, tarpaulins, or covers;

(C) cotton and other natural fiber products, woven silk or woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric (including all textile fibers and yarns that are for use in such fabrics), canvas products, or wool (whether in the form

of fiber or yarn or contained in fabrics, materials, or manufactured articles); or

(D) any item of individual equipment manufactured from or containing such fibers, yarns, fabrics, or materials.

(c) AVAILABILITY EXCEPTION.—Subsection (a) does not apply to the extent that the Secretary of Homeland Security determines that satisfactory quality and sufficient quantity of any such article or item described in subsection (b)(1) grown, reprocessed, reused, or produced in the United States cannot be procured as and when needed.

(d) EXCEPTION FOR CERTAIN PROCUREMENTS OUTSIDE THE UNITED STATES.—Subsection (a) does not apply to the following:

(1) Procurements by vessels in foreign waters.

(2) Emergency procurements.

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

(f) APPLICABILITY TO CONTRACTS AND SUBCONTRACTS FOR PROCUREMENT OF COMMERCIAL ITEMS.—This section is applicable to contracts and subcontracts for the procurement of commercial items not-

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

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

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

17 (i) TRAINING DURING FISCAL YEAR 2008.—

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

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

(j) CONSISTENCY WITH INTERNATIONAL AGREEMENTS.—

(1) IN GENERAL.—No provision of this section shall apply to the extent the Secretary of Homeland Security, in consultation with the United States Trade Representative, determines that it is in inconsistent with United States obligations under an international agreement.

(2) REPORT.—The Secretary of Homeland Security shall submit a report each year to Congress containing, with respect to the year covered by the report—

(A) a list of each provision of this section that did not apply during that year pursuant to a determination by the Secretary under paragraph (1); and

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

year without regard to a provision in this section because that provision was made inapplicable pursuant to such a determination.

(k) EFFECTIVE DATE.—This section applies with respect to contracts entered into by the Department of Homeland Security after the date of the enactment of this Act.

TITLE VIII—INTERIOR AND ENVIRONMENT

DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

CONSTRUCTION

(INCLUDING TRANSFERS OF FUNDS)

For an additional amount for ''Construction'', $325,000,000, for priority road, bridge, and trail repair or decommissioning, critical deferred maintenance projects, facilities construction and renovation, hazardous fuels reduction, and remediation of abandoned mine or well sites: *Provided*, That funds may be transferred to other appropriate accounts of the Bureau of Land management: *Provided further*, That the amount set aside from this appropriation pursuant to section 1106 of this Act shall be not more than 5 percent instead of the percentage specified in such section.

UNITED STATES FISH AND WILDLIFE SERVICE

CONSTRUCTION

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for ''Construction'', $300,000,000, for priority road and bridge repair and replacement, and critical deferred maintenance and improvement projects on National Wildlife Refuges, National Fish Hatcheries, and other Service properties: *Provided*, That funds may be transferred to ''Resource Management'': *Provided further*, That the amount set aside from this appropriation pursuant to section 1106 of this Act shall be not more than 5 percent instead of the percentage specified in such section.

NATIONAL PARK SERVICE

CONSTRUCTION

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for ''Construction'', $1,700,000,000, for projects to address critical deferred maintenance needs within the National Park System, including roads, bridges and trails, and for other critical infrastructure projects: *Provided*, That funds may be transferred to ''Operation of the National Park System'': *Provided further*, That $200,000,000 of these funds shall be for projects related to the preservation and repair of historical and cultural resources within the National Park

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

CENTENNIAL CHALLENGE

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

UNITED STATES GEOLOGICAL SURVEY

SURVEYS, INVESTIGATIONS, AND RESEARCH

For an additional amount for ''Surveys, Investigations, and Research'', $200,000,000, for repair and restoration of facilities; equipment replacement and upgrades including stream gages, and seismic and volcano monitoring systems; national map activities; and other critical deferred maintenance and improvement projects: *Provided*, That the amount set aside from this appropriation pursuant to section 1106 of this Act shall be not more than 5 percent instead of the percentage specified in such section.

BUREAU OF INDIAN AFFAIRS

CONSTRUCTION

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for ''Construction'', $500,000,000, for priority repair and replacement of schools, detention centers, roads, bridges, employee housing, and critical deferred maintenance projects: *Provided*, That not less than $250,000,000 shall be used for new and replacement schools and detention centers: *Provided further*, That funds may be transferred to ''Operation of Indian Programs'': *Provided further*, That the amount set aside from this appropriation pursuant to section 1106 of

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

ENVIRONMENTAL PROTECTION AGENCY

HAZARDOUS SUBSTANCE SUPERFUND

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

LEAKING UNDERGROUND STORAGE TANK TRUST FUND PROGRAM

For an additional amount for ''Leaking Underground Storage Tank Trust Fund Program'', to carry out leaking underground storage tank cleanup activities authorized by subtitle I of the Solid Waste Disposal Act, $200,000,000, which shall be used to carry out leaking underground storage tank cleanup activities authorized by section 9003(h) of the Solid Waste Disposal Act, except that such funds shall not be subject to the State matching requirements in section 9003(h)(7)(B): *Provided*, That amounts available by law from this appropriation for management and administration shall take the place of the set-aside under section 1106 of this Act.

STATE AND TRIBAL ASSISTANCE GRANTS

For an additional amount for ''State and Tribal Assistance Grants'', $8,400,000,000, which shall be used as follows:

(1) $6,000,000,000 shall be for capitalization grants for the Clean Water State Revolving Funds under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.), except that such funds shall not be subject to the State matching requirements in paragraphs (2) and (3) of section 602(b) of such Act or to the Federal cost share limitations in section 202 of such Act: *Provided*, That the amount set aside from this appropriation pursuant to section 1106 of this Act shall be not more than 2 percent instead of the percentage specified in such section: *Provided further*, That, notwithstanding the limitation on amounts specified in section 518(c) of the Federal Water Pollution Control Act, up to a total of 1.5 percent of such funds may be reserved by the Administrator of the Environmental Protection Agency for grants under section 518(c) of such Act: *Provided further*, That the requirements of section 513 of such Act shall apply to the construction of treatment works carried out in whole or in part with assistance made available

under this heading by a Clean Water State Revolving Fund under title VI of such Act, or with assistance made available under section 205(m) of such Act, or both: *Provided further*, That, notwithstanding the requirements of section 603(d) of such Act, each State shall use 50 percent of the amount of the capitalization grant received by the State under title VI of such Act to provide assistance, in the form of additional subsidization, including forgiveness of principal, negative interest loans, and grants, to municipalities (as defined in section 502 of such Act) for projects that are included on the State's priority list established under section 603(g) of such Act, of which 80 percent shall be for projects to benefit municipalities that meet affordability criteria as determined by the Governor of the State and 20 percent shall be for projects to address water-efficiency goals, address energy-efficiency goals, mitigate stormwater runoff, or encourage environmentally sensitive project planning, design, and construction, to the extent that there are sufficient project applications eligible for such assistance.

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

Water Act (42 U.S.C. 300j–12), except that such funds shall not be subject to the State matching requirements of section 1452(e) of such Act: *Provided*, That the amount set aside from this appropriation pursuant to section 1106 of this Act shall be not more than 2 percent instead of the percentage specified in such section: *Provided further,* That section 1452(k) of the Safe Drinking Water Act shall not apply to such funds: *Provided further*, That the requirements of section 1450(e) of such Act (42 U.S.C. 300j–9(e)) shall apply to the construction carried out in whole or part with assistance made available under this heading by a Drinking Water State Revolving fund under section 1452 of such Act: *Provided further*, That, notwithstanding the requirements of section 1452(a)(2) of such Act, each State shall use 50 percent of the amount of the capitalization grant received by the State under section 1452 of such Act to provide assistance, in the form of additional subsidization, including forgiveness of principal, negative interest loans, and grants, to municipalities (as defined in section 1401 of such Act) for projects that are included on the State's priority list established under section 1452(b)(3) of such Act.

(3) $300,000,000 shall be for grants under title VII, Subtitle G of the Energy Policy Act of 2005: *Provided*, That the amount set aside from this appropriation pursuant to section 1106 of this Act shall be not more than 3 percent instead of the percentage specified in such section.

(4) $100,000,000 shall be to carry out section 104(k) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980: *Provided*, That the amount set aside from this appropriation pursuant to section 1106 of this Act shall be not more than 3 percent instead of the percentage specified in such section.

DEPARTMENT OF AGRICULTURE

FOREST SERVICE

CAPITAL IMPROVEMENT AND MAINTENANCE

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for ''Capital Improvement and Maintenance'', $650,000,000, for reconstruction, capital improvement, decommissioning, and maintenance of forest roads, bridges and trails; alternative energy technologies, energy efficiency enhancements and deferred maintenance at Federal facilities; and for remediation of abandoned mine sites, removal of fish passage barriers, and other critical habitat, forest improvement and water-

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

WILDLAND FIRE MANAGEMENT

(INCLUDING TRANSFERS OF FUNDS)

For an additional amount for ''Wildland Fire Management'', $850,000,000, of which $300,000,000 is for hazardous fuels reduction, forest health, wood to energy grants and rehabilitation and restoration activities on Federal lands, and of which $550,000,000 is for State fire assistance hazardous fuels projects, volunteer fire assistance, cooperative forest health projects, city forest enhancements, and wood to energy grants on State and private lands: *Provided*, That amounts in this paragraph may be transferred to ''State and Private Forestry'' and ''National Forest System'': *Provided further*, That the amount set aside from this appropriation pursuant to section 1106 of this Act shall be not more than 5 percent instead of the percentage specified in such section.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

INDIAN HEALTH SERVICE

INDIAN HEALTH FACILITIES

For an additional amount for ''Indian Health Facilities'', $550,000,000, for priority health care facilities construction projects and deferred maintenance, and the purchase of equipment and related services, including but not limited to health information technology: *Provided*, That notwithstanding any other provision of law, the amounts available under this paragraph shall be allocated at the discretion of the Director of the Indian Health Service: *Provided further*, That the amount set aside from this appropriation pursuant to section 1106 of this Act shall be not more than 5 percent instead of the percentage specified in such section.

OTHER RELATED AGENCIES

SMITHSONIAN INSTITUTION

FACILITIES CAPITAL

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for ''Facilities Capital'', $150,000,000, for deferred maintenance projects, and for repair, revitalization, and alteration of facilities owned or occupied by the Smithsonian Institution, by contract or otherwise, as authorized by section 2 of the Act of August

22, 1949 (63 Stat. 623): *Provided*, That funds may be transferred to ''Salaries and Expenses'': *Provided further*, That the amount set aside from this appropriation pursuant to section 1106 of this Act shall be not more than 5 percent instead of the percentage specified in such section.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

NATIONAL ENDOWMENT FOR THE ARTS

GRANTS AND ADMINISTRATION

For an additional amount for ''Grants and Administration'', $50,000,000, to be distributed in direct grants to fund arts projects and activities which preserve jobs in the non-profit arts sector threatened by declines in philanthropic and other support during the current economic downturn: *Provided*, That 40 percent of such funds shall be distributed to State arts agencies and regional arts organizations in a manner similar to the agency's current practice and 60 percent of such funds shall be for competitively selected arts projects and activities according to sections 2 and 5(c) of the National Foundation on the Arts and Humanities Act of 1965 (20 U.S.C. 951, 954(c)): *Provided further*, That matching requirements under section 5(e) of such Act shall be waived: *Provided further*, That the amount set aside from this appropriation pursu-

ant to section 1106 of this Act shall be not more than 5 percent instead of the percentage specified in such section.

TITLE IX—LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION

Subtitle A—Labor

DEPARTMENT OF LABOR

EMPLOYMENT AND TRAINING ADMINISTRATION

TRAINING AND EMPLOYMENT SERVICES

For an additional amount for ''Training and Employment Services'' for activities under the Workforce Investment Act of 1998 (''WIA''), $4,000,000,000, which shall be available for obligation on the date of enactment of this Act, as follows:

(1) $500,000,000 for grants to the States for adult employment and training activities.

(2) $1,200,000,000 for grants to the States for youth activities, including summer jobs for youth: *Provided*, That the work readiness performance indicator described in section 136(b)(2)(A)(ii)(I) of the WIA shall be the only measure of performance used to assess the effectiveness of summer jobs for youth provided with such funds: *Provided further*, That with respect to the youth activities provided with

such funds, section 101(13)(A) of the WIA shall be applied by substituting ''age 24'' for ''age 21'': *Provided further*, That no portion of the additional funds provided herein shall be reserved to carry out section 127(b)(1)(A) of the WIA: *Provided further*, That for purposes of section 127(b)(1)(C)(iv) of the WIA, such funds shall be allotted as if the total amount of funding available for youth activities in the fiscal year does not exceed $1,000,000,000.

(3) $1,000,000,000 for grants to the States for dislocated worker employment and training activities.

(4) $500,000,000 for the dislocated workers assistance national reserve to remain available for Federal obligation through June 30, 2010: *Provided*, That such funds shall be made available for grants only to eligible entities that serve areas of high unemployment or high poverty and only for the purposes described in subsection 173(a)(1) of the WIA: *Provided further*, That the Secretary of Labor shall ensure that applicants for such funds demonstrate how income support, child care, and other supportive services necessary for an individual's participation in job training will be provided.

(5) $50,000,000 for YouthBuild activities, which shall remain available for Federal obligation through June 30, 2010.

(6) $750,000,000 for a program of competitive grants for worker training and placement in high growth and emerging industry sectors (including projects funded under section 6002 of division B of this Act): *Provided*, That $500,000,000 shall be for research, labor exchange and job training projects that prepare workers for careers in the energy efficiency and renewable energy industries specified in section 171(e)(1)(B)(ii) of the WIA (as amended by the Green Jobs Act of 2007): *Provided further*, That in awarding grants from those funds not designated in the preceding proviso, the Secretary of Labor shall give priority to projects that prepare workers for careers in the health care sector: *Provided further*, That the provisions of section 1103 of this Act shall not apply to this appropriation:

Provided, That the additional funds provided to States under this heading are not subject to section 191(a) of the WIA: *Provided further*, That notwithstanding section 1106 of this Act, there shall be no amount set aside from the appropriations made in subsections (1) through (3) under this heading and the amount set aside for sub-

sections (4) through (6) shall be up to 1 percent instead of the percentage specified in such section.

COMMUNITY SERVICE EMPLOYMENT FOR OLDER AMERICANS

For an additional amount for ''Community Service Employment for Older Americans'' to carry out title V of the Older Americans Act of 1965, $120,000,000, which shall be available for obligation on the date of enactment of this Act: *Provided*, That funds shall be allotted within 30 days of such enactment to current grantees in proportion to their allotment in program year 2008.

STATE UNEMPLOYMENT INSURANCE AND EMPLOYMENT SERVICE OPERATIONS

For an additional amount for ''State Unemployment Insurance and Employment Service Operations'' for grants to the States in accordance with section 6 of the Wagner-Peyser Act, $500,000,000, which may be expended from the Employment Security Administration Account in the Unemployment Trust Fund, and which shall be available for obligation on the date of enactment of this Act: *Provided*, That such funds shall remain available to the States through September 30, 2010: *Provided further*, That, with respect to such funds, section 6(b)(1) of such Act shall be applied by substituting ''one-third'' for ''two-thirds'' in subparagraph (A), with the remaining one-third

of the sums to be allotted in accordance with section 132(b)(2)(B)(ii)(III) of the Workforce Investment Act of 1998: *Provided further*, That not less than $250,000,000 of the amount provided under this heading shall be used by States for reemployment services for unemployment insurance claimants (including the integrated Employment Service and Unemployment Insurance information technology required to identify and serve the needs of such claimants): *Provided further*, That the Secretary of Labor shall establish planning and reporting procedures necessary to provide oversight of funds used for reemployment services.

DEPARTMENTAL MANAGEMENT

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for ''Departmental Management'', $80,000,000, for the enforcement of worker protection laws and regulations, oversight, and coordination activities related to the infrastructure and unemployment insurance investments in this Act: *Provided*, That the Secretary of Labor may transfer such sums as necessary to ''Employment and Standards Administration'', ''Occupational Safety and Health Administration'', and ''Employment and Training Administration—Program Administration'' for enforcement, oversight, and coordina-

tion activities: *Provided further*, That the provisions of section 1106 of this Act shall not apply to this appropriation.

OFFICE OF JOB CORPS

For an additional amount for ''Office of Job Corps'', $300,000,000, for construction, rehabilitation and acquisition of Job Corps Centers, which shall be available upon the date of enactment of this Act and remain available for obligation through June 30, 2010: *Provided*, That section 1552(a) of title 31, United States Code shall not apply to up to 30 percent of such funds, if such funds are used for a multi-year lease agreement that will result in construction activities that can commence within 120 days of enactment of this Act: *Provided further*, That notwithstanding section 3324(a) of title 31, United States Code, the funds referred to in the preceding proviso may be used for advance, progress, and other payments: *Provided further*, That the Secretary of Labor may transfer up to 15 percent of such funds to meet the operational needs of such centers, which may include the provision of additional training for careers in the energy efficiency and renewable energy industries: *Provided further*, That priority should be given to activities that can commence promptly following enactment and to those projects that will create the greatest impact on the energy efficiency of Job Corps facilities: *Provided further*, That the Secretary

shall provide to the Committees on Appropriations of the House of Representatives and the Senate a report on the actual obligations, expenditures, and unobligated balances for each activity funded under this heading not later than September 30, 2009 and quarterly thereafter as long as funding provided under this heading is available for obligation or expenditure.

GENERAL PROVISIONS, THIS SUBTITLE

SEC. 9101. ELIGIBLE EMPLOYEES IN THE RECREATIONAL MARINE INDUSTRY.

Section 2(3)(F) of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 902(3)(F)) is amended—

(1) by striking ", repair, or dismantle"; and

(2) by striking the semicolon and inserting ", or individuals employed to repair any recreational vessel, or to dismantle any part of a recreational vessel in connection with the repair of such vessel;".

Subtitle B—Health and Human Services

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HEALTH RESOURCES AND SERVICES

For an additional amount for "Health Resources and Services", $2,188,000,000 which shall be used as follows:

(1) $500,000,000, of which $250,000,000 shall not be available until October 1, 2009, shall be for grants to health centers authorized under section 330 of the Public Health Service Act (''PHS Act'').

(2) $1,000,000,000 shall be available for renovation and repair of health centers authorized under section 330 of the PHS Act and for the acquisition by such centers of health information technology systems: *Provided*, That the timeframe for the award of grants pursuant to section 1103(b) of this Act shall not be later than 180 days after the date of enactment of this Act instead of the timeframe specified in such section.

(3) $88,000,000 shall be for fit-out and other costs related to moving into a facility to be secured through a competitive lease procurement to replace or renovate a headquarters building for Public Health Service agencies and other components of the Department of Health and Human Services.

(4) $600,000,000, of which $300,000,000 shall not be available until October 1, 2009, shall be for the training of nurses and primary care physicians and dentists as authorized under titles VII and VIII of the PHS Act, for the provision of health care personnel under the National Health Service Corps pro-

gram authorized under title III of the PHS Act, and for the patient navigator program authorized under title III of the PHS Act.

CENTERS FOR DISEASE CONTROL AND PREVENTION

DISEASE CONTROL, RESEARCH, AND TRAINING

For an additional amount for ''Disease Control, Research, and Training'' for equipment, construction, and renovation of facilities, including necessary repairs and improvements to leased laboratories, $462,000,000: *Provided*, That notwithstanding any other provision of law, the Centers for Disease Control and Prevention may award a single contract or related contracts for development and construction of facilities that collectively include the full scope of the project: *Provided further,* That the solicitation and contract shall contain the clause ''availability of funds'' found at 48 CFR 52.232–18: *Provided further*, That in accordance with applicable authorities, policies, and procedures, the Centers for Disease Control and Prevention shall acquire real property, and make any necessary improvements thereon, to relocate and consolidate property and facilities of the National Institute for Occupational Safety and Health.

NATIONAL INSTITUTES OF HEALTH

NATIONAL CENTER FOR RESEARCH RESOURCES

For an additional amount for ''National Center for Research Resources'', $1,500,000,000 for grants or contracts under section 481A of the Public Health Service Act to renovate or repair existing non-Federal research facilities: *Provided*, That sections 481A(c)(1)(B)(ii), paragraphs (1), (3), and (4) of section 481A(e), and section 481B of such Act shall not apply to the use of such funds: *Provided further*, That the references to ''20 years'' in subsections (c)(1)(B)(i) and (f) of section 481A of such Act are deemed to be references to ''10 years'' for purposes of using such funds: *Provided further*, That the National Center for Research Resources may also use such funds to provide, under the authority of section 301 and title IV of such Act, shared instrumentation and other capital research equipment to recipients of grants and contracts under section 481A of such Act and other appropriate entities: *Provided further*, That the Director of the Center shall provide to the Committees on Appropriations of the House of Representatives and the Senate an annual report indicating the number of institutions receiving awards of a grant or contract under section 481A of such Act, the proposed use of the funding, the average award size, a list of grant or contract recipients, and the amount of each

award: *Provided further*, That the Center, in obligating such funds, shall require that each entity that applies for a grant or contract under section 481A for any project shall include in its application an assurance described in section 1621(b)(1)(I) of the Public Health Service Act: *Provided further*, That the Center shall give priority in the award of grants and contracts under section 481A of such Act to those applications that are expected to generate demonstrable energy-saving or beneficial environmental effects: *Provided further*, That the provisions of section 1103 of this Act shall not apply to the peer-reviewed grants awarded under this heading.

OFFICE OF THE DIRECTOR

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for ''Office of the Director'', $1,500,000,000, of which $750,000,000 shall not be available until October 1, 2009: *Provided*, That such funds shall be transferred to the Institutes and Centers of the National Institutes of Health and to the Common Fund established under section 402A(c)(1) of the Public Health Service Act in proportion to the appropriations otherwise made to such Institutes, Centers, and Common Fund for fiscal year 2009: *Provided further*, That these funds shall be used to support additional scientific research and shall be merged with and be available for the same purposes

as the appropriation or fund to which transferred: *Provided further*, That this transfer authority is in addition to any other transfer authority available to the National Institutes of Health: *Provided further*, That none of these funds may be transferred to ''National Institutes of Health—Buildings and Facilities'', the Center for Scientific Review, the Center for Information Technology, the Clinical Center, the Global Fund for HIV/AIDS, Tuberculosis and Malaria, or the Office of the Director (except for the transfer to the Common Fund): *Provided further*, That the provisions of section 1103 of this Act shall not apply to the peer-reviewed grants awarded under this heading.

BUILDINGS AND FACILITIES

For an additional amount for ''Buildings and Facilities'', $500,000,000, to fund high priority repair and improvement projects for National Institutes of Health facilities on the Bethesda, Maryland campus and other agency locations.

AGENCY FOR HEALTHCARE RESEARCH AND QUALITY

HEALTHCARE RESEARCH AND QUALITY

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for ''Healthcare Research and Quality'' to carry out titles III and IX of the Public Health Service Act, part A of title XI of the Social Secu-

rity Act, and section 1013 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, $700,000,000 for comparative effectiveness research: *Provided*, That of the amount appropriated in this paragraph, $400,000,000 shall be transferred to the Office of the Director of the National Institutes of Health (''Office of the Director'') to conduct or support comparative effectiveness research: *Provided further*, That funds transferred to the Office of the Director may be transferred to the national research institutes and national centers of the National Institutes of Health and to the Common Fund established under section 402A(c)(1) of the Public Health Service Act: *Provided further*, That this transfer authority is in addition to any other transfer authority available to the National Institutes of Health: *Provided further*, That the provisions of section 1103 of this Act shall not apply to the peer-reviewed grants awarded under this paragraph: *Provided further*, That the amount set aside from this appropriation pursuant to section 1106 of this Act shall be not more than 1 percent instead of the percentage specified in such section.

In addition, $400,000,000 shall be available for comparative effectiveness research to be allocated at the discretion of the Secretary of Health and Human Services (''Secretary''): *Provided*, That the funding appropriated in

1 this paragraph shall be used to accelerate the development
2 and dissemination of research assessing the comparative
3 effectiveness of health care treatments and strategies, in-
4 cluding through efforts that: (1) conduct, support, or syn-
5 thesize research that compares the clinical outcomes, ef-
6 fectiveness, and appropriateness of items, services, and
7 procedures that are used to prevent, diagnose, or treat dis-
8 eases, disorders, and other health conditions; and (2) en-
9 courage the development and use of clinical registries, clin-
10 ical data networks, and other forms of electronic health
11 data that can be used to generate or obtain outcomes data:
12 *Provided further*, That the Secretary shall enter into a
13 contract with the Institute of Medicine, for which no more
14 than $1,500,000 shall be made available from funds pro-
15 vided in this paragraph, to produce and submit a report
16 to the Congress and the Secretary by not later than June
17 30, 2009, that includes recommendations on the national
18 priorities for comparative effectiveness research to be con-
19 ducted or supported with the funds provided in this para-
20 graph and that considers input from stakeholders: *Pro-*
21 *vided further*, That the Secretary shall consider any rec-
22 ommendations of the Federal Coordinating Council for
23 Comparative Effectiveness Research established by section
24 9201 of this Act and any recommendations included in
25 the Institute of Medicine report pursuant to the preceding

1 proviso in designating activities to receive funds provided
2 in this paragraph and may make grants and contracts
3 with appropriate entities, which may include agencies
4 within the Department of Health and Human Services and
5 other governmental agencies, as well as private sector enti-
6 ties, that have demonstrated experience and capacity to
7 achieve the goals of comparative effectiveness research:
8 *Provided further*, That the Secretary shall publish infor-
9 mation on grants and contracts awarded with the funds
10 provided under this heading within a reasonable time of
11 the obligation of funds for such grants and contracts and
12 shall disseminate research findings from such grants and
13 contracts to clinicians, patients, and the general public,
14 as appropriate: *Provided further*, That, to the extent fea-
15 sible, the Secretary shall ensure that the recipients of the
16 funds provided by this paragraph offer an opportunity for
17 public comment on the research: *Provided further*, That
18 the provisions of section 1103 of this Act shall not apply
19 to the peer-reviewed grants awarded under this paragraph:
20 *Provided further*, That the Secretary shall provide the
21 Committees on Appropriations of the House of Represent-
22 atives and the Senate, the Committee on Energy and Com-
23 merce and the Committee on Ways and Means of the
24 House of Representatives, and the Committee on Health,
25 Education, Labor, and Pensions and the Committee on Fi-

1 nance of the Senate with an annual report on the research
2 conducted or supported through the funds provided under
3 this heading: *Provided further*, That the Secretary, jointly
4 with the Directors of the Agency for Healthcare Research
5 and Quality and the National Institutes of Health, shall
6 provide the Committees on Appropriations of the House
7 of Representatives and the Senate a fiscal year 2009 oper-
8 ating plan for the funds appropriated under this heading
9 prior to making any Federal obligations of such funds in
10 fiscal year 2009, but not later than 90 days after the date
11 of enactment of this Act, and a fiscal year 2010 operating
12 plan for such funds prior to making any Federal obliga-
13 tions of such funds in fiscal year 2010, but not later than
14 November 1, 2009, that detail the type of research being
15 conducted or supported, including the priority conditions
16 addressed; and specify the allocation of resources within
17 the Department of Health and Human Services: *Provided*
18 *further*, That the Secretary jointly with the Directors of
19 the Agency for Healthcare Research and Quality and the
20 National Institutes of Health, shall provide to the Com-
21 mittees on Appropriations of the House of Representatives
22 and the Senate a report on the actual obligations, expendi-
23 tures, and unobligated balances for each activity funded
24 under this heading not later than November 1, 2009, and
25 every 6 months thereafter as long as funding provided

under this heading is available for obligation or expenditure.

ADMINISTRATION FOR CHILDREN AND FAMILIES

LOW-INCOME HOME ENERGY ASSISTANCE

For an additional amount for ''Low-Income Home Energy Assistance'' for making payments under section 2602(b) and section 2602(d) of the Low-Income Home Energy Assistance Act of 1981, $1,000,000,000, which shall become available on October 1, 2009: *Provided*, That the provisions of section 1106 of this Act shall not apply to this appropriation.

PAYMENTS TO STATES FOR THE CHILD CARE AND DEVELOPMENT BLOCK GRANT

For an additional amount for ''Payments to States for the Child Care and Development Block Grant'', $2,000,000,000, of which $1,000,000,000 shall become available on October 1, 2009, which shall be used to supplement, not supplant State general revenue funds for child care assistance for low-income families: *Provided*, That the provisions of section 1106 of this Act shall not apply to this appropriation.

CHILDREN AND FAMILIES SERVICES PROGRAMS

For an additional amount for ''Children and Families Services Programs'', $3,200,000,000, which shall be used as follows:

(1) $1,000,000,000 for carrying out activities under the Head Start Act, of which $500,000,000 shall become available on October 1, 2009.

(2) $1,100,000,000 for expansion of Early Head Start programs, as described in section 645A of the Head Start Act, of which $550,000,000 shall become available on October 1, 2009: *Provided*, That of the funds provided in this sentence, up to 10 percent shall be available for the provision of training and technical assistance to such programs consistent with section 645A(g)(2) of such Act, and up to 3 percent shall be available for monitoring the operation of such programs consistent with section 641A of such Act: *Provided further*, That the preceding proviso shall apply to this appropriation in lieu of the provisions of section 1106 of this Act: *Provided further*, That the provisions of section 1103 of this Act shall not apply to this appropriation.

(3) $1,000,000,000 for carrying out activities under sections 674 through 679 of the Community Services Block Grant Act, of which $500,000,000 shall become available on October 1, 2009, and of which no part shall be subject to paragraphs (2) and (3) of section 674(b) of such Act: *Provided*, That notwithstanding section 675C(a)(1) of such Act, 100

percent of the funds made available to a State from this additional amount shall be distributed to eligible entities as defined in section 673(1) of such Act: *Provided further*, That for services furnished under such Act during fiscal years 2009 and 2010, States may apply the last sentence of section 673(2) of such Act by substituting "200 percent" for "125 percent": *Provided further*, That the provisions of section 1106 of this Act shall not apply to this appropriation.

(4) $100,000,000 for carrying out activities under section 1110 of the Social Security Act, of which $50,000,000 shall become available on October 1, 2009: *Provided*, That the Secretary of Health and Human Services shall distribute such amount under the Compassion Capital Fund to eligible faith-based and community organizations: *Provided further*, That the provisions of section 1106 of this Act shall not apply to this appropriation.

ADMINISTRATION ON AGING

AGING SERVICES PROGRAMS

For an additional amount for "Aging Services Programs" under section 311, and subparts 1 and 2 of part C, of title III of the Older Americans Act of 1965, $200,000,000, of which $100,000,000 shall become avail-

able on October 1, 2009: *Provided*, That the provisions of section 1106 of this Act shall not apply to this appropriation.

OFFICE OF THE SECRETARY

OFFICE OF THE NATIONAL COORDINATOR FOR HEALTH INFORMATION TECHNOLOGY

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for ''Office of the National Coordinator for Health Information Technology'' to carry out section 9202 of this Act, $2,000,000,000, to remain available until expended: *Provided*, That of such amount, the Secretary of Health and Human Services shall transfer $20,000,000 to the Director of the National Institute of Standards and Technology in the Department of Commerce for continued work on advancing health care information enterprise integration through activities such as technical standards analysis and establishment of conformance testing infrastructure, so long as such activities are coordinated with the Office of the National Coordinator for Health Information Technology: *Provided further*, That the provisions of section 1103 of this Act shall not apply to this appropriation: *Provided further*, That the amount set aside from this appropriation pursuant to section 1106 of this Act shall be 0.25 percent instead of the percentage specified in such section: *Provided further*,

1 That funds available under this heading shall become
2 available for obligation only upon submission of an annual
3 operating plan by the Secretary to the Committees on Ap-
4 propriations of the House of Representatives and the Sen-
5 ate: *Provided further*, That the fiscal year 2009 operating
6 plan shall be provided not later than 90 days after enact-
7 ment of this Act and that subsequent annual operating
8 plans shall be provided not later than November 1 of each
9 year: *Provided further*, That these operating plans shall
10 describe how expenditures are aligned with the specific ob-
11 jectives, milestones, and metrics of the Federal Health In-
12 formation Technology Strategic Plan, including any subse-
13 quent updates to the Plan; the allocation of resources
14 within the Department of Health and Human Services and
15 other Federal agencies; and the identification of programs
16 and activities that are supported: *Provided further*, That
17 the Secretary shall provide to the Committees on Appro-
18 priations of the House of Representatives and the Senate
19 a report on the actual obligations, expenditures, and unob-
20 ligated balances for each major set of activities not later
21 than November 1, 2009, and every 6 months thereafter
22 as long as funding provided under this heading is available
23 for obligation or expenditure: *Provided further*, That the
24 Comptroller General of the United States shall review on
25 an annual basis the expenditures from funds provided

under this heading to determine if such funds are used in a manner consistent with the purpose and requirements under this heading.

PUBLIC HEALTH AND SOCIAL SERVICES EMERGENCY FUND

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for ''Public Health and Social Services Emergency Fund'' to support advanced research and development pursuant to section 319L of the Public Health Service Act, $430,000,000: *Provided*, That the provisions of section 1103 of this Act shall not apply to this appropriation.

For an additional amount for ''Public Health and Social Services Emergency Fund'' to prepare for and respond to an influenza pandemic, including the development and purchase of vaccine, antivirals, necessary medical supplies, diagnostics, and other surveillance tools, $420,000,000: *Provided*, That the provisions of section 1103 of this Act shall not apply to this appropriation: *Provided further*, That products purchased with these funds may, at the discretion of the Secretary of Health and Human Services (''Secretary''), be deposited in the Strategic National Stockpile: *Provided further*, That notwithstanding section 496(b) of the Public Health Service Act, funds may be used for the construction or renovation of

1 privately owned facilities for the production of pandemic
2 influenza vaccine and other biologics, where the Secretary
3 finds such a contract necessary to secure sufficient sup-
4 plies of such vaccines or biologics: *Provided further*, That
5 funds appropriated in this paragraph may be transferred
6 to other appropriation accounts of the Department of
7 Health and Human Services, as determined by the Sec-
8 retary to be appropriate, to be used for the purposed speci-
9 fied in this sentence.

10 For an additional amount for ''Public Health and So-
11 cial Services Emergency Fund'' to improve information
12 technology security at the Department of Health and
13 Human Services, $50,000,000: *Provided*, That the Sec-
14 retary shall prepare and submit a report by not later than
15 November 1, 2009, and by not later than 15 days after
16 the end of each month thereafter, updating the status of
17 actions taken and funds obligated in this and previous ap-
18 propriations Acts for pandemic influenza preparedness
19 and response activities, biomedical advanced research and
20 development activities, Project BioShield, and Cyber Secu-
21 rity.

22 PREVENTION AND WELLNESS FUND

23 (INCLUDING TRANSFER OF FUNDS)

24 For necessary expenses for a ''Prevention and
25 Wellness Fund'' to be administered through the Depart-

1 ment of Health and Human Services Office of the Sec-
2 retary, $3,000,000,000: *Provided*, That the provisions of
3 section 1103 of this Act shall not apply to this appropria-
4 tion: *Provided further*, That of the amount appropriated
5 under this heading not less than $2,350,000,000 shall be
6 transferred to the Centers for Disease Control and Pre-
7 vention as follows:

8 (1) Not less than $954,000,000 shall be used as
9 an additional amount to carry out the immunization
10 program authorized by section 317(a), (j), and
11 (k)(1) of the Public Health Service Act (''section
12 317 immunization program''), of which
13 $649,900,000 shall be available on October 1, 2009.

14 (2) Not less than $296,000,000 shall be used as
15 an additional amount to carry out Part A of title
16 XIX of the Public Health Service Act, of which
17 $148,000,000 shall be available on October 1, 2009.

18 (3) Not less than $545,000,000 shall be used as
19 an additional amount to carry out chronic disease,
20 health promotion, and genomics programs, as jointly
21 determined by the Secretary of Health and Human
22 Services (''Secretary'') and the Director of the Cen-
23 ters for Disease Control and Prevention (''Direc-
24 tor'').

(4) Not less than $335,000,000 shall be used as an additional amount to carry out domestic HIV/AIDS, viral hepatitis, sexually-transmitted diseases, and tuberculosis prevention programs, as jointly determined by the Secretary and the Director.

(5) Not less than $60,000,000 shall be used as an additional amount to carry out environmental health programs, as jointly determined by the Secretary and the Director.

(6) Not less than $50,000,000 shall be used as an additional amount to carry out injury prevention and control programs, as jointly determined by the Secretary and the Director.

(7) Not less than $30,000,000 shall be used as an additional amount for public health workforce development activities, as jointly determined by the Secretary and the Director.

(8) Not less than $40,000,000 shall be used as an additional amount for the National Institute for Occupational Safety and Health to carry out research activities within the National Occupational Research Agenda.

(9) Not less than $40,000,000 shall be used as an additional amount for the National Center for Health Statistics:

1 *Provided further*, That of the amount appropriated under
2 this heading not less than $150,000,000 shall be available
3 for an additional amount to carry out activities to imple-
4 ment a national action plan to prevent healthcare-associ-
5 ated infections, as determined by the Secretary, of which
6 not less $50,000,000 shall be provided to States to imple-
7 ment healthcare-associated infection reduction strategies:
8 *Provided further*, That of the amount appropriated under
9 this heading $500,000,000 shall be used to carry out evi-
10 dence-based clinical and community-based prevention and
11 wellness strategies and public health workforce develop-
12 ment activities authorized by the Public Health Service
13 Act, as determined by the Secretary, that deliver specific,
14 measurable health outcomes that address chronic and in-
15 fectious disease rates and health disparities, which shall
16 include evidence-based interventions in obesity, diabetes,
17 heart disease, cancer, tobacco cessation and smoking pre-
18 vention, and oral health, and which may be used for the
19 Healthy Communities program administered by the Cen-
20 ters for Disease Control and Prevention and other existing
21 community-based programs administered by the Depart-
22 ment of Health and Human Services: *Provided further*,
23 That funds appropriated in the preceding proviso may be
24 transferred to other appropriation accounts of the Depart-
25 ment of Health and Human Services, as determined by

the Secretary to be appropriate: *Provided further*, That the Secretary shall, directly or through contracts with public or private entities, provide for annual evaluations of programs carried out with funds provided under this heading in order to determine the quality and effectiveness of the programs: *Provided further*, That the Secretary shall, not later than 1 year after the date of enactment of this Act, submit to the Committees on Appropriations of the House of Representatives and the Senate, the Committee on Energy and Commerce of the House of Representatives, and the Committee on Health, Education, Labor, and Pensions of the Senate, a report: (1) summarizing the annual evaluations of programs from the preceding proviso; and (2) making recommendations concerning future spending on prevention and wellness activities, including any recommendations made by the United States Preventive Services Task Force in the area of clinical preventive services and the Task Force on Community Preventive Services in the area of community preventive services: *Provided further*, That the Secretary shall enter into a contract with the Institute of Medicine, for which no more than $1,500,000 shall be made available from funds provided in this paragraph, to produce and submit a report to the Congress and the Secretary by no later than 1 year after the date of enactment of this Act that includes rec-

1 ommendations on the national priorities for clinical and
2 community-based prevention and wellness activities that
3 will have a positive impact in preventing illness or reduc-
4 ing healthcare costs and that considers input from stake-
5 holders: *Provided further*, That the Secretary shall provide
6 to the Committees on Appropriations of the House of Rep-
7 resentatives and the Senate a fiscal year 2009 operating
8 plan for the Prevention and Wellness Fund prior to mak-
9 ing any Federal obligations of funds provided under this
10 heading in fiscal year 2009 (excluding funds to carry out
11 the section 317 immunization program), but not later than
12 90 days after the date of enactment of this Act, and a
13 fiscal year 2010 operating plan for the Prevention and
14 Wellness Fund prior to making any Federal obligations
15 of funds provided under this heading in fiscal year 2010
16 (excluding funds to carry out the section 317 immuniza-
17 tion program), but not later than November 1, 2009, that
18 indicate the prevention priorities to be addressed; provide
19 measurable goals for each prevention priority; detail the
20 allocation of resources within the Department of Health
21 and Human Services; and identify which programs or ac-
22 tivities are supported, including descriptions of any new
23 programs or activities: *Provided further*, That the Sec-
24 retary shall provide to the Committees on Appropriations
25 of the House of Representatives and the Senate a report

on the actual obligations, expenditures, and unobligated balances for each activity funded under this heading not later than November 1, 2009, and every 6 months thereafter as long as funding provided under this heading is available for obligation or expenditure.

GENERAL PROVISIONS, THIS SUBTITLE

SEC. 9201. FEDERAL COORDINATING COUNCIL FOR COMPARATIVE EFFECTIVENESS RESEARCH.

(a) ESTABLISHMENT.—There is hereby established a Federal Coordinating Council for Comparative Effectiveness Research (in this section referred to as the ''Council'').

(b) PURPOSE; DUTIES.—The Council shall—

(1) assist the offices and agencies of the Federal Government, including the Departments of Health and Human Services, Veterans Affairs, and Defense, and other Federal departments or agencies, to coordinate the conduct or support of comparative effectiveness and related health services research; and

(2) advise the President and Congress on—

(A) strategies with respect to the infrastructure needs of comparative effectiveness research within the Federal Government;

(B) appropriate organizational expenditures for comparative effectiveness research by relevant Federal departments and agencies; and

(C) opportunities to assure optimum coordination of comparative effectiveness and related health services research conducted or supported by relevant Federal departments and agencies, with the goal of reducing duplicative efforts and encouraging coordinated and complementary use of resources.

(c) MEMBERSHIP.—

(1) NUMBER AND APPOINTMENT.—The Council shall be composed of not more than 15 members, all of whom are senior Federal officers or employees with responsibility for health-related programs, appointed by the President, acting through the Secretary of Health and Human Services (in this section referred to as the ''Secretary''). Members shall first be appointed to the Council not later than 30 days after the date of the enactment of this Act.

(2) MEMBERS.—

(A) IN GENERAL.—The members of the Council shall include one senior officer or employee from each of the following agencies:

1 (i) The Agency for Healthcare Re-
2 search and Quality.
3 (ii) The Centers for Medicare and
4 Medicaid Services.
5 (iii) The National Institutes of
6 Health.
7 (iv) The Office of the National Coor-
8 dinator for Health Information Tech-
9 nology.
10 (v) The Food and Drug Administra-
11 tion.
12 (vi) The Veterans Health Administra-
13 tion within the Department of Veterans
14 Affairs.
15 (vii) The office within the Department
16 of Defense responsible for management of
17 the Department of Defense Military
18 Health Care System.
19 (B) QUALIFICATIONS.—At least half of the
20 members of the Council shall be physicians or
21 other experts with clinical expertise.
22 (3) CHAIRMAN; VICE CHAIRMAN.—The Sec-
23 retary shall serve as Chairman of the Council and
24 shall designate a member to serve as Vice Chairman.
25 (d) REPORTS.—

(1) INITIAL REPORT.—Not later than June 30, 2009, the Council shall submit to the President and the Congress a report containing information describing Federal activities on comparative effectiveness research and recommendations for additional investments in such research conducted or supported from funds made available for allotment by the Secretary for comparative effectiveness research in this Act.

(2) ANNUAL REPORT.—The Council shall submit to the President and Congress an annual report regarding its activities and recommendations concerning the infrastructure needs, appropriate organizational expenditures and opportunities for better coordination of comparative effectiveness research by relevant Federal departments and agencies.

(e) STAFFING; SUPPORT.—From funds made available for allotment by the Secretary for comparative effectiveness research in this Act, the Secretary shall make available not more than 1 percent to the Council for staff and administrative support.

SEC. 9202. INVESTMENT IN HEALTH INFORMATION TECHNOLOGY.

(a) IN GENERAL.—The Secretary of Health and Human Services shall invest in the infrastructure nec-

1 essary to allow for and promote the electronic exchange
2 and use of health information for each individual in the
3 United States consistent with the goals outlined in the
4 Strategic Plan developed by the Office of the National Co-
5 ordinator for Health Information Technology. Such invest-
6 ment shall include investment in at least the following:

7 (1) Health information technology architecture
8 that will support the nationwide electronic exchange
9 and use of health information in a secure, private,
10 and accurate manner, including connecting health
11 information exchanges, and which may include up-
12 dating and implementing the infrastructure nec-
13 essary within different agencies of the Department
14 of Health and Human Services to support the elec-
15 tronic use and exchange of health information.

16 (2) Integration of health information tech-
17 nology, including electronic medical records, into the
18 initial and ongoing training of health professionals
19 and others in the healthcare industry who would be
20 instrumental to improving the quality of healthcare
21 through the smooth and accurate electronic use and
22 exchange of health information as determined by the
23 Secretary.

24 (3) Training on and dissemination of informa-
25 tion on best practices to integrate health information

technology, including electronic records, into a provider's delivery of care, including community health centers receiving assistance under section 330 of the Public Health Service Act and providers participating in one or more of the programs under titles XVIII, XIX, and XXI of the Social Security Act (relating to Medicare, Medicaid, and the State Children's Health Insurance Program).

(4) Infrastructure and tools for the promotion of telemedicine, including coordination among Federal agencies in the promotion of telemedicine.

(5) Promotion of the interoperability of clinical data repositories or registries.

The Secretary shall implement paragraph (3) in coordination with State agencies administering the Medicaid program and the State Children's Health Insurance Program.

(b) LIMITATION.—None of the funds appropriated to carry out this section may be used to make significant investments in, or provide significant funds for, the acquisition of hardware or software or for the use of an electronic health or medical record, or significant components thereof, unless such investments or funds are for certified products that would permit the full and accurate electronic exchange and use of health information in a medical record, including standards for security, privacy, and quality im-

1 provement functions adopted by the Office of the National
2 Coordinator for Health Information Technology.
3 (c) REPORT.—The Secretary shall annually report to
4 the Committees on Energy and Commerce, on Ways and
5 Means, on Science and Technology, and on Appropriations
6 of the House of Representatives and the Committees on
7 Finance, on Health, Education, Labor, and Pensions, and
8 on Appropriations of the Senate on the uses of these funds
9 and their impact on the infrastructure for the electronic
10 exchange and use of health information.

11 **Subtitle C—Education**

12 DEPARTMENT OF EDUCATION

13 EDUCATION FOR THE DISADVANTAGED

14 For an additional amount for ''Education for the Dis-
15 advantaged'' to carry out title I of the Elementary and
16 Secondary Education Act of 1965 (''ESEA''),
17 $13,000,000,000: *Provided*, That $5,500,000,000 shall be
18 available for targeted grants under section 1125 of the
19 ESEA, of which $2,750,000,000 shall become available on
20 July 1, 2009, and shall remain available through Sep-
21 tember 30, 2010, and $2,750,000,000 shall become avail-
22 able on July 1, 2010, and shall remain available through
23 September 30, 2011: *Provided further*, That
24 $5,500,000,000 shall be available for education finance in-
25 centive grants under section 1125A of the ESEA, of which

$2,750,000,000 shall become available on July 1, 2009, and shall remain available through September 30, 2010, and $2,750,000,000 shall become available on July 1, 2010, and shall remain available through September 30, 2011: *Provided further*, That $2,000,000,000 shall be for school improvement grants under section 1003(g) of the ESEA, of which $1,000,000,000 shall become available on July 1, 2009, and shall remain available through September 30, 2010, and $1,000,000,000 shall become available on July 1, 2010, and shall remain available through September 30, 2011: *Provided further*, That the provisions of section 1106 of this Act shall not apply to this appropriation.

IMPACT AID

For an additional amount for ''Impact Aid'' to carry out section 8007 of title VIII of the Elementary and Secondary Education Act of 1965, $100,000,000, which shall remain available through September 30, 2010: *Provided*, That the amount set aside from this appropriation pursuant to section 1106 of this Act shall be 1 percent instead of the percentage specified in such section.

SCHOOL IMPROVEMENT PROGRAMS

For an additional amount for ''School Improvement Programs'' to carry out subpart 1, part D of title II of the Elementary and Secondary Education Act of 1965

1 (''ESEA''), and subtitle B of title VII of the McKinney-
2 Vento Homeless Assistance Act, $1,066,000,000: *Pro-*
3 *vided*, That $1,000,000,000 shall be available for subpart
4 1, part D of title II of the ESEA, of which $500,000,000
5 shall become available on July 1, 2009, and shall remain
6 available through September 30, 2010, and $500,000,000
7 shall become available on July 1, 2010, and remain avail-
8 able through September 30, 2011: *Provided further*, That
9 the provisions of section 1106 of this Act shall not apply
10 to these funds: *Provided further*, That $66,000,000 shall
11 be available for subtitle B of title VII of the McKinney-
12 Vento Homeless Assistance Act, of which $33,000,000
13 shall become available on July 1, 2009, and shall remain
14 available through September 30, 2010, and $33,000,000
15 shall become available on July 1, 2010, and remain avail-
16 able through September 30, 2011.

17 INNOVATION AND IMPROVEMENT

18 For an additional amount for ''Innovation and Im-
19 provement'' to carry out subpart 1, part D and subpart
20 2, part B of title V of the Elementary and Secondary Edu-
21 cation Act of 1965 (''ESEA''), $225,000,000: *Provided*,
22 That $200,000,000 shall be available for subpart 1, part
23 D of title V of the ESEA: *Provided further*, That these
24 funds shall be expended as directed in the fifth, sixth, and
25 seventh provisos under the heading ''Innovation and Im-

provement'' in the Department of Education Appropriations Act, 2008: *Provided further*, That a portion of these funds shall also be used for a rigorous national evaluation by the Institute of Education Sciences, utilizing randomized controlled methodology to the extent feasible, that assesses the impact of performance-based teacher and principal compensation systems supported by the funds provided in this Act on teacher and principal recruitment and retention in high-need schools and subjects: *Provided further*, That $25,000,000 shall be available for subpart 2, part B of title V of the ESEA: *Provided further*, That the amount set aside from this appropriation pursuant to section 1106 of this Act shall be 1 percent instead of the percentage specified in such section.

SPECIAL EDUCATION

For an additional amount for ''Special Education'' for carrying out section 611 and part C of the Individuals with Disabilities Education Act (''IDEA''), $13,600,000,000: *Provided*, That $13,000,000,000 shall be available for section 611 of the IDEA, of which $6,000,000,000 shall become available on July 1, 2009, and remain available through September 30, 2010, and $7,000,000,000 shall become available on July 1, 2010, and remain available through September 30, 2011: *Provided further*, That $600,000,000 shall be available for

1 part C of the IDEA, of which $300,000,000 shall become
2 available on July 1, 2009, and remain available through
3 September 30, 2010, and $300,000,000 shall become
4 available on July 1, 2010, and remain available through
5 September 30, 2011: *Provided further*, That by July 1,
6 2009, the Secretary of Education shall reserve the amount
7 needed for grants under section 643(e) of the IDEA from
8 funds available for obligation on July 1, 2009, with any
9 remaining funds to be allocated in accordance with section
10 643(c) of the IDEA: *Provided further*, That by July 1,
11 2010, the Secretary shall reserve the amount needed for
12 grants under section 643(e) of the IDEA from funds avail-
13 able for obligation on July 1, 2010, with any remaining
14 funds to be allocated in accordance with section 643(c)
15 of the IDEA: *Provided further*, That if every State, as de-
16 fined by section 602(31) of the IDEA, reaches its max-
17 imum allocation under section 611(d)(3)(B)(iii) of the
18 IDEA, and there are remaining funds, such funds shall
19 be proportionally allocated to each State subject to the
20 maximum amounts contained in section 611(a)(2) of the
21 IDEA: *Provided further*, That the provisions of section
22 1106 of this Act shall not apply to this appropriation.

23 REHABILITATION SERVICES AND DISABILITY RESEARCH

24 For an additional amount for ''Rehabilitation Serv-
25 ices and Disability Research'' for providing grants to

States to carry out the Vocational Rehabilitation Services program under part B of title I and parts B and C of chapter 1 and chapter 2 of title VII of the Rehabilitation Act of 1973, $700,000,000: *Provided*, That $500,000,000 shall be available for part B of title I of the Rehabilitation Act, of which $250,000,000 shall become available on October 1, 2009: *Provided further*, That funds provided herein shall not be considered in determining the amount required to be appropriated under section 100(b)(1) of the Rehabilitation Act of 1973 in any fiscal year: *Provided further*, That, notwithstanding section 7(14)(A), the Federal share of the costs of vocational rehabilitation services provided with the funds provided herein shall be 100 percent: *Provided further*, That the provisions of section 1106 of this Act shall not apply to these funds: *Provided further*, That $200,000,000 shall be available for parts B and C of chapter 1 and chapter 2 of title VII of the Rehabilitation Act, of which $100,000,000 shall become available on October 1, 2009: *Provided further*, That $34,775,000 shall be for State Grants, $114,581,000 shall be for independent living centers, and $50,644,000 shall be for services for older blind individuals.

STUDENT FINANCIAL ASSISTANCE

For an additional amount for ''Student Financial Assistance'' to carry out subpart 1 of part A and part C

of title IV of the Higher Education Act of 1965 (''HEA''), $16,126,000,000, which shall remain available through September 30, 2011: *Provided*, That $15,636,000,000 shall be available for subpart 1of part A of title IV of the HEA: *Provided further*, That $490,000,000 shall be available for part C of title IV of the HEA, of which $245,000,000 shall become available on October 1, 2009: *Provided further*, That the provisions of section 1106 of this Act shall not apply to this appropriation.

The maximum Pell Grant for which a student shall be eligible during award year 2009–2010 shall be $4,860.

STUDENT AID ADMINISTRATION

For an additional amount for ''Student Aid Administration'' to carry out part D of title I, and subparts 1, 3, and 4 of part A, and parts B, C, D, and E of title IV of the Higher Education Act of 1965, $50,000,000, which shall remain available through September 30, 2011: *Provided*, That such amount shall also be available for an independent audit of programs and activities authorized under section 459A of such Act: *Provided further*, That the provisions of section 1106 of this Act shall not apply to this appropriation.

HIGHER EDUCATION

For an additional amount for ''Higher Education'' to carry out part A of title II of the Higher Education Act

of 1965, $100,000,000: *Provided*, That section 203(c)(1) of such Act shall not apply to awards made with these funds.

INSTITUTE OF EDUCATION SCIENCES

For an additional amount for Institute of Education Sciences to carry out section 208 of the Educational Technical Assistance Act, $250,000,000, which may be used for Statewide data systems that include postsecondary and workforce information, of which up to $5,000,000 may be used for State data coordinators and for awards to public or private organizations or agencies to improve data coordination: *Provided*, That the amount set aside from this appropriation pursuant to section 1106 of this Act shall be 1 percent instead of the percentage specified in such section.

SCHOOL MODERNIZATION, RENOVATION, AND REPAIR

For carrying out section 9301 of this Act, $14,000,000,000: *Provided*, That amount available under section 9301 of this Act for administration and oversight shall take the place of the set-aside under section 1106 of this Act.

HIGHER EDUCATION MODERNIZATION, RENOVATION, AND REPAIR

For carrying out section 9302 of this Act, $6,000,000,000: *Provided*, That amount available under

section 9302 of this Act for administration and oversight shall take the place of the set-aside under section 1106 of this Act.

GENERAL PROVISIONS, THIS SUBTITLE

SEC. 9301. 21ST CENTURY GREEN HIGH-PERFORMING PUBLIC SCHOOL FACILITIES.

(a) DEFINITIONS.—In this section:

(1) The term ''Bureau-funded school'' has the meaning given to such term in section 1141 of the Education Amendments of 1978 (25 U.S.C. 2021).

(2) The term ''charter school'' has the meaning given such term in section 5210 of the Elementary and Secondary Education Act of 1965.

(3) The term ''local educational agency''—

(A) has the meaning given to that term in section 9101 of the Elementary and Secondary Education Act of 1965, and shall also include the Recovery School District of Louisiana and the New Orleans Public Schools; and

(B) includes any public charter school that constitutes a local educational agency under State law.

(4) The term ''outlying area''—

(A) means the United States Virgin Islands, Guam, American Samoa, and the Com-

monwealth of the Northern Mariana Islands; and

(B) includes the freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

(5) The term ''public school facilities'' includes charter schools.

(6) The term ''State'' means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(7) The term ''LEED Green Building Rating System'' means the United States Green Building Council Leadership in Energy and Environmental Design green building rating standard referred to as the LEED Green Building Rating System.

(8) The term ''Energy Star'' means the Energy Star program of the United States Department of Energy and the United States Environmental Protection Agency.

(9) The term ''CHPS Criteria'' means the green building rating program developed by the Collaborative for High Performance Schools.

(10) The term ''Green Globes'' means the Green Building Initiative environmental design and rating system referred to as Green Globes.

(b) PURPOSE.—Grants under this section shall be for the purpose of modernizing, renovating, or repairing public school facilities, based on their need for such improvements, to be safe, healthy, high-performing, and up-to-date technologically.

(c) ALLOCATION OF FUNDS.—

(1) RESERVATIONS.—

(A) IN GENERAL.—From the amount appropriated to carry out this section, the Secretary of Education shall reserve 1 percent of such amount, consistent with the purpose described in subsection (b)—

(i) to provide assistance to the outlying areas; and

(ii) for payments to the Secretary of the Interior to provide assistance to Bureau-funded schools.

(B) ADMINISTRATION AND OVERSIGHT.—The Secretary may, in addition, reserve up to $6,000,000 of such amount for administration and oversight of this section.

(2) ALLOCATION TO STATES.—

(A) STATE-BY-STATE ALLOCATION.—Of the amount appropriated to carry out this section, and not reserved under paragraph (1), each State shall be allocated an amount in proportion to the amount received by all local educational agencies in the State under part A of title I of the Elementary and Secondary Education Act of 1965 for fiscal year 2008 relative to the total amount received by all local educational agencies in every State under such part for such fiscal year.

(B) STATE ADMINISTRATION.—A State may reserve up to 1 percent of its allocation under subparagraph (A) to carry out its responsibilities under this section, including—

(i) providing technical assistance to local educational agencies;

(ii) developing, within 6 months of receiving its allocation under subparagraph (A), a plan to develop a database that includes an inventory of public school facilities in the State and the modernization, renovation, and repair needs of, energy use by, and the carbon footprint of such schools; and

(iii) developing a school energy efficiency quality plan.

(C) GRANTS TO LOCAL EDUCATIONAL AGENCIES.—From the amount allocated to a State under subparagraph (A), each local educational agency in the State that meets the requirements of section 1112(a) of the Elementary and Secondary Education Act of 1965 shall receive an amount in proportion to the amount received by such local educational agency under part A of title I of that Act for fiscal year 2008 relative to the total amount received by all local educational agencies in the State under such part for such fiscal year, except that no local educational agency that received funds under part A of title I of that Act for such fiscal year shall receive a grant of less than $5,000.

(D) SPECIAL RULE.—Section 1122(c)(3) of the Elementary and Secondary Education Act of 1965 shall not apply to subparagraph (A) or (C).

(3) SPECIAL RULES.—

(A) DISTRIBUTIONS BY SECRETARY.—The Secretary of Education shall make and dis-

tribute the reservations and allocations described in paragraphs (1) and (2) not later than 30 days after the date of the enactment of this Act.

(B) DISTRIBUTIONS BY STATES.—A State shall make and distribute the allocations described in paragraph (2)(C) within 30 days of receiving such funds from the Secretary.

(d) USE IT OR LOSE IT REQUIREMENTS.—

(1) DEADLINE FOR BINDING COMMITMENTS.—Each local educational agency receiving funds under this section shall enter into contracts or other binding commitments not later than 1 year after the date of the enactment of this Act (or not later than 9 months after such funds are awarded, if later) to make use of 50 percent of such funds, and shall enter into contracts or other binding commitments not later than 2 years after the date of the enactment of this Act (or not later than 21 months after such funds are awarded, if later) to make use of the remaining funds. In the case of activities to be carried out directly by a local educational agency (rather than by contracts, subgrants, or other arrangements with third parties), a certification by the agency specifying the amounts, planned timing, and

1 purpose of such expenditures shall be deemed a
2 binding commitment for purposes of this subsection.
3 (2) REDISTRIBUTION OF UNCOMMITTED
4 FUNDS.—A State shall recover or deobligate any
5 funds not committed in accordance with paragraph
6 (1), and redistribute such funds to other local edu-
7 cational agencies eligible under this section and able
8 to make use of such funds in a timely manner (in-
9 cluding binding commitments within 120 days after
10 the reallocation).
11 (e) ALLOWABLE USES OF FUNDS.—A local edu-
12 cational agency receiving a grant under this section shall
13 use the grant for modernization, renovation, or repair of
14 public school facilities, including—
15 (1) repairing, replacing, or installing roofs, in-
16 cluding extensive, intensive or semi-intensive green
17 roofs, electrical wiring, plumbing systems, sewage
18 systems, lighting systems, or components of such
19 systems, windows, or doors, including security doors;
20 (2) repairing, replacing, or installing heating,
21 ventilation, air conditioning systems, or components
22 of such systems (including insulation), including in-
23 door air quality assessments;
24 (3) bringing public schools into compliance with
25 fire, health, and safety codes, including professional

installation of fire/life safety alarms, including modernizations, renovations, and repairs that ensure that schools are prepared for emergencies, such as improving building infrastructure to accommodate security measures;

(4) modifications necessary to make public school facilities accessible to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), except that such modifications shall not be the primary use of the grant;

(5) asbestos or polychlorinated biphenyls abatement or removal from public school facilities;

(6) implementation of measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls, abatement, or a combination of each;

(7) implementation of measures designed to reduce or eliminate human exposure to mold or mildew;

(8) upgrading or installing educational technology infrastructure to ensure that students have access to up-to-date educational technology;

(9) technology activities that are carried out in connection with school repair and renovation, including—

(A) wiring;

(B) acquiring hardware and software;

(C) acquiring connectivity linkages and resources; and

(D) acquiring microwave, fiber optics, cable, and satellite transmission equipment;

(10) modernization, renovation, or repair of science and engineering laboratory facilities, libraries, and career and technical education facilities, including those related to energy efficiency and renewable energy, and improvements to building infrastructure to accommodate bicycle and pedestrian access;

(11) renewable energy generation and heating systems, including solar, photovoltaic, wind, geothermal, or biomass, including wood pellet, systems or components of such systems;

(12) other modernization, renovation, or repair of public school facilities to—

(A) improve teachers' ability to teach and students' ability to learn;

(B) ensure the health and safety of students and staff;

(C) make them more energy efficient; or

(D) reduce class size; and

(13) required environmental remediation related to public school modernization, renovation, or repair described in paragraphs (1) through (12).

(f) IMPERMISSIBLE USES OF FUNDS.—No funds received under this section may be used for—

(1) payment of maintenance costs; or

(2) stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public.

(g) SUPPLEMENT, NOT SUPPLANT.—A local educational agency receiving a grant under this section shall use such Federal funds only to supplement and not supplant the amount of funds that would, in the absence of such Federal funds, be available for modernization, renovation, or repair of public school facilities.

(h) PROHIBITION REGARDING STATE AID.—A State shall not take into consideration payments under this section in determining the eligibility of any local educational agency in that State for State aid, or the amount of State aid, with respect to free public education of children.

(i) SPECIAL RULE ON CONTRACTING.—Each local educational agency receiving a grant under this section shall ensure that, if the agency carries out modernization, renovation, or repair through a contract, the process for any such contract ensures the maximum number of qualified bidders, including local, small, minority, and women- and veteran-owned businesses, through full and open competition.

(j) SPECIAL RULE ON USE OF IRON AND STEEL PRODUCED IN THE UNITED STATES.—

(1) IN GENERAL.—A local educational agency shall not obligate or expend funds received under this section for a project for the modernization, renovation, or repair of a public school facility unless all of the iron and steel used in such project is produced in the United States.

(2) EXCEPTIONS.—The provisions of paragraph (1) shall not apply in any case in which the local educational agency finds that—

(A) their application would be inconsistent with the public interest;

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

(C) inclusion of iron and steel produced in the United States will increase the cost of the overall project contract by more than 25 percent.

(k) APPLICATION OF GEPA.—The grant program under this section is an applicable program (as that term is defined in section 400 of the General Education Provisions Act (20 U.S.C. 1221)) subject to section 439 of such Act (20 U.S.C. 1232b).

(l) CHARTER SCHOOLS.—A local educational agency receiving an allocation under this section shall use an equitable portion of that allocation for allowable activities benefitting charter schools within its jurisdiction, as determined based on the percentage of students from low-income families in the schools of the agency who are enrolled in charter schools and on the needs of those schools as determined by the agency.

(m) GREEN SCHOOLS.—

(1) IN GENERAL.—A local educational agency shall use not less than 25 percent of the funds received under this section for public school modernization, renovation, or repairs that are certified, verified, or consistent with any applicable provisions of—

(A) the LEED Green Building Rating System;

(B) Energy Star;

(C) the CHPS Criteria;

(D) Green Globes; or

(E) an equivalent program adopted by the State or another jurisdiction with authority over the local educational agency.

(2) TECHNICAL ASSISTANCE.—The Secretary, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, shall provide outreach and technical assistance to States and school districts concerning the best practices in school modernization, renovation, and repair, including those related to student academic achievement and student and staff health, energy efficiency, and environmental protection.

(n) YOUTHBUILD PROGRAMS.—The Secretary of Education, in consultation with the Secretary of Labor, shall work with recipients of funds under this section to promote appropriate opportunities for participants in a YouthBuild program (as defined in section 173A of the Workforce Investment Act of 1998 (29 U.S.C. 2918a)) to gain employment experience on modernization, renovation, and repair projects funded under this section.

(o) REPORTING.—

(1) REPORTS BY LOCAL EDUCATIONAL AGENCIES.—Local educational agencies receiving a grant under this section shall compile, and submit to the State educational agency (which shall compile and submit such reports to the Secretary), a report describing the projects for which such funds were used, including—

(A) the number of public schools in the agency, including the number of charter schools;

(B) the total amount of funds received by the local educational agency under this section and the amount of such funds expended, including the amount expended for modernization, renovation, and repair of charter schools;

(C) the number of public schools in the agency with a metro-centric locale code of 41, 42, or 43 as determined by the National Center for Education Statistics and the percentage of funds received by the agency under this section that were used for projects at such schools;

(D) the number of public schools in the agency that are eligible for schoolwide programs under section 1114 of the Elementary and Sec-

ondary Education Act of 1965 and the percentage of funds received by the agency under this section that were used for projects at such schools;

(E) the cost of each project, which, if any, of the standards described in subsection (k)(1) the project met, and any demonstrable or expected academic, energy, or environmental benefits as a result of the project;

(F) if flooring was installed, whether—

(i) it was low- or no-VOC (Volatile Organic Compounds) flooring;

(ii) it was made from sustainable materials; and

(iii) use of flooring described in clause (i) or (ii) was cost effective; and

(G) the total number and amount of contracts awarded, and the number and amount of contracts awarded to local, small, minority-owned, women-owned, and veteran-owned businesses.

(2) REPORTS BY SECRETARY.—Not later than December 31, 2011, the Secretary of Education shall submit to the Committees on Education and Labor and Appropriations of the House of Rep-

resentatives and the Committees on Health, Education, Labor, and Pensions and Appropriations of the Senate a report on grants made under this section, including the information described in paragraph (1), the types of modernization, renovation, and repair funded, and the number of students impacted, including the number of students counted under section 1113(a)(5) of the Elementary and Secondary Education Act of 1965.

SEC. 9302. HIGHER EDUCATION MODERNIZATION, RENOVATION, AND REPAIR.

(a) PURPOSE.—Grants awarded under this section shall be for the purpose of modernizing, renovating, and repairing institution of higher education facilities that are primarily used for instruction, research, or student housing.

(b) GRANTS TO STATE HIGHER EDUCATION AGENCIES.—

(1) FORMULA.—From the amounts appropriated to carry out this section, the Secretary of Education shall allocate funds to State higher education agencies based on the number of students attending institutions of higher education, with the State higher education agency in each State receiving an amount that is in proportion to the number

of full-time equivalent undergraduate students attending institutions of higher education in such State for the most recent fiscal year for which there are data available, relative to the total number of full-time equivalent undergraduate students attending institutions of higher education in all States for such fiscal year.

(2) APPLICATION.—To be eligible to receive an allocation from the Secretary under paragraph (1), a State higher education agency shall submit an application to the Secretary at such time and in such manner as the Secretary may reasonably require.

(3) REALLOCATION.—Amounts allocated to a State higher education agency under this section that are not obligated by such agency within 6 months of the date the agency receives such amounts shall be returned to the Secretary, and the Secretary shall reallocate such amounts to State higher education agencies in other States on the same basis as the original allocations under paragraph (1)(B).

(4) ADMINISTRATION AND OVERSIGHT EXPENSES.—From the amounts appropriated to carry out this section, not more than $6,000,000 shall be available to the Secretary for administrative and

oversight expenses related to carrying out this section.

(c) USE OF GRANTS BY STATE HIGHER EDUCATION AGENCIES.—

(1) SUBGRANTS TO INSTITUTIONS OF HIGHER EDUCATION.—

(A) IN GENERAL.—Except as provided in paragraph (2), each State higher education agency receiving an allocation under subsection (b)(1) shall use the amount allocated to award subgrants to institutions of higher education within the State to carry out projects in accordance with subsection (d)(1).

(B) SUBGRANT AWARD ALLOCATION.—A State higher education agency shall award subgrants to institutions of higher education under this section based on the demonstrated need of each institution for facility modernization, renovation, and repair.

(C) PRIORITY CONSIDERATIONS.—In awarding subgrants under this section, each State higher education agency shall give priority consideration to institutions of higher education with any of the following characteristics:

(i) The institution is eligible for Federal assistance under title III or title V of the Higher Education Act of 1965.

(ii) The institution was impacted by a major disaster or emergency declared by the President (as defined in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2))), including an institution affected by a Gulf hurricane disaster, as such term is defined in section 824(g)(1) of the Higher Education Act of 1965 (20 U.S.C. 11611–3(g)(1)).

(iii) The institution demonstrates that the proposed project or projects to be carried out with a subgrant under this section will increase the energy efficiency of the institution's facilities and comply with the LEED Green Building Rating System.

(2) ADMINISTRATIVE AND OVERSIGHT EXPENSES.—Of the allocation amount received under subsection (b)(1), a State higher education agency may reserve not more than 5 percent of such amount, or $500,000, whichever is less, for adminis-

trative and oversight expenses related to carrying out this section.

(d) USE OF SUBGRANTS BY INSTITUTIONS OF HIGHER EDUCATION.—

(1) PERMISSIBLE USES OF FUNDS.—An institution of higher education receiving a subgrant under this section shall use such subgrant to modernize, renovate, or repair facilities of the institution that are primarily used for instruction, research, or student housing, which may include any of the following:

(A) Repair, replacement, or installation of roofs, electrical wiring, plumbing systems, sewage systems, or lighting systems.

(B) Repair, replacement, or installation of heating, ventilation, or air conditioning systems (including insulation).

(C) Compliance with fire and safety codes, including—

(i) professional installation of fire or life safety alarms; and

(ii) modernizations, renovations, and repairs that ensure that the institution's facilities are prepared for emergencies,

such as improving building infrastructure to accommodate security measures.

(D) Retrofitting necessary to increase the energy efficiency of the institution's facilities.

(E) Renovations to the institution's facilities necessary to comply with accessibility requirements in the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(F) Abatement or removal of asbestos from the institution's facilities.

(G) Modernization, renovation, and repair relating to improving science and engineering laboratories, libraries, and instructional facilities.

(H) Upgrading or installation of educational technology infrastructure.

(I) Installation or upgrading of renewable energy generation and heating systems, including solar, photovoltaic, wind, biomass (including wood pellet), or geothermal systems, or components of such systems.

(J) Other modernization, renovation, or repair projects that are primarily for instruction, research, or student housing.

(2) GREEN SCHOOL REQUIREMENT.—An institution of higher education receiving a subgrant under this section shall use not less than 25 percent of such subgrant to carry out projects for modernization, renovation, or repair that are certified, verified, or consistent with the applicable provisions of—

(A) the LEED Green Building Rating System;

(B) Energy Star;

(C) the CHPS Criteria;

(D) Green Globes; or

(E) an equivalent program adopted by the State or the State higher education agency.

(3) PROHIBITED USES OF FUNDS.—No funds awarded under this section may be used for—

(A) the maintenance of systems, equipment, or facilities, including maintenance associated with any permissible uses of funds described in paragraph (1);

(B) modernization, renovation, or repair of stadiums or other facilities primarily used for

athletic contests or exhibitions or other events for which admission is charged to the general public;

(C) modernization, renovation, or repair of facilities—

(i) used for sectarian instruction, religious worship, or a school or department of divinity; or

(ii) in which a substantial portion of the functions of the facilities are subsumed in a religious mission; or

(D) construction of new facilities.

(4) USE IT OR LOSE IT REQUIREMENTS.—

(A) DEADLINE FOR BINDING COMMITMENTS.—Each institution of higher education receiving a subgrant under this section shall enter into contracts or other binding commitments not later than 1 year after the date of the enactment of this Act (or not later than 9 months after the subgrant is awarded, if later) to make use of 50 percent of the funds awarded, and shall enter into contracts or other binding commitments not later than 2 years after the date of the enactment of this Act (or not later than 21 months after the subgrant is

awarded, if later) to make use of the remaining funds. In the case of activities to be carried out directly by an institution of higher education receiving such a subgrant (rather than by contracts, subgrants, or other arrangements with third parties), a certification by the institution specifying the amounts, planned timing, and purpose of such expenditures shall be deemed a binding commitment for purposes of this section.

(B) REDISTRIBUTION OF UNCOMMITTED FUNDS.—A State higher education agency shall recover or deobligate any subgrant funds not committed in accordance with subparagraph (A), and redistribute such funds to other institutions of higher education that are—

(i) eligible for subgrants under this section; and

(ii) able to make use of such funds in a timely manner (including binding commitments within 120 days after the reallocation).

(e) APPLICATION OF GEPA.—The grant program authorized in this section is an applicable program (as that term is defined in section 400 of the General Education

1 Provisions Act (20 U.S.C. 1221)) subject to section 439
2 of such Act (20 U.S.C. 1232b). The Secretary shall, not-
3 withstanding section 437 of such Act (20 U.S.C. 1232)
4 and section 553 of title 5, United States Code, establish
5 such program rules as may be necessary to implement
6 such grant program by notice in the Federal Register.

7 (f) REPORTING.—

8 (1) REPORTS BY INSTITUTIONS.—Not later
9 than September 30, 2011, each institution of higher
10 education receiving a subgrant under this section
11 shall submit to the State higher education agency
12 awarding such subgrant a report describing the
13 projects for which such subgrant was received, in-
14 cluding—

15 (A) a description of each project carried
16 out, or planned to be carried out, with such
17 subgrant, including the types of modernization,
18 renovation, and repair to be completed by each
19 such project;

20 (B) the total amount of funds received by
21 the institution under this section and the
22 amount of such funds expended, as of the date
23 of the report, on the such projects;

24 (C) the actual or planned cost of each such
25 project and any demonstrable or expected aca-

demic, energy, or environmental benefits resulting from such project; and

(D) the total number of contracts, and amount of funding for such contracts, awarded by the institution to carry out such projects, as of the date of such report, including the number of contracts, and amount of funding for such contracts, awarded to local, small, minority-owned, women-owned, and veteran-owned businesses, as such terms are defined by the Small Business Act.

(2) REPORTS BY STATES.—Not later than December 31, 2011, each State higher education agency receiving a grant under this section shall submit to the Secretary a report containing a compilation of all of the reports under paragraph (1) submitted to the agency by institutions of higher education.

(3) REPORTS BY THE SECRETARY.—Not later than March 31, 2012, the Secretary shall submit to the Committee on Education and Labor in the House of Representatives and the Committee on Health, Education, Labor, and Pensions in the Senate and Committees on Appropriations of the House of Representatives and the Senate a report on

grants and subgrants made under this section, including the information described in paragraph (1).

(g) DEFINITIONS.—In this section:

(1) CHPS CRITERIA.—The term ''CHPS Criteria'' means the green building rating program developed by the Collaborative for High Performance Schools.

(2) ENERGY STAR.—The term ''Energy Star'' means the Energy Star program of the United States Department of Energy and the United States Environmental Protection Agency.

(3) GREEN GLOBES.—The term ''Green Globes'' means the Green Building Initiative environmental design and rating system referred to as Green Globes.

(4) INSTITUTION OF HIGHER EDUCATION.—The term ''institution of higher education'' has the meaning given such term in section 101 of the Higher Education Act of 1965.

(5) LEED GREEN BUILDING RATING SYSTEM.—The term ''LEED Green Building Rating System'' means the United States Green Building Council Leadership in Energy and Environmental Design green building rating standard referred to as the LEED Green Building Rating System.

(6) SECRETARY.—The term ''Secretary'' means the Secretary of Education.

(7) STATE.—The term ''State'' has the meaning given such term in section 103 of the Higher Education Act of 1965 (20 U.S.C. 1003).

(8) STATE HIGHER EDUCATION AGENCY.—The term ''State higher education agency'' has the meaning given such term in section 103 of the Higher Education Act of 1965 (20 U.S.C. 1003).

SEC. 9303. MANDATORY PELL GRANTS.

Section 401(b)(9)(A) of the Higher Education Act of 1965 (20 U.S.C. 1070a(b)(9)(A)) is amended—

(1) in clause (ii), by striking ''$2,090,000,000'' and inserting ''$2,733,000,000''; and

(2) in clause (iii), by striking ''$3,030,000,000'' and inserting ''$3,861,000,000''.

SEC. 9304. INCREASE STUDENT LOAN LIMITS.

(a) AMENDMENTS.—Section 428H(d) of the Higher Education Act of 1965 (20 U.S.C. 1078–8(d)) is amended—

(1) in paragraph (3)—

(A) in subparagraph (A), by striking ''$2,000'' and inserting ''$4,000''; and

(B) in subparagraph (B), by striking ''$31,000'' and inserting ''$39,000''; and

(2) in paragraph (4)—

(A) in subparagraph (A)—

(i) in clause (i)(I) and clause (iii)(I), by striking ''$6,000'' each place it appears and inserting ''$8,000''; and

(ii) in clause (ii)(I) and clause (iii)(II), by striking ''$7,000'' each place it appears and inserting ''$9,000''; and

(B) in subparagraph (B), by striking ''$57,500'' and inserting ''$65,500''.

(b) EFFECTIVE DATE.—The amendments made by this section shall be effective for loans first disbursed on or after January 1, 2009.

SEC. 9305. STUDENT LENDER SPECIAL ALLOWANCE.

(a) TEMPORARY CALCULATION RULE.—Section 438(b)(2)(I) of the Higher Education Act of 1965 (20 U.S.C. 1087–1(b)(2)(I)) is amended by adding at the end the following new clause:

''(vii) TEMPORARY CALCULATION RULE DURING UNSTABLE COMMERCIAL PAPER MARKETS.—

''(I) CALCULATION BASED ON LIBOR.—For the calendar quarter beginning on October 1, 2008, and ending on December 31, 2008, in com-

1 puting the special allowance paid pur-
2 suant to this subsection with respect
3 to loans for which the first disburse-
4 ment is made on or after January 1,
5 2000, clause (i)(I) of this subpara-
6 graph shall be applied by substituting
7 'the rate that is the average rate of
8 the 3-month London Inter Bank Of-
9 fered Rate (LIBOR) for United
10 States dollars in effect for each of the
11 days in such quarter as compiled and
12 released by the British Bankers Asso-
13 ciation, minus 0.13 percent,' for 'the
14 average of the bond equivalent rates
15 of the quotes of the 3-month commer-
16 cial paper (financial) rates in effect
17 for each of the days in such quarter
18 as reported by the Federal Reserve in
19 Publication H–15 (or its successor)
20 for such 3-month period'.
21 ''(II) PARTICIPATION INTER-
22 ESTS.—Notwithstanding subclause (I)
23 of this clause, the special allowance
24 paid on any loan held by a lender that
25 has sold participation interests in

such loan to the Secretary shall be the rate computed under this subparagraph without regard to subclause (I) of this clause, unless the lender agrees that the participant's yield with respect to such participation interest is to be calculated in accordance with subclause (I) of this clause.''.

(b) CONFORMING AMENDMENTS.—Section 438(b)(2)(I) of the Higher Education Act of 1965 (20 U.S.C. 1087–1(b)(2)(I)) is further amended—

(1) in clause (i)(II), by striking ''such average bond equivalent rate'' and inserting ''the rate determined under subclause (I)''; and

(2) in clause (v)(III), by striking ''(iv), and (vi)'' and inserting ''(iv), (vi), and (vii)''.

Subtitle D—Related Agencies

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

OPERATING EXPENSES

For an additional amount for ''Operating Expenses'' to carry out the Domestic Volunteer Service Act of 1973 and the National and Community Service Act of 1990 (''1990 Act''), $160,000,000, which shall be used to expand existing AmeriCorps grants: *Provided*, That funds made available under this heading may be used to provide

adjustments to awards made prior to September 30, 2010 in order to waive the match requirement authorized in section 121(e)(4) of part I of subtitle C of the 1990 Act, if the Chief Executive Officer of the Corporation for National and Community Service (''CEO'') determines that the grantee has reduced capacity to meet this requirement: *Provided further*, That in addition to requirements identified herein, funds provided under this heading shall be subject to the terms and conditions under which funds are appropriated in fiscal year 2009: *Provided further*, That the CEO shall provide the Committees on Appropriations of the House of Representatives and the Senate a fiscal year 2009 operating plan for the funds appropriated under this heading prior to making any Federal obligations of such funds in fiscal year 2009, but not later than 90 days after the date of enactment of this Act, and a fiscal year 2010 operating plan for such funds prior to making any Federal obligations of such funds in fiscal year 2010, but not later than November 1, 2009, that detail the allocation of resources and the increased number of volunteers supported by the AmeriCorps programs: *Provided further*, That the CEO shall provide to the Committees on Appropriations of the House of Representatives and the Senate a report on the actual obligations, expenditures, and unobligated balances for each activity funded under this head-

ing not later than November 1, 2009, and every 6 months thereafter as long as funding provided under this heading is available for obligation or expenditure.

NATIONAL SERVICE TRUST

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for ''National Service Trust'' established under subtitle D of title I of the National and Community Service Act of 1990 (''1990 Act''), $40,000,000, which shall remain available until expended: *Provided*, That the Corporation for National and Community Service may transfer additional funds from the amount provided within ''Operating Expenses'' for grants made under subtitle C of the 1990 Act to this appropriation upon determination that such transfer is necessary to support the activities of national service participants and after notice is transmitted to the Committees on Appropriations of the House of Representatives and the Senate: *Provided further*, That the amount appropriated for or transferred to the National Service Trust may be invested under section 145(b) of the 1990 Act without regard to the requirement to apportion funds under 31 U.S.C. 1513(b).

SOCIAL SECURITY ADMINISTRATION

LIMITATION ON ADMINISTRATIVE EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for ''Limitation on Administrative Expenses'', $900,000,000, which shall be used as follows:

(1) $400,000,000 for the construction and associated costs to establish a new National Computer Center, which may include lease or purchase of real property: *Provided*, That the construction plan and site selection for such center shall be subject to review and approval by the Office of Management and Budget: *Provided further*, That the Committees on Appropriations of the House of Representatives and the Senate shall be notified 15 days in advance of the lease or purchase of such site: *Provided further*, That such center shall continue to be a government-operated facility.

(2) $500,000,000 for processing disability and retirement workloads: *Provided*, That up to $40,000,000 may be used by the Commissioner of Social Security for health information technology research and activities to facilitate the adoption of electronic medical records in disability claims, including the transfer of funds to ''Supplemental Se-

curity Income Program'' to carry out activities under section 1110 of the Social Security Act.

TITLE X—MILITARY CONSTRUCTION AND VETERANS AFFAIRS

DEPARTMENT OF DEFENSE

MILITARY CONSTRUCTION, ARMY

For an additional amount for ''Military Construction, Army'', $920,000,000: *Provided*, That notwithstanding any other provision of law, such funds may be obligated and expended to carry out planning and design and military construction projects in the United States not otherwise authorized by law: *Provided further*, That of the amount provided under this heading, $600,000,000 shall be for training and recruit troop housing, $220,000,000 shall be for permanent party troop housing, and $100,000,000 shall be for child development centers: *Provided further*, That not later than 30 days after the date of enactment of this Act, the Secretary of Defense shall submit to the Committees on Appropriations of the House of Representatives and the Senate an expenditure plan for funds provided under this heading.

MILITARY CONSTRUCTION, NAVY AND MARINE CORPS

For an additional amount for ''Military Construction, Navy and Marine Corps'', $350,000,000: *Provided*, That

notwithstanding any other provision of law, such funds may be obligated and expended to carry out planning and design and military construction projects in the United States not otherwise authorized by law: *Provided further*, That of the amount provided under this heading, $170,000,000 shall be for sailor and marine housing and $180,000,000 shall be for child development centers: *Provided further*, That not later than 30 days after the date of enactment of this Act, the Secretary of Defense shall submit to the Committees on Appropriations of the House of Representatives and the Senate an expenditure plan for funds provided under this heading.

MILITARY CONSTRUCTION, AIR FORCE

For an additional amount for ''Military Construction, Air Force'', $280,000,000: *Provided*, That notwithstanding any other provision of law, such funds may be obligated and expended to carry out planning and design and military construction projects in the United States not otherwise authorized by law: *Provided further*, That of the amount provided under this heading, $200,000,000 shall be for airmen housing and $80,000,000 shall be for child development centers: *Provided further*, That not later than 30 days after the date of enactment of this Act, the Secretary of Defense shall submit to the Committees on Appropriations of the House of Representatives and the Sen-

ate an expenditure plan for funds provided under this heading.

MILITARY CONSTRUCTION, DEFENSE-WIDE

For an additional amount for ''Military Construction, Defense-Wide'', $3,750,000,000, for the construction of hospitals and ambulatory surgery centers: *Provided*, That notwithstanding any other provision of law, such funds may be obligated and expended to carry out planning and design and military construction projects in the United States not otherwise authorized by law: *Provided further*, That not later than 30 days after the date of enactment of this Act, the Secretary of Defense shall submit to the Committees on Appropriations of the House of Representatives and the Senate an expenditure plan for funds provided under this heading.

MILITARY CONSTRUCTION, ARMY NATIONAL GUARD

For an additional amount for ''Military Construction, Army National Guard'', $140,000,000: *Provided*, That notwithstanding any other provision of law, such funds may be obligated and expended to carry out planning and design and military construction projects in the United States not otherwise authorized by law: *Provided further*, That not later than 30 days after the date of enactment of this Act, the Secretary of Defense shall submit to the Committees on Appropriations of the House of Represent-

atives and the Senate an expenditure plan for funds provided under this heading.

MILITARY CONSTRUCTION, AIR NATIONAL GUARD

For an additional amount for ''Military Construction, Air National Guard'', $70,000,000: *Provided*, That notwithstanding any other provision of law, such funds may be obligated and expended to carry out planning and design and military construction projects in the United States not otherwise authorized by law: *Provided further*, That not later than 30 days after the date of enactment of this Act, the Secretary of Defense shall submit to the Committees on Appropriations of the House of Representatives and the Senate an expenditure plan for funds provided under this heading.

MILITARY CONSTRUCTION, ARMY RESERVE

For an additional amount for ''Military Construction, Army Reserve'', $100,000,000: *Provided*, That notwithstanding any other provision of law, such funds may be obligated and expended to carry out planning and design and military construction projects in the United States not otherwise authorized by law: *Provided further*, That not later than 30 days after the date of enactment of this Act, the Secretary of Defense shall submit to the Committees on Appropriations of the House of Representatives and the

Senate an expenditure plan for funds provided under this heading.

MILITARY CONSTRUCTION, NAVY RESERVE

For an additional amount for ''Military Construction, Navy Reserve'', $30,000,000: *Provided*, That notwithstanding any other provision of law, such funds may be obligated and expended to carry out planning and design and military construction projects in the United States not otherwise authorized by law: *Provided further*, That not later than 30 days after the date of enactment of this Act, the Secretary of Defense shall submit to the Committees on Appropriations of the House of Representatives and the Senate an expenditure plan for funds provided under this heading.

MILITARY CONSTRUCTION, AIR FORCE RESERVE

For an additional amount for ''Military Construction, Air Force Reserve'', $60,000,000: *Provided*, That notwithstanding any other provision of law, such funds may be obligated and expended to carry out planning and design and military construction projects in the United States not otherwise authorized by law: *Provided further*, That not later than 30 days after the date of enactment of this Act, the Secretary of Defense shall submit to the Committees on Appropriations of the House of Representatives and the

Senate an expenditure plan for funds provided under this heading.

DEPARTMENT OF DEFENSE BASE CLOSURE ACCOUNT 1990

For an additional amount to be deposited into the Department of Defense Base Closure Account 1990, established by section 2906(a)(1) of the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note), $300,000,000: *Provided*, That not later than 30 days after the date of enactment of this Act, the Secretary of Defense shall submit to the Committees on Appropriations of the House of Representatives and the Senate an expenditure plan for funds provided under this heading.

DEPARTMENT OF VETERANS AFFAIRS

VETERANS HEALTH ADMINISTRATION

MEDICAL FACILITIES

For an additional amount for ''Medical Facilities'' for non-recurring maintenance, including energy projects, $950,000,000: *Provided*, That not later than 30 days after the date of enactment of this Act, the Secretary of Veterans Affairs shall submit to the Committees on Appropriations of the House of Representatives and the Senate an expenditure plan for funds provided under this heading.

NATIONAL CEMETERY ADMINISTRATION

For an additional amount for ''National Cemetery Administration'' for monument and memorial repairs, $50,000,000: *Provided*, That not later than 30 days after the date of enactment of this Act, the Secretary of Veterans Affairs shall submit to the Committees on Appropriations of the House of Representatives and the Senate an expenditure plan for funds provided under this heading.

TITLE XI—DEPARTMENT OF STATE

DEPARTMENT OF STATE

ADMINISTRATION OF FOREIGN AFFAIRS

CAPITAL INVESTMENT FUND

For an additional amount for ''Capital Investment Fund'', $276,000,000, of which up to $120,000,000 shall be available for the design and construction of a backup information management facility in the United States to support mission-critical operations and projects, and up to $98,527,000 shall be available to carry out the Department of State's responsibilities under the Comprehensive National Cybersecurity Initiative: *Provided*, That the Secretary of State shall submit to the Committees on Appropriations of the House of Representatives and the Senate

within 90 days of enactment of this Act a detailed spending plan for funds appropriated under this heading.

INTERNATIONAL COMMISSIONS

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

CONSTRUCTION

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for ''Construction'' for the water quantity program to meet immediate repair and rehabilitation requirements, $224,000,000: *Provided*, That up to $2,000,000 may be transferred to, and merged with, funds available under the heading ''International Boundary and Water Commission, United States and Mexico—Salaries and Expenses'', and such amount shall be in lieu of amounts available under section 1106 of this Act: *Provided*, That the Secretary of State shall submit to the Committees on Appropriations of the House of Representatives and the Senate within 90 days of enactment of this Act a detailed spending plan for funds appropriated under this heading.

TITLE XII—TRANSPORTATION, AND HOUSING AND URBAN DEVELOPMENT

DEPARTMENT OF TRANSPORTATION

FEDERAL AVIATION ADMINISTRATION

GRANTS-IN-AID FOR AIRPORTS

For an additional amount for ''Grants-in-Aid for Airports'', to enable the Secretary of Transportation to make grants for discretionary projects as authorized by subchapter I of chapter 471 and subchapter I of chapter 475 of title 49, United States Code, $3,000,000,000: *Provided*, That such funds shall not be subject to apportionment formulas, special apportionment categories, or minimum percentages under chapter 471: *Provided further*, That the conditions, certifications, and assurances required for grants under subchapter I of chapter 471 of such title apply: *Provided further,* That for purposes of applying section 1104 of this Act to this appropriation, the deadline for grantees to enter into contracts or other binding commitments to make use of not less than 50 percent of the funds awarded shall be 90 days after award of the grant.

FEDERAL HIGHWAY ADMINISTRATION

HIGHWAY INFRASTRUCTURE INVESTMENT

For projects and activities eligible under section 133 of title 23, United States Code, section 144 of such title

(without regard to subsection (g)), and sections 103, 119, 134, 148, and 149 of such title, $30,000,000,000, of which $300,000,000 shall be for Indian reservation roads under section 204 of such title; $250,000,000 shall be for park roads and parkways under section 204 of such title; $20,000,000 shall be for highway surface transportation and technology training under section 140(b) of such title; and $20,000,000 shall be for disadvantaged business enterprises bonding assistance under section 332(e) of title 49, United States Code: *Provided*, That the amount set aside from this appropriation pursuant to section 1106 of this Act shall not be more than 0.2 percent of the funds made available under this heading instead of the percentage specified in such section: *Provided further*, That, after making the set-asides authorized by the previous provisos, the funds made available under this heading shall be distributed among the States, and Puerto Rico, American Samoa, Guam, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands, in the same ratio as the obligation limitation for fiscal year 2008 was distributed among the States in accordance with the formula specified in section 120(a)(6) of division K of Public Law 110–161, but, in the case of the Puerto Rico Highway Program and the Territorial Highway Program, under section 120(a)(5) of such division: *Provided further*, That 45 percent of the

funds distributed to a State under this heading shall be suballocated within the State in the manner and for the purposes described in section 133(d) of title 23, United States Code, (without regard to the comparison to fiscal year 2005 in paragraph (2)): *Provided further*, That in selecting projects to be funded, recipients shall give priority to projects that can award contracts within 90 days of enactment of this Act, are included in an approved Statewide Transportation Improvement Program (STIP) and/or Metropolitan Transportation Improvement Program (TIP), are projected for completion within a three-year time frame, and are located in economically distressed areas as defined by section 301 of the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3161): *Provided further*, That funds made available under this heading shall be administered as if apportioned under chapter 1 of title 23, United States Code, except for funds made available for Indian reservation roads and park roads and parkways which shall be administered in accordance with chapter 2 of title 23, United States Code: *Provided further*, That the Federal share payable on account of any project or activity carried out with funds made available under this heading shall, at the option of the recipient, be up to 100 percent of the total cost thereof: *Provided further*, That funds

made available by this Act shall not be obligated for the purposes authorized under section 115(b) of title 23, United States Code: *Provided further*, That the provisions of section 1101(b) of Public Law 109–59 shall apply to funds made available under this heading: *Provided further*, That, in lieu of the redistribution required by section 1104(b) of this Act, if less than 50 percent of the funds made available to each State and territory under this heading are obligated within 90 days after the date of distribution of those funds to the States and territories, then the portion of the 50 percent of the total funding distributed to the State or territory that has not been obligated shall be redistributed, in the manner described in section 120(c) of division K of Public Law 110–161, to those States and territories that have obligated at least 50 percent of the funds made available under this heading and are able to obligate amounts in addition to those previously distributed, except that, for those funds suballocated within the State, if less than 50 percent of the funds so suballocated within the State are obligated within 75 days of suballocation, then the portion of the 50 percent of funding so suballocated that has not been obligated will be returned to the State for use anywhere in the State prior to being redistributed in accordance with the first part of this proviso: *Provided further*, That, in lieu of the

redistribution required by section 1104(b) of this Act, any funds made available under this heading that are not obligated by August 1, 2010, shall be redistributed, in the manner described in section 120(c) of division K of Public Law 110–161, to those States able to obligate amounts in addition to those previously distributed, except that funds suballocated within the State that are not obligated by June 1, 2010, will be returned to the State for use anywhere in the State prior to being redistributed in accordance with the first part of this proviso: *Provided further*, That notwithstanding section 1103 of this Act, funds made available under this heading shall be apportioned not later than 7 days after the date of enactment of this Act.

FEDERAL RAILROAD ADMINISTRATION

CAPITAL ASSISTANCE FOR INTERCITY PASSENGER RAIL SERVICE

For an additional amount for ''Capital Assistance for Intercity Passenger Rail Service'' to enable the Secretary of Transportation to make grants for capital costs as authorized by chapter 244 of title 49 United States Code, $300,000,000: *Provided*, That notwithstanding section 1103 of this Act, the Secretary shall give preference to projects for the repair, rehabilitation, upgrade, or purchase of railroad assets or infrastructure that can be awarded within 90 days of enactment of this Act: *Provided*

further, That in awarding grants for the acquisition of a piece of rolling stock or locomotive, the Secretary shall give preference to FRA-compliant rolling stock and locomotives: *Provided further*, That the Secretary shall give preference to projects that support the development of intercity high speed rail service: *Provided further*, That the Federal share shall be, at the option of the recipient, up to 100 percent.

CAPITAL AND DEBT SERVICE GRANTS TO THE NATIONAL RAILROAD PASSENGER CORPORATION

For an additional amount for ''Capital and Debt Service Grants to the National Railroad Passenger Corporation'' (Amtrak) to enable the Secretary of Transportation to make capital grants to Amtrak as authorized by section 101(c) of the Passenger Rail Investment and Improvement Act of 2008 (Public Law 110–432), $800,000,000: *Provided*, That priority shall be given to projects for the repair, rehabilitation, or upgrade of railroad assets or infrastructure: *Provided further*, That none of the funds under this heading shall be used to subsidize the operating losses of Amtrak: *Provided further*, Notwithstanding section 1103 of this Act, funds made available under this heading shall be awarded not later than 7 days after the date of enactment of this Act.

FEDERAL TRANSIT ADMINISTRATION

TRANSIT CAPITAL ASSISTANCE

For transit capital assistance grants, $6,000,000,000 (increased by $1,500,000,000), of which $5,400,000,000 (increased by $1,350,000,000) shall be for grants under section 5307 of title 49, United States Code and shall be apportioned in accordance with section 5336 of such title (other than subsections (i)(1) and (j)) but may not be combined or commingled with any other funds apportioned under such section 5336, and of which $600,000,000 (increased by $150,000,000) shall be for grants under section 5311 of such title and shall be apportioned in accordance with such section 5311 but may not be combined or commingled with any other funds apportioned under that section: *Provided*, That of the funds provided for section 5311 under this heading, 3 percent shall be made available for section 5311(c)(1): *Provided further*, That applicable chapter 53 requirements shall apply except that the Federal share of the costs for which a grant is made under this heading shall be, at the option of the recipient, up to 100 percent: *Provided further*, In lieu of the requirements of section 1103 of this Act, funds made available under this heading shall be apportioned not later than 7 days after the date of enactment of this Act: *Provided further*, That for purposes of applying section 1104 of this

Act to this appropriation, the deadline for grantees to enter into obligations to make use of not less than 50 percent of the funds awarded shall be 90 days after apportionment: *Provided further,* That the provisions of section 1101(b) of Public Law 109–59 shall apply to funds made available under this heading: *Provided further*, That notwithstanding any other provision of law, of the funds apportioned in accordance with section 5336, up to three-quarters of 1 percent shall be available for administrative expenses and program management oversight and of the funds apportioned in accordance with section 5311, up to one-half of 1 percent shall be available for administrative expenses and program management oversight and both amounts shall remain available for obligation until September 30, 2012: *Provided further*, That the preceding proviso shall apply in lieu of the provisions in section 1106 of this Act.

FIXED GUIDEWAY INFRASTRUCTURE INVESTMENT

For an amount for capital expenditures authorized under section 5309(b)(2) of title 49, United States Code, $2,000,000,000: *Provided*, That the Secretary of Transportation shall apportion funds under this heading pursuant to the formula set forth in section 5337 of title 49, United States Code: *Provided further*, That the funds appropriated under this heading shall not be commingled

with funds available under the Formula and Bus Grants account: *Provided further*, In lieu of the requirements of section 1103 of this Act, funds made available under this heading shall be apportioned not later than 7 days after the date of enactment of this Act: *Provided further*, That for purposes of applying section 1104 of this Act to this appropriation, the deadline for grantees to enter into obligations to make use of not less than 50 percent of the funds awarded shall be 90 days after apportionment: *Provided further*, That applicable chapter 53 requirements shall apply except that the Federal share of the costs for which a grant is made under this heading shall be, at the option of the recipient, up to 100 percent: *Provided further*, That the provisions of section 1101(b) of Public Law 109–59 shall apply to funds made available under this heading: *Provided further*, That notwithstanding any other provision of law, up to 1 percent of the funds under this heading shall be available for administrative expenses and program management oversight and shall remain available for obligation until September 30, 2012: *Provided further*, That the preceding proviso shall apply in lieu of the provisions in section 1106 of this Act.

CAPITAL INVESTMENT GRANTS

For an additional amount for ''Capital Investment Grants'', as authorized under section 5338(c)(4) of title

49, United States Code, and allocated under section 5309(m)(2)(A) of such title, to enable the Secretary of Transportation to make discretionary grants as authorized by section 5309(d) and (e) of such title, $1,000,000,000 (increased by $1,500,000,000): *Provided*, That such amount shall be allocated without regard to the limitation under section 5309(m)(2)(A)(i): *Provided further*, That in selecting projects to be funded, priority shall be given to projects that are currently in construction or are able to award contracts based on bids within 90 days of enactment of this Act: *Provided further*, That for purposes of applying section 1104 of this Act to this appropriation, the deadline for grantees to enter into contracts or other binding commitments to make use of not less than 50 percent of the funds awarded shall be 90 days after award: *Provided further*, That the provisions of section 1101(b) of Public Law 109–59 shall apply to funds made available under this heading: *Provided further*, That applicable chapter 53 requirements shall apply, except that notwithstanding any other provision of law, up to 1 percent of the funds under this heading shall be available for administrative expenses and program management oversight and shall remain available for obligation until September 30, 2012: *Provided further*, That the preceding proviso shall apply in lieu of the provisions in section 1106 of this Act.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PUBLIC AND INDIAN HOUSING

PUBLIC HOUSING CAPITAL FUND

For an additional amount for ''Public Housing Capital Fund'' to carry out capital and management activities for public housing agencies, as authorized under section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437g) (''the Act''), $5,000,000,000: *Provided*, That the Secretary of Housing and Urban Development shall distribute at least $4,000,000,000 of this amount by the same formula used for amounts made available in fiscal year 2008: *Provided further*, That public housing authorities shall give priority to capital projects that can award contracts based on bids within 120 days from the date the funds are made available to the public housing authorities: *Provided further*, That public housing agencies shall give priority consideration to the rehabilitation of vacant rental units: *Provided further*, That notwithstanding any other provision of the Act or regulations: (1) funding provided herein may not be used for Operating Fund activities pursuant to section 9(g) of the Act; and (2) any restriction of funding to replacement housing uses shall be inapplicable: *Provided further*, That public housing agencies shall prioritize capital projects underway or al-

ready in their 5-year plans: *Provided further*, That of the amount provided under this heading, the Secretary may obligate up to $1,000,000,000, for competitive grants to public housing authorities for activities including: (1) investments that leverage private sector funding or financing for housing renovations and energy conservation retrofit investments; (2) rehabilitation of units using sustainable materials and methods that improve energy efficiency, reduce energy costs, or preserve and improve units with good access to public transportation or employment centers; (3) increase the availability of affordable rental housing by expediting rehabilitation projects to bring vacant units into use or by filling the capital investment gap for redevelopment or replacement housing projects which have been approved or are otherwise ready to proceed but are stalled due to the inability to obtain anticipated private capital; or (4) address the needs of seniors and persons with disabilities through improvements to housing and related facilities which attract or promote the coordinated delivery of supportive services: *Provided further*, That the Secretary may waive statutory or regulatory provisions related to the obligation and expenditure of capital funds if necessary to facilitate the timely expenditure of funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment).

ELDERLY, DISABLED, AND SECTION 8 ASSISTED HOUSING ENERGY RETROFIT

For grants or loans to owners of properties receiving project-based assistance pursuant to section 202 of the Housing Act of 1959 (12 U.S.C. 17012), section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013), or section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), to accomplish energy retrofit investments, $2,500,000,000: *Provided*, That such loans or grants shall be provided through the Office of Affordable Housing Preservation of the Department of Housing and Urban Development, on such terms and conditions as the Secretary of Housing and Urban Development deems appropriate: *Provided further*, That eligible owners must have at least a satisfactory management review rating, be in substantial compliance with applicable performance standards and legal requirements, and commit to an additional period of affordability determined by the Secretary: *Provided further*, That the Secretary shall undertake appropriate underwriting and oversight with respect to such transactions: *Provided further*, That the Secretary may set aside funds made available under this heading for an efficiency incentive payable upon satisfactory completion of energy retrofit investments, and may provide additional incentives if such investments resulted

in extraordinary job creation for low-income and very low-income persons: *Provided further*, that of the funds provided under this heading, 1 percent shall be available only for staffing, training, technical assistance, technology, monitoring, research and evaluation activities.

NATIVE AMERICAN HOUSING BLOCK GRANTS

For an additional amount for ''Native American Housing Block Grants'', as authorized under title I of the Native American Housing Assistance and Self-Determination Act of 1996 (''NAHASDA'') (25 U.S.C. 4111 et seq.), $500,000,000: *Provided*, That $250,000,000 of the amount appropriated under this heading shall be distributed according to the same funding formula used in fiscal year 2008: *Provided further*, That in selecting projects to be funded, recipients shall give priority to projects that can award contracts based on bids within 120 days from the date that funds are available to the recipients: *Provided further*, That in allocating the funds appropriated under this heading, the Secretary of Housing and Urban Development shall not require an additional action plan from grantees: *Provided further*, That the Secretary may obligate $250,000,000 of the amount appropriated under this heading for competitive grants to eligible entities that apply for funds as authorized under NAHASDA: *Provided further*, That in awarding competitive funds, the Secretary

shall give priority to projects that will spur construction and rehabilitation and will create employment opportunities for low-income and unemployed persons.

COMMUNITY PLANNING AND DEVELOPMENT

COMMUNITY DEVELOPMENT FUND

For an additional amount for ''Community Development Fund'' $1,000,000,000, to carry out the community development block grant program under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.): *Provided*, That the amount appropriated in this paragraph shall be distributed according to the same funding formula used in fiscal year 2008: *Provided further*, That in allocating the funds appropriated in this paragraph, the Secretary of Housing and Urban Development shall not require an additional action plan from grantees: *Provided further*, That in selecting projects to be funded, recipients shall give priority to projects that can award contracts based on bids within 120 days from the date the funds are made available to the recipients; *Provided further*, That in administering funds provided in this paragraph, the Secretary may waive any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these funds (except for requirements related to fair housing, nondiscrimination, labor

standards, and the environment), upon a finding that such waiver is required to facilitate the timely use of such funds and would not be inconsistent with the overall purpose of the statute.

For a further additional amount for ''Community Development Fund'', $4,190,000,000, to be used for neighborhood stabilization activities related to emergency assistance for the redevelopment of abandoned and foreclosed homes as authorized under division B, title III of the Housing and Economic Recovery Act of 2008 (Public Law 110–289), of which—

(1) not less than $3,440,000,000 shall be allocated by a competition for which eligible entities shall be States, units of general local government, and nonprofit entities or consortia of nonprofit entities: *Provided,* That the award criteria for such competition shall include grantee capacity, leveraging potential, targeted impact of foreclosure prevention, and any additional factors determined by the Secretary of Housing and Urban Development: *Provided further*, that the Secretary may establish a minimum grant size: *Provided further*, That amounts made available under this Section may be used to: (A) establish financing mechanisms for purchase and redevelopment of foreclosed-upon homes and residential

1 properties, including such mechanisms as soft-sec-
2 onds, loan loss reserves, and shared-equity loans for
3 low- and moderate-income homebuyers; (B) purchase
4 and rehabilitate homes and residential properties
5 that have been abandoned or foreclosed upon, in
6 order to sell or rent such homes and properties; (C)
7 establish and operate land banks for homes that
8 have been foreclosed upon; (D) demolish foreclosed
9 properties that have become blighted structures; and
10 (E) redevelop demolished or vacant foreclosed prop-
11 erties in order to sell or rent such properties; and
12 (2) up to $750,000,000 shall be awarded by
13 competition to nonprofit entities or consortia of non-
14 profit entities to provide community stabilization as-
15 sistance by: (A) accelerating state and local govern-
16 ment and nonprofit productivity; (B) increasing the
17 scale and efficiency of property transfers of fore-
18 closed and vacant residential properties from finan-
19 cial institutions and government entities to qualified
20 local housing providers in order to return the prop-
21 erties to productive affordable housing use; (C)
22 building industry and property management capac-
23 ity; and (D) partnering with private sector real es-
24 tate developers and contractors and leveraging pri-
25 vate sector capital: *Provided further*, That such com-

1 munity stabilization assistance shall be provided pri-
2 marily in States and areas with high rates of de-
3 faults and foreclosures to support the acquisition, re-
4 habilitation and property management of single-fam-
5 ily and multi-family homes and to work in partner-
6 ship with the private sector real estate industry and
7 to leverage available private and public funds for
8 those purposes: *Provided further*, That for purposes
9 of this paragraph qualified local housing providers
10 shall be nonprofit organizations with demonstrated
11 capabilities in real estate development or acquisition
12 and rehabilitation or property management of single-
13 or multi-family homes, or local or state governments
14 or instrumentalities of such governments: *Provided*
15 *further*, That qualified local housing providers shall
16 be expected to utilize and leverage additional local
17 nonprofit, governmental, for-profit and private re-
18 sources:
19 *Provided further*, That in the case of any foreclosure on
20 any dwelling or residential real property acquired with any
21 amounts made available under this heading, any successor
22 in interest in such property pursuant to the foreclosure
23 shall assume such interest subject to: (1) the provision by
24 such successor in interest of a notice to vacate to any bona
25 fide tenant at least 90 days before the effective date of

such notice; and (2) the rights of any bona fide tenant, as of the date of such notice of foreclosure: (A) under any bona fide lease entered into before the notice of foreclosure to occupy the premises until the end of the remaining term of the lease, except that a successor in interest may terminate a lease effective on the date of sale of the unit to a purchaser who will occupy the unit as a primary residence, subject to the receipt by the tenant of the 90-day notice under this paragraph; or (B) without a lease or with a lease terminable at will under State law, subject to the receipt by the tenant of the 90-day notice under this paragraph, except that nothing in this paragraph shall affect the requirements for termination of any Federal- or State-subsidized tenancy or of any State or local law that provides longer time periods or other additional protections for tenants: *Provided further*, That, for purposes of this paragraph, a lease or tenancy shall be considered bona fide only if: (1) the mortgagor under the contract is not the tenant; (2) the lease or tenancy was the result of an arms-length transaction; and (3) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property: *Provided further*, That the recipient of any grant or loan from amounts made available under this heading may not refuse to lease a dwelling unit in housing assisted with such loan or grant to a hold-

er of a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) because of the status of the prospective tenant as such a holder: *Provided further*, That in the case of any qualified foreclosed housing for which funds made available under this heading are used and in which a recipient of assistance under section 8(o) of the U.S. Housing Act of 1937 resides at the time of acquisition or financing, the owner and any successor in interest shall be subject to the lease and to the housing assistance payments contract for the occupied unit: *Provided further*, That vacating the property prior to sale shall not constitute good cause for termination of the tenancy unless the property is unmarketable while occupied or unless the owner or subsequent purchaser desires the unit for personal or family use: *Provided further*, That this paragraph shall not preempt any State or local law that provides more protection for tenants: *Provided further*, That amounts made available under this heading may be used for the costs of demolishing foreclosed housing that is deteriorated or unsafe: *Provided further*, That the amount for demolition of such housing may not exceed 10 percent of amounts allocated under this paragraph to States and units of general local government: *Provided further*, That no amounts from a grant made under this paragraph may be used to

demolish any public housing (as such term is defined in section 3 of the United States Housing Act of 1937 (42 U.S.C. 1437a)): *Provided further*, That section 2301(d)(4) of the Housing and Economic Recovery Act of 2008 (Public Law 110–289) is repealed.

HOME INVESTMENT PARTNERSHIPS PROGRAM

For an additional amount for ''HOME Investment Partnerships Program'' as authorized under Title II of the Cranston-Gonzalez National Affordable Housing Act (''the Act''), $1,500,000,000: *Provided*, That the amount appropriated under this heading shall be distributed according to the same funding formula used in fiscal year 2008: *Provided further*, That the Secretary of Housing and Urban Development may waive statutory or regulatory provisions related to the obligation of such funds if necessary to facilitate the timely expenditure of funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment): *Provided further*, That in selecting projects to be funded, recipients shall give priority to projects that can award contracts based on bids within 120 days from the date that funds are available to the recipients.

SELF-HELP AND ASSISTED HOMEOWNERSHIP OPPORTUNITY PROGRAM

For an additional amount for ''Self-Help and Assisted Homeownership Opportunity Program'', as authorized under section 11 of the Housing Opportunity Program Extension Act of 1996, $10,000,000: *Provided*, That in awarding competitive grant funds, the Secretary of Housing and Urban Development shall give priority to the provision and rehabilitation of sustainable, affordable single and multifamily units in low-income, high-need rural areas: *Provided further*, That in selecting projects to be funded, grantees shall give priority to projects that can award contracts based on bids within 120 days from the date the funds are made available to the grantee.

HOMELESS ASSISTANCE GRANTS

For an additional amount for ''Homeless Assistance Grants'', for the emergency shelter grants program as authorized under subtitle B of tile IV of the McKinney-Vento Homeless Assistance Act, $1,500,000,000: *Provided*, That in addition to homeless prevention activities specified in the emergency shelter grant program, funds provided under this heading may be used for the provision of short-term or medium-term rental assistance; housing relocation and stabilization services including housing search, mediation or outreach to property owners, legal services, credit

repair, resolution of security or utility deposits, utility payments, rental assistance for a final month at a location, and moving costs assistance; or other appropriate homelessness prevention activities; *Provided further*, That these funds shall be allocated pursuant to the formula authorized by section 413 of such Act: *Provided further*, That the Secretary of Housing and Urban Development may waive statutory or regulatory provisions related to the obligation and use of emergency shelter grant funds necessary to facilitate the timely expenditure of funds.

OFFICE OF HEALTHY HOMES AND LEAD HAZARD CONTROL

LEAD HAZARD REDUCTION

For an additional amount for ''Lead Hazard Reduction'', for the Lead Hazard Reduction Program as authorized by section 1011 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, $100,000,000: *Provided*, That for purposes of environmental review, pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and other provisions of law that further the purposes of such Act, a grant under the Healthy Homes Initiative, Operation Lead Elimination Action Plan (LEAP), or the Lead Technical Studies program under this heading or under prior appropriations Acts for such purposes under this heading, shall be considered to be

funds for a special project for purposes of section 305(e) of the Multifamily Housing Property Disposition Reform Act of 1994: *Provided further*, That of the total amount made available under this heading, $30,000,000 shall be made available on a competitive basis for areas with the highest lead paint abatement needs.

GENERAL PROVISIONS, THIS TITLE

SEC. 12001. MAINTENANCE OF EFFORT AND REPORTING REQUIREMENTS TO ENSURE TRANSPARENCY AND ACCOUNTABILITY.

(a) MAINTENANCE OF EFFORT.—Not later than 30 days after the date of enactment of this Act, for each amount that is distributed to a State or agency thereof from an appropriation in this Act for a covered program, the Governor of the State shall certify that the State will maintain its effort with regard to State funding for the types of projects that are funded by the appropriation. As part of this certification, the Governor shall submit to the covered agency a statement identifying the amount of funds the State planned to expend as of October 1, 2008, from non-Federal sources in the period beginning on the date of enactment of this Act through September 30, 2010, for the types of projects that are funded by the appropriation.

(b) FAILURE TO MAINTAIN EFFORT.—If a Governor is unable to certify that Federal funds will not supplant non-Federal funds pursuant to subsection (a), then the Federal funds apportioned to that State under this Act that will supplant non-Federal funds will be recaptured by the appropriate Federal agency and redistributed to States or agencies that can spend the Federal funds without supplanting non-Federal funds.

(c) PERIODIC REPORTS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, each grant recipient shall submit to the covered agency from which they received funding periodic reports on the use of the funds appropriated in this Act for covered programs. Such reports shall be collected and compiled by the covered agency and transmitted to Congress.

(2) CONTENTS OF REPORTS.—For amounts received under each covered program by a grant recipient under this Act, the grant recipient shall include in the periodic reports information tracking—

(A) the amount of Federal funds appropriated, allocated, obligated, and outlayed under the appropriation;

(B) the number of projects that have been put out to bid under the appropriation and the

amount of Federal funds associated with such projects;

(C) the number of projects for which contracts have been awarded under the appropriation and the amount of Federal funds associated with such contracts;

(D) the number of projects for which work has begun under such contracts and the amount of Federal funds associated with such contracts;

(E) the number of projects for which work has been completed under such contracts and the amount of Federal funds associated with such contracts;

(F) the number of jobs created or sustained by the Federal funds provided for projects under the appropriation, including information on job sectors and pay levels; and

(G) for each covered program report information tracking the actual aggregate expenditures by each grant recipient from non-Federal sources for projects eligible for funding under the program during the period beginning on the date of enactment of this Act through September 30, 2010, as compared to the level of

such expenditures that were planned to occur during such period as of the date of enactment of this Act.

(3) TIMING OF REPORTS.—Each grant recipient shall submit the first of the periodic reports required under this subsection not later than 30 days after the date of enactment of this Act and shall submit updated reports not later than 60 days, 120 days, 180 days, 1 year, and 3 years after such date of enactment.

(d) DEFINITIONS.—In this section, the following definitions apply:

(1) COVERED AGENCY.—The term ''covered agency'' means the Federal Aviation Administration, the Federal Highway Administration, the Federal Railroad Administration, and the Federal Transit Administration of the Department of Transportation.

(2) COVERED PROGRAM.—The term ''covered program'' means funds appropriated in this Act for ''Grants-in-Aid for Airports'' to the Federal Aviation Administration; for ''Highway Infrastructure Investment'' to the Federal Highway Administration; for ''Capital Assistance for Intercity Passenger Rail Service'' to the Federal Railroad Administration; for

"Transit Capital Assistance", "Fixed Guideway Infrastructure Investment", and "Capital Investment Grants" to the Federal Transit Administration.

(3) GRANT RECIPIENT.—The term "grant recipient" means a State or other recipient of assistance provided under a covered program in this Act. Such term does not include a Federal department or agency.

SEC. 12002. FHA LOAN LIMITS FOR 2009.

(a) LOAN LIMIT FLOOR BASED ON 2008 LEVELS.—For mortgages for which the mortgagee issues credit approval for the borrower during calendar year 2009, if the dollar amount limitation on the principal obligation of a mortgage determined under section 203(b)(2) of the National Housing Act (12 U.S.C. 1709(b)(2)) for any size residence for any area is less than such dollar amount limitation that was in effect for such size residence for such area for 2008 pursuant to section 202 of the Economic Stimulus Act of 2008 (Public Law 110–185; 122 Stat. 620), notwithstanding any other provision of law, the maximum dollar amount limitation on the principal obligation of a mortgage for such size residence for such area for purposes of such section 203(b)(2) shall be considered (except for purposes of section 255(g) of such Act (12 U.S.C.

1715z–20(g))) to be such dollar amount limitation in effect for such size residence for such area for 2008.

(b) DISCRETIONARY AUTHORITY FOR SUB-AREAS.—Notwithstanding any other provision of law, if the Secretary of Housing and Urban Development determines, for any geographic area that is smaller than an area for which dollar amount limitations on the principal obligation of a mortgage are determined under section 203(b)(2) of the National Housing Act, that a higher such maximum dollar amount limitation is warranted for any particular size or sizes of residences in such sub-area by higher median home prices in such sub-area, the Secretary may, for mortgages for which the mortgagee issues credit approval for the borrower during calendar year 2009, increase the maximum dollar amount limitation for such size or sizes of residences for such sub-area that is otherwise in effect (including pursuant to subsection (a) of this section), but in no case to an amount that exceeds the amount specified in section 202(a)(2) of the Economic Stimulus Act of 2008.

SEC. 12003. GSE CONFORMING LOAN LIMITS FOR 2009.

(a) LOAN LIMIT FLOOR BASED ON 2008 LEVELS.—For mortgages originated during calendar year 2009, if the limitation on the maximum original principal obligation of a mortgage that may purchased by the Federal

National Mortgage Association or the Federal Home Loan Mortgage Corporation determined under section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)) or section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1754(a)(2)), respectively, for any size residence for any area is less than such maximum original principal obligation limitation that was in effect for such size residence for such area for 2008 pursuant to section 201 of the Economic Stimulus Act of 2008 (Public Law 110–185; 122 Stat. 619), notwithstanding any other provision of law, the limitation on the maximum original principal obligation of a mortgage for such Association and Corporation for such size residence for such area shall be such maximum limitation in effect for such size residence for such area for 2008.

(b) DISCRETIONARY AUTHORITY FOR SUB-AREAS.—Notwithstanding any other provision of law, if the Director of the Federal Housing Finance Agency determines, for any geographic area that is smaller than an area for which limitations on the maximum original principal obligation of a mortgage are determined for the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, that a higher such maximum original principal obligation limitation is warranted for any

1 particular size or sizes of residences in such sub-area by
2 higher median home prices in such sub-area, the Director
3 may, for mortgages originated during 2009, increase the
4 maximum original principal obligation limitation for such
5 size or sizes of residences for such sub-area that is other-
6 wise in effect (including pursuant to subsection (a) of this
7 section) for such Association and Corporation, but in no
8 case to an amount that exceeds the amount specified in
9 the matter following the comma in section 201(a)(1)(B)
10 of the Economic Stimulus Act of 2008.

11 **SEC. 12004. FHA REVERSE MORTGAGE LOAN LIMITS FOR**
12 **2009.**

13 For mortgages for which the mortgagee issues credit
14 approval for the borrower during calendar year 2009, the
15 second sentence of section 255(g) of the National Housing
16 Act (12 U.S.C. 171520(g)) shall be considered to require
17 that in no case may the benefits of insurance under such
18 section 255 exceed 150 percent of the maximum dollar
19 amount in effect under the sixth sentence of section
20 305(a)(2) of the Federal Home Loan Mortgage Corpora-
21 tion Act (12 U.S.C. 1454(a)(2)).

TITLE XIII—STATE FISCAL STABILIZATION FUND

DEPARTMENT OF EDUCATION

STATE FISCAL STABILIZATION FUND

For necessary expenses for a State Fiscal Stabilization Fund, $79,000,000,000, which shall be administered by the Department of Education, of which $39,500,000,000 shall become available on July 1, 2009, and remain available through September 30, 2010, and $39,500,000,000 shall become available on July 1, 2010, and remain available through September 30, 2011: *Provided*, That the provisions of section 1103 of this Act shall not apply to the funds reserved under section 13001(c) of this title: *Provided further*, That the amount made available under section 13001(b) of this title for administration and oversight shall take the place of the set-aside under section 1106 of this Act.

GENERAL PROVISIONS, THIS TITLE

SEC. 13001. ALLOCATIONS.

(a) OUTLYING AREAS.—From each year's appropriation to carry out this title, the Secretary of Education shall first allocate one half of 1 percent to the outlying areas on the basis of their respective needs, as determined by the Secretary, for activities consistent with this title

under such terms and conditions as the Secretary may determine.

(b) ADMINISTRATION AND OVERSIGHT.—The Secretary may, in addition, reserve up to $12,500,000 each year for administration and oversight of this title, including for program evaluation.

(c) RESERVATION FOR ADDITIONAL PROGRAMS.—After reserving funds under subsections (a) and (b), the Secretary shall reserve $7,500,000,000 each year for grants under sections 13006 and 13007.

(d) STATE ALLOCATIONS.—After carrying out subsections (a), (b), and (c), the Secretary shall allocate the remaining funds made available to carry out this title to the States as follows:

(1) 61 percent on the basis of their relative population of individuals aged 5 through 24.

(2) 39 percent on the basis of their relative total population.

(e) STATE GRANTS.—From funds allocated under subsection (d), the Secretary shall make grants to the Governor of each State.

(f) REALLOCATION.—The Governor shall return to the Secretary any funds received under subsection (e) that the Governor does not obligate within one year of receiving

a grant, and the Secretary shall reallocate such funds to the remaining States in accordance with subsection (d).

SEC. 13002. STATE USES OF FUNDS.

(a) EDUCATION FUND.—

(1) IN GENERAL.—For each fiscal year, the Governor shall use at least 61 percent of the State's allocation under section 13001 for the support of elementary, secondary, and postsecondary education.

(2) RESTORING 2008 STATE SUPPORT FOR EDUCATION.—

(A) IN GENERAL.—The Governor shall first use the funds described in paragraph (1)—

(i) to provide the amount of funds, through the State's principal elementary and secondary funding formula, that is needed to restore State support for elementary and secondary education to the fiscal year 2008 level; and

(ii) to provide the amount of funds to public institutions of higher education in the State that is needed to restore State support for postsecondary education to the fiscal year 2008 level.

(B) SHORTFALL.—If the Governor determines that the amount of funds available under

paragraph (1) is insufficient to restore State support for education to the levels described in clauses (i) and (ii) of subparagraph (A), the Governor shall allocate those funds between those clauses in proportion to the relative shortfall in State support for the education sectors described in those clauses.

(3) SUBGRANTS TO IMPROVE BASIC PROGRAMS OPERATED BY LOCAL EDUCATIONAL AGENCIES.—After carrying out paragraph (2), the Governor shall use any funds remaining under paragraph (1) to provide local educational agencies in the State with subgrants based on their relative shares of funding under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) for the most recent year for which data are available.

(b) OTHER GOVERNMENT SERVICES.—For each fiscal year, the Governor may use up to 39 percent of the State's allocation under section 1301 for public safety and other government services, which may include assistance for elementary and secondary education and public institutions of higher education.

SEC. 13003. USES OF FUNDS BY LOCAL EDUCATIONAL AGENCIES.

(a) IN GENERAL.—A local educational agency that receives funds under this title may use the funds for any activity authorized by the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) (''ESEA''), the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) (''IDEA''), or the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 et seq.) (''the Perkins Act'').

(b) PROHIBITION.—A local educational agency may not use funds received under this title for capital projects unless authorized by ESEA, IDEA, or the Perkins Act.

SEC. 13004. USES OF FUNDS BY INSTITUTIONS OF HIGHER EDUCATION.

(a) IN GENERAL.—A public institution of higher education that receives funds under this title shall use the funds for education and general expenditures, and in such a way as to mitigate the need to raise tuition and fees for in-State students.

(b) PROHIBITION.—An institution of higher education may not use funds received under this title to increase its endowment.

(c) ADDITIONAL PROHIBITION.—An institution of higher education may not use funds received under this title for construction, renovation, or facility repair.

SEC. 13005. STATE APPLICATIONS.

(a) IN GENERAL.—The Governor of a State desiring to receive an allocation under section 13001 shall submit an annual application at such time, in such manner, and containing such information as the Secretary may reasonably require.

(b) FIRST YEAR APPLICATION.—In the first of such applications, the Governor shall—

(1) include the assurances described in subsection (e);

(2) provide baseline data that demonstrates the State's current status in each of the areas described in such assurances; and

(3) describe how the State intends to use its allocation.

(c) SECOND YEAR APPLICATION.—In the second year application, the Governor shall—

(1) include the assurances described in subsection (e); and

(2) describe how the State intends to use its allocation.

(d) INCENTIVE GRANT APPLICATION.—The Governor of a State seeking a grant under section 13006 shall—

(1) submit an application for consideration;

(2) describe the status of the State's progress in each of the areas described in subsection (e), and

the strategies the State is employing to help ensure that high-need students in the State continue making progress towards meeting the State's student academic achievement standards;

(3) describe how the State would use its grant funding, including how it will allocate the funds to give priority to high-need schools and local educational agencies; and

(4) include a plan for evaluating its progress in closing achievement gaps.

(e) ASSURANCES.—An application under subsection (b) or (c) shall include the following assurances:

(1) MAINTENANCE OF EFFORT.—

(A) ELEMENTARY AND SECONDARY EDUCATION.—The State will, in each of fiscal years 2009 and 2010, maintain State support for elementary and secondary education at least at the level of such support in fiscal year 2006.

(B) HIGHER EDUCATION.—The State will, in each of fiscal years 2009 and 2010, maintain State support for public institutions of higher education (not including support for capital projects or for research and development) at least at the level of such support in fiscal year 2006.

(2) ACHIEVING EQUITY IN TEACHER DISTRIBUTION.—The State will take actions to comply with section 1111(b)(8)(C) of ESEA (20 U.S.C. 6311(b)(8)(C)) in order to address inequities in the distribution of teachers between high-and low-poverty schools, and to ensure that low-income and minority children are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers.

(3) IMPROVING COLLECTION AND USE OF DATA.—The State will establish a longitudinal data system that includes the elements described in section 6401(e)(2)(D) of the America COMPETES Act (20 U.S.C. 9871).

(4) ASSESSMENTS.—The State—

(A) will enhance the quality of academic assessments described in section 1111(b)(3) of ESEA (20 U.S.C. 6311(b)(3)) through activities such as those described in section 6112(a) of such Act (20 U.S.C. 7301a(a)); and

(B) will comply with the requirements of paragraphs 3(C)(ix) and (6) of section 1111(b) of ESEA (20 U.S.C. 6311(b)) and section 612(a)(16) of IDEA (20 U.S.C. 1412(a)(16)) related to the inclusion of children with disabil-

ities and limited English proficient students in State assessments, the development of valid and reliable assessments for those students, and the provision of accommodations that enable their participation in State assessments.

SEC. 13006. STATE INCENTIVE GRANTS.

(a) IN GENERAL.—From the total amount reserved under section 13001(c) that is not used for section 13007, the Secretary shall, in fiscal year 2010, make grants to States that have made significant progress in meeting the objectives of paragraphs (2), (3), and (4) of section 13005(e).

(b) BASIS FOR GRANTS.—The Secretary shall determine which States receive grants under this section, and the amount of those grants, on the basis of information provided in State applications under section 13005 and such other criteria as the Secretary determines appropriate.

(c) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.—Each State receiving a grant under this section shall use at least 50 percent of the grant to provide local educational agencies in the State with subgrants based on their relative shares of funding under part A of title I of ESEA (20 U.S.C. 6311 et seq.) for the most recent year.

SEC. 13007. INNOVATION FUND.

(a) IN GENERAL.—

(1) PROGRAM ESTABLISHED.—From the total amount reserved under section 13001(c), the Secretary may reserve up to $325,000,000 each year to establish an Innovation Fund, which shall consist of academic achievement awards that recognize States, local educational agencies, or schools that meet the requirements described in subsection (b).

(2) BASIS FOR AWARDS.—The Secretary shall make awards to States, local educational agencies, or schools that have made significant gains in closing the achievement gap as described in subsection (b)(1)—

(A) to allow such States, local educational agencies, and schools to expand their work and serve as models for best practices;

(B) to allow such States, local educational agencies, and schools to work in partnership with the private sector and the philanthropic community; and

(C) to identify and document best practices that can be shared, and taken to scale based on demonstrated success.

(b) ELIGIBILITY.—To be eligible for such an award, a State, local educational agency, or school shall—

(1) have significantly closed the achievement gaps between groups of students described in section 1111(b)(2) of ESEA (20 U.S.C. 6311(b)(2));

(2) have exceeded the State's annual measurable objectives consistent with such section 1111(b)(2) for 2 or more consecutive years or have demonstrated success in significantly increasing student academic achievement for all groups of students described in such section through another measure, such as measures described in section 1111(c)(2) of ESEA;

(3) have made significant improvement in other areas, such as graduation rates or increased recruitment and placement of high-quality teachers and school leaders, as demonstrated with meaningful data; and

(4) demonstrate that they have established partnerships with the private sector, which may include philanthropic organizations, and that the private sector will provide matching funds in order to help bring results to scale.

SEC. 13008. STATE REPORTS.

For each year of the program under this title, a State receiving funds under this title shall submit a report to

the Secretary, at such time and in such manner as the Secretary may require, that describes—

(1) the uses of funds provided under this title within the State;

(2) how the State distributed the funds it received under this title;

(3) the number of jobs that the Governor estimates were saved or created with funds the State received under this title;

(4) tax increases that the Governor estimates were averted because of the availability of funds from this title;

(5) the State's progress in reducing inequities in the distribution of teachers, in implementing a State student longitudinal data system, and in developing and implementing valid and reliable assessments for limited English proficient students and children with disabilities;

(6) the tuition and fee increases for in-State students imposed by public institutions of higher education in the State during the period of availability of funds under this title, and a description of any actions taken by the State to limit those increases; and

(7) the extent to which public institutions of higher education maintained, increased, or decreased enrollment of in-State students, including students eligible for Pell Grants or other need-based financial assistance.

SEC. 13009. EVALUATION.

The Comptroller General of the United States shall conduct evaluations of the programs under sections 13006 and 13007 which shall include, but not be limited to, the criteria used for the awards made, the States selected for awards, award amounts, how each State used the award received, and the impact of this funding on the progress made toward closing achievement gaps.

SEC. 13010. SECRETARY'S REPORT TO CONGRESS.

The Secretary shall submit a report to the Committee on Education and Labor of the House of Representatives, the Committee on Health, Education, Labor, and Pensions of the Senate, and the Committees on Appropriations of the House of Representatives and of the Senate, not less than 6 months following the submission of State reports, that evaluates the information provided in the State reports under section 13008.

SEC. 13011. PROHIBITION ON PROVISION OF CERTAIN ASSISTANCE.

No recipient of funds under this title shall use such funds to provide financial assistance to students to attend private elementary or secondary schools.

SEC. 13012. DEFINITIONS.

Except as otherwise provided in this title, as used in this title—

(1) the term ''institution of higher education'' has the meaning given such term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001);

(2) the term ''Secretary'' means the Secretary of Education;

(3) the term ''State'' means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and

(4) any other term used in this title that is defined in section 9101 of ESEA (20 U.S.C. 7801) shall have the meaning given the term in that section.

DIVISION B—OTHER PROVISIONS

TITLE I—TAX PROVISIONS

SEC. 1000. SHORT TITLE, ETC.

(a) SHORT TITLE.—This title may be cited as the ''American Recovery and Reinvestment Tax Act of 2009''.

(b) REFERENCE.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

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

Sec. 1000. Short title, etc.

Subtitle A—Making Work Pay

Sec. 1001. Making work pay credit.

Subtitle B—Additional Tax Relief for Families With Children

Sec. 1101. Increase in earned income tax credit.
Sec. 1102. Increase of refundable portion of child credit.

Subtitle C—American Opportunity Tax Credit

Sec. 1201. American opportunity tax credit.

Subtitle D—Housing Incentives

Sec. 1301. Waiver of requirement to repay first-time homebuyer credit.
Sec. 1302. Coordination of low-income housing credit and low-income housing grants.

Subtitle E—Tax Incentives for Business

PART 1—TEMPORARY INVESTMENT INCENTIVES

Sec. 1401. Special allowance for certain property acquired during 2009.

Sec. 1402. Temporary increase in limitations on expensing of certain depreciable business assets.

PART 2—5-YEAR CARRYBACK OF OPERATING LOSSES

Sec. 1411. 5-year carryback of operating losses.
Sec. 1412. Exception for TARP recipients.

PART 3—INCENTIVES FOR NEW JOBS

Sec. 1421. Incentives to hire unemployed veterans and disconnected youth.

PART 4—CLARIFICATION OF REGULATIONS RELATED TO LIMITATIONS ON CERTAIN BUILT-IN LOSSES FOLLOWING AN OWNERSHIP CHANGE

Sec. 1431. Clarification of regulations related to limitations on certain built-in losses following an ownership change.

Subtitle F—Fiscal Relief for State and Local Governments

PART 1—IMPROVED MARKETABILITY FOR TAX-EXEMPT BONDS

Sec. 1501. De minimis safe harbor exception for tax-exempt interest expense of financial institutions.
Sec. 1502. Modification of small issuer exception to tax-exempt interest expense allocation rules for financial institutions.
Sec. 1503. Temporary modification of alternative minimum tax limitations on tax-exempt bonds.

PART 2—TAX CREDIT BONDS FOR SCHOOLS

Sec. 1511. Qualified school construction bonds.
Sec. 1512. Extension and expansion of qualified zone academy bonds.

PART 3—TAXABLE BOND OPTION FOR GOVERNMENTAL BONDS

Sec. 1521. Taxable bond option for governmental bonds.

PART 4—RECOVERY ZONE BONDS

Sec. 1531. Recovery zone bonds.
Sec. 1532. Tribal economic development bonds.

PART 5—REPEAL OF WITHHOLDING TAX ON GOVERNMENT CONTRACTORS

Sec. 1541. Repeal of withholding tax on government contractors.

Subtitle G—Energy Incentives

PART 1—RENEWABLE ENERGY INCENTIVES

Sec. 1601. Extension of credit for electricity produced from certain renewable resources.
Sec. 1602. Election of investment credit in lieu of production credit.
Sec. 1603. Repeal of certain limitations on credit for renewable energy property.
Sec. 1604. Coordination with renewable energy grants.

PART 2—INCREASED ALLOCATIONS OF NEW CLEAN RENEWABLE ENERGY BONDS AND QUALIFIED ENERGY CONSERVATION BONDS

Sec. 1611. Increased limitation on issuance of new clean renewable energy bonds.
Sec. 1612. Increased limitation and expansion of qualified energy conservation bonds.

PART 3—ENERGY CONSERVATION INCENTIVES

Sec. 1621. Extension and modification of credit for nonbusiness energy property.
Sec. 1622. Modification of credit for residential energy efficient property.
Sec. 1623. Temporary increase in credit for alternative fuel vehicle refueling property.

PART 4—ENERGY RESEARCH INCENTIVES

Sec. 1631. Increased research credit for energy research.

Subtitle H—Other Provisions

PART 1—APPLICATION OF CERTAIN LABOR STANDARDS TO PROJECTS FINANCED WITH CERTAIN TAX-FAVORED BONDS

Sec. 1701. Application of certain labor standards to projects financed with certain tax-favored bonds.

PART 2—GRANTS TO PROVIDE FINANCING FOR LOW-INCOME HOUSING

Sec. 1711. Grants to States for low-income housing projects in lieu of low-income housing credit allocations for 2009.

PART 3—GRANTS FOR SPECIFIED ENERGY PROPERTY IN LIEU OF TAX CREDITS

Sec. 1721. Grants for specified energy property in lieu of tax credits.

PART 4—STUDY OF ECONOMIC, EMPLOYMENT, AND RELATED EFFECTS OF THIS ACT

Sec. 1731. Study of economic, employment, and related effects of this Act.

1 # Subtitle A—Making Work Pay

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

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

6 **"SEC. 36A. MAKING WORK PAY CREDIT.**

7 "(a) ALLOWANCE OF CREDIT.—In the case of an eli-
8 gible individual, there shall be allowed as a credit against

the tax imposed by this subtitle for the taxable year an amount equal to the lesser of—

"(1) 6.2 percent of earned income of the taxpayer, or

"(2) $500 ($1,000 in the case of a joint return).

"(b) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—

"(1) IN GENERAL.—The amount allowable as a credit under subsection (a) (determined without regard to this paragraph) for the taxable year shall be reduced (but not below zero) by 2 percent of so much of the taxpayer's modified adjusted gross income as exceeds $75,000 ($150,000 in the case of a joint return).

"(2) MODIFIED ADJUSTED GROSS INCOME.—For purposes of subparagraph (A), the term 'modified adjusted gross income' means the adjusted gross income of the taxpayer for the taxable year increased by any amount excluded from gross income under section 911, 931, or 933.

"(c) DEFINITIONS.—For purposes of this section—

"(1) ELIGIBLE INDIVIDUAL.—The term 'eligible individual' means any individual other than—

"(A) any nonresident alien individual,

"(B) any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, and

"(C) an estate or trust.

Such term shall not include any individual unless the requirements of section 32(c)(1)(E) are met with respect to such individual.

"(2) EARNED INCOME.—The term 'earned income' has the meaning given such term by section 32(c)(2), except that such term shall not include net earnings from self-employment which are not taken into account in computing taxable income. For purposes of the preceding sentence, any amount excluded from gross income by reason of section 112 shall be treated as earned income which is taken into account in computing taxable income for the taxable year.

"(d) TERMINATION.—This section shall not apply to taxable years beginning after December 31, 2010.".

(b) TREATMENT OF POSSESSIONS.—

(1) PAYMENTS TO POSSESSIONS.—

(A) MIRROR CODE POSSESSION.—The Secretary of the Treasury shall pay to each posses-

sion of the United States with a mirror code tax system amounts equal to the loss to that possession by reason of the amendments made by this section with respect to taxable years beginning in 2009 and 2010. Such amounts shall be determined by the Secretary of the Treasury based on information provided by the government of the respective possession.

(B) OTHER POSSESSIONS.—The Secretary of the Treasury shall pay to each possession of the United States which does not have a mirror code tax system amounts estimated by the Secretary of the Treasury as being equal to the aggregate benefits that would have been provided to residents of such possession by reason of the amendments made by this section for taxable years beginning in 2009 and 2010 if a mirror code tax system had been in effect in such possession. The preceding sentence shall not apply with respect to any possession of the United States unless such possession has a plan, which has been approved by the Secretary of the Treasury, under which such possession will promptly distribute such payments to the residents of such possession.

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

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

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

(3) DEFINITIONS AND SPECIAL RULES.—

(A) POSSESSION OF THE UNITED STATES.—For purposes of this subsection, the term ''possession of the United States'' includes the Commonwealth of Puerto Rico and the Commonwealth of the Northern Mariana Islands.

(B) MIRROR CODE TAX SYSTEM.—For purposes of this subsection, the term ''mirror code tax system'' means, with respect to any possession of the United States, the income tax system of such possession if the income tax liabil-

ity of the residents of such possession under such system is determined by reference to the income tax laws of the United States as if such possession were the United States.

(C) TREATMENT OF PAYMENTS.—For purposes of section 1324(b)(2) of title 31, United States Code, the payments under this subsection shall be treated in the same manner as a refund due from the credit allowed under section 36A of the Internal Revenue Code of 1986 (as added by this section).

(c) REFUNDS DISREGARDED IN THE ADMINISTRATION OF FEDERAL PROGRAMS AND FEDERALLY ASSISTED PROGRAMS.—Any credit or refund allowed or made to any individual by reason of section 36A of the Internal Revenue Code of 1986 (as added by this section) or by reason of subsection (b) of this section shall not be taken into account as income and shall not be taken into account as resources for the month of receipt and the following 2 months, for purposes of determining the eligibility of such individual or any other individual for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program or under any State or local program financed in whole or in part with Federal funds.

(d) CONFORMING AMENDMENTS.—

(1) Section 6211(b)(4)(A) is amended by inserting "36A," after "36,".

(2) Section 1324(b)(2) of title 31, United States Code, is amended by inserting "36A," after "36,".

(3) The table of sections for subpart C of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 36 the following new item:

"Sec. 36A. Making work pay credit.".

(e) EFFECTIVE DATE.—This section shall apply to taxable years beginning after December 31, 2008.

Subtitle B—Additional Tax Relief for Families With Children

SEC. 1101. INCREASE IN EARNED INCOME TAX CREDIT.

(a) IN GENERAL.—Subsection (b) of section 32 is amended by adding at the end the following new paragraph:

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

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

"(B) REDUCTION OF MARRIAGE PENALTY.—

"(i) IN GENERAL.—The dollar amount in effect under paragraph (2)(B) shall be $5,000.

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

"(I) such dollar amount, multiplied by

"(II) the cost of living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins determined by substituting 'calendar year 2008' for 'calendar year 1992' in subparagraph (B) thereof.

"(iii) ROUNDING.—Subparagraph (A) of subsection (j)(2) shall apply after taking into account any increase under clause (ii).".

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

SEC. 1102. INCREASE OF REFUNDABLE PORTION OF CHILD CREDIT.

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

"(4) SPECIAL RULE FOR 2009 AND 2010.—Notwithstanding paragraph (3), in the case of any taxable year beginning in 2009 or 2010, the dollar amount in effect for such taxable year under paragraph (1)(B)(i) shall be zero.".

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

Subtitle C—American Opportunity Tax Credit

SEC. 1201. AMERICAN OPPORTUNITY TAX CREDIT.

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

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

"(1) INCREASE IN CREDIT.—The Hope Scholarship Credit shall be an amount equal to the sum of—

"(A) 100 percent of so much of the qualified tuition and related expenses paid by the

taxpayer during the taxable year (for education furnished to the eligible student during any academic period beginning in such taxable year) as does not exceed $2,000, plus

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

"(2) CREDIT ALLOWED FOR FIRST 4 YEARS OF POST-SECONDARY EDUCATION.—Subparagraphs (A) and (C) of subsection (b)(2) shall be applied by substituting '4' for '2'.

"(3) QUALIFIED TUITION AND RELATED EXPENSES TO INCLUDE REQUIRED COURSE MATERIALS.—Subsection (f)(1)(A) shall be applied by substituting 'tuition, fees, and course materials' for 'tuition and fees'.

"(4) INCREASE IN AGI LIMITS FOR HOPE SCHOLARSHIP CREDIT.—In lieu of applying subsection (d) with respect to the Hope Scholarship Credit, such credit (determined without regard to this paragraph) shall be reduced (but not below zero) by the amount which bears the same ratio to such credit (as so determined) as—

"(A) the excess of—

"(i) the taxpayer's modified adjusted gross income (as defined in subsection (d)(3)) for such taxable year, over

"(ii) $80,000 ($160,000 in the case of a joint return), bears to

"(B) $10,000 ($20,000 in the case of a joint return).

"(5) CREDIT ALLOWED AGAINST ALTERNATIVE MINIMUM TAX.—In the case of a taxable year to which section 26(a)(2) does not apply, so much of the credit allowed under subsection (a) as is attributable to the Hope Scholarship Credit shall not exceed the excess of—

"(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

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

Any reference in this section or section 24, 25, 26, 25B, 904, or 1400C to a credit allowable under this subsection shall be treated as a reference to so much of the credit allowable under subsection (a) as is attributable to the Hope Scholarship Credit.

"(6) PORTION OF CREDIT MADE REFUNDABLE.—40 percent of so much of the credit allowed under subsection (a) as is attributable to the Hope Scholarship Credit (determined after application of paragraph (4) and without regard to this paragraph and section 26(a)(2) or paragraph (5), as the case may be) shall be treated as a credit allowable under subpart C (and not allowed under subsection (a)). The preceding sentence shall not apply to any taxpayer for any taxable year if such taxpayer is a child to whom subsection (g) of section 1 applies for such taxable year.

"(7) COORDINATION WITH MIDWESTERN DISASTER AREA BENEFITS.—In the case of a taxpayer with respect to whom section 702(a)(1)(B) of the Heartland Disaster Tax Relief Act of 2008 applies for any taxable year, such taxpayer may elect to waive the application of this subsection to such taxpayer for such taxable year.".

(b) CONFORMING AMENDMENTS.—

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

(2) Section 25(e)(1)(C)(ii) is amended by inserting "25A(i)," after "24,".

(3) Section 26(a)(1) is amended by inserting "25A(i)," after "24,".

(4) Section 25B(g)(2) is amended by inserting "25A(i)," after "23,".

(5) Section 904(i) is amended by inserting "25A(i)," after "24,".

(6) Section 1400C(d)(2) is amended by inserting "25A(i)," after "24,".

(7) Section 1324(b)(2) of title 31, United States Code, is amended by inserting "25A," before "35".

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

(d) APPLICATION OF EGTRRA SUNSET.—The amendment made by subsection (b)(1) shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 in the same manner as the provision of such Act to which such amendment relates.

(e) TREASURY STUDIES REGARDING EDUCATION INCENTIVES.—

(1) STUDY REGARDING COORDINATION WITH NON-TAX EDUCATIONAL INCENTIVES.—The Secretary of the Treasury, or the Secretary's delegate, shall study how to coordinate the credit allowed

under section 25A of the Internal Revenue Code of 1986 with the Federal Pell Grant program under section 401 of the Higher Education Act of 1965.

(2) STUDY REGARDING IMPOSITION OF COMMUNITY SERVICE REQUIREMENTS.—The Secretary of the Treasury, or the Secretary's delegate, shall study the feasibility of requiring students to perform community service as a condition of taking their tuition and related expenses into account under section 25A of the Internal Revenue Code of 1986.

(3) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary of the Treasury, or the Secretary's delegate, shall report to Congress on the results of the studies conducted under this paragraph.

Subtitle D—Housing Incentives

SEC. 1301. WAIVER OF REQUIREMENT TO REPAY FIRST-TIME HOMEBUYER CREDIT.

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

"(D) WAIVER OF RECAPTURE FOR PURCHASES IN 2009.—In the case of any credit allowed with respect to the purchase of a prin-

cipal residence after December 31, 2008, and before July 1, 2009—

"(i) paragraph (1) shall not apply, and

"(ii) paragraph (2) shall apply only if the disposition or cessation described in paragraph (2) with respect to such residence occurs during the 36-month period beginning on the date of the purchase of such residence by the taxpayer.".

(b) CONFORMING AMENDMENT.—Subsection (g) of section 36 is amended by striking "subsection (c)" and inserting "subsections (c) and (f)(4)(D)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to residences purchased after December 31, 2008.

SEC. 1302. COORDINATION OF LOW-INCOME HOUSING CREDIT AND LOW-INCOME HOUSING GRANTS.

Subsection (i) of section 42 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

"(9) COORDINATION WITH LOW-INCOME HOUSING GRANTS.—

"(A) REDUCTION IN STATE HOUSING CREDIT CEILING FOR LOW-INCOME HOUSING

GRANTS RECEIVED IN 2009.—For purposes of this section, the amounts described in clauses (i) through (iv) of subsection (h)(3)(C) with respect to any State for 2009 shall each be reduced by so much of such amount as is taken into account in determining the amount of any grant to such State under section 1711 of the American Recovery and Reinvestment Tax Act of 2009.

"(B) SPECIAL RULE FOR BASIS.—Basis of a qualified low-income building shall not be reduced by the amount of any grant described in subparagraph (A).".

Subtitle E—Tax Incentives for Business

PART 1—TEMPORARY INVESTMENT INCENTIVES

SEC. 1401. SPECIAL ALLOWANCE FOR CERTAIN PROPERTY ACQUIRED DURING 2009.

(a) IN GENERAL.—Paragraph (2) of section 168(k) is amended—

(1) by striking "January 1, 2010" and inserting "January 1, 2011", and

(2) by striking "January 1, 2009" each place it appears and inserting "January 1, 2010".

(b) CONFORMING AMENDMENTS.—

(1) The heading for subsection (k) of section 168 is amended by striking ''JANUARY 1, 2009'' and inserting ''JANUARY 1, 2010''.

(2) The heading for clause (ii) of section 168(k)(2)(B) is amended by striking ''PRE-JANUARY 1, 2009'' and inserting ''PRE-JANUARY 1, 2010''.

(3) Subparagraph (D) of section 168(k)(4) is amended—

(A) by striking ''and'' at the end of clause (i),

(B) by redesignating clause (ii) as clause (v), and

(C) by inserting after clause (i) the following new clauses:

''(ii) 'April 1, 2008' shall be substituted for 'January 1, 2008' in subparagraph (A)(iii)(I) thereof,

''(iii) 'January 1, 2009' shall be substituted for 'January 1, 2010' each place it appears,

''(iv) 'January 1, 2010' shall be substituted for 'January 1, 2011' in subparagraph (A)(iv) thereof, and''.

(4) Subparagraph (B) of section 168(l)(5) is amended by striking ''January 1, 2009'' and inserting ''January 1, 2010''.

(5) Subparagraph (B) of section 1400N(d)(3) is amended by striking ''January 1, 2009'' and inserting ''January 1, 2010''.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to property placed in service after December 31, 2008, in taxable years ending after such date.

(2) TECHNICAL AMENDMENT.—Section 168(k)(4)(D)(ii) of the Internal Revenue Code of 1986, as added by subsection (b)(3)(C), shall apply to taxable years ending after March 31, 2008.

SEC. 1402. TEMPORARY INCREASE IN LIMITATIONS ON EXPENSING OF CERTAIN DEPRECIABLE BUSINESS ASSETS.

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

(1) by striking ''2008'' and inserting ''2008, or 2009'', and

(2) by striking ''2008'' in the heading thereof and inserting ''2008, AND 2009''.

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

PART 2—5-YEAR CARRYBACK OF OPERATING LOSSES

SEC. 1411. 5-YEAR CARRYBACK OF OPERATING LOSSES.

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

"(H) CARRYBACK FOR 2008 AND 2009 NET OPERATING LOSSES.—

"(i) IN GENERAL.—In the case of an applicable 2008 or 2009 net operating loss with respect to which the taxpayer has elected the application of this subparagraph—

"(I) such net operating loss shall be reduced by 10 percent of such loss (determined without regard to this subparagraph),

"(II) subparagraph (A)(i) shall be applied by substituting any whole number elected by the taxpayer which is more than 2 and less than 6 for '2',

"(III) subparagraph (E)(ii) shall be applied by substituting the whole

number which is one less than the whole number substituted under subclause (II) for '2', and

"(IV) subparagraph (F) shall not apply.

"(ii) APPLICABLE 2008 OR 2009 NET OPERATING LOSS.—For purposes of this subparagraph, the term 'applicable 2008 or 2009 net operating loss' means—

"(I) the taxpayer's net operating loss for any taxable year ending in 2008 or 2009, or

"(II) if the taxpayer elects to have this subclause apply in lieu of subclause (I), the taxpayer's net operating loss for any taxable year beginning in 2008 or 2009.

"(iii) ELECTION.—Any election under this subparagraph shall be made in such manner as may be prescribed by the Secretary, and shall be made by the due date (including extension of time) for filing the taxpayer's return for the taxable year of the net operating loss. Any such election, once made, shall be irrevocable.

"(iv) COORDINATION WITH ALTERNATIVE TAX NET OPERATING LOSS DEDUCTION.—In the case of a taxpayer who elects to have clause (ii)(II) apply, section 56(d)(1)(A)(ii) shall be applied by substituting 'ending during 2001 or 2002 or beginning during 2008 or 2009' for 'ending during 2001, 2002, 2008, or 2009'.".

(b) ALTERNATIVE TAX NET OPERATING LOSS DEDUCTION.—Subclause (I) of section 56(d)(1)(A)(ii) is amended to read as follows:

"(I) the amount of such deduction attributable to the sum of carrybacks of net operating losses from taxable years ending during 2001, 2002, 2008, or 2009 and carryovers of net operating losses to such taxable years, or".

(c) LOSS FROM OPERATIONS OF LIFE INSURANCE COMPANIES.—Subsection (b) of section 810 is amended by adding at the end the following new paragraph:

"(4) CARRYBACK FOR 2008 AND 2009 LOSSES.—

"(A) IN GENERAL.—In the case of an applicable 2008 or 2009 loss from operations with

respect to which the taxpayer has elected the application of this paragraph—

"(i) such loss from operations shall be reduced by 10 percent of such loss (determined without regard to this paragraph), and

"(ii) paragraph (1)(A) shall be applied, at the election of the taxpayer, by substituting '5' or '4' for '3'.

"(B) APPLICABLE 2008 OR 2009 LOSS FROM OPERATIONS.—For purposes of this paragraph, the term 'applicable 2008 or 2009 loss from operations' means—

"(i) the taxpayer's loss from operations for any taxable year ending in 2008 or 2009, or

"(ii) if the taxpayer elects to have this clause apply in lieu of clause (i), the taxpayer's loss from operations for any taxable year beginning in 2008 or 2009.

"(C) ELECTION.—Any election under this paragraph shall be made in such manner as may be prescribed by the Secretary, and shall be made by the due date (including extension of time) for filing the taxpayer's return for the

taxable year of the loss from operations. Any such election, once made, shall be irrevocable.

"(D) COORDINATION WITH ALTERNATIVE TAX NET OPERATING LOSS DEDUCTION.—In the case of a taxpayer who elects to have subparagraph (B)(ii) apply, section 56(d)(1)(A)(ii) shall be applied by substituting 'ending during 2001 or 2002 or beginning during 2008 or 2009' for 'ending during 2001, 2002, 2008, or 2009'.".

(d) CONFORMING AMENDMENT.—Section 172 is amended by striking subsection (k).

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to net operating losses arising in taxable years ending after December 31, 2007.

(2) ALTERNATIVE TAX NET OPERATING LOSS DEDUCTION.—The amendment made by subsection (b) shall apply to taxable years ending after 1997.

(3) LOSS FROM OPERATIONS OF LIFE INSURANCE COMPANIES.—The amendment made by subsection (d) shall apply to losses from operations arising in taxable years ending after December 31, 2007.

(4) TRANSITIONAL RULE.—In the case of a net operating loss (or, in the case of a life insurance company, a loss from operations) for a taxable year ending before the date of the enactment of this Act—

(A) any election made under section 172(b)(3) or 810(b)(3) of the Internal Revenue Code of 1986 with respect to such loss may (notwithstanding such section) be revoked before the applicable date,

(B) any election made under section 172(b)(1)(H) or 810(b)(4) of such Code with respect to such loss shall (notwithstanding such section) be treated as timely made if made before the applicable date, and

(C) any application under section 6411(a) of such Code with respect to such loss shall be treated as timely filed if filed before the applicable date.

For purposes of this paragraph, the term ''applicable date'' means the date which is 60 days after the date of the enactment of this Act.

SEC. 1412. EXCEPTION FOR TARP RECIPIENTS.

The amendments made by this part shall not apply to—

(1) any taxpayer if—

(A) the Federal Government acquires, at any time, an equity interest in the taxpayer pursuant to the Emergency Economic Stabilization Act of 2008, or

(B) the Federal Government acquires, at any time, any warrant (or other right) to acquire any equity interest with respect to the taxpayer pursuant to such Act,

(2) the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, and

(3) any taxpayer which at any time in 2008 or 2009 is a member of the same affiliated group (as defined in section 1504 of the Internal Revenue Code of 1986, determined without regard to subsection (b) thereof) as a taxpayer described in paragraph (1) or (2).

PART 3—INCENTIVES FOR NEW JOBS

SEC. 1421. INCENTIVES TO HIRE UNEMPLOYED VETERANS AND DISCONNECTED YOUTH.

(a) IN GENERAL.—Subsection (d) of section 51 is amended by adding at the end the following new paragraph:

"(14) CREDIT ALLOWED FOR UNEMPLOYED VETERANS AND DISCONNECTED YOUTH HIRED IN 2009 OR 2010.—

"(A) IN GENERAL.—Any unemployed veteran or disconnected youth who begins work for the employer during 2009 or 2010 shall be treated as a member of a targeted group for purposes of this subpart.

"(B) DEFINITIONS.—For purposes of this paragraph—

"(i) UNEMPLOYED VETERAN.—The term 'unemployed veteran' means any veteran (as defined in paragraph (3)(B), determined without regard to clause (ii) thereof) who is certified by the designated local agency as—

"(I) having been discharged or released from active duty in the Armed Forces during 2008, 2009, or 2010, and

"(II) being in receipt of unemployment compensation under State or Federal law for not less than 4 weeks during the 1-year period ending on the hiring date.

"(ii) DISCONNECTED YOUTH.—The term 'disconnected youth' means any individual who is certified by the designated local agency—

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

"(II) as not regularly attending any secondary, technical, or post-secondary school during the 6-month period preceding the hiring date,

"(III) as not regularly employed during such 6-month period, and

"(IV) as not readily employable by reason of lacking a sufficient number of basic skills.".

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

PART 4—CLARIFICATION OF REGULATIONS RELATED TO LIMITATIONS ON CERTAIN BUILT-IN LOSSES FOLLOWING AN OWNERSHIP CHANGE

SEC. 1431. CLARIFICATION OF REGULATIONS RELATED TO LIMITATIONS ON CERTAIN BUILT-IN LOSSES FOLLOWING AN OWNERSHIP CHANGE.

(a) FINDINGS.—Congress finds as follows:

(1) The delegation of authority to the Secretary of the Treasury under section 382(m) of the Internal Revenue Code of 1986 does not authorize the Secretary to provide exemptions or special rules that are restricted to particular industries or classes of taxpayers.

(2) Internal Revenue Service Notice 2008–83 is inconsistent with the congressional intent in enacting such section 382(m).

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

(4) However, as taxpayers should generally be able to rely on guidance issued by the Secretary of the Treasury legislation is necessary to clarify the force and effect of Internal Revenue Service Notice 2008–83 and restore the proper application under the Internal Revenue Code of 1986 of the limitation

on built-in losses following an ownership change of a bank.

(b) DETERMINATION OF FORCE AND EFFECT OF INTERNAL REVENUE SERVICE NOTICE 2008–83 EXEMPTING BANKS FROM LIMITATION ON CERTAIN BUILT–IN LOSSES FOLLOWING OWNERSHIP CHANGE.—

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

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

(B) shall have no force or effect with respect to any ownership change after such date.

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

(A) is pursuant to a written binding contract entered into on or before such date, or

(B) is pursuant to a written agreement entered into on or before such date and such

agreement was described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission required by reason of such ownership change.

Subtitle F—Fiscal Relief for State and Local Governments

PART 1—IMPROVED MARKETABILITY FOR TAX-EXEMPT BONDS

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

(a) IN GENERAL.—Subsection (b) of section 265 is amended by adding at the end the following new paragraph:

"(7) DE MINIMIS EXCEPTION FOR BONDS ISSUED DURING 2009 OR 2010.—

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

"(B) LIMITATION.—The amount of tax-exempt obligations not taken into account by reason of subparagraph (A) shall not exceed 2 percent of the amount determined under paragraph (2)(B).

"(C) REFUNDINGS.—For purposes of this paragraph, a refunding bond (whether a current or advance refunding) shall be treated as issued on the date of the issuance of the refunded bond (or in the case of a series of refundings, the original bond).".

(b) TREATMENT AS FINANCIAL INSTITUTION PREFERENCE ITEM.—Clause (iv) of section 291(e)(1)(B) is amended by adding at the end the following: "That portion of any obligation not taken into account under paragraph (2)(A) of section 265(b) by reason of paragraph (7) of such section shall be treated for purposes of this section as having been acquired on August 7, 1986.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after December 31, 2008.

SEC. 1502. MODIFICATION OF SMALL ISSUER EXCEPTION TO TAX-EXEMPT INTEREST EXPENSE ALLOCATION RULES FOR FINANCIAL INSTITUTIONS.

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

"(G) SPECIAL RULES FOR OBLIGATIONS ISSUED DURING 2009 AND 2010.—

"(i) INCREASE IN LIMITATION.—In the case of obligations issued during 2009 or 2010, subparagraphs (C)(i), (D)(i), and (D)(iii)(II) shall each be applied by substituting '$30,000,000' for '$10,000,000'.

"(ii) QUALIFIED 501(C)(3) BONDS TREATED AS ISSUED BY EXEMPT ORGANIZATION.—In the case of a qualified 501(c)(3) bond (as defined in section 145) issued during 2009 or 2010, this paragraph shall be applied by treating the 501(c)(3) organization for whose benefit such bond was issued as the issuer.

"(iii) SPECIAL RULE FOR QUALIFIED FINANCINGS.—In the case of a qualified financing issue issued during 2009 or 2010—

"(I) subparagraph (F) shall not apply, and

"(II) any obligation issued as a part of such issue shall be treated as a qualified tax-exempt obligation if the requirements of this paragraph are met with respect to each qualified portion of the issue (determined by

treating each qualified portion as a separate issue issued by the qualified borrower with respect to which such portion relates).

"(iv) QUALIFIED FINANCING ISSUE.—For purposes of this subparagraph, the term 'qualified financing issue' means any composite, pooled, or other conduit financing issue the proceeds of which are used directly or indirectly to make or finance loans to one or more ultimate borrowers each of whom is a qualified borrower.

"(v) QUALIFIED PORTION.—For purposes of this subparagraph, the term 'qualified portion' means that portion of the proceeds which are used with respect to each qualified borrower under the issue.

"(vi) QUALIFIED BORROWER.—For purposes of this subparagraph, the term 'qualified borrower' means a borrower which is a State or political subdivision thereof or an organization described in section 501(c)(3) and exempt from taxation under section 501(a).".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after December 31, 2008.

SEC. 1503. TEMPORARY MODIFICATION OF ALTERNATIVE MINIMUM TAX LIMITATIONS ON TAX-EXEMPT BONDS.

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

"(vi) EXCEPTION FOR BONDS ISSUED IN 2009 AND 2010.—For purposes of clause (i), the term 'private activity bond' shall not include any bond issued after December 31, 2008, and before January 1, 2011. For purposes of the preceding sentence, a refunding bond (whether a current or advance refunding) shall be treated as issued on the date of the issuance of the refunded bond (or in the case of a series of refundings, the original bond).".

(b) NO ADJUSTMENT TO ADJUSTED CURRENT EARNINGS FOR INTEREST ON TAX-EXEMPT BONDS ISSUED AFTER 2008.—Subparagraph (B) of section

56(g)(4) is amended by adding at the end the following new clause:

"(iv) TAX EXEMPT INTEREST ON BONDS ISSUED IN 2009 AND 2010.—Clause (i) shall not apply in the case of any interest on a bond issued after December 31, 2008, and before January 1, 2011. For purposes of the preceding sentence, a refunding bond (whether a current or advance refunding) shall be treated as issued on the date of the issuance of the refunded bond (or in the case of a series of refundings, the original bond).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after December 31, 2008.

PART 2—TAX CREDIT BONDS FOR SCHOOLS

SEC. 1511. QUALIFIED SCHOOL CONSTRUCTION BONDS.

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

"SEC. 54F. QUALIFIED SCHOOL CONSTRUCTION BONDS.

"(a) QUALIFIED SCHOOL CONSTRUCTION BOND.—For purposes of this subchapter, the term 'qualified school

construction bond' means any bond issued as part of an issue if—

"(1) 100 percent of the available project proceeds of such issue are to be used for the construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which such a facility is to be constructed with part of the proceeds of such issue,

"(2) the bond is issued by a State or local government within the jurisdiction of which such school is located, and

"(3) the issuer designates such bond for purposes of this section.

"(b) LIMITATION ON AMOUNT OF BONDS DESIGNATED.—The maximum aggregate face amount of bonds issued during any calendar year which may be designated under subsection (a) by any issuer shall not exceed the sum of—

"(1) the limitation amount allocated under subsection (d) for such calendar year to such issuer, and

"(2) if such issuer is a large local educational agency (as defined in subsection (e)(4)) or is issuing on behalf of such an agency, the limitation amount

allocated under subsection (e) for such calendar year to such agency.

"(c) NATIONAL LIMITATION ON AMOUNT OF BONDS DESIGNATED.—There is a national qualified school construction bond limitation for each calendar year. Such limitation is—

"(1) $11,000,000,000 for 2009,

"(2) $11,000,000,000 for 2010, and

"(3) except as provided in subsection (f), zero after 2010.

"(d) 60 PERCENT OF LIMITATION ALLOCATED AMONG STATES.—

"(1) IN GENERAL.—60 percent of the limitation applicable under subsection (c) for any calendar year shall be allocated by the Secretary among the States in proportion to the respective numbers of children in each State who have attained age 5 but not age 18 for the most recent fiscal year ending before such calendar year. The limitation amount allocated to a State under the preceding sentence shall be allocated by the State to issuers within such State.

"(2) MINIMUM ALLOCATIONS TO STATES.—

"(A) IN GENERAL.—The Secretary shall adjust the allocations under this subsection for

any calendar year for each State to the extent necessary to ensure that the sum of—

"(i) the amount allocated to such State under this subsection for such year, and

"(ii) the aggregate amounts allocated under subsection (e) to large local educational agencies in such State for such year,

is not less than an amount equal to such State's adjusted minimum percentage of the amount to be allocated under paragraph (1) for the calendar year.

"(B) ADJUSTED MINIMUM PERCENTAGE.—A State's adjusted minimum percentage for any calendar year is the product of—

"(i) the minimum percentage described in section 1124(d) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6334(d)) for such State for the most recent fiscal year ending before such calendar year, multiplied by

"(ii) 1.68.

"(3) ALLOCATIONS TO CERTAIN POSSESSIONS.—The amount to be allocated under para-

graph (1) to any possession of the United States other than Puerto Rico shall be the amount which would have been allocated if all allocations under paragraph (1) were made on the basis of respective populations of individuals below the poverty line (as defined by the Office of Management and Budget). In making other allocations, the amount to be allocated under paragraph (1) shall be reduced by the aggregate amount allocated under this paragraph to possessions of the United States.

"(4) ALLOCATIONS FOR INDIAN SCHOOLS.—In addition to the amounts otherwise allocated under this subsection, $200,000,000 for calendar year 2009, and $200,000,000 for calendar year 2010, shall be allocated by the Secretary of the Interior for purposes of the construction, rehabilitation, and repair of schools funded by the Bureau of Indian Affairs. In the case of amounts allocated under the preceding sentence, Indian tribal governments (as defined in section 7701(a)(40)) shall be treated as qualified issuers for purposes of this subchapter.

"(e) 40 PERCENT OF LIMITATION ALLOCATED AMONG LARGEST SCHOOL DISTRICTS.—

"(1) IN GENERAL.—40 percent of the limitation applicable under subsection (c) for any calendar year

shall be allocated under paragraph (2) by the Secretary among local educational agencies which are large local educational agencies for such year.

"(2) ALLOCATION FORMULA.—The amount to be allocated under paragraph (1) for any calendar year shall be allocated among large local educational agencies in proportion to the respective amounts each such agency received for Basic Grants under subpart 2 of part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6331 et seq.) for the most recent fiscal year ending before such calendar year.

"(3) ALLOCATION OF UNUSED LIMITATION TO STATE.—The amount allocated under this subsection to a large local educational agency for any calendar year may be reallocated by such agency to the State in which such agency is located for such calendar year. Any amount reallocated to a State under the preceding sentence may be allocated as provided in subsection (d)(1).

"(4) LARGE LOCAL EDUCATIONAL AGENCY.—For purposes of this section, the term 'large local educational agency' means, with respect to a calendar year, any local educational agency if such agency is—

"(A) among the 100 local educational agencies with the largest numbers of children aged 5 through 17 from families living below the poverty level, as determined by the Secretary using the most recent data available from the Department of Commerce that are satisfactory to the Secretary, or

"(B) 1 of not more than 25 local educational agencies (other than those described in subparagraph (A)) that the Secretary of Education determines (based on the most recent data available satisfactory to the Secretary) are in particular need of assistance, based on a low level of resources for school construction, a high level of enrollment growth, or such other factors as the Secretary deems appropriate.

"(f) CARRYOVER OF UNUSED LIMITATION.—If for any calendar year—

"(1) the amount allocated under subsection (d) to any State, exceeds

"(2) the amount of bonds issued during such year which are designated under subsection (a) pursuant to such allocation,

the limitation amount under such subsection for such State for the following calendar year shall be increased

by the amount of such excess. A similar rule shall apply to the amounts allocated under subsection (d)(4) or (e).''.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 54A(d) is amended by striking ''or'' at the end of subparagraph (C), by inserting ''or'' at the end of subparagraph (D), and by inserting after subparagraph (D) the following new subparagraph:

''(E) a qualified school construction bond,''.

(2) Subparagraph (C) of section 54A(d)(2) is amended by striking ''and'' at the end of clause (iii), by striking the period at the end of clause (iv) and inserting '', and'', and by adding at the end the following new clause:

''(v) in the case of a qualified school construction bond, a purpose specified in section 54F(a)(1).''.

(3) The table of sections for subpart I of part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

''Sec. 54F. Qualified school construction bonds.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after December 31, 2008.

SEC. 1512. EXTENSION AND EXPANSION OF QUALIFIED ZONE ACADEMY BONDS.

(a) IN GENERAL.—Section 54E(c)(1) is amended by striking ''and 2009'' and inserting ''and $1,400,000,000 for 2009 and 2010''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to obligations issued after December 31, 2008.

PART 3—TAXABLE BOND OPTION FOR GOVERNMENTAL BONDS

SEC. 1521. TAXABLE BOND OPTION FOR GOVERNMENTAL BONDS.

(a) IN GENERAL.—Part IV of subchapter A of chapter 1 is amended by adding at the end the following new subpart:

"Subpart J—Taxable Bond Option for Governmental Bonds

''Sec. 54AA. Taxable bond option for governmental bonds.

"SEC. 54AA. TAXABLE BOND OPTION FOR GOVERNMENTAL BONDS.

''(a) IN GENERAL.—If a taxpayer holds a taxable governmental bond on one or more interest payment dates of the bond during any taxable year, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of the credits

determined under subsection (b) with respect to such dates.

"(b) AMOUNT OF CREDIT.—The amount of the credit determined under this subsection with respect to any interest payment date for a taxable governmental bond is 35 percent of the amount of interest payable by the issuer with respect to such date.

"(c) LIMITATION BASED ON AMOUNT OF TAX.—

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

"(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

"(B) the sum of the credits allowable under this part (other than subpart C and this subpart).

"(2) CARRYOVER OF UNUSED CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by paragraph (1) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year (determined before the application of paragraph (1) for such succeeding taxable year).

"(d) TAXABLE GOVERNMENTAL BOND.—

"(1) IN GENERAL.—For purposes of this section, the term 'taxable governmental bond' means any obligation (other than a private activity bond) if—

"(A) the interest on such obligation would (but for this section) be excludable from gross income under section 103, and

"(B) the issuer makes an irrevocable election to have this section apply.

"(2) APPLICABLE RULES.—For purposes of applying paragraph (1)—

"(A) a taxable governmental bond shall not be treated as federally guaranteed by reason of the credit allowed under subsection (a) or section 6432,

"(B) the yield on a taxable governmental bond shall be determined without regard to the credit allowed under subsection (a), and

"(C) a bond shall not be treated as a taxable governmental bond if the issue price has more than a de minimis amount (determined under rules similar to the rules of section 1273(a)(3)) of premium over the stated principal amount of the bond.

"(e) INTEREST PAYMENT DATE.—For purposes of this section, the term 'interest payment date' means any date on which the holder of record of the taxable governmental bond is entitled to a payment of interest under such bond.

"(f) SPECIAL RULES.—

"(1) INTEREST ON TAXABLE GOVERNMENTAL BONDS INCLUDIBLE IN GROSS INCOME FOR FEDERAL INCOME TAX PURPOSES.—For purposes of this title, interest on any taxable governmental bond shall be includible in gross income.

"(2) APPLICATION OF CERTAIN RULES.—Rules similar to the rules of subsections (f), (g), (h), and (i) of section 54A shall apply for purposes of the credit allowed under subsection (a).

"(g) SPECIAL RULE FOR QUALIFIED BONDS ISSUED BEFORE 2011.—In the case of a qualified bond issued before January 1, 2011—

"(1) ISSUER ALLOWED REFUNDABLE CREDIT.—In lieu of any credit allowed under this section with respect to such bond, the issuer of such bond shall be allowed a credit as provided in section 6432.

"(2) QUALIFIED BOND.—For purposes of this subsection, the term 'qualified bond' means any tax-

able governmental bond issued as part of an issue if—

"(A) 100 percent of the available project proceeds (as defined in section 54A) of such issue are to be used for capital expenditures, and

"(B) the issuer makes an irrevocable election to have this subsection apply.

"(h) REGULATIONS.—The Secretary may prescribe such regulations and other guidance as may be necessary or appropriate to carry out this section and section 6432.".

(b) CREDIT FOR QUALIFIED BONDS ISSUED BEFORE 2011.—Subchapter B of chapter 65, as amended by this Act, is amended by adding at the end the following new section:

"SEC. 6432. CREDIT FOR QUALIFIED BONDS ALLOWED TO ISSUER.

"(a) IN GENERAL.—In the case of a qualified bond issued before January 1, 2011, the issuer of such bond shall be allowed a credit with respect to each interest payment under such bond which shall be payable by the Secretary as provided in subsection (b).

"(b) PAYMENT OF CREDIT.—The Secretary shall pay (contemporaneously with each interest payment date

under such bond) to the issuer of such bond (or to any person who makes such interest payments on behalf of the issuer) 35 percent of the interest payable under such bond on such date.

"(c) APPLICATION OF ARBITRAGE RULES.—For purposes of section 148, the yield on a qualified bond shall be reduced by the credit allowed under this section.

"(d) INTEREST PAYMENT DATE.—For purposes of this subsection, the term 'interest payment date' means each date on which interest is payable by the issuer under the terms of the bond.

"(e) QUALIFIED BOND.—For purposes of this subsection, the term 'qualified bond' has the meaning given such term in section 54AA(h).".

(c) CONFORMING AMENDMENTS.—

(1) Section 1324(b)(2) of title 31, United States Code, is amended by striking "or 6428" and inserting "6428, or 6432,".

(2) Section 54A(c)(1)(B) is amended by striking "subpart C" and inserting "subparts C and J".

(3) Sections 54(c)(2), 1397E(c)(2), and 1400N(l)(3)(B) are each amended by striking "and I" and inserting ", I, and J".

(4) Section 6401(b)(1) is amended by striking "and I" and inserting "I, and J".

(5) The table of subparts for part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

"Subpart J. Taxable bond option for governmental bonds.".

(6) The table of sections for subchapter B of chapter 65, as amended by this Act, is amended by adding at the end the following new item:

"Sec. 6432. Credit for qualified bonds allowed to issuer on advance basis.".

(d) TRANSITIONAL COORDINATION WITH STATE LAW.—Except as otherwise provided by a State after the date of the enactment of this Act, the interest on any taxable governmental bond (as defined in section 54AA of the Internal Revenue Code of 1986, as added by this section) and the amount of any credit determined under such section with respect to such bond shall be treated for purposes of the income tax laws of such State as being exempt from Federal income tax.

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

PART 4—RECOVERY ZONE BONDS

SEC. 1531. RECOVERY ZONE BONDS.

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

"PART III—RECOVERY ZONE BONDS

"Sec. 1400U–1. Allocation of recovery zone bonds.

''Sec. 1400U–2. Recovery zone economic development bonds.
''Sec. 1400U–3. Recovery zone facility bonds.

''SEC. 1400U–1. ALLOCATION OF RECOVERY ZONE BONDS.

''(a) ALLOCATIONS.—

''(1) IN GENERAL.—The Secretary shall allocate the national recovery zone economic development bond limitation and the national recovery zone facility bond limitation among the States in the proportion that each such State's 2008 State employment decline bears to the aggregate of the 2008 State employment declines for all of the States.

''(2) 2008 STATE EMPLOYMENT DECLINE.—For purposes of this subsection, the term '2008 State employment decline' means, with respect to any State, the excess (if any) of—

''(A) the number of individuals employed in such State determined for December 2007, over

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

''(3) ALLOCATIONS BY STATES.—

''(A) IN GENERAL.—Each State with respect to which an allocation is made under paragraph (1) shall reallocate such allocation among the counties and large municipalities in such State in the proportion the each such

county's or municipality's 2008 employment decline bears to the aggregate of the 2008 employment declines for all the counties and municipalities in such State.

"(B) LARGE MUNICIPALITIES.—For purposes of subparagraph (A), the term 'large municipality' means a municipality with a population of more than 100,000.

"(C) DETERMINATION OF LOCAL EMPLOYMENT DECLINES.—For purposes of this paragraph, the employment decline of any municipality or county shall be determined in the same manner as determining the State employment decline under paragraph (2), except that in the case of a municipality any portion of which is in a county, such portion shall be treated as part of such municipality and not part of such county.

"(4) NATIONAL LIMITATIONS.—

"(A) RECOVERY ZONE ECONOMIC DEVELOPMENT BONDS.—There is a national recovery zone economic development bond limitation of $10,000,000,000.

"(B) RECOVERY ZONE FACILITY BONDS.—There is a national recovery zone facility bond limitation of $15,000,000,000.

"(b) RECOVERY ZONE.—For purposes of this part, the term 'recovery zone' means—

"(1) any area designated by the issuer as having significant poverty, unemployment, home foreclosures, or general distress, and

"(2) any area for which a designation as an empowerment zone or renewal community is in effect.

"SEC. 1400U–2. RECOVERY ZONE ECONOMIC DEVELOPMENT BONDS.

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

"(1) such bond shall be treated as a qualified bond for purposes of section 6432, and

"(2) subsection (b) of such section shall be applied by substituting '55 percent' for '35 percent'.

"(b) RECOVERY ZONE ECONOMIC DEVELOPMENT BOND.—

"(1) IN GENERAL.—For purposes of this section, the term 'recovery zone economic development bond' means any taxable governmental bond (as defined in section 54AA(d)) issued before January 1, 2011, as part of issue if—

"(A) 100 percent of the available project proceeds (as defined in section 54A) of such issue are to be used for one or more qualified economic development purposes, and

"(B) the issuer designates such bond for purposes of this section.

"(2) LIMITATION ON AMOUNT OF BONDS DESIGNATED.—The maximum aggregate face amount of bonds which may be designated by any issuer under paragraph (1) shall not exceed the amount of the recovery zone economic development bond limitation allocated to such issuer under section 1400U–1.

"(c) QUALIFIED ECONOMIC DEVELOPMENT PURPOSE.—For purposes of this section, the term 'qualified economic development purpose' means expenditures for purposes of promoting development or other economic activity in a recovery zone, including—

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

"(2) expenditures for public infrastructure and construction of public facilities, and

"(3) expenditures for job training and educational programs.

"SEC. 1400U–3. RECOVERY ZONE FACILITY BONDS.

"(a) IN GENERAL.—For purposes of part IV of subchapter B (relating to tax exemption requirements for State and local bonds), the term 'exempt facility bond' includes any recovery zone facility bond.

"(b) RECOVERY ZONE FACILITY BOND.—

"(1) IN GENERAL.—For purposes of this section, the term 'recovery zone facility bond' means any bond issued as part of an issue if—

"(A) 95 percent or more of the net proceeds (as defined in section 150(a)(3)) of such issue are to be used for recovery zone property,

"(B) such bond is issued before January 1, 2011, and

"(C) the issuer designates such bond for purposes of this section.

"(2) LIMITATION ON AMOUNT OF BONDS DESIGNATED.—The maximum aggregate face amount of bonds which may be designated by any issuer under paragraph (1) shall not exceed the amount of recovery zone facility bond limitation allocated to such issuer under section 1400U–1.

"(c) RECOVERY ZONE PROPERTY.—For purposes of this section—

"(1) IN GENERAL.—The term 'recovery zone property' means any property to which section 168 applies (or would apply but for section 179) if—

"(A) such property was acquired by the taxpayer by purchase (as defined in section 179(d)(2)) after the date on which the designation of the recovery zone took effect,

"(B) the original use of which in the recovery zone commences with the taxpayer, and

"(C) substantially all of the use of which is in the recovery zone and is in the active conduct of a qualified business by the taxpayer in such zone.

"(2) QUALIFIED BUSINESS.—The term 'qualified business' means any trade or business except that—

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

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

"(3) SPECIAL RULES FOR SUBSTANTIAL RENOVATIONS AND SALE-LEASEBACK.—Rules similar to the rules of subsections (a)(2) and (b) of section 1397D shall apply for purposes of this subsection.

"(d) NONAPPLICATION OF CERTAIN RULES.—Sections 146 (relating to volume cap) and 147(d) (relating to acquisition of existing property not permitted) shall not apply to any recovery zone facility bond.".

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

"PART III. RECOVERY ZONE BONDS.".

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

SEC. 1532. TRIBAL ECONOMIC DEVELOPMENT BONDS.

(a) IN GENERAL.—Section 7871 is amended by adding at the end the following new subsection:

"(f) TRIBAL ECONOMIC DEVELOPMENT BONDS.—

"(1) ALLOCATION OF LIMITATION.—

"(A) IN GENERAL.—The Secretary shall allocate the national tribal economic development bond limitation among the Indian tribal governments in such manner as the Secretary, in consultation with the Secretary of the Interior, determines appropriate.

"(B) NATIONAL LIMITATION.—There is a national tribal economic development bond limitation of $2,000,000,000.

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

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

"(B) section 146 shall not apply.

"(3) TRIBAL ECONOMIC DEVELOPMENT BOND.—

"(A) IN GENERAL.—For purposes of this section, the term 'tribal economic development bond' means any bond issued by an Indian tribal government—

"(i) the interest on which is not exempt from tax under section 103 by reason of subsection (c) (determined without regard to this subsection) but would be so exempt if issued by a State or local government, and

"(ii) which is designated by the Indian tribal government as a tribal eco-

nomic development bond for purposes of this subsection.

"(B) EXCEPTIONS.—The term tribal economic development bond shall not include any bond issued as part of an issue if any portion of the proceeds of such issue are used to finance—

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

"(ii) any facility located outside the Indian reservation (as defined in section 168(j)(6)).

"(C) LIMITATION ON AMOUNT OF BONDS DESIGNATED.—The maximum aggregate face amount of bonds which may be designated by any Indian tribal government under subparagraph (A) shall not exceed the amount of national tribal economic development bond limitation allocated to such government under paragraph (1).".

(b) STUDY.—The Secretary of the Treasury, or the Secretary's delegate, shall conduct a study of the effects of the amendment made by subsection (a). Not later than 1 year after the date of the enactment of this Act, the Secretary of the Treasury, or the Secretary's delegate, shall report to Congress on the results of the studies conducted under this paragraph, including the Secretary's recommendations regarding such amendment.

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

PART 5—REPEAL OF WITHHOLDING TAX ON GOVERNMENT CONTRACTORS

SEC. 1541. REPEAL OF WITHHOLDING TAX ON GOVERNMENT CONTRACTORS.

Section 3402 is amended by striking subsection (t).

Subtitle G—Energy Incentives

PART 1—RENEWABLE ENERGY INCENTIVES

SEC. 1601. EXTENSION OF CREDIT FOR ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES.

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

(1) by striking "2010" in paragraph (1) and inserting "2013",

(2) by striking ''2011'' each place it appears in paragraphs (2), (3), (4), (6), (7) and (9) and inserting ''2014'', and

(3) by striking ''2012'' in paragraph (11)(B) and inserting ''2014''.

(b) TECHNICAL AMENDMENT.—Paragraph (5) of section 45(d) is amended by striking ''and before'' and all that follows and inserting '' and before October 3, 2008.''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by subsection (a) shall apply to property placed in service after the date of the enactment of this Act.

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

SEC. 1602. ELECTION OF INVESTMENT CREDIT IN LIEU OF PRODUCTION CREDIT.

(a) IN GENERAL.—Subsection (a) of section 48 is amended by adding at the end the following new paragraph:

''(5) ELECTION TO TREAT QUALIFIED FACILITIES AS ENERGY PROPERTY.—

"(A) IN GENERAL.—In the case of any qualified investment credit facility placed in service in 2009 or 2010—

"(i) such facility shall be treated as energy property for purposes of this section, and

"(ii) the energy percentage with respect to such property shall be 30 percent.

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

"(C) QUALIFIED INVESTMENT CREDIT FACILITY.—For purposes of this paragraph, the term 'qualified investment credit facility' means any facility described in paragraph (1), (2), (3), (4), (6), (7), (9), or (11) of section 45(d) if no credit has been allowed under section 45 with respect to such facility and the taxpayer makes an irrevocable election to have this paragraph apply to such facility.".

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

SEC. 1603. REPEAL OF CERTAIN LIMITATIONS ON CREDIT FOR RENEWABLE ENERGY PROPERTY.

(a) REPEAL OF LIMITATION ON CREDIT FOR QUALIFIED SMALL WIND ENERGY PROPERTY.—Paragraph (4) of section 48(c) is amended by striking subparagraph (B) and by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C).

(b) REPEAL OF LIMITATION ON PROPERTY FINANCED BY SUBSIDIZED ENERGY FINANCING.—

(1) IN GENERAL.—Subsection (a) of section 48 is amended by striking paragraph (4).

(2) CONFORMING AMENDMENTS.—

(A) Section 25C(e)(1) is amended by striking "(8), and (9)" and inserting "and (8)".

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

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2),the amendment made by this section shall apply to periods after December 31, 2008, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

(2) CONFORMING AMENDMENTS.—The amendments made by subsection (b)(2) shall apply to taxable years beginning after December 31, 2008.

SEC. 1604. COORDINATION WITH RENEWABLE ENERGY GRANTS.

Section 48 is amended by adding at the end the following new subsection:

"(d) COORDINATION WITH DEPARTMENT OF ENERGY GRANTS.—In the case of any property with respect to which the Secretary of Energy makes a grant under section 1721 of the American Recovery and Reinvestment Tax Act of 2009—

"(1) DENIAL OF PRODUCTION AND INVESTMENT CREDITS.—No credit shall be determined under this section or section 45 with respect to such property for the taxable year in which such grant is made or any subsequent taxable year.

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

"(A) the tax imposed under subtitle A on the taxpayer for the taxable year in which such

grant is made shall be increased by so much of such credit as was allowed under section 38,

"(B) the general business carryforwards under section 39 shall be adjusted so as to recapture the portion of such credit which was not so allowed, and

"(C) the amount of such grant shall be determined without regard to any reduction in the basis of such property by reason of such credit.

"(3) TREATMENT OF GRANTS.—Any such grant shall—

"(A) not be includible in the gross income of the taxpayer, but

"(B) shall be taken into account in determining the basis of the property to which such grant relates, except that the basis of such property shall be reduced under section 50(c) in the same manner as a credit allowed under subsection (a).".

PART 2—INCREASED ALLOCATIONS OF NEW CLEAN RENEWABLE ENERGY BONDS AND QUALIFIED ENERGY CONSERVATION BONDS

SEC. 1611. INCREASED LIMITATION ON ISSUANCE OF NEW CLEAN RENEWABLE ENERGY BONDS.

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

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

SEC. 1612. INCREASED LIMITATION AND EXPANSION OF QUALIFIED ENERGY CONSERVATION BONDS.

(a) INCREASED LIMITATION.—Subsection (e) of section 54D is amended by adding at the end the following new paragraph:

"(4) ADDITIONAL LIMITATION.—The national qualified energy conservation bond limitation shall be increased by $2,400,000,000. Such increase shall be allocated by the Secretary consistent with the rules of paragraphs (1), (2), and (3).".

(b) LOANS AND GRANTS TO IMPLEMENT GREEN COMMUNITY PROGRAMS.—

(1) IN GENERAL.—Subparagraph (A) of section 54D(f)(1) is amended by inserting "(or loans or

grants for capital expenditures to implement any green community program)'' after ''Capital expenditures''.

(2) BONDS TO IMPLEMENT GREEN COMMUNITY PROGRAMS NOT TREATED AS PRIVATE ACTIVITY BONDS FOR PURPOSES OF LIMITATIONS ON QUALIFIED ENERGY CONSERVATION BONDS .—Subsection (e) of section 54D is amended by adding at the end the following new paragraph:

''(4) BONDS TO IMPLEMENT GREEN COMMUNITY PROGRAMS NOT TREATED AS PRIVATE ACTIVITY BONDS.—For purposes of paragraph (3) and subsection (f)(2), a bond shall not be treated as a private activity bond solely because proceeds of the issue of which such bond is a part are to be used for loans or grants for capital expenditures to implement any green community program.''.

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

PART 3—ENERGY CONSERVATION INCENTIVES

SEC. 1621. EXTENSION AND MODIFICATION OF CREDIT FOR NONBUSINESS ENERGY PROPERTY.

(a) IN GENERAL.—Section 25C is amended by striking subsections (a) and (b) and inserting the following new subsections:

"(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 30 percent of the sum of—

"(1) the amount paid or incurred by the taxpayer during such taxable year for qualified energy efficiency improvements, and

"(2) the amount of the residential energy property expenditures paid or incurred by the taxpayer during such taxable year.

"(b) LIMITATION.—The aggregate amount of the credits allowed under this section for taxable years beginning in 2009 and 2010 with respect to any taxpayer shall not exceed $1,500.".

(b) EXTENSION.—Section 25C(g)(2) is amended by striking "December 31, 2009" and inserting "December 31, 2010".

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

SEC. 1622. MODIFICATION OF CREDIT FOR RESIDENTIAL ENERGY EFFICIENT PROPERTY.

(a) REMOVAL OF CREDIT LIMITATION FOR PROPERTY PLACED IN SERVICE.—

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

"(1) MAXIMUM CREDIT FOR FUEL CELLS.—In the case of any qualified fuel cell property expenditure, the credit allowed under subsection (a) (determined without regard to subsection (c)) for any taxable year shall not exceed $500 with respect to each half kilowatt of capacity of the qualified fuel cell property (as defined in section 48(c)(1)) to which such expenditure relates.".

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

(A) by striking all that precedes subparagraph (B) and inserting the following:

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

"(A) MAXIMUM EXPENDITURES FOR FUEL CELLS.—The maximum amount of such expenditures which may be taken into account under subsection (a) by all such individuals with respect to such dwelling unit during such calendar year shall be $1,667 in the case of each half kilowatt of capacity of qualified fuel cell property (as defined in section 48(c)(1)) with respect to which such expenditures relate.", and

(B) by striking subparagraph (C).

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

SEC. 1623. TEMPORARY INCREASE IN CREDIT FOR ALTERNATIVE FUEL VEHICLE REFUELING PROPERTY.

(a) IN GENERAL.—Section 30C(e) is amended by adding at the end the following new paragraph:

"(6) SPECIAL RULE FOR PROPERTY PLACED IN SERVICE DURING 2009 AND 2010.—In the case of property placed in service in taxable years beginning after December 31, 2008, and before January 1, 2011—

"(A) in the case of any such property which does not relate to hydrogen—

"(i) subsection (a) shall be applied by substituting '50 percent' for '30 percent',

"(ii) subsection (b)(1) shall be applied by substituting '$50,000' for '$30,000', and

"(iii) subsection (b)(2) shall be applied by substituting '$2,000' for '$1,000', and

"(B) in the case of any such property which relates to hydrogen, subsection (b) shall be applied by substituting '$200,000' for '$30,000'.".

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

PART 4—ENERGY RESEARCH INCENTIVES

SEC. 1631. INCREASED RESEARCH CREDIT FOR ENERGY RESEARCH.

(a) IN GENERAL.—Section 41 is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

"(h) ENERGY RESEARCH CREDIT.—In the case of any taxable year beginning in 2009 or 2010—

"(1) IN GENERAL.—The credit determined under subsection (a)(1) shall be increased by 20 percent of the qualified energy research expenses for the taxable year.

"(2) QUALIFIED ENERGY RESEARCH EXPENSES.—For purposes of this subsection, the term 'qualified energy research expenses' means so much of the taxpayer's qualified research expenses as are related to the fields of fuel cells and battery technology, renewable energy, energy conservation technology, efficient transmission and distribution of electricity, and carbon capture and sequestration.

"(3) COORDINATION WITH OTHER RESEARCH CREDITS.—

"(A) INCREMENTAL CREDIT.—The amount of qualified energy research expenses taken into account under subsection (a)(1)(A) shall not exceed the base amount.

"(B) ALTERNATIVE SIMPLIFIED CREDIT.—For purposes of subsection (c)(5), the amount of qualified energy research expenses taken into account for the taxable year for which the credit is being determined shall not exceed—

"(i) in the case of subsection (c)(5)(A), 50 percent of the average quali-

fied research expenses for the 3 taxable years preceding the taxable year for which the credit is being determined, and

"(ii) in the case of subsection (c)(5)(B)(ii), zero.

"(C) BASIC RESEARCH AND ENERGY RESEARCH CONSORTIUM PAYMENTS.—Any amount taken into account under paragraph (1) shall not be taken into account under paragraph (2) or (3) of subsection (a).".

(b) CONFORMING AMENDMENT.—Subparagraph (B) of section 41(i)(1)(B), as redesignated by subsection (a), is amended by inserting "(in the case of the increase in the credit determined under subsection (h), December 31, 2010)" after "December 31, 2009".

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

Subtitle H—Other Provisions

PART 1—APPLICATION OF CERTAIN LABOR STANDARDS TO PROJECTS FINANCED WITH CERTAIN TAX-FAVORED BONDS

SEC. 1701. APPLICATION OF CERTAIN LABOR STANDARDS TO PROJECTS FINANCED WITH CERTAIN TAX-FAVORED BONDS.

Subchapter IV of chapter 31 of the title 40, United States Code, shall apply to projects financed with the proceeds of—

(1) any qualified clean renewable energy bond (as defined in section 54C of the Internal Revenue Code of 1986) issued after the date of the enactment of this Act,

(2) any qualified energy conservation bond (as defined in section 54D of the Internal Revenue Code of 1986) issued after the date of the enactment of this Act,

(3) any qualified zone academy bond (as defined in section 54E of the Internal Revenue Code of 1986) issued after the date of the enactment of this Act,

(4) any qualified school construction bond (as defined in section 54F of the Internal Revenue Code of 1986), and

(5) any recovery zone economic development bond (as defined in section 1400U–2 of the Internal Revenue Code of 1986).

PART 2—GRANTS TO PROVIDE FINANCING FOR LOW-INCOME HOUSING

SEC. 1711. GRANTS TO STATES FOR LOW-INCOME HOUSING PROJECTS IN LIEU OF LOW-INCOME HOUSING CREDIT ALLOCATIONS FOR 2009.

(a) IN GENERAL.—The Secretary of the Treasury shall make a grant to the housing credit agency of each State in an amount equal to such State's low-income housing grant election amount.

(b) LOW-INCOME HOUSING GRANT ELECTION AMOUNT.—For purposes of this section, the term ''low-income housing grant election amount'' means, with respect to any State, such amount as the State may elect which does not exceed 85 percent of the product of—

(1) the sum of—

(A) 100 percent of the State housing credit ceiling for 2009 which is attributable to amounts described in clauses (i) and (iii) of section 42(h)(3)(C) of the Internal Revenue Code of 1986, and

(B) 40 percent of the State housing credit ceiling for 2009 which is attributable to

amounts described in clauses (ii) and (iv) of such section, multiplied by

(2) 10.

(c) SUBAWARDS FOR LOW-INCOME BUILDINGS.—

(1) IN GENERAL.—A State housing credit agency receiving a grant under this section shall use such grant to make subawards to finance the construction or acquisition and rehabilitation of qualified low-income buildings. A subaward under this section may be made to finance a qualified low-income building with or without an allocation under section 42 of the Internal Revenue Code of 1986, except that a State housing credit agency may make subawards to finance qualified low-income buildings without an allocation only if it makes a determination that such use will increase the total funds available to the State to build and rehabilitate affordable housing. In complying with such determination requirement, a State housing credit agency shall establish a process in which applicants that are allocated credits are required to demonstrate good faith efforts to obtain investment commitments for such credits before the agency makes such subawards.

(2) SUBAWARDS SUBJECT TO SAME REQUIREMENTS AS LOW-INCOME HOUSING CREDIT ALLOCA-

TIONS.—Any such subaward with respect to any qualified low-income building shall be made in the same manner and shall be subject to the same limitations (including rent, income, and use restrictions on such building) as an allocation of housing credit dollar amount allocated by such State housing credit agency under section 42 of the Internal Revenue Code of 1986, except that such subawards shall not be limited by, or otherwise affect (except as provided in subsection (h)(3)(J) of such section), the State housing credit ceiling applicable to such agency.

(3) COMPLIANCE AND ASSET MANAGEMENT.—The State housing credit agency shall perform asset management functions to ensure compliance with section 42 of the Internal Revenue Code of 1986 and the long-term viability of buildings funded by any subaward under this section. The State housing credit agency may collect reasonable fees from a subaward recipient to cover expenses associated with the performance of its duties under this paragraph. The State housing credit agency may retain an agent or other private contractor to satisfy the requirements of this paragraph.

(4) RECAPTURE.—The State housing credit agency shall impose conditions or restrictions, in-

cluding a requirement providing for recapture, on any subaward under this section so as to assure that the building with respect to which such subaward is made remains a qualified low-income building during the compliance period. Any such recapture shall be payable to the Secretary of the Treasury for deposit in the general fund of the Treasury and may be enforced by means of liens or such other methods as the Secretary of the Treasury determines appropriate.

(d) RETURN OF UNUSED GRANT FUNDS.—Any grant funds not used to make subawards under this section before January 1, 2011, shall be returned to the Secretary of the Treasury on such date. Any subawards returned to the State housing credit agency on or after such date shall be promptly returned to the Secretary of the Treasury. Any amounts returned to the Secretary of the Treasury under this subsection shall be deposited in the general fund of the Treasury.

(e) DEFINITIONS.—Any term used in this section which is also used in section 42 of the Internal Revenue Code of 1986 shall have the same meaning for purposes of this section as when used in such section 42. Any reference in this section to the Secretary of the Treasury shall be treated as including the Secretary's delegate.

(f) APPROPRIATIONS.—There is hereby appropriated to the Secretary of the Treasury such sums as may be necessary to carry out this section.

PART 3—GRANTS FOR SPECIFIED ENERGY PROPERTY IN LIEU OF TAX CREDITS

SEC. 1721. GRANTS FOR SPECIFIED ENERGY PROPERTY IN LIEU OF TAX CREDITS.

(a) IN GENERAL.—Upon application, the Secretary of Energy shall, within 60 days of the application and subject to the requirements of this section, provide a grant to each person who places in service specified energy property during 2009 or 2010 to reimburse such person for a portion of the expense of such facility as provided in subsection (b).

(b) GRANT AMOUNT.—

(1) IN GENERAL.—The amount of the grant under subsection (a) with respect to any specified energy property shall be the applicable percentage of the basis of such facility.

(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the term ''applicable percentage'' means—

(A) 30 percent in the case of any property described in paragraphs (1) through (4) of subsection (c), and

(B) 10 percent in the case of any other property.

(3) DOLLAR LIMITATIONS.—In the case of property described in paragraph (2), (6), or (7) of subsection (c), the amount of any grant under this section with respect to such property shall not exceed the limitation described in section 48(c)(1)(B), 48(c)(2)(B), or 48(c)(3)(B) of the Internal Revenue Code of 1986, respectively, with respect to such property.

(c) SPECIFIED ENERGY PROPERTY.—For purposes of this section, the term ''specified energy property'' means any of the following:

(1) QUALIFIED FACILITIES.—Any facility described in paragraph (1), (2), (3), (4), (6), (7), (9), or (11) of section 45(d) of the Internal Revenue Code of 1986.

(2) QUALIFIED FUEL CELL PROPERTY.—Any qualified fuel cell property (as defined in section 48(c)(1) of such Code).

(3) SOLAR PROPERTY.—Any property described in clause (i) or (ii) of section 48(a)(3)(A) of such Code.

(4) QUALIFIED SMALL WIND ENERGY PROPERTY.—Any qualified small wind energy property (as defined in section 48(c)(4) of such Code).

(5) GEOTHERMAL PROPERTY.—Any property described in clause (iii) of section 48(a)(3)(A) of such Code.

(6) QUALIFIED MICROTURBINE PROPERTY.—Any qualified microturbine property (as defined in section 48(c)(2) of such Code).

(7) COMBINED HEAT AND POWER SYSTEM PROPERTY.—Any combined heat and power system property (as defined in section 48(c)(3) of such Code).

(8) GEOTHERMAL HEATPUMP PROPERTY.—Any property described in clause (vii) of section 48(a)(3)(A) of such Code.

(d) APPLICATION OF CERTAIN RULES.—In making grants under this section, the Secretary of Energy shall apply rules similar to the rules of section 50 of the Internal Revenue Code of 1986. In applying such rules, if the facility is disposed of, or otherwise ceases to be a qualified renewable energy facility, the Secretary of Energy shall provide for the recapture of the appropriate percentage of the grant amount in such manner as the Secretary of Energy determines appropriate.

(e) EXCEPTION FOR CERTAIN NON-TAXPAYERS.—The Secretary of Energy shall not make any grant under this section to any Federal, State, or local government (or any political subdivision, agency, or instrumentality thereof) or any organization described in section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code.

(f) DEFINITIONS.—Terms used in this section which are also used in section 45 or 48 of the Internal Revenue Code of 1986 shall have the same meaning for purposes of this section as when used in such section 45 or 48. Any reference in this section to the Secretary of the Treasury shall be treated as including the Secretary's delegate.

(g) COORDINATION BETWEEN DEPARTMENTS OF TREASURY AND ENERGY.—The Secretary of the Treasury shall provide the Secretary of Energy with such technical assistance as the Secretary of Energy may require in carrying out this section. The Secretary of Energy shall provide the Secretary of the Treasury with such information as the Secretary of the Treasury may require in carrying out the amendment made by section 1604.

(h) APPROPRIATIONS.—There is hereby appropriated to the Secretary of Energy such sums as may be necessary to carry out this section.

(i) TERMINATION.—The Secretary of Energy shall not make any grant to any person under this section unless the application of such person for such grant is received before October 1, 2011.

PART 4—STUDY OF ECONOMIC, EMPLOYMENT, AND RELATED EFFECTS OF THIS ACT

SEC. 1731. STUDY OF ECONOMIC, EMPLOYMENT, AND RELATED EFFECTS OF THIS ACT.

On February 1, 2010, and every 3 months thereafter in calendar year 2010, the Comptroller General of the United States shall submit to the Committee on Ways and Means a written report on the most recent national (and, where available, State-by-State) information on—

(1) the economic effects of this Act;

(2) the employment effects of this Act, including—

(A) a comparison of the number of jobs preserved and the number of jobs created as a result of this Act; and

(B) a comparison of the numbers of jobs preserved and the number of jobs created in each of the public and private sectors;

(3) the share of tax and non-tax expenditures provided under this Act that were spent or saved, by group and income class;

(4) how the funds provided to States under this Act have been spent, including a breakdown of—

(A) funds used for services provided to citizens; and

(B) wages and other compensation for public employees; and

(5) a description of any funds made available under this Act that remain unspent, and the reasons why.

TITLE II—ASSISTANCE FOR UNEMPLOYED WORKERS AND STRUGGLING FAMILIES

SEC. 2000. SHORT TITLE.

This title may be cited as the ''Assistance for Unemployed Workers and Struggling Families Act''.

Subtitle A—Unemployment Insurance

SEC. 2001. EXTENSION OF EMERGENCY UNEMPLOYMENT COMPENSATION PROGRAM.

(a) IN GENERAL.—Section 4007 of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 26 U.S.C. 3304 note), as amended by section 4 of the Unemployment Compensation Extension Act of 2008 (Public Law 110–449; 122 Stat. 5015), is amended—

(1) by striking ''March 31, 2009'' each place it appears and inserting ''December 31, 2009'';

(2) in the heading for subsection (b)(2), by striking ''MARCH 31, 2009'' and inserting ''DECEMBER 31, 2009''; and

(3) in subsection (b)(3), by striking ''August 27, 2009'' and inserting ''May 31, 2010''.

(b) FINANCING PROVISIONS.—Section 4004 of such Act is amended by adding at the end the following:

''(e) TRANSFER OF FUNDS.—Notwithstanding any other provision of law, the Secretary of the Treasury shall transfer from the general fund of the Treasury (from funds not otherwise appropriated)—

''(1) to the extended unemployment compensation account (as established by section 905 of the Social Security Act) such sums as the Secretary of Labor estimates to be necessary to make payments to States under this title by reason of the amendments made by section 2001(a) of the Assistance for Unemployed Workers and Struggling Families Act; and

''(2) to the employment security administration account (as established by section 901 of the Social Security Act) such sums as the Secretary of Labor estimates to be necessary for purposes of assisting

States in meeting administrative costs by reason of the amendments referred to in paragraph (1).

There are appropriated from the general fund of the Treasury, without fiscal year limitation, the sums referred to in the preceding sentence and such sums shall not be required to be repaid.''.

SEC. 2002. INCREASE IN UNEMPLOYMENT COMPENSATION BENEFITS.

(a) FEDERAL-STATE AGREEMENTS.—Any State which desires to do so may enter into and participate in an agreement under this section with the Secretary of Labor (hereinafter in this section referred to as the ''Secretary''). Any State which is a party to an agreement under this section may, upon providing 30 days' written notice to the Secretary, terminate such agreement.

(b) PROVISIONS OF AGREEMENT.—

(1) ADDITIONAL COMPENSATION.—Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had

been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to the amount determined under the State law (before the application of this paragraph) plus an additional $25.

(2) ALLOWABLE METHODS OF PAYMENT.—Any additional compensation provided for in accordance with paragraph (1) shall be payable either—

(A) as an amount which is paid at the same time and in the same manner as any regular compensation otherwise payable for the week involved; or

(B) at the option of the State, by payments which are made separately from, but on the same weekly basis as, any regular compensation otherwise payable.

(c) NONREDUCTION RULE.—An agreement under this section shall not apply (or shall cease to apply) with respect to a State upon a determination by the Secretary that the method governing the computation of regular compensation under the State law of that State has been modified in a manner such that—

(1) the average weekly benefit amount of regular compensation which will be payable during the

period of the agreement (determined disregarding any additional amounts attributable to the modification described in subsection (b)(1)) will be less than

(2) the average weekly benefit amount of regular compensation which would otherwise have been payable during such period under the State law, as in effect on December 31, 2008.

(d) PAYMENTS TO STATES.—

(1) IN GENERAL.—

(A) FULL REIMBURSEMENT.—There shall be paid to each State which has entered into an agreement under this section an amount equal to 100 percent of—

(i) the total amount of additional compensation (as described in subsection (b)(1)) paid to individuals by the State pursuant to such agreement; and

(ii) any additional administrative expenses incurred by the State by reason of such agreement (as determined by the Secretary).

(B) TERMS OF PAYMENTS.—Sums payable to any State by reason of such State's having an agreement under this section shall be payable, either in advance or by way of reimburse-

ment (as determined by the Secretary), in such amounts as the Secretary estimates the State will be entitled to receive under this section for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that his estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

(2) CERTIFICATIONS.—The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this section.

(3) APPROPRIATION.—There are appropriated from the general fund of the Treasury, without fiscal year limitation, such sums as may be necessary for purposes of this subsection.

(e) APPLICABILITY.—

(1) IN GENERAL.—An agreement entered into under this section shall apply to weeks of unemployment—

(A) beginning after the date on which such agreement is entered into; and

(B) ending before January 1, 2010.

(2) TRANSITION RULE FOR INDIVIDUALS REMAINING ENTITLED TO REGULAR COMPENSATION AS OF JANUARY 1, 2010.—In the case of any individual who, as of the date specified in paragraph (1)(B), has not yet exhausted all rights to regular compensation under the State law of a State with respect to a benefit year that began before such date, additional compensation (as described in subsection (b)(1)) shall continue to be payable to such individual for any week beginning on or after such date for which the individual is otherwise eligible for regular compensation with respect to such benefit year.

(3) TERMINATION.—Notwithstanding any other provision of this subsection, no additional compensation (as described in subsection (b)(1)) shall be payable for any week beginning after June 30, 2010.

(f) FRAUD AND OVERPAYMENTS.—The provisions of section 4005 of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 122 Stat. 2356) shall apply with respect to additional compensation (as described in subsection (b)(1)) to the same extent and in the same

manner as in the case of emergency unemployment compensation.

(g) APPLICATION TO OTHER UNEMPLOYMENT BENEFITS.—

(1) IN GENERAL.—Each agreement under this section shall include provisions to provide that the purposes of the preceding provisions of this section shall be applied with respect to unemployment benefits described in subsection (h)(3) to the same extent and in the same manner as if those benefits were regular compensation.

(2) ELIGIBILITY AND TERMINATION RULES.—Additional compensation (as described in subsection (b)(1))—

(A) shall not be payable, pursuant to this subsection, with respect to any unemployment benefits described in subsection (h)(3) for any week beginning on or after the date specified in subsection (e)(1)(B), except in the case of an individual who was eligible to receive additional compensation (as so described) in connection with any regular compensation or any unemployment benefits described in subsection (h)(3) for any period of unemployment ending before such date; and

(B) shall in no event be payable for any week beginning after the date specified in subsection (e)(3).

(h) DISREGARD OF ADDITIONAL COMPENSATION FOR PURPOSES OF MEDICAID AND SCHIP.—The monthly equivalent of any additional compensation paid under this section shall be disregarded in considering the amount of income of an individual for any purposes under title XIX and title XXI of the Social Security Act.

(i) DEFINITIONS.—For purposes of this section—

(1) the terms ''compensation'', ''regular compensation'', ''benefit year'', ''State'', ''State agency'', ''State law'', and ''week'' have the respective meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note);

(2) the term ''emergency unemployment compensation'' means emergency unemployment compensation under title IV of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 122 Stat. 2353); and

(3) any reference to unemployment benefits described in this paragraph shall be considered to refer to—

(A) extended compensation (as defined by section 205 of the Federal-State Extended Unemployment Compensation Act of 1970); and

(B) unemployment compensation (as defined by section 85(b) of the Internal Revenue Code of 1986) provided under any program administered by a State under an agreement with the Secretary.

SEC. 2003. SPECIAL TRANSFERS FOR UNEMPLOYMENT COMPENSATION MODERNIZATION.

(a) IN GENERAL.—Section 903 of the Social Security Act (42 U.S.C. 1103) is amended by adding at the end the following:

"Special Transfers in Fiscal Years 2009, 2010, and 2011 for Modernization

"(f)(1)(A) In addition to any other amounts, the Secretary of Labor shall provide for the making of unemployment compensation modernization incentive payments (hereinafter 'incentive payments') to the accounts of the States in the Unemployment Trust Fund, by transfer from amounts reserved for that purpose in the Federal unemployment account, in accordance with succeeding provisions of this subsection.

"(B) The maximum incentive payment allowable under this subsection with respect to any State shall, as

determined by the Secretary of Labor, be equal to the amount obtained by multiplying $7,000,000,000 by the same ratio as would apply under subsection (a)(2)(B) for purposes of determining such State's share of any excess amount (as described in subsection (a)(1)) that would have been subject to transfer to State accounts, as of October 1, 2008, under the provisions of subsection (a).

''(C) Of the maximum incentive payment determined under subparagraph (B) with respect to a State—

''(i) one-third shall be transferred to the account of such State upon a certification under paragraph (4)(B) that the State law of such State meets the requirements of paragraph (2); and

''(ii) the remainder shall be transferred to the account of such State upon a certification under paragraph (4)(B) that the State law of such State meets the requirements of paragraph (3).

''(2) The State law of a State meets the requirements of this paragraph if such State law—

''(A) uses a base period that includes the most recently completed calendar quarter before the start of the benefit year for purposes of determining eligibility for unemployment compensation; or

''(B) provides that, in the case of an individual who would not otherwise be eligible for unemploy-

ment compensation under the State law because of the use of a base period that does not include the most recently completed calendar quarter before the start of the benefit year, eligibility shall be determined using a base period that includes such calendar quarter.

"(3) The State law of a State meets the requirements of this paragraph if such State law includes provisions to carry out at least 2 of the following subparagraphs:

"(A) An individual shall not be denied regular unemployment compensation under any State law provisions relating to availability for work, active search for work, or refusal to accept work, solely because such individual is seeking only part-time work (as defined by the Secretary of Labor), except that the State law provisions carrying out this subparagraph may exclude an individual if a majority of the weeks of work in such individual's base period do not include part-time work (as so defined).

"(B) An individual shall not be disqualified from regular unemployment compensation for separating from employment if that separation is for any compelling family reason. For purposes of this subparagraph, the term 'compelling family reason' means the following:

"(i) Domestic violence, verified by such reasonable and confidential documentation as the State law may require, which causes the individual reasonably to believe that such individual's continued employment would jeopardize the safety of the individual or of any member of the individual's immediate family (as defined by the Secretary of Labor).

"(ii) The illness or disability of a member of the individual's immediate family (as those terms are defined by the Secretary of Labor).

"(iii) The need for the individual to accompany such individual's spouse—

"(I) to a place from which it is impractical for such individual to commute; and

"(II) due to a change in location of the spouse's employment.

"(C) Weekly unemployment compensation is payable under this subparagraph to any individual who is unemployed (as determined under the State unemployment compensation law), has exhausted all rights to regular unemployment compensation under the State law, and is enrolled and making satisfactory progress in a State-approved training program

or in a job training program authorized under the Workforce Investment Act of 1998. Such programs shall prepare individuals who have been separated from a declining occupation, or who have been involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations at the individual's place of employment, for entry into a high-demand occupation. The amount of unemployment compensation payable under this subparagraph to an individual for a week of unemployment shall be equal to the individual's average weekly benefit amount (including dependents' allowances) for the most recent benefit year, and the total amount of unemployment compensation payable under this subparagraph to any individual shall be equal to at least 26 times the individual's average weekly benefit amount (including dependents' allowances) for the most recent benefit year.

''(D) Dependents' allowances are provided, in the case of any individual who is entitled to receive regular unemployment compensation and who has any dependents (as defined by State law), in an amount equal to at least $15 per dependent per week, subject to any aggregate limitation on such allowances which the State law may establish (but

which aggregate limitation on the total allowance for dependents paid to an individual may not be less than $50 for each week of unemployment or 50 percent of the individual's weekly benefit amount for the benefit year, whichever is less).

"(4)(A) Any State seeking an incentive payment under this subsection shall submit an application therefor at such time, in such manner, and complete with such information as the Secretary of Labor may within 60 days after the date of the enactment of this subsection prescribe (whether by regulation or otherwise), including information relating to compliance with the requirements of paragraph (2) or (3), as well as how the State intends to use the incentive payment to improve or strengthen the State's unemployment compensation program. The Secretary of Labor shall, within 30 days after receiving a complete application, notify the State agency of the State of the Secretary's findings with respect to the requirements of paragraph (2) or (3) (or both).

"(B)(i) If the Secretary of Labor finds that the State law provisions (disregarding any State law provisions which are not then currently in effect as permanent law or which are subject to discontinuation) meet the requirements of paragraph (2) or (3), as the case may be, the Secretary of Labor shall thereupon make a certification

to that effect to the Secretary of the Treasury, together with a certification as to the amount of the incentive payment to be transferred to the State account pursuant to that finding. The Secretary of the Treasury shall make the appropriate transfer within 7 days after receiving such certification.

"(ii) For purposes of clause (i), State law provisions which are to take effect within 12 months after the date of their certification under this subparagraph shall be considered to be in effect as of the date of such certification.

"(C)(i) No certification of compliance with the requirements of paragraph (2) or (3) may be made with respect to any State whose State law is not otherwise eligible for certification under section 303 or approvable under section 3304 of the Federal Unemployment Tax Act.

"(ii) No certification of compliance with the requirements of paragraph (3) may be made with respect to any State whose State law is not in compliance with the requirements of paragraph (2).

"(iii) No application under subparagraph (A) may be considered if submitted before the date of the enactment of this subsection or after the latest date necessary (as specified by the Secretary of Labor) to ensure that all incentive payments under this subsection are made before October 1, 2011.

1 "(5)(A) Except as provided in subparagraph (B), any
2 amount transferred to the account of a State under this
3 subsection may be used by such State only in the payment
4 of cash benefits to individuals with respect to their unem-
5 ployment (including for dependents' allowances and for
6 unemployment compensation under paragraph (3)(C)), ex-
7 clusive of expenses of administration.

8 "(B) A State may, subject to the same conditions as
9 set forth in subsection (c)(2) (excluding subparagraph (B)
10 thereof, and deeming the reference to 'subsections (a) and
11 (b)' in subparagraph (D) thereof to include this sub-
12 section), use any amount transferred to the account of
13 such State under this subsection for the administration
14 of its unemployment compensation law and public employ-
15 ment offices.

16 "(6) Out of any money in the Federal unemployment
17 account not otherwise appropriated, the Secretary of the
18 Treasury shall reserve $7,000,000,000 for incentive pay-
19 ments under this subsection. Any amount so reserved shall
20 not be taken into account for purposes of any determina-
21 tion under section 902, 910, or 1203 of the amount in
22 the Federal unemployment account as of any given time.
23 Any amount so reserved for which the Secretary of the
24 Treasury has not received a certification under paragraph
25 (4)(B) by the deadline described in paragraph (4)(C)(iii)

shall, upon the close of fiscal year 2011, become unrestricted as to use as part of the Federal unemployment account.

"(7) For purposes of this subsection, the terms 'benefit year', 'base period', and 'week' have the respective meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note).

"Special Transfer in Fiscal Year 2009 for Administration

"(g)(1) In addition to any other amounts, the Secretary of the Treasury shall transfer from the employment security administration account to the account of each State in the Unemployment Trust Fund, within 30 days after the date of the enactment of this subsection, the amount determined with respect to such State under paragraph (2).

"(2) The amount to be transferred under this subsection to a State account shall (as determined by the Secretary of Labor and certified by such Secretary to the Secretary of the Treasury) be equal to the amount obtained by multiplying $500,000,000 by the same ratio as determined under subsection (f)(1)(B) with respect to such State.

"(3) Any amount transferred to the account of a State as a result of the enactment of this subsection may

be used by the State agency of such State only in the payment of expenses incurred by it for—

"(A) the administration of the provisions of its State law carrying out the purposes of subsection (f)(2) or any subparagraph of subsection (f)(3);

"(B) improved outreach to individuals who might be eligible for regular unemployment compensation by virtue of any provisions of the State law which are described in subparagraph (A);

"(C) the improvement of unemployment benefit and unemployment tax operations, including responding to increased demand for unemployment compensation; and

"(D) staff-assisted reemployment services for unemployment compensation claimants.".

(b) REGULATIONS.—The Secretary of Labor may prescribe any regulations, operating instructions, or other guidance necessary to carry out the amendment made by subsection (a).

Subtitle B—Assistance for Vulnerable Individuals

SEC. 2101. EMERGENCY FUND FOR TANF PROGRAM.

(a) IN GENERAL.—Section 403 of the Social Security Act (42 U.S.C. 603) is amended by adding at the end the following:

1 "(c) EMERGENCY FUND.—

2 "(1) ESTABLISHMENT.—There is established in
3 the Treasury of the United States a fund which
4 shall be known as the 'Emergency Contingency
5 Fund for State Temporary Assistance for Needy
6 Families Programs' (in this subsection referred to as
7 the 'Emergency Fund').

8 "(2) DEPOSITS INTO FUND.—Out of any money
9 in the Treasury of the United States not otherwise
10 appropriated, there are appropriated such sums as
11 are necessary for payment to the Emergency Fund.

12 "(3) GRANTS.—

13 "(A) GRANT RELATED TO CASELOAD IN-
14 CREASES.—

15 "(i) IN GENERAL.—For each calendar
16 quarter in fiscal year 2009 or 2010, the
17 Secretary shall make a grant from the
18 Emergency Fund to each State that—

19 "(I) requests a grant under this
20 subparagraph for the quarter; and

21 "(II) meets the requirement of
22 clause (ii) for the quarter.

23 "(ii) CASELOAD INCREASE REQUIRE-
24 MENT.—A State meets the requirement of
25 this clause for a quarter if the average

monthly assistance caseload of the State for the quarter exceeds the average monthly assistance caseload of the State for the corresponding quarter in the emergency fund base year of the State.

"(iii) AMOUNT OF GRANT.—Subject to paragraph (5), the amount of the grant to be made to a State under this subparagraph for a quarter shall be 80 percent of the amount (if any) by which the total expenditures of the State for basic assistance (as defined by the Secretary) in the quarter, whether under the State program funded under this part or as qualified State expenditures, exceeds the total expenditures of the State for such assistance for the corresponding quarter in the emergency fund base year of the State.

"(B) GRANT RELATED TO INCREASED EXPENDITURES FOR NON-RECURRENT SHORT TERM BENEFITS.—

"(i) IN GENERAL.—For each calendar quarter in fiscal year 2009 or 2010, the Secretary shall make a grant from the Emergency Fund to each State that—

"(I) requests a grant under this subparagraph for the quarter; and

"(II) meets the requirement of clause (ii) for the quarter.

"(ii) NON-RECURRENT SHORT TERM EXPENDITURE REQUIREMENT.—A State meets the requirement of this clause for a quarter if the total expenditures of the State for non-recurrent short term benefits in the quarter, whether under the State program funded under this part or as qualified State expenditures, exceeds the total such expenditures of the State for non-recurrent short term benefits in the corresponding quarter in the emergency fund base year of the State.

"(iii) AMOUNT OF GRANT.—Subject to paragraph (5), the amount of the grant to be made to a State under this subparagraph for a quarter shall be an amount equal to 80 percent of the excess described in clause (ii).

"(C) GRANT RELATED TO INCREASED EXPENDITURES FOR SUBSIDIZED EMPLOYMENT.—

"(i) IN GENERAL.—For each calendar quarter in fiscal year 2009 or 2010, the Secretary shall make a grant from the Emergency Fund to each State that—

"(I) requests a grant under this subparagraph for the quarter; and

"(II) meets the requirement of clause (ii) for the quarter.

"(ii) SUBSIDIZED EMPLOYMENT EXPENDITURE REQUIREMENT.—A State meets the requirement of this clause for a quarter if the total expenditures of the State for subsidized employment in the quarter, whether under the State program funded under this part or as qualified State expenditures, exceeds the total of such expenditures of the State in the corresponding quarter in the emergency fund base year of the State.

"(iii) AMOUNT OF GRANT.—Subject to paragraph (5), the amount of the grant to be made to a State under this subparagraph for a quarter shall be an amount equal to 80 percent of the excess described in clause (ii).

"(4) AUTHORITY TO MAKE NECESSARY ADJUSTMENTS TO DATA AND COLLECT NEEDED DATA.—In determining the size of the caseload of a State and the expenditures of a State for basic assistance, nonrecurrent short-term benefits, and subsidized employment, during any period for which the State requests funds under this subsection, and during the emergency fund base year of the State, the Secretary may make appropriate adjustments to the data to ensure that the data reflect expenditures under the State program funded under this part and qualified State expenditures. The Secretary may develop a mechanism for collecting expenditure data, including procedures which allow States to make reasonable estimates, and may set deadlines for making revisions to the data.

"(5) LIMITATION.—The total amount payable to a single State under subsection (b) and this subsection for a fiscal year shall not exceed 25 percent of the State family assistance grant.

"(6) LIMITATIONS ON USE OF FUNDS.—A State to which an amount is paid under this subsection may use the amount only as authorized by section 404.

"(7) TIMING OF IMPLEMENTATION.—The Secretary shall implement this subsection as quickly as reasonably possible, pursuant to appropriate guidance to States.

"(8) DEFINITIONS.—In this subsection:

"(A) AVERAGE MONTHLY ASSISTANCE CASELOAD.—The term 'average monthly assistance caseload' means, with respect to a State and a quarter, the number of families receiving assistance during the quarter under the State program funded under this part or as qualified State expenditures, subject to adjustment under paragraph (4).

"(B) EMERGENCY FUND BASE YEAR.—

"(i) IN GENERAL.—The term 'emergency fund base year' means, with respect to a State and a category described in clause (ii), whichever of fiscal year 2007 or 2008 is the fiscal year in which the amount described by the category with respect to the State is the lesser.

"(ii) CATEGORIES DESCRIBED.—The categories described in this clause are the following:

"(I) The average monthly assistance caseload of the State.

"(II) The total expenditures of the State for non-recurrent short term benefits, whether under the State program funded under this part or as qualified State expenditures.

"(III) The total expenditures of the State for subsidized employment, whether under the State program funded under this part or as qualified State expenditures.

"(C) QUALIFIED STATE EXPENDITURES.—The term 'qualified State expenditures' has the meaning given the term in section 409(a)(7).".

(b) TEMPORARY MODIFICATION OF CASELOAD REDUCTION CREDIT.—Section 407(b)(3)(A)(i) of such Act (42 U.S.C. 607(b)(3)(A)(i)) is amended by inserting "(or if the immediately preceding fiscal year is fiscal year 2009 or 2010, then, at State option, during the emergency fund base year of the State with respect to the average monthly assistance caseload of the State (within the meaning of section 403(c)(8)(B)))" before "under the State".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 2102. ONE-TIME EMERGENCY PAYMENT TO SSI RECIPIENTS.

(a) PAYMENT AUTHORITY.—

(1) IN GENERAL.—At the earliest practicable date in calendar year 2009 but not later than 120 days after the date of the enactment of this section, the Commissioner of Social Security shall make a one-time payment to each individual who is determined by the Commissioner in calendar year 2009 to be an individual who—

(A) is entitled to a cash benefit under the supplemental security income program under title XVI of the Social Security Act (other than pursuant to section 1611(e)(1)(B) of such Act) for at least 1 day in the calendar month in which the first payment under this section is to be made; or

(B)(i) was entitled to such a cash benefit (other than pursuant to section 1611(e)(1)(B) of such Act) for at least 1 day in the 2-month period preceding that calendar month; and

(ii) whose entitlement to that benefit ceased in that 2-month period solely because the income of the individual (and the income of the spouse, if any, of the individual) exceeded the applicable income limit described in paragraph (1)(A) or (2)(A) of section 1611(a) of such Act.

(2) AMOUNT OF PAYMENT.—Subject to subsection (b)(1) of this section, the amount of the payment shall be—

(A) in the case of an individual eligible for a payment under this section who does not have a spouse eligible for such a payment, an amount equal to the average of the cash benefits payable in the aggregate under section 1611 or 1619(a) of the Social Security Act to eligible individuals who do not have an eligible spouse, for the most recent month for which data on payment of the benefits are available, as determined by the Commissioner of Social Security; or

(B) in the case of an individual eligible for a payment under this section who has a spouse eligible for such a payment, an amount equal to the average of the cash benefits payable in the

aggregate under section 1611 or 1619(a) of the Social Security Act to eligible individuals who have an eligible spouse, for the most recent month for which data on payment of the benefits are available, as so determined.

(b) ADMINISTRATIVE PROVISIONS.—

(1) AUTHORITY TO WITHHOLD PAYMENT TO RECOVER PRIOR OVERPAYMENT OF SSI BENEFITS.—The Commissioner of Social Security may withhold part or all of a payment otherwise required to be made under subsection (a) of this section to an individual, in order to recover a prior overpayment of benefits to the individual under the supplemental security income program under title XVI of the Social Security Act, subject to the limitations of section 1631(b) of such Act.

(2) PAYMENT TO BE DISREGARDED IN DETERMINING UNDERPAYMENTS UNDER THE SSI PROGRAM.—A payment under subsection (a) shall be disregarded in determining whether there has been an underpayment of benefits under the supplemental security income program under title XVI of the Social Security Act.

(3) NONASSIGNMENT.—The provisions of section 1631(d) of the Social Security Act shall apply

with respect to payments under this section to the same extent as they apply in the case of title XVI of such Act.

(c) PAYMENTS TO BE DISREGARDED FOR PURPOSES OF ALL FEDERAL AND FEDERALLY ASSISTED PROGRAMS.—A payment under subsection (a) shall not be regarded as income to the recipient, and shall not be regarded as a resource of the recipient for the month of receipt and the following 6 months, for purposes of determining the eligibility of any individual for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program or under any State or local program financed in whole or in part with Federal funds.

(d) APPROPRIATION.—Out of any sums in the Treasury of the United States not otherwise appropriated, there are appropriated such sums as may be necessary to carry out this section.

SEC. 2103. TEMPORARY RESUMPTION OF PRIOR CHILD SUPPORT LAW.

During the period that begins with October 1, 2008, and ends with September 30, 2010, section 455(a)(1) of the Social Security Act shall be applied and administered as if the phrase ''from amounts paid to the State under section 458 or'' did not appear in such section.

TITLE III—HEALTH INSURANCE ASSISTANCE FOR THE UNEMPLOYED

SEC. 3001. SHORT TITLE AND TABLE OF CONTENTS OF TITLE.

(a) SHORT TITLE OF TITLE.—This title may be cited as the "Health Insurance Assistance for the Unemployed Act of 2009".

(b) TABLE OF CONTENTS OF TITLE.—The table of contents of this title is as follows:

Sec. 3001. Short title and table of contents of title.
Sec. 3002. Premium assistance for COBRA benefits and extension of COBRA benefits for older or long-term employees.
Sec. 3003. Temporary optional Medicaid coverage for the unemployed.

SEC. 3002. PREMIUM ASSISTANCE FOR COBRA BENEFITS AND EXTENSION OF COBRA BENEFITS FOR OLDER OR LONG-TERM EMPLOYEES.

(a) PREMIUM ASSISTANCE FOR COBRA CONTINUATION COVERAGE FOR INDIVIDUALS AND THEIR FAMILIES.—

(1) PROVISION OF PREMIUM ASSISTANCE.—

(A) REDUCTION OF PREMIUMS PAYABLE.—In the case of any premium for a period of coverage beginning on or after the date of the enactment of this Act for COBRA continuation coverage with respect to any assistance eligible individual, such individual shall be

1 treated for purposes of any COBRA continu-
2 ation provision as having paid the amount of
3 such premium if such individual pays 35 per-
4 cent of the amount of such premium (as deter-
5 mined without regard to this subsection).
6 (B) PREMIUM REIMBURSEMENT.—For pro-
7 visions providing the balance of such premium,
8 see section 6431 of the Internal Revenue Code
9 of 1986, as added by paragraph (12).
10 (2) LIMITATION OF PERIOD OF PREMIUM AS-
11 SISTANCE.—
12 (A) IN GENERAL.—Paragraph (1)(A) shall
13 not apply with respect to any assistance eligible
14 individual for months of coverage beginning on
15 or after the earlier of—
16 (i) the first date that such individual
17 is eligible for coverage under any other
18 group health plan (other than coverage
19 consisting of only dental, vision, coun-
20 seling, or referral services (or a combina-
21 tion thereof), coverage under a health re-
22 imbursement arrangement or a health
23 flexible spending arrangement, or coverage
24 of treatment that is furnished in an on-site
25 medical facility maintained by the em-

ployer and that consists primarily of first-aid services, prevention and wellness care, or similar care (or a combination thereof)) or is eligible for benefits under title XVIII of the Social Security Act, or

(ii) the earliest of—

(I) the date which is 12 months after the first day of the first month that paragraph (1)(A) applies with respect to such individual,

(II) the date following the expiration of the maximum period of continuation coverage required under the applicable COBRA continuation coverage provision, or

(III) the date following the expiration of the period of continuation coverage allowed under paragraph (4)(B)(ii).

(B) TIMING OF ELIGIBILITY FOR ADDITIONAL COVERAGE.—For purposes of subparagraph (A)(i), an individual shall not be treated as eligible for coverage under a group health plan before the first date on which such individual could be covered under such plan.

1 (C) NOTIFICATION REQUIREMENT.—An
2 assistance eligible individual shall notify in writ-
3 ing the group health plan with respect to which
4 paragraph (1)(A) applies if such paragraph
5 ceases to apply by reason of subparagraph
6 (A)(i). Such notice shall be provided to the
7 group health plan in such time and manner as
8 may be specified by the Secretary of Labor.
9 (3) ASSISTANCE ELIGIBLE INDIVIDUAL.—For
10 purposes of this section, the term ''assistance eligible
11 individual'' means any qualified beneficiary if—
12 (A) at any time during the period that be-
13 gins with September 1, 2008, and ends with
14 December 31, 2009, such qualified beneficiary
15 is eligible for COBRA continuation coverage,
16 (B) such qualified beneficiary elects such
17 coverage, and
18 (C) the qualifying event with respect to the
19 COBRA continuation coverage consists of the
20 involuntary termination of the covered employ-
21 ee's employment and occurred during such pe-
22 riod.
23 (4) EXTENSION OF ELECTION PERIOD AND EF-
24 FECT ON COVERAGE.—

(A) IN GENERAL.—Notwithstanding section 605(a) of the Employee Retirement Income Security Act of 1974, section 4980B(f)(5)(A) of the Internal Revenue Code of 1986, section 2205(a) of the Public Health Service Act, and section 8905a(c)(2) of title 5, United States Code, in the case of an individual who is a qualified beneficiary described in paragraph (3)(A) as of the date of the enactment of this Act and has not made the election referred to in paragraph (3)(B) as of such date, such individual may elect the COBRA continuation coverage under the COBRA continuation coverage provisions containing such sections during the 60-day period commencing with the date on which the notification required under paragraph (7)(C) is provided to such individual.

(B) COMMENCEMENT OF COVERAGE; NO REACH-BACK.—Any COBRA continuation coverage elected by a qualified beneficiary during an extended election period under subparagraph (A)—

(i) shall commence on the date of the enactment of this Act, and

(ii) shall not extend beyond the period of COBRA continuation coverage that would have been required under the applicable COBRA continuation coverage provision if the coverage had been elected as required under such provision.

(C) PREEXISTING CONDITIONS.—With respect to a qualified beneficiary who elects COBRA continuation coverage pursuant to subparagraph (A), the period—

(i) beginning on the date of the qualifying event, and

(ii) ending with the day before the date of the enactment of this Act,

shall be disregarded for purposes of determining the 63-day periods referred to in section 701)(2) of the Employee Retirement Income Security Act of 1974, section 9801(c)(2) of the Internal Revenue Code of 1986, and section 2701(c)(2) of the Public Health Service Act.

(5) EXPEDITED REVIEW OF DENIALS OF PREMIUM ASSISTANCE.—In any case in which an individual requests treatment as an assistance eligible individual and is denied such treatment by the group health plan by reason of such individual's ineligi-

1 bility for COBRA continuation coverage, the Sec-
2 retary of Labor (or the Secretary of Health and
3 Human services in connection with COBRA continu-
4 ation coverage which is provided other than pursu-
5 ant to part 6 of subtitle B of title I of the Employee
6 Retirement Income Security Act of 1974), in con-
7 sultation with the Secretary of the Treasury, shall
8 provide for expedited review of such denial. An indi-
9 vidual shall be entitled to such review upon applica-
10 tion to such Secretary in such form and manner as
11 shall be provided by such Secretary. Such Secretary
12 shall make a determination regarding such individ-
13 ual's eligibility within 10 business days after receipt
14 of such individual's application for review under this
15 paragraph.

16 (6) DISREGARD OF SUBSIDIES FOR PURPOSES
17 OF FEDERAL AND STATE PROGRAMS.—Notwith-
18 standing any other provision of law, any premium
19 reduction with respect to an assistance eligible indi-
20 vidual under this subsection shall not be considered
21 income or resources in determining eligibility for, or
22 the amount of assistance or benefits provided under,
23 any other public benefit provided under Federal law
24 or the law of any State or political subdivision there-
25 of.

(7) NOTICES TO INDIVIDUALS.—

(A) GENERAL NOTICE.—

(i) IN GENERAL.—In the case of notices provided under section 606(4) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1166(4)), section 4980B(f)(6)(D) of the Internal Revenue Code of 1986, section 2206(4) of the Public Health Service Act (42 U.S.C. 300bb-6(4)), or section 8905a(f)(2)(A) of title 5, United States Code, with respect to individuals who, during the period described in paragraph (3)(A), become entitled to elect COBRA continuation coverage, such notices shall include an additional notification to the recipient of the availability of premium reduction with respect to such coverage under this subsection.

(ii) ALTERNATIVE NOTICE.—In the case of COBRA continuation coverage to which the notice provision under such sections does not apply, the Secretary of Labor, in consultation with the Secretary of the Treasury and the Secretary of Health and Human Services, shall, in co-

ordination with administrators of the group health plans (or other entities) that provide or administer the COBRA continuation coverage involved, provide rules requiring the provision of such notice.

(iii) FORM.—The requirement of the additional notification under this subparagraph may be met by amendment of existing notice forms or by inclusion of a separate document with the notice otherwise required.

(B) SPECIFIC REQUIREMENTS.—Each additional notification under subparagraph (A) shall include—

(i) the forms necessary for establishing eligibility for premium reduction under this subsection,

(ii) the name, address, and telephone number necessary to contact the plan administrator and any other person maintaining relevant information in connection with such premium reduction,

(iii) a description of the extended election period provided for in paragraph (4)(A),

(iv) a description of the obligation of the qualified beneficiary under paragraph (2)(C) to notify the plan providing continuation coverage of eligibility for subsequent coverage under another group health plan or eligibility for benefits under title XVIII of the Social Security Act and the penalty provided for failure to so notify the plan, and

(v) a description, displayed in a prominent manner, of the qualified beneficiary's right to a reduced premium and any conditions on entitlement to the reduced premium.

(C) NOTICE RELATING TO RETROACTIVE COVERAGE.—In the case of an individual described in paragraph (3)(A) who has elected COBRA continuation coverage as of the date of enactment of this Act or an individual described in paragraph (4)(A), the administrator of the group health plan (or other entity) involved shall provide (within 60 days after the date of enactment of this Act) for the additional notification required to be provided under subparagraph (A).

(D) MODEL NOTICES.—Not later than 30 days after the date of enactment of this Act, the Secretary of the Labor, in consultation with the Secretary of the Treasury and the Secretary of Health and Human Services, shall prescribe models for the additional notification required under this paragraph.

(8) SAFEGUARDS.—The Secretary of the Treasury shall provide such rules, procedures, regulations, and other guidance as may be necessary and appropriate to prevent fraud and abuse under this subsection.

(9) OUTREACH.—The Secretary of Labor, in consultation with the Secretary of the Treasury and the Secretary of Health and Human Services, shall provide outreach consisting of public education and enrollment assistance relating to premium reduction provided under this subsection. Such outreach shall target employers, group health plan administrators, public assistance programs, States, insurers, and other entities as determined appropriate by such Secretaries. Such outreach shall include an initial focus on those individuals electing continuation coverage who are referred to in paragraph (7)(C). Information on such premium reduction, including en-

1 rollment, shall also be made available on website of
2 the Departments of Labor, Treasury, and Health
3 and Human Services.

4 (10) DEFINITIONS.—For purposes of this sub-
5 section—

6 (A) ADMINISTRATOR.—The term ''admin-
7 istrator'' has the meaning given such term in
8 section 3(16) of the Employee Retirement In-
9 come Security Act of 1974.

10 (B) COBRA CONTINUATION COVERAGE.—
11 The term ''COBRA continuation coverage''
12 means continuation coverage provided pursuant
13 to part 6 of subtitle B of title I of the Em-
14 ployee Retirement Income Security Act of 1974
15 (other than under section 609), title XXII of
16 the Public Health Service Act, section 4980B of
17 the Internal Revenue Code of 1986 (other than
18 subsection (f)(1) of such section insofar as it
19 relates to pediatric vaccines), or section 8905a
20 of title 5, United States Code, or under a State
21 program that provides continuation coverage
22 comparable to such continuation coverage. Such
23 term does not include coverage under a health
24 flexible spending arrangement.

(C) COBRA CONTINUATION PROVISION.—The term ''COBRA continuation provision'' means the provisions of law described in subparagraph (B).

(D) COVERED EMPLOYEE.—The term ''covered employee'' has the meaning given such term in section 607(2) of the Employee Retirement Income Security Act of 1974.

(E) QUALIFIED BENEFICIARY.—The term ''qualified beneficiary'' has the meaning given such term in section 607(3) of the Employee Retirement Income Security Act of 1974.

(F) GROUP HEALTH PLAN.—The term ''group health plan'' has the meaning given such term in section 607(1) of the Employee Retirement Income Security Act of 1974.

(G) STATE.—The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(11) REPORTS.—

(A) INTERIM REPORT.—The Secretary of the Treasury shall submit an interim report to the Committee on Education and Labor, the

1 Committee on Ways and Means, and the Com-
2 mittee on Energy and Commerce of the House
3 of Representatives and the Committee on
4 Health, Education, Labor, and Pensions and
5 the Committee on Finance of the Senate re-
6 garding the premium reduction provided under
7 this subsection that includes—
8 (i) the number of individuals provided
9 such assistance as of the date of the re-
10 port; and
11 (ii) the total amount of expenditures
12 incurred (with administrative expenditures
13 noted separately) in connection with such
14 assistance as of the date of the report.
15 (B) FINAL REPORT.—As soon as prac-
16 ticable after the last period of COBRA continu-
17 ation coverage for which premium reduction is
18 provided under this section, the Secretary of the
19 Treasury shall submit a final report to each
20 Committee referred to in subparagraph (A) that
21 includes—
22 (i) the number of individuals provided
23 premium reduction under this section;

(ii) the average dollar amount (monthly and annually) of premium reductions provided to such individuals; and

(iii) the total amount of expenditures incurred (with administrative expenditures noted separately) in connection with premium reduction under this section.

(12) COBRA PREMIUM ASSISTANCE.—

(A) IN GENERAL.—Subchapter B of chapter 65 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

"SEC. 6431. COBRA PREMIUM ASSISTANCE.

''(a) IN GENERAL.—The entity to whom premiums are payable under COBRA continuation coverage shall be reimbursed for the amount of premiums not paid by plan beneficiaries by reason of section 3002(a) of the Health Insurance Assistance for the Unemployed Act of 2009. Such amount shall be treated as a credit against the requirement of such entity to make deposits of payroll taxes and the liability of such entity for payroll taxes. To the extent that such amount exceeds the amount of such taxes, the Secretary shall pay to such entity the amount of such excess. No payment may be made under this subsection to an entity with respect to any assistance eligible

individual until after such entity has received the reduced premium from such individual required under section 3002(a)(1)(A) of such Act.

"(b) PAYROLL TAXES.—For purposes of this section, the term 'payroll taxes' means—

"(1) amounts required to be deducted and withheld for the payroll period under section 3401 (relating to wage withholding),

"(2) amounts required to be deducted for the payroll period under section 3102 (relating to FICA employee taxes), and

"(3) amounts of the taxes imposed for the payroll period under section 3111 (relating to FICA employer taxes).

"(c) TREATMENT OF CREDIT.—Except as otherwise provided by the Secretary, the credit described in subsection (a) shall be applied as though the employer had paid to the Secretary, on the day that the qualified beneficiary's premium payment is received, an amount equal to such credit.

"(d) TREATMENT OF PAYMENT.—For purposes of section 1324(b)(2) of title 31, United States Code, any payment under this section shall be treated in the same manner as a refund of the credit under section 35.

"(e) REPORTING.—

"(1) IN GENERAL.—Each entity entitled to reimbursement under subsection (a) for any period shall submit such reports as the Secretary may require, including—

"(A) an attestation of involuntary termination of employment for each covered employee on the basis of whose termination entitlement to reimbursement is claimed under subsection (a), and

"(B) a report of the amount of payroll taxes offset under subsection (a) for the reporting period and the estimated offsets of such taxes for the subsequent reporting period in connection with reimbursements under subsection (a).

"(2) TIMING OF REPORTS RELATING TO AMOUNT OF PAYROLL TAXES.—Reports required under paragraph (1)(B) shall be submitted at the same time as deposits of taxes imposed by chapters 21, 22, and 24 or at such time as is specified by the Secretary.

"(f) REGULATIONS.—The Secretary may issue such regulations or other guidance as may be necessary or appropriate to carry out this section, including the requirement to report information or the establishment of other

1 methods for verifying the correct amounts of payments
2 and credits under this section. The Secretary shall issue
3 such regulations or guidance with respect to the applica-
4 tion of this section to group health plans that are multiem-
5 ployer plans (as defined in section 3(37) of the Employee
6 Retirement Income Security Act of 1974).''.

7 (B) SOCIAL SECURITY TRUST FUNDS HELD
8 HARMLESS.—In determining any amount trans-
9 ferred or appropriated to any fund under the
10 Social Security Act, section 6431 of the Inter-
11 nal Revenue Code of 1986 shall not be taken
12 into account.

13 (C) CLERICAL AMENDMENT.—The table of
14 sections for subchapter B of chapter 65 of the
15 Internal Revenue Code of 1986 is amended by
16 adding at the end the following new item:

''Sec. 6431. COBRA premium assistance.''.

17 (D) EFFECTIVE DATE.—The amendments
18 made by this paragraph shall apply to pre-
19 miums to which subsection (a)(1)(A) applies.

20 (13) PENALTY FOR FAILURE TO NOTIFY
21 HEALTH PLAN OF CESSATION OF ELIGIBILITY FOR
22 PREMIUM ASSISTANCE.—

23 (A) IN GENERAL.—Part I of subchapter B
24 of chapter 68 of the Internal Revenue Code of

1986 is amended by adding at the end the following new section:

"SEC. 6720C. PENALTY FOR FAILURE TO NOTIFY HEALTH PLAN OF CESSATION OF ELIGIBILITY FOR COBRA PREMIUM ASSISTANCE.

"(a) IN GENERAL.—Any person required to notify a group health plan under section 3002(a)(2)(C)) of the Health Insurance Assistance for the Unemployed Act of 2009 who fails to make such a notification at such time and in such manner as the Secretary of Labor may require shall pay a penalty of 110 percent of the premium reduction provided under such section after termination of eligibility under such subsection.

"(b) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under subsection (a) with respect to any failure if it is shown that such failure is due to reasonable cause and not to willful neglect.".

(B) CLERICAL AMENDMENT.—The table of sections of part I of subchapter B of chapter 68 of such Code is amended by adding at the end the following new item:

"Sec. 6720C. Penalty for failure to notify health plan of cessation of eligibility for COBRA premium assistance.".

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to failures

occurring after the date of the enactment of this Act.

(14) COORDINATION WITH HCTC.—

(A) IN GENERAL.—Subsection (g) of section 35 of the Internal Revenue Code of 1986 is amended by redesignating paragraph (9) as paragraph (10) and inserting after paragraph (8) the following new paragraph:

"(9) COBRA PREMIUM ASSISTANCE.—In the case of an assistance eligible individual who receives premium reduction for COBRA continuation coverage under section 3002(a) of the Health Insurance Assistance for the Unemployed Act of 2009 for any month during the taxable year, such individual shall not be treated as an eligible individual, a certified individual, or a qualifying family member for purposes of this section or section 7527 with respect to such month.".

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall apply to taxable years ending after the date of the enactment of this Act.

(15) EXCLUSION OF COBRA PREMIUM ASSISTANCE FROM GROSS INCOME.—

(A) IN GENERAL.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 139B the following new section:

"SEC. 139C. COBRA PREMIUM ASSISTANCE.

''In the case of an assistance eligible individual (as defined in section 3002 of the Health Insurance Assistance for the Unemployed Act of 2009), gross income does not include any premium reduction provided under subsection (a) of such section.''.

(B) CLERICAL AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 of such Code is amended by inserting after the item relating to section 139B the following new item:

''Sec. 139C. COBRA premium assistance.''.

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to taxable years ending after the date of the enactment of this Act.

(b) EXTENSION OF COBRA BENEFITS FOR OLDER OR LONG-TERM EMPLOYEES.—

(1) ERISA AMENDMENT.—Section 602(2)(A) of the Employee Retirement Income Security Act of 1974 is amended by adding at the end the following new clauses:

"(x) SPECIAL RULE FOR OLDER OR LONG-TERM EMPLOYEES GENERALLY.—In the case of a qualifying event described in section 603(2) with respect to a covered employee who (as of such qualifying event) has attained age 55 or has completed 10 or more years of service with the entity that is the employer at the time of the qualifying event, clauses (i) and (ii) shall not apply. For purposes of this clause, in the case of a group health plan that is a multiemployer plan, service by the covered employee performed for 2 or more employers during periods for which such employers contributed to such plan shall be treated as service performed for the entity referred to in the preceding sentence.

"(xi) YEAR OF SERVICE.— For purposes of this subparagraph, the term 'year of service' shall have the meaning provided in section 202(a)(3).".

(2) IRC AMENDMENT.—Clause (i) of section 4980B(f)(2)(B) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subclauses:

1 "(X) SPECIAL RULE FOR OLDER
2 OR LONG-TERM EMPLOYEES GEN-
3 ERALLY.—In the case of a qualifying
4 event described in paragraph (3)(B)
5 with respect to a covered employee
6 who (as of such qualifying event) has
7 attained age 55 or has completed 10
8 or more years of service with the enti-
9 ty that is the employer at the time of
10 the qualifying event, subclauses (I)
11 and (II) shall not apply. For purposes
12 of this subclause, in the case of a
13 group health plan that is a multiem-
14 ployer plan (as defined in section
15 3(37) of the Employee Retirement In-
16 come Security Act of 1974), service by
17 the covered employee performed for 2
18 or more employers during periods for
19 which such employers contributed to
20 such plan shall be treated as service
21 performed for the entity referred to in
22 the preceding sentence.
23 "(XI) YEAR OF SERVICE.— For
24 purposes of this clause, the term 'year
25 of service' shall have the meaning pro-

vided in section 202(a)(3) of the Employee Retirement Income Security Act of 1974.''.

(3) PHSA AMENDMENT.—Section 2202(2)(A) of the Public Health Service Act is amended by adding at the end the following new clauses:

''(viii) SPECIAL RULE FOR OLDER OR LONG-TERM EMPLOYEES GENERALLY.—In the case of a qualifying event described in section 2203(2) with respect to a covered employee who (as of such qualifying event) has attained age 55 or has completed 10 or more years of service with the entity that is the employer at the time of the qualifying event, clauses (i) and (ii) shall not apply. For purposes of this clause, in the case of a group health plan that is a multiemployer plan (as defined in section 3(37) of the Employee Retirement Income Security Act of 1974), service by the covered employee performed for 2 or more employers during periods for which such employers contributed to such plan shall be treated as service performed for the entity referred to in the preceding sentence.

"(ix) YEAR OF SERVICE.— For purposes of this subparagraph, the term 'year of service' shall have the meaning provided in section 202(a)(3) of the Employee Retirement Income Security Act of 1974.".

(4) EFFECTIVE DATE OF AMENDMENTS.—The amendments made by this subsection shall apply to periods of coverage which would (without regard to the amendments made by this section) end on or after the date of the enactment of this Act.

SEC. 3003. TEMPORARY OPTIONAL MEDICAID COVERAGE FOR THE UNEMPLOYED.

(a) IN GENERAL.—Section 1902 of the Social Security Act (42 U.S.C. 1396b) is amended—

(1) in subsection (a)(10)(A)(ii)—

(A) by striking "or" at the end of subclause (XVIII);

(B) by adding "or" at the end of subclause (XIX); and

(C) by adding at the end the following new subclause:

"(XX) who are described in subsection (dd)(1) (relating to certain unemployed individuals and their families);"; and

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

"(dd)(1) Individuals described in this paragraph are—

"(A) individuals who—

"(i) are within one or more of the categories described in paragraph (2), as elected under the State plan; and

"(ii) meet the applicable requirements of paragraph (3); and

"(B) individuals who—

"(i) are the spouse, or dependent child under 19 years of age, of an individual described in subparagraph (A); and

"(ii) meet the requirement of paragraph (3)(B).

"(2) The categories of individuals described in this paragraph are each of the following:

"(A)(i) Individuals who are receiving unemployment compensation benefits; and

"(ii) individuals who were receiving, but have exhausted, unemployment compensation benefits on or after July 1, 2008.

"(B) Individuals who are involuntarily unemployed and were involuntarily separated from employment on or after September 1, 2008, and before

January 1, 2011, whose family gross income does not exceed a percentage specified by the State (not to exceed 200 percent) of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved, and who, but for subsection (a)(10)(A)(ii)(XX), are not eligible for medical assistance under this title or health assistance under title XXI.

"(C) Individuals who are involuntarily unemployed and were involuntarily separated from employment on or after September 1, 2008, and before January 1, 2011, who are members of households participating in the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.), and who, but for subsection (a)(10)(A)(ii)(XX), are not eligible for medical assistance under this title or health assistance under title XXI.

"(3) The requirements of this paragraph with respect to an individual are the following:

"(A) In the case of individuals within a category described in subparagraph (A)(i) of paragraph

(2), the individual was involuntarily separated from employment on or after September 1, 2008, and before January 1, 2011, or meets such comparable requirement as the Secretary specifies through rule, guidance, or otherwise in the case of an individual who was an independent contractor.

"(B) The individual is not otherwise covered under creditable coverage, as defined in section 2701(c) of the Public Health Service Act (42 U.S.C. 300gg(c)), but applied without regard to paragraph (1)(F) of such section and without regard to coverage provided by reason of the application of subsection (a)(10)(A)(ii)(XX).

"(4)(A) No income or resources test shall be applied with respect to any category of individuals described in subparagraph (A) or (C) of paragraph (2) who are eligible for medical assistance only by reason of the application of subsection (a)(10)(A)(ii)(XX).

"(B) Nothing in this subsection shall be construed to prevent a State from imposing a resource test for the category of individuals described in paragraph (2)(B)).

"(C) In the case of individuals described in paragraph (2)(A) or (2)(C), the requirements of subsections (i)(22) and (x) in section 1903 shall not apply.".

(b) 100 PERCENT FEDERAL MATCHING RATE.—

(1) FMAP FOR TIME-LIMITED PERIOD.—The third sentence of section 1905(b) of such Act (42 U.S.C. 1396d(b)) is amended by inserting before the period at the end the following: ''and for items and services furnished on or after the date of enactment of this Act and before January 1, 2011, to individuals who are eligible for medical assistance only by reason of the application of section 1902(a)(10)(A)(ii)(XX)''.

(2) CERTAIN ENROLLMENT-RELATED ADMINISTRATIVE COSTS.—Notwithstanding any other provision of law, for purposes of applying section 1903(a) of the Social Security Act (42 U.S.C. 1396b(a)), with respect to expenditures incurred on or after the date of the enactment of this Act and before January 1, 2011, for costs of administration (including outreach and the modification and operation of eligibility information systems) attributable to eligibility determination and enrollment of individuals who are eligible for medical assistance only by reason of the application of section 1902(a)(10)(A)(ii)(XX) of such Act, as added by subsection (a)(1), the Federal matching percentage shall be 100 percent instead of the matching percentage otherwise applicable.

(c) CONFORMING AMENDMENTS.—(1) Section 1903(f)(4) of such Act (42 U.S.C. 1396c(f)(4)) is amended by inserting "1902(a)(10)(A)(ii)(XX), or" after "1902(a)(10)(A)(ii)(XIX),".

(2) Section 1905(a) of such Act (42 U.S.C. 1396d(a)) is amended, in the matter preceding paragraph (1)—

(A) by striking "or" at the end of clause (xii);

(B) by adding "or" at the end of clause (xiii); and

(C) by inserting after clause (xiii) the following new clause:

"(xiv) individuals described in section 1902(dd)(1),".

TITLE IV—HEALTH INFORMATION TECHNOLOGY

SEC. 4001. SHORT TITLE; TABLE OF CONTENTS OF TITLE.

(a) SHORT TITLE.—This title may be cited as the "Health Information Technology for Economic and Clinical Health Act" or the "HITECH Act".

(b) TABLE OF CONTENTS OF TITLE.—The table of contents of this title is as follows:

Sec. 4001. Short title; table of contents of title.

Subtitle A—Promotion of Health Information Technology

PART I—IMPROVING HEALTH CARE QUALITY, SAFETY, AND EFFICIENCY

Sec. 4101. ONCHIT; standards development and adoption.

"TITLE XXX—HEALTH INFORMATION TECHNOLOGY AND QUALITY

"Sec. 3000. Definitions.

"Subtitle A—Promotion of Health Information Technology

"Sec. 3001. Office of the National Coordinator for Health Information Technology.
"Sec. 3002. HIT Policy Committee.
"Sec. 3003. HIT Standards Committee.
"Sec. 3004. Process for adoption of endorsed recommendations; adoption of initial set of standards, implementation specifications, and certification criteria.
"Sec. 3005. Application and use of adopted standards and implementation specifications by Federal agencies.
"Sec. 3006. Voluntary application and use of adopted standards and implementation specifications by private entities.
"Sec. 3007. Federal health information technology.
"Sec. 3008. Transitions.
"Sec. 3009. Relation to HIPAA privacy and security law.
"Sec. 3010. Authorization for appropriations.
Sec. 4102. Technical amendment.

Part II—Application and Use of Adopted Health Information Technology Standards; Reports

Sec. 4111. Coordination of Federal activities with adopted standards and implementation specifications.
Sec. 4112. Application to private entities.
Sec. 4113. Study and reports.

Subtitle B—Testing of Health Information Technology

Sec. 4201. National Institute for Standards and Technology testing.
Sec. 4202. Research and development programs.

Subtitle C—Incentives for the Use of Health Information Technology

Part I—Grants and Loans Funding

Sec. 4301. Grant, loan, and demonstration programs.

"Subtitle B—Incentives for the Use of Health Information Technology

"Sec. 3011. Immediate funding to strengthen the health information technology infrastructure.
"Sec. 3012. Health information technology implementation assistance.
"Sec. 3013. State grants to promote health information technology.
"Sec. 3014. Competitive grants to States and Indian tribes for the development of loan programs to facilitate the widespread adoption of certified EHR technology.
"Sec. 3015. Demonstration program to integrate information technology into clinical education.
"Sec. 3016. Information technology professionals on health care.
"Sec. 3017. General grant and loan provisions.
"Sec. 3018. Authorization for appropriations.

PART II—MEDICARE PROGRAM

Sec. 4311. Incentives for eligible professionals.
Sec. 4312. Incentives for hospitals.
Sec. 4313. Treatment of payments and savings; implementation funding.
Sec. 4314. Study on application of EHR payment incentives for providers not receiving other incentive payments.

PART III—MEDICAID FUNDING

Sec. 4321. Medicaid provider HIT adoption and operation payments; implementation funding.
Sec. 4322. Medicaid nursing home grant program.

Subtitle D—Privacy

Sec. 4400. Definitions.

PART I—IMPROVED PRIVACY PROVISIONS AND SECURITY PROVISIONS

Sec. 4401. Application of security provisions and penalties to business associates of covered entities; annual guidance on security provisions.
Sec. 4402. Notification in the case of breach.
Sec. 4403. Education on Health Information Privacy.
Sec. 4404. Application of privacy provisions and penalties to business associates of covered entities.
Sec. 4405. Restrictions on certain disclosures and sales of health information; accounting of certain protected health information disclosures; access to certain information in electronic format.
Sec. 4406. Conditions on certain contacts as part of health care operations.
Sec. 4407. Temporary breach notification requirement for vendors of personal health records and other non-HIPAA covered entities.
Sec. 4408. Business associate contracts required for certain entities.
Sec. 4409. Clarification of application of wrongful disclosures criminal penalties.
Sec. 4410. Improved enforcement.
Sec. 4411. Audits.
Sec. 4412. Special rule for information to reduce medication errors and improve patient safety.

PART II—RELATIONSHIP TO OTHER LAWS; REGULATORY REFERENCES; EFFECTIVE DATE; REPORTS

Sec. 4421. Relationship to other laws.
Sec. 4422. Regulatory references.
Sec. 4423. Effective date.
Sec. 4424. Studies, reports, guidance.

Subtitle E—Miscellaneous Medicare Provisions

Sec. 4501. Moratoria on certain Medicare regulations.
Sec. 4502. Long-term care hospital technical corrections.

Subtitle A—Promotion of Health Information Technology

PART I—IMPROVING HEALTH CARE QUALITY, SAFETY, AND EFFICIENCY

SEC. 4101. ONCHIT; STANDARDS DEVELOPMENT AND ADOPTION.

The Public Health Service Act (42 U.S.C. 201 et seq.) is amended by adding at the end the following:

"TITLE XXX—HEALTH INFORMATION TECHNOLOGY AND QUALITY

"SEC. 3000. DEFINITIONS.

''In this title:

''(1) CERTIFIED EHR TECHNOLOGY.—The term 'certified EHR technology' means a qualified electronic health record that is certified pursuant to section 3001(c)(5) as meeting standards adopted under section 3004 that are applicable to the type of record involved (as determined by the Secretary, such as an ambulatory electronic health record for office-based physicians or an inpatient hospital electronic health record for hospitals).

''(2) ENTERPRISE INTEGRATION.—The term 'enterprise integration' means the electronic linkage of health care providers, health plans, the govern-

1 ment, and other interested parties, to enable the
2 electronic exchange and use of health information
3 among all the components in the health care infra-
4 structure in accordance with applicable law, and
5 such term includes related application protocols and
6 other related standards.

7 "(3) HEALTH CARE PROVIDER.—The term
8 'health care provider' means a hospital, skilled nurs-
9 ing facility, nursing facility, home health entity or
10 other long term care facility, health care clinic, Fed-
11 erally qualified health center, group practice (as de-
12 fined in section 1877(h)(4) of the Social Security
13 Act), a pharmacist, a pharmacy, a laboratory, a phy-
14 sician (as defined in section 1861(r) of the Social
15 Security Act), a practitioner (as described in section
16 1842(b)(18)(C) of the Social Security Act), a pro-
17 vider operated by, or under contract with, the Indian
18 Health Service or by an Indian tribe (as defined in
19 the Indian Self-Determination and Education Assist-
20 ance Act), tribal organization, or urban Indian orga-
21 nization (as defined in section 4 of the Indian
22 Health Care Improvement Act), a rural health clinic,
23 a covered entity under section 340B, an ambulatory
24 surgical center described in section 1833(i) of the
25 Social Security Act, and any other category of facil-

1 ity or clinician determined appropriate by the Sec-
2 retary.

3 "(4) HEALTH INFORMATION.—The term 'health
4 information' has the meaning given such term in
5 section 1171(4) of the Social Security Act.

6 "(5) HEALTH INFORMATION TECHNOLOGY.—
7 The term 'health information technology' means
8 hardware, software, integrated technologies and re-
9 lated licenses, intellectual property, upgrades, and
10 packaged solutions sold as services that are specifi-
11 cally designed for use by health care entities for the
12 electronic creation, maintenance, or exchange of
13 health information.

14 "(6) HEALTH PLAN.—The term 'health plan'
15 has the meaning given such term in section 1171(5)
16 of the Social Security Act.

17 "(7) HIT POLICY COMMITTEE.—The term 'HIT
18 Policy Committee' means such Committee estab-
19 lished under section 3002(a).

20 "(8) HIT STANDARDS COMMITTEE.—The term
21 'HIT Standards Committee' means such Committee
22 established under section 3003(a).

23 "(9) INDIVIDUALLY IDENTIFIABLE HEALTH IN-
24 FORMATION.—The term 'individually identifiable

1 health information' has the meaning given such term
2 in section 1171(6) of the Social Security Act.
3 "(10) LABORATORY.—The term 'laboratory'
4 has the meaning given such term in section 353(a).
5 "(11) NATIONAL COORDINATOR.—The term
6 'National Coordinator' means the head of the Office
7 of the National Coordinator for Health Information
8 Technology established under section 3001(a).
9 "(12) PHARMACIST.—The term 'pharmacist'
10 has the meaning given such term in section 804(2)
11 of the Federal Food, Drug, and Cosmetic Act.
12 "(13) QUALIFIED ELECTRONIC HEALTH
13 RECORD.—The term 'qualified electronic health
14 record' means an electronic record of health-related
15 information on an individual that—
16 "(A) includes patient demographic and
17 clinical health information, such as medical his-
18 tory and problem lists; and
19 "(B) has the capacity—
20 "(i) to provide clinical decision sup-
21 port;
22 "(ii) to support physician order entry;
23 "(iii) to capture and query informa-
24 tion relevant to health care quality; and

"(iv) to exchange electronic health information with, and integrate such information from other sources.

"(14) STATE.—The term 'State' means each of the several States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

"Subtitle A—Promotion of Health Information Technology

"SEC. 3001. OFFICE OF THE NATIONAL COORDINATOR FOR HEALTH INFORMATION TECHNOLOGY.

"(a) ESTABLISHMENT.—There is established within the Department of Health and Human Services an Office of the National Coordinator for Health Information Technology (referred to in this section as the 'Office'). The Office shall be headed by a National Coordinator who shall be appointed by the Secretary and shall report directly to the Secretary.

"(b) PURPOSE.—The National Coordinator shall perform the duties under subsection (c) in a manner consistent with the development of a nationwide health information technology infrastructure that allows for the electronic use and exchange of information and that—

1 ''(1) ensures that each patient's health informa-
2 tion is secure and protected, in accordance with ap-
3 plicable law;
4 ''(2) improves health care quality, reduces med-
5 ical errors, reduces health disparities, and advances
6 the delivery of patient-centered medical care;
7 ''(3) reduces health care costs resulting from
8 inefficiency, medical errors, inappropriate care, du-
9 plicative care, and incomplete information;
10 ''(4) provides appropriate information to help
11 guide medical decisions at the time and place of
12 care;
13 ''(5) ensures the inclusion of meaningful public
14 input in such development of such infrastructure;
15 ''(6) improves the coordination of care and in-
16 formation among hospitals, laboratories, physician
17 offices, and other entities through an effective infra-
18 structure for the secure and authorized exchange of
19 health care information;
20 ''(7) improves public health activities and facili-
21 tates the early identification and rapid response to
22 public health threats and emergencies, including bio-
23 terror events and infectious disease outbreaks;
24 ''(8) facilitates health and clinical research and
25 health care quality;

1 "(9) promotes prevention of chronic diseases;
2 "(10) promotes a more effective marketplace,
3 greater competition, greater systems analysis, in-
4 creased consumer choice, and improved outcomes in
5 health care services; and
6 "(11) improves efforts to reduce health dispari-
7 ties.
8 "(c) DUTIES OF THE NATIONAL COORDINATOR.—
9 "(1) STANDARDS.—The National Coordinator
10 shall review and determine whether to endorse each
11 standard, implementation specification, and certifi-
12 cation criterion for the electronic exchange and use
13 of health information that is recommended by the
14 HIT Standards Committee under section 3003 for
15 purposes of adoption under section 3004. The Coor-
16 dinator shall make such determination, and report to
17 the Secretary such determination, not later than 45
18 days after the date the recommendation is received
19 by the Coordinator.
20 "(2) HIT POLICY COORDINATION.—
21 "(A) IN GENERAL.—The National Coordi-
22 nator shall coordinate health information tech-
23 nology policy and programs of the Department
24 with those of other relevant executive branch
25 agencies with a goal of avoiding duplication of

1 efforts and of helping to ensure that each agen-
2 cy undertakes health information technology ac-
3 tivities primarily within the areas of its greatest
4 expertise and technical capability and in a man-
5 ner towards a coordinated national goal.

6 "(B) HIT POLICY AND STANDARDS COM-
7 MITTEES.—The National Coordinator shall be a
8 leading member in the establishment and oper-
9 ations of the HIT Policy Committee and the
10 HIT Standards Committee and shall serve as a
11 liaison among those two Committees and the
12 Federal Government.

13 "(3) STRATEGIC PLAN.—

14 "(A) IN GENERAL.—The National Coordi-
15 nator shall, in consultation with other appro-
16 priate Federal agencies (including the National
17 Institute of Standards and Technology), update
18 the Federal Health IT Strategic Plan (devel-
19 oped as of June 3, 2008) to include specific ob-
20 jectives, milestones, and metrics with respect to
21 the following:

22 "(i) The electronic exchange and use
23 of health information and the enterprise
24 integration of such information.

1 "(ii) The utilization of an electronic
2 health record for each person in the United
3 States by 2014.
4 "(iii) The incorporation of privacy and
5 security protections for the electronic ex-
6 change of an individual's individually iden-
7 tifiable health information.
8 "(iv) Ensuring security methods to
9 ensure appropriate authorization and elec-
10 tronic authentication of health information
11 and specifying technologies or methodolo-
12 gies for rendering health information unus-
13 able, unreadable, or indecipherable.
14 "(v) Specifying a framework for co-
15 ordination and flow of recommendations
16 and policies under this subtitle among the
17 Secretary, the National Coordinator, the
18 HIT Policy Committee, the HIT Standards
19 Committee, and other health information
20 exchanges and other relevant entities.
21 "(vi) Methods to foster the public un-
22 derstanding of health information tech-
23 nology.
24 "(vii) Strategies to enhance the use of
25 health information technology in improving

the quality of health care, reducing medical errors, reducing health disparities, improving public health, and improving the continuity of care among health care settings.

"(B) COLLABORATION.—The strategic plan shall be updated through collaboration of public and private entities.

"(C) MEASURABLE OUTCOME GOALS.—The strategic plan update shall include measurable outcome goals.

"(D) PUBLICATION.—The National Coordinator shall republish the strategic plan, including all updates.

"(4) WEBSITE.—The National Coordinator shall maintain and frequently update an Internet website on which there is posted information on the work, schedules, reports, recommendations, and other information to ensure transparency in promotion of a nationwide health information technology infrastructure.

"(5) CERTIFICATION.—

"(A) IN GENERAL.—The National Coordinator, in consultation with the Director of the National Institute of Standards and Technology, shall develop a program (either directly

1 or by contract) for the voluntary certification of
2 health information technology as being in com-
3 pliance with applicable certification criteria
4 adopted under this subtitle. Such program shall
5 include testing of the technology in accordance
6 with section 4201(b) of the HITECH Act.

7 "(B) CERTIFICATION CRITERIA DE-
8 SCRIBED.—In this title, the term 'certification
9 criteria' means, with respect to standards and
10 implementation specifications for health infor-
11 mation technology, criteria to establish that the
12 technology meets such standards and implemen-
13 tation specifications.

14 "(6) REPORTS AND PUBLICATIONS.—

15 "(A) REPORT ON ADDITIONAL FUNDING
16 OR AUTHORITY NEEDED.—Not later than 12
17 months after the date of the enactment of this
18 title, the National Coordinator shall submit to
19 the appropriate committees of jurisdiction of
20 the House of Representatives and the Senate a
21 report on any additional funding or authority
22 the Coordinator or the HIT Policy Committee
23 or HIT Standards Committee requires to evalu-
24 ate and develop standards, implementation
25 specifications, and certification criteria, or to

1 achieve full participation of stakeholders in the
2 adoption of a nationwide health information
3 technology infrastructure that allows for the
4 electronic use and exchange of health informa-
5 tion.

6 "(B) IMPLEMENTATION REPORT.—The
7 National Coordinator shall prepare a report
8 that identifies lessons learned from major pub-
9 lic and private health care systems in their im-
10 plementation of health information technology,
11 including information on whether the tech-
12 nologies and practices developed by such sys-
13 tems may be applicable to and usable in whole
14 or in part by other health care providers.

15 "(C) ASSESSMENT OF IMPACT OF HIT ON
16 COMMUNITIES WITH HEALTH DISPARITIES AND
17 UNINSURED, UNDERINSURED, AND MEDICALLY
18 UNDERSERVED AREAS.—The National Coordi-
19 nator shall assess and publish the impact of
20 health information technology in communities
21 with health disparities and in areas with a high
22 proportion of individuals who are uninsured,
23 underinsured, and medically underserved indi-
24 viduals (including urban and rural areas) and
25 identify practices to increase the adoption of

1 such technology by health care providers in
2 such communities.
3 "(D) EVALUATION OF BENEFITS AND
4 COSTS OF THE ELECTRONIC USE AND EX-
5 CHANGE OF HEALTH INFORMATION.—The Na-
6 tional Coordinator shall evaluate and publish
7 evidence on the benefits and costs of the elec-
8 tronic use and exchange of health information
9 and assess to whom these benefits and costs ac-
10 crue.
11 "(E) RESOURCE REQUIREMENTS.—The
12 National Coordinator shall estimate and publish
13 resources required annually to reach the goal of
14 utilization of an electronic health record for
15 each person in the United States by 2014, in-
16 cluding the required level of Federal funding,
17 expectations for regional, State, and private in-
18 vestment, and the expected contributions by vol-
19 unteers to activities for the utilization of such
20 records.
21 "(7) ASSISTANCE.—The National Coordinator
22 may provide financial assistance to consumer advo-
23 cacy groups and not-for-profit entities that work in
24 the public interest for purposes of defraying the cost
25 to such groups and entities to participate under,

1 whether in whole or in part, the National Tech-
2 nology Transfer Act of 1995 (15 U.S.C. 272 note).
3 ''(8) GOVERNANCE FOR NATIONWIDE HEALTH
4 INFORMATION NETWORK.—The National Coordi-
5 nator shall establish a governance mechanism for the
6 nationwide health information network.
7 ''(d) DETAIL OF FEDERAL EMPLOYEES.—
8 ''(1) IN GENERAL.—Upon the request of the
9 National Coordinator, the head of any Federal agen-
10 cy is authorized to detail, with or without reimburse-
11 ment from the Office, any of the personnel of such
12 agency to the Office to assist it in carrying out its
13 duties under this section.
14 ''(2) EFFECT OF DETAIL.—Any detail of per-
15 sonnel under paragraph (1) shall—
16 ''(A) not interrupt or otherwise affect the
17 civil service status or privileges of the Federal
18 employee; and
19 ''(B) be in addition to any other staff of
20 the Department employed by the National Co-
21 ordinator.
22 ''(3) ACCEPTANCE OF DETAILEES.—Notwith-
23 standing any other provision of law, the Office may
24 accept detailed personnel from other Federal agen-

1 cies without regard to whether the agency described
2 under paragraph (1) is reimbursed.
3 "(e) CHIEF PRIVACY OFFICER OF THE OFFICE OF
4 THE NATIONAL COORDINATOR.—Not later than 12
5 months after the date of the enactment of this title, the
6 Secretary shall appoint a Chief Privacy Officer of the Of-
7 fice of the National Coordinator, whose duty it shall be
8 to advise the National Coordinator on privacy, security,
9 and data stewardship of electronic health information and
10 to coordinate with other Federal agencies (and similar pri-
11 vacy officers in such agencies), with State and regional
12 efforts, and with foreign countries with regard to the pri-
13 vacy, security, and data stewardship of electronic individ-
14 ually identifiable health information.

15 **"SEC. 3002. HIT POLICY COMMITTEE.**

16 "(a) ESTABLISHMENT.—There is established a HIT
17 Policy Committee to make policy recommendations to the
18 National Coordinator relating to the implementation of a
19 nationwide health information technology infrastructure,
20 including implementation of the strategic plan described
21 in section 3001(c)(3).
22 "(b) DUTIES.—
23 "(1) RECOMMENDATIONS ON HEALTH INFOR-
24 MATION TECHNOLOGY INFRASTRUCTURE.—The HIT
25 Policy Committee shall recommend a policy frame-

1 work for the development and adoption of a nation-
2 wide health information technology infrastructure
3 that permits the electronic exchange and use of
4 health information as is consistent with the strategic
5 plan under section 3001(c)(3) and that includes the
6 recommendations under paragraph (2). The Com-
7 mittee shall update such recommendations and make
8 new recommendations as appropriate.

9 "(2) SPECIFIC AREAS OF STANDARD DEVELOP-
10 MENT.—

11 "(A) IN GENERAL.—The HIT Policy Com-
12 mittee shall recommend the areas in which
13 standards, implementation specifications, and
14 certification criteria are needed for the elec-
15 tronic exchange and use of health information
16 for purposes of adoption under section 3004
17 and shall recommend an order of priority for
18 the development, harmonization, and recogni-
19 tion of such standards, specifications, and cer-
20 tification criteria among the areas so rec-
21 ommended. Such standards and implementation
22 specifications shall include named standards,
23 architectures, and software schemes for the au-
24 thentication and security of individually identifi-
25 able health information and other information

as needed to ensure the reproducible development of common solutions across disparate entities.

"(B) AREAS REQUIRED FOR CONSIDERATION.—For purposes of subparagraph (A), the HIT Policy Committee shall make recommendations for at least the following areas:

"(i) Technologies that protect the privacy of health information and promote security in a qualified electronic health record, including for the segmentation and protection from disclosure of specific and sensitive individually identifiable health information with the goal of minimizing the reluctance of patients to seek care (or disclose information about a condition) because of privacy concerns, in accordance with applicable law, and for the use and disclosure of limited data sets of such information.

"(ii) A nationwide health information technology infrastructure that allows for the electronic use and accurate exchange of health information.

1 "(iii) The utilization of a certified
2 electronic health record for each person in
3 the United States by 2014.
4 "(iv) Technologies that as a part of a
5 qualified electronic health record allow for
6 an accounting of disclosures made by a
7 covered entity (as defined for purposes of
8 regulations promulgated under section
9 264(c) of the Health Insurance Portability
10 and Accountability Act of 1996) for pur-
11 poses of treatment, payment, and health
12 care operations (as such terms are defined
13 for purposes of such regulations).
14 "(v) The use of certified electronic
15 health records to improve the quality of
16 health care, such as by promoting the co-
17 ordination of health care and improving
18 continuity of health care among health
19 care providers, by reducing medical errors,
20 by improving population health, by reduc-
21 ing health disparities, and by advancing re-
22 search and education.
23 "(vi) Technologies that allow individ-
24 ually identifiable health information to be
25 rendered unusable, unreadable, or indeci-

1 pherable to unauthorized individuals when
2 such information is transmitted in the na-
3 tionwide health information network or
4 physically transported outside of the se-
5 cured, physical perimeter of a health care
6 provider, health plan, or health care clear-
7 inghouse.
8 ''(C) OTHER AREAS FOR CONSIDER-
9 ATION.—In making recommendations under
10 subparagraph (A), the HIT Policy Committee
11 may consider the following additional areas:
12 ''(i) The appropriate uses of a nation-
13 wide health information infrastructure, in-
14 cluding for purposes of—
15 ''(I) the collection of quality data
16 and public reporting;
17 ''(II) biosurveillance and public
18 health;
19 ''(III) medical and clinical re-
20 search; and
21 ''(IV) drug safety.
22 ''(ii) Self-service technologies that fa-
23 cilitate the use and exchange of patient in-
24 formation and reduce wait times.

1 "(iii) Telemedicine technologies, in
2 order to reduce travel requirements for pa-
3 tients in remote areas.
4 "(iv) Technologies that facilitate home
5 health care and the monitoring of patients
6 recuperating at home.
7 "(v) Technologies that help reduce
8 medical errors.
9 "(vi) Technologies that facilitate the
10 continuity of care among health settings.
11 "(vii) Technologies that meet the
12 needs of diverse populations.
13 "(viii) Any other technology that the
14 HIT Policy Committee finds to be among
15 the technologies with the greatest potential
16 to improve the quality and efficiency of
17 health care.
18 "(3) FORUM.—The HIT Policy Committee shall
19 serve as a forum for broad stakeholder input with
20 specific expertise in policies relating to the matters
21 described in paragraphs (1) and (2).
22 "(c) MEMBERSHIP AND OPERATIONS.—
23 "(1) IN GENERAL.—The National Coordinator
24 shall provide leadership in the establishment and op-
25 erations of the HIT Policy Committee.

1 "(2) MEMBERSHIP.—The membership of the
2 HIT Policy Committee shall at least reflect pro-
3 viders, ancillary healthcare workers, consumers, pur-
4 chasers, health plans, technology vendors, research-
5 ers, relevant Federal agencies, and individuals with
6 technical expertise on health care quality, privacy
7 and security, and on the electronic exchange and use
8 of health information.

9 "(3) CONSIDERATION.—The National Coordi-
10 nator shall ensure that the relevant recommenda-
11 tions and comments from the National Committee
12 on Vital and Health Statistics are considered in the
13 development of policies.

14 "(d) APPLICATION OF FACA.—The Federal Advisory
15 Committee Act (5 U.S.C. App.), other than section 14 of
16 such Act, shall apply to the HIT Policy Committee.

17 "(e) PUBLICATION.—The Secretary shall provide for
18 publication in the Federal Register and the posting on the
19 Internet website of the Office of the National Coordinator
20 for Health Information Technology of all policy rec-
21 ommendations made by the HIT Policy Committee under
22 this section.

23 **"SEC. 3003. HIT STANDARDS COMMITTEE.**

24 "(a) ESTABLISHMENT.—There is established a com-
25 mittee to be known as the HIT Standards Committee to

1 recommend to the National Coordinator standards, imple-
2 mentation specifications, and certification criteria for the
3 electronic exchange and use of health information for pur-
4 poses of adoption under section 3004, consistent with the
5 implementation of the strategic plan described in section
6 3001(c)(3) and beginning with the areas listed in section
7 3002(b)(2)(B) in accordance with policies developed by
8 the HIT Policy Committee.

9 "(b) DUTIES.—

10 "(1) STANDARDS DEVELOPMENT.—

11 "(A) IN GENERAL.—The HIT Standards
12 Committee shall recommend to the National
13 Coordinator standards, implementation speci-
14 fications, and certification criteria described in
15 subsection (a) that have been developed, har-
16 monized, or recognized by the HIT Standards
17 Committee. The HIT Standards Committee
18 shall update such recommendations and make
19 new recommendations as appropriate, including
20 in response to a notification sent under section
21 3004(a)(2)(B). Such recommendations shall be
22 consistent with the latest recommendations
23 made by the HIT Policy Committee.

24 "(B) PILOT TESTING OF STANDARDS AND
25 IMPLEMENTATION SPECIFICATIONS.—In the de-

1 velopment, harmonization, or recognition of
2 standards and implementation specifications,
3 the HIT Standards Committee shall, as appro-
4 priate, provide for the testing of such standards
5 and specifications by the National Institute for
6 Standards and Technology under section
7 4201(a) of the HITECH Act.

8 "(C) CONSISTENCY.—The standards, im-
9 plementation specifications, and certification
10 criteria recommended under this subsection
11 shall be consistent with the standards for infor-
12 mation transactions and data elements adopted
13 pursuant to section 1173 of the Social Security
14 Act.

15 "(2) FORUM.—The HIT Standards Committee
16 shall serve as a forum for the participation of a
17 broad range of stakeholders to provide input on the
18 development, harmonization, and recognition of
19 standards, implementation specifications, and certifi-
20 cation criteria necessary for the development and
21 adoption of a nationwide health information tech-
22 nology infrastructure that allows for the electronic
23 use and exchange of health information.

24 "(3) SCHEDULE.—Not later than 90 days after
25 the date of the enactment of this title, the HIT

1 Standards Committee shall develop a schedule for
2 the assessment of policy recommendations developed
3 by the HIT Policy Committee under section 3002.
4 The HIT Standards Committee shall update such
5 schedule annually. The Secretary shall publish such
6 schedule in the Federal Register.

7 "(4) PUBLIC INPUT.—The HIT Standards
8 Committee shall conduct open public meetings and
9 develop a process to allow for public comment on the
10 schedule described in paragraph (3) and rec-
11 ommendations described in this subsection. Under
12 such process comments shall be submitted in a time-
13 ly manner after the date of publication of a rec-
14 ommendation under this subsection.

15 "(c) MEMBERSHIP AND OPERATIONS.—

16 "(1) IN GENERAL.—The National Coordinator
17 shall provide leadership in the establishment and op-
18 erations of the HIT Standards Committee.

19 "(2) MEMBERSHIP.—The membership of the
20 HIT Standards Committee shall at least reflect pro-
21 viders, ancillary healthcare workers, consumers, pur-
22 chasers, health plans, technology vendors, research-
23 ers, relevant Federal agencies, and individuals with
24 technical expertise on health care quality, privacy

1 and security, and on the electronic exchange and use
2 of health information.
3 "(3) CONSIDERATION.—The National Coordi-
4 nator shall ensure that the relevant recommenda-
5 tions and comments from the National Committee
6 on Vital and Health Statistics are considered in the
7 development of standards.
8 "(4) ASSISTANCE.—For the purposes of car-
9 rying out this section, the Secretary may provide or
10 ensure that financial assistance is provided by the
11 HIT Standards Committee to defray in whole or in
12 part any membership fees or dues charged by such
13 Committee to those consumer advocacy groups and
14 not for profit entities that work in the public inter-
15 est as a part of their mission.
16 "(d) APPLICATION OF FACA.—The Federal Advisory
17 Committee Act (5 U.S.C. App.), other than section 14,
18 shall apply to the HIT Standards Committee.
19 "(e) PUBLICATION.—The Secretary shall provide for
20 publication in the Federal Register and the posting on the
21 Internet website of the Office of the National Coordinator
22 for Health Information Technology of all recommenda-
23 tions made by the HIT Standards Committee under this
24 section.

"SEC. 3004. PROCESS FOR ADOPTION OF ENDORSED RECOMMENDATIONS; ADOPTION OF INITIAL SET OF STANDARDS, IMPLEMENTATION SPECIFICATIONS, AND CERTIFICATION CRITERIA.

"(a) PROCESS FOR ADOPTION OF ENDORSED RECOMMENDATIONS.—

"(1) REVIEW OF ENDORSED STANDARDS, IMPLEMENTATION SPECIFICATIONS, AND CERTIFICATION CRITERIA.—Not later than 90 days after the date of receipt of standards, implementation specifications, or certification criteria endorsed under section 3001(c), the Secretary, in consultation with representatives of other relevant Federal agencies, shall jointly review such standards, implementation specifications, or certification criteria and shall determine whether or not to propose adoption of such standards, implementation specifications, or certification criteria.

"(2) DETERMINATION TO ADOPT STANDARDS, IMPLEMENTATION SPECIFICATIONS, AND CERTIFICATION CRITERIA.—If the Secretary determines—

"(A) to propose adoption of any grouping of such standards, implementation specifications, or certification criteria, the Secretary shall, by regulation, determine whether or not

to adopt such grouping of standards, implementation specifications, or certification criteria; or

"(B) not to propose adoption of any grouping of standards, implementation specifications, or certification criteria, the Secretary shall notify the National Coordinator and the HIT Standards Committee in writing of such determination and the reasons for not proposing the adoption of such recommendation.

"(3) PUBLICATION.—The Secretary shall provide for publication in the Federal Register of all determinations made by the Secretary under paragraph (1).

"(b) ADOPTION OF INITIAL SET OF STANDARDS, IMPLEMENTATION SPECIFICATIONS, AND CERTIFICATION CRITERIA.—

"(1) IN GENERAL.—Not later than December 31, 2009, the Secretary shall, through the rulemaking process described in section 3004(a), adopt an initial set of standards, implementation specifications, and certification criteria for the areas required for consideration under section 3002(b)(2)(B).

"(2) APPLICATION OF CURRENT STANDARDS, IMPLEMENTATION SPECIFICATIONS, AND CERTIFICATION CRITERIA.—The standards, implementation

specifications, and certification criteria adopted before the date of the enactment of this title through the process existing through the Office of the National Coordinator for Health Information Technology may be applied towards meeting the requirement of paragraph (1).

"SEC. 3005. APPLICATION AND USE OF ADOPTED STANDARDS AND IMPLEMENTATION SPECIFICATIONS BY FEDERAL AGENCIES.

''For requirements relating to the application and use by Federal agencies of the standards and implementation specifications adopted under section 3004, see section 4111 of the HITECH Act.

"SEC. 3006. VOLUNTARY APPLICATION AND USE OF ADOPTED STANDARDS AND IMPLEMENTATION SPECIFICATIONS BY PRIVATE ENTITIES.

''(a) IN GENERAL.—Except as provided under section 4112 of the HITECH Act, any standard or implementation specification adopted under section 3004 shall be voluntary with respect to private entities.

''(b) RULE OF CONSTRUCTION.—Nothing in this subtitle shall be construed to require that a private entity that enters into a contract with the Federal Government apply or use the standards and implementation specifications

1 adopted under section 3004 with respect to activities not
2 related to the contract.

3 **"SEC. 3007. FEDERAL HEALTH INFORMATION TECH-**
4 **NOLOGY.**

5 "(a) IN GENERAL.—The National Coordinator shall
6 support the development, routine updating, and provision
7 of qualified EHR technology (as defined in section 3000)
8 consistent with subsections (b) and (c) unless the Sec-
9 retary determines that the needs and demands of pro-
10 viders are being substantially and adequately met through
11 the marketplace.

12 "(b) CERTIFICATION.—In making such EHR tech-
13 nology publicly available, the National Coordinator shall
14 ensure that the qualified EHR technology described in
15 subsection (a) is certified under the program developed
16 under section 3001(c)(3) to be in compliance with applica-
17 ble standards adopted under section 3003(a).

18 "(c) AUTHORIZATION TO CHARGE A NOMINAL
19 FEE.—The National Coordinator may impose a nominal
20 fee for the adoption by a health care provider of the health
21 information technology system developed or approved
22 under subsection (a) and (b). Such fee shall take into ac-
23 count the financial circumstances of smaller providers, low
24 income providers, and providers located in rural or other
25 medically underserved areas.

"(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require that a private or government entity adopt or use the technology provided under this section.

"SEC. 3008. TRANSITIONS.

"(a) ONCHIT.—To the extent consistent with section 3001, all functions, personnel, assets, liabilities, and administrative actions applicable to the National Coordinator for Health Information Technology appointed under Executive Order No. 13335 or the Office of such National Coordinator on the date before the date of the enactment of this title shall be transferred to the National Coordinator appointed under section 3001(a) and the Office of such National Coordinator as of the date of the enactment of this title.

"(b) AHIC.—

"(1) To the extent consistent with sections 3002 and 3003, all functions, personnel, assets, and liabilities applicable to the AHIC Successor, Inc. doing business as the National eHealth Collaborative as of the day before the date of the enactment of this title shall be transferred to the HIT Policy Committee or the HIT Standards Committee, established under section 3002(a) or 3003(a), as appropriate, as of the date of the enactment of this title.

1 "(2) In carrying out section 3003(b)(1)(A),
2 until recommendations are made by the HIT Policy
3 Committee, recommendations of the HIT Standards
4 Committee shall be consistent with the most recent
5 recommendations made by such AHIC Successor,
6 Inc.
7 "(c) RULES OF CONSTRUCTION.—
8 "(1) ONCHIT.—Nothing in section 3001 or
9 subsection (a) shall be construed as requiring the
10 creation of a new entity to the extent that the Office
11 of the National Coordinator for Health Information
12 Technology established pursuant to Executive Order
13 No. 13335 is consistent with the provisions of sec-
14 tion 3001.
15 "(2) AHIC.—Nothing in sections 3002 or 3003
16 or subsection (b) shall be construed as prohibiting
17 the AHIC Successor, Inc. doing business as the Na-
18 tional eHealth Collaborative from modifying its char-
19 ter, duties, membership, and any other structure or
20 function required to be consistent with section 3002
21 and 3003 in a manner that would permit the Sec-
22 retary to choose to recognize such AHIC Successor,
23 Inc. as the HIT Policy Committee or the HIT
24 Standards Committee.

1 **"SEC. 3009. RELATION TO HIPAA PRIVACY AND SECURITY**
2 **LAW.**

3 "(a) IN GENERAL.—With respect to the relation of
4 this title to HIPAA privacy and security law:

5 "(1) This title may not be construed as having
6 any effect on the authorities of the Secretary under
7 HIPAA privacy and security law.

8 "(2) The purposes of this title include ensuring
9 that the health information technology standards
10 and implementation specifications adopted under
11 section 3004 take into account the requirements of
12 HIPAA privacy and security law.

13 "(b) DEFINITION.—For purposes of this section, the
14 term 'HIPAA privacy and security law' means—

15 "(1) the provisions of part C of title XI of the
16 Social Security Act, section 264 of the Health Insur-
17 ance Portability and Accountability Act of 1996, and
18 subtitle D of title IV of the HITECH Act; and

19 "(2) regulations under such provisions.

20 **"SEC. 3010. AUTHORIZATION FOR APPROPRIATIONS.**

21 "There is authorized to be appropriated to the Office
22 of the National Coordinator for Health Information Tech-
23 nology to carry out this subtitle $250,000,000 for fiscal
24 year 2009.".

SEC. 4102. TECHNICAL AMENDMENT.

Section 1171(5) of the Social Security Act (42 U.S.C. 1320d) is amended by striking ''or C'' and inserting ''C, or D''.

PART II—APPLICATION AND USE OF ADOPTED HEALTH INFORMATION TECHNOLOGY STANDARDS; REPORTS

SEC. 4111. COORDINATION OF FEDERAL ACTIVITIES WITH ADOPTED STANDARDS AND IMPLEMENTATION SPECIFICATIONS.

(a) SPENDING ON HEALTH INFORMATION TECHNOLOGY SYSTEMS.—As each agency (as defined in the Executive order issued on August 22, 2006, relating to promoting quality and efficient health care in Federal government administered or sponsored health care programs) implements, acquires, or upgrades health information technology systems used for the direct exchange of individually identifiable health information between agencies and with non-Federal entities, it shall utilize, where available, health information technology systems and products that meet standards and implementation specifications adopted under section 3004 of the Public Health Service Act, as added by section 4101.

(b) FEDERAL INFORMATION COLLECTION ACTIVITIES.—With respect to a standard or implementation specification adopted under section 3004 of the Public

1 Health Service Act, as added by section 4101, the Presi-
2 dent shall take measures to ensure that Federal activities
3 involving the broad collection and submission of health in-
4 formation are consistent with such standard or implemen-
5 tation specification, respectively, within three years after
6 the date of such adoption.

7 (c) APPLICATION OF DEFINITIONS.—The definitions
8 contained in section 3000 of the Public Health Service
9 Act, as added by section 4101, shall apply for purposes
10 of this part.

11 **SEC. 4112. APPLICATION TO PRIVATE ENTITIES.**

12 Each agency (as defined in such Executive Order
13 issued on August 22, 2006, relating to promoting quality
14 and efficient health care in Federal government adminis-
15 tered or sponsored health care programs) shall require in
16 contracts or agreements with health care providers, health
17 plans, or health insurance issuers that as each provider,
18 plan, or issuer implements, acquires, or upgrades health
19 information technology systems, it shall utilize, where
20 available, health information technology systems and prod-
21 ucts that meet standards and implementation specifica-
22 tions adopted under section 3004 of the Public Health
23 Service Act, as added by section 4101.

SEC. 4113. STUDY AND REPORTS.

(a) REPORT ON ADOPTION OF NATIONWIDE SYSTEM.—Not later than 2 years after the date of the enactment of this Act and annually thereafter, the Secretary of Health and Human Services shall submit to the appropriate committees of jurisdiction of the House of Representatives and the Senate a report that—

(1) describes the specific actions that have been taken by the Federal Government and private entities to facilitate the adoption of a nationwide system for the electronic use and exchange of health information;

(2) describes barriers to the adoption of such a nationwide system; and

(3) contains recommendations to achieve full implementation of such a nationwide system.

(b) REIMBURSEMENT INCENTIVE STUDY AND REPORT.—

(1) STUDY.—The Secretary of Health and Human Services shall carry out, or contract with a private entity to carry out, a study that examines methods to create efficient reimbursement incentives for improving health care quality in Federally qualified health centers, rural health clinics, and free clinics.

(2) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit to the appropriate committees of jurisdiction of the House of Representatives and the Senate a report on the study carried out under paragraph (1).

(c) AGING SERVICES TECHNOLOGY STUDY AND REPORT.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall carry out, or contract with a private entity to carry out, a study of matters relating to the potential use of new aging services technology to assist seniors, individuals with disabilities, and their caregivers throughout the aging process.

(2) MATTERS TO BE STUDIED.—The study under paragraph (1) shall include—

(A) an evaluation of—

(i) methods for identifying current, emerging, and future health technology that can be used to meet the needs of seniors and individuals with disabilities and their caregivers across all aging services settings, as specified by the Secretary;

(ii) methods for fostering scientific innovation with respect to aging services

technology within the business and academic communities; and

(iii) developments in aging services technology in other countries that may be applied in the United States; and

(B) identification of—

(i) barriers to innovation in aging services technology and devising strategies for removing such barriers; and

(ii) barriers to the adoption of aging services technology by health care providers and consumers and devising strategies to removing such barriers.

(3) REPORT.—Not later than 24 months after the date of the enactment of this Act, the Secretary shall submit to the appropriate committees of jurisdiction of the House of Representatives and of the Senate a report on the study carried out under paragraph (1).

(4) DEFINITIONS.—For purposes of this subsection:

(A) AGING SERVICES TECHNOLOGY.—The term ''aging services technology'' means health technology that meets the health care needs of

seniors, individuals with disabilities, and the caregivers of such seniors and individuals.

(B) SENIOR.—The term ''senior'' has such meaning as specified by the Secretary.

Subtitle B—Testing of Health Information Technology

SEC. 4201. NATIONAL INSTITUTE FOR STANDARDS AND TECHNOLOGY TESTING.

(a) PILOT TESTING OF STANDARDS AND IMPLEMENTATION SPECIFICATIONS.—In coordination with the HIT Standards Committee established under section 3003 of the Public Health Service Act, as added by section 4101, with respect to the development of standards and implementation specifications under such section, the Director of the National Institute for Standards and Technology shall test such standards and implementation specifications, as appropriate, in order to assure the efficient implementation and use of such standards and implementation specifications.

(b) VOLUNTARY TESTING PROGRAM.—In coordination with the HIT Standards Committee established under section 3003 of the Public Health Service Act, as added by section 4101, with respect to the development of standards and implementation specifications under such section, the Director of the National Institute of Standards

1 and Technology shall support the establishment of a con-
2 formance testing infrastructure, including the develop-
3 ment of technical test beds. The development of this con-
4 formance testing infrastructure may include a program to
5 accredit independent, non-Federal laboratories to perform
6 testing.

7 **SEC. 4202. RESEARCH AND DEVELOPMENT PROGRAMS.**

8 (a) HEALTH CARE INFORMATION ENTERPRISE INTE-
9 GRATION RESEARCH CENTERS.—

10 (1) IN GENERAL.—The Director of the National
11 Institute of Standards and Technology, in consulta-
12 tion with the Director of the National Science Foun-
13 dation and other appropriate Federal agencies, shall
14 establish a program of assistance to institutions of
15 higher education (or consortia thereof which may in-
16 clude nonprofit entities and Federal Government
17 laboratories) to establish multidisciplinary Centers
18 for Health Care Information Enterprise Integration.

19 (2) REVIEW; COMPETITION.—Grants shall be
20 awarded under this subsection on a merit-reviewed,
21 competitive basis.

22 (3) PURPOSE.—The purposes of the Centers de-
23 scribed in paragraph (1) shall be—

24 (A) to generate innovative approaches to
25 health care information enterprise integration

1 by conducting cutting-edge, multidisciplinary
2 research on the systems challenges to health
3 care delivery; and
4 (B) the development and use of health in-
5 formation technologies and other complemen-
6 tary fields.
7 (4) RESEARCH AREAS.—Research areas may in-
8 clude—
9 (A) interfaces between human information
10 and communications technology systems;
11 (B) voice-recognition systems;
12 (C) software that improves interoperability
13 and connectivity among health information sys-
14 tems;
15 (D) software dependability in systems crit-
16 ical to health care delivery;
17 (E) measurement of the impact of informa-
18 tion technologies on the quality and productivity
19 of health care;
20 (F) health information enterprise manage-
21 ment;
22 (G) health information technology security
23 and integrity; and
24 (H) relevant health information technology
25 to reduce medical errors.

(5) APPLICATIONS.—An institution of higher education (or a consortium thereof) seeking funding under this subsection shall submit an application to the Director of the National Institute of Standards and Technology at such time, in such manner, and containing such information as the Director may require. The application shall include, at a minimum, a description of—

(A) the research projects that will be undertaken by the Center established pursuant to assistance under paragraph (1) and the respective contributions of the participating entities;

(B) how the Center will promote active collaboration among scientists and engineers from different disciplines, such as information technology, biologic sciences, management, social sciences, and other appropriate disciplines;

(C) technology transfer activities to demonstrate and diffuse the research results, technologies, and knowledge; and

(D) how the Center will contribute to the education and training of researchers and other professionals in fields relevant to health information enterprise integration.

(b) NATIONAL INFORMATION TECHNOLOGY RESEARCH AND DEVELOPMENT PROGRAM.—The National High-Performance Computing Program established by section 101 of the High-Performance Computing Act of 1991 (15 U.S.C. 5511) shall coordinate Federal research and development programs related to the development and deployment of health information technology, including activities related to—

(1) computer infrastructure;

(2) data security;

(3) development of large-scale, distributed, reliable computing systems;

(4) wired, wireless, and hybrid high-speed networking;

(5) development of software and software-intensive systems;

(6) human-computer interaction and information management technologies; and

(7) the social and economic implications of information technology.

Subtitle C—Incentives for the Use of Health Information Technology

PART I—GRANTS AND LOANS FUNDING

SEC. 4301. GRANT, LOAN, AND DEMONSTRATION PROGRAMS.

Title XXX of the Public Health Service Act, as added by section 4101, is amended by adding at the end the following new subtitle:

"Subtitle B—Incentives for the Use of Health Information Technology

"SEC. 3011. IMMEDIATE FUNDING TO STRENGTHEN THE HEALTH INFORMATION TECHNOLOGY INFRASTRUCTURE.

''(a) IN GENERAL.—The Secretary shall, using amounts appropriated under section 3018, invest in the infrastructure necessary to allow for and promote the electronic exchange and use of health information for each individual in the United States consistent with the goals outlined in the strategic plan developed by the National Coordinator (and as available) under section 3001. To the greatest extent practicable, the Secretary shall ensure that any funds so appropriated shall be used for the acquisition of health information technology that meets standards and certification criteria adopted before the date of the enactment of this title until such date as the standards are

1 adopted under section 3004. The Secretary shall invest
2 funds through the different agencies with expertise in such
3 goals, such as the Office of the National Coordinator for
4 Health Information Technology, the Health Resources and
5 Services Administration, the Agency for Healthcare Re-
6 search and Quality, the Centers of Medicare & Medicaid
7 Services, the Centers for Disease Control and Prevention,
8 and the Indian Health Service to support the following:
9 "(1) Health information technology architecture
10 that will support the nationwide electronic exchange
11 and use of health information in a secure, private,
12 and accurate manner, including connecting health
13 information exchanges, and which may include up-
14 dating and implementing the infrastructure nec-
15 essary within different agencies of the Department
16 of Health and Human Services to support the elec-
17 tronic use and exchange of health information.
18 "(2) Development and adoption of appropriate
19 certified electronic health records for categories of
20 providers, as defined in section 3000, not eligible for
21 support under title XVIII or XIX of the Social Secu-
22 rity Act for the adoption of such records.
23 "(3) Training on and dissemination of informa-
24 tion on best practices to integrate health information
25 technology, including electronic health records, into

1 a provider's delivery of care, consistent with best
2 practices learned from the Health Information Tech-
3 nology Research Center developed under section
4 3012(b), including community health centers receiv-
5 ing assistance under section 330, covered entities
6 under section 340B, and providers participating in
7 one or more of the programs under titles XVIII,
8 XIX, and XXI of the Social Security Act (relating
9 to Medicare, Medicaid, and the State Children's
10 Health Insurance Program).

11 ''(4) Infrastructure and tools for the promotion
12 of telemedicine, including coordination among Fed-
13 eral agencies in the promotion of telemedicine.

14 ''(5) Promotion of the interoperability of clinical
15 data repositories or registries.

16 ''(6) Promotion of technologies and best prac-
17 tices that enhance the protection of health informa-
18 tion by all holders of individually identifiable health
19 information.

20 ''(7) Improvement and expansion of the use of
21 health information technology by public health de-
22 partments.

23 ''(8) Provision of $300 million to support re-
24 gional or sub-national efforts towards health infor-
25 mation exchange.

"(b) COORDINATION.—The Secretary shall ensure funds under this section are used in a coordinated manner with other health information promotion activities.

"(c) ADDITIONAL USE OF FUNDS.—In addition to using funds as provided in subsection (a), the Secretary may use amounts appropriated under section 3018 to carry out health information technology activities that are provided for under laws in effect on the date of the enactment of this title.

"SEC. 3012. HEALTH INFORMATION TECHNOLOGY IMPLEMENTATION ASSISTANCE.

"(a) HEALTH INFORMATION TECHNOLOGY EXTENSION PROGRAM.—To assist health care providers to adopt, implement, and effectively use certified EHR technology that allows for the electronic exchange and use of health information, the Secretary, acting through the Office of the National Coordinator, shall establish a health information technology extension program to provide health information technology assistance services to be carried out through the Department of Health and Human Services. The National Coordinator shall consult with other Federal agencies with demonstrated experience and expertise in information technology services, such as the National Institute of Standards and Technology, in developing and implementing this program.

1 "(b) HEALTH INFORMATION TECHNOLOGY RE-
2 SEARCH CENTER.—
3 "(1) IN GENERAL.—The Secretary shall create
4 a Health Information Technology Research Center
5 (in this section referred to as the 'Center') to pro-
6 vide technical assistance and develop or recognize
7 best practices to support and accelerate efforts to
8 adopt, implement, and effectively utilize health infor-
9 mation technology that allows for the electronic ex-
10 change and use of information in compliance with
11 standards, implementation specifications, and certifi-
12 cation criteria adopted under section 3004.
13 "(2) INPUT.—The Center shall incorporate
14 input from—
15 "(A) other Federal agencies with dem-
16 onstrated experience and expertise in informa-
17 tion technology services such as the National
18 Institute of Standards and Technology;
19 "(B) users of health information tech-
20 nology, such as providers and their support and
21 clerical staff and others involved in the care and
22 care coordination of patients, from the health
23 care and health information technology indus-
24 try; and
25 "(C) others as appropriate.

"(3) PURPOSES.—The purposes of the Center are to—

"(A) provide a forum for the exchange of knowledge and experience;

"(B) accelerate the transfer of lessons learned from existing public and private sector initiatives, including those currently receiving Federal financial support;

"(C) assemble, analyze, and widely disseminate evidence and experience related to the adoption, implementation, and effective use of health information technology that allows for the electronic exchange and use of information including through the regional centers described in subsection (c);

"(D) provide technical assistance for the establishment and evaluation of regional and local health information networks to facilitate the electronic exchange of information across health care settings and improve the quality of health care;

"(E) provide technical assistance for the development and dissemination of solutions to barriers to the exchange of electronic health information; and

1 "(F) learn about effective strategies to
2 adopt and utilize health information technology
3 in medically underserved communities.
4 "(c) HEALTH INFORMATION TECHNOLOGY RE-
5 GIONAL EXTENSION CENTERS.—
6 "(1) IN GENERAL.—The Secretary shall provide
7 assistance for the creation and support of regional
8 centers (in this subsection referred to as 'regional
9 centers') to provide technical assistance and dissemi-
10 nate best practices and other information learned
11 from the Center to support and accelerate efforts to
12 adopt, implement, and effectively utilize health infor-
13 mation technology that allows for the electronic ex-
14 change and use of information in compliance with
15 standards, implementation specifications, and certifi-
16 cation criteria adopted under section 3004. Activities
17 conducted under this subsection shall be consistent
18 with the strategic plan developed by the National
19 Coordinator, (and, as available) under section 3001.
20 "(2) AFFILIATION.—Regional centers shall be
21 affiliated with any United States-based nonprofit in-
22 stitution or organization, or group thereof, that ap-
23 plies and is awarded financial assistance under this
24 section. Individual awards shall be decided on the
25 basis of merit.

1 "(3) OBJECTIVE.—The objective of the regional
2 centers is to enhance and promote the adoption of
3 health information technology through—
4 "(A) assistance with the implementation,
5 effective use, upgrading, and ongoing mainte-
6 nance of health information technology, includ-
7 ing electronic health records, to healthcare pro-
8 viders nationwide;
9 "(B) broad participation of individuals
10 from industry, universities, and State govern-
11 ments;
12 "(C) active dissemination of best practices
13 and research on the implementation, effective
14 use, upgrading, and ongoing maintenance of
15 health information technology, including elec-
16 tronic health records, to health care providers
17 in order to improve the quality of healthcare
18 and protect the privacy and security of health
19 information;
20 "(D) participation, to the extent prac-
21 ticable, in health information exchanges;
22 "(E) utilization, when appropriate, of the
23 expertise and capability that exists in Federal
24 agencies other than the Department; and

1 "(F) integration of health information
2 technology, including electronic health records,
3 into the initial and ongoing training of health
4 professionals and others in the healthcare in-
5 dustry that would be instrumental to improving
6 the quality of healthcare through the smooth
7 and accurate electronic use and exchange of
8 health information.
9 "(4) REGIONAL ASSISTANCE.—Each regional
10 center shall aim to provide assistance and education
11 to all providers in a region, but shall prioritize any
12 direct assistance first to the following:
13 "(A) Public or not-for-profit hospitals or
14 critical access hospitals.
15 "(B) Federally qualified health centers (as
16 defined in section 1861(aa)(4) of the Social Se-
17 curity Act).
18 "(C) Entities that are located in rural and
19 other areas that serve uninsured, underinsured,
20 and medically underserved individuals (regard-
21 less of whether such area is urban or rural).
22 "(D) Individual or small group practices
23 (or a consortium thereof) that are primarily fo-
24 cused on primary care.

"(5) FINANCIAL SUPPORT.—The Secretary may provide financial support to any regional center created under this subsection for a period not to exceed four years. The Secretary may not provide more than 50 percent of the capital and annual operating and maintenance funds required to create and maintain such a center, except in an instance of national economic conditions which would render this cost-share requirement detrimental to the program and upon notification to Congress as to the justification to waive the cost-share requirement.

"(6) NOTICE OF PROGRAM DESCRIPTION AND AVAILABILITY OF FUNDS.—The Secretary shall publish in the Federal Register, not later than 90 days after the date of the enactment of this title, a draft description of the program for establishing regional centers under this subsection. Such description shall include the following:

"(A) A detailed explanation of the program and the programs goals.

"(B) Procedures to be followed by the applicants.

"(C) Criteria for determining qualified applicants.

1 "(D) Maximum support levels expected to
2 be available to centers under the program.
3 "(7) APPLICATION REVIEW.—The Secretary
4 shall subject each application under this subsection
5 to merit review. In making a decision whether to ap-
6 prove such application and provide financial support,
7 the Secretary shall consider at a minimum the mer-
8 its of the application, including those portions of the
9 application regarding—
10 "(A) the ability of the applicant to provide
11 assistance under this subsection and utilization
12 of health information technology appropriate to
13 the needs of particular categories of health care
14 providers;
15 "(B) the types of service to be provided to
16 health care providers;
17 "(C) geographical diversity and extent of
18 service area; and
19 "(D) the percentage of funding and
20 amount of in-kind commitment from other
21 sources.
22 "(8) BIENNIAL EVALUATION.—Each regional
23 center which receives financial assistance under this
24 subsection shall be evaluated biennially by an evalua-
25 tion panel appointed by the Secretary. Each evalua-

tion panel shall be composed of private experts, none of whom shall be connected with the center involved, and of Federal officials. Each evaluation panel shall measure the involved center's performance against the objective specified in paragraph (3). The Secretary shall not continue to provide funding to a regional center unless its evaluation is overall positive.

"(9) CONTINUING SUPPORT.—After the second year of assistance under this subsection, a regional center may receive additional support under this subsection if it has received positive evaluations and a finding by the Secretary that continuation of Federal funding to the center was in the best interest of provision of health information technology extension services.

"SEC. 3013. STATE GRANTS TO PROMOTE HEALTH INFORMATION TECHNOLOGY.

"(a) IN GENERAL.—The Secretary, acting through the National Coordinator, shall establish a program in accordance with this section to facilitate and expand the electronic movement and use of health information among organizations according to nationally recognized standards.

"(b) PLANNING GRANTS.—The Secretary may award a grant to a State or qualified State-designated entity (as

1 described in subsection (f)) that submits an application
2 to the Secretary at such time, in such manner, and con-
3 taining such information as the Secretary may specify, for
4 the purpose of planning activities described in subsection
5 (d).

6 "(c) IMPLEMENTATION GRANTS.—The Secretary
7 may award a grant to a State or qualified State designated
8 entity that—

9 "(1) has submitted, and the Secretary has ap-
10 proved, a plan described in subsection (e) (regardless
11 of whether such plan was prepared using amounts
12 awarded under subsection (b); and

13 "(2) submits an application at such time, in
14 such manner, and containing such information as
15 the Secretary may specify.

16 "(d) USE OF FUNDS.—Amounts received under a
17 grant under subsection (c) shall be used to conduct activi-
18 ties to facilitate and expand the electronic movement and
19 use of health information among organizations according
20 to nationally recognized standards through activities that
21 include—

22 "(1) enhancing broad and varied participation
23 in the authorized and secure nationwide electronic
24 use and exchange of health information;

1 ''(2) identifying State or local resources avail-
2 able towards a nationwide effort to promote health
3 information technology;
4 ''(3) complementing other Federal grants, pro-
5 grams, and efforts towards the promotion of health
6 information technology;
7 ''(4) providing technical assistance for the de-
8 velopment and dissemination of solutions to barriers
9 to the exchange of electronic health information;
10 ''(5) promoting effective strategies to adopt and
11 utilize health information technology in medically
12 underserved communities;
13 ''(6) assisting patients in utilizing health infor-
14 mation technology;
15 ''(7) encouraging clinicians to work with Health
16 Information Technology Regional Extension Centers
17 as described in section 3012, to the extent they are
18 available and valuable;
19 ''(8) supporting public health agencies' author-
20 ized use of and access to electronic health informa-
21 tion;
22 ''(9) promoting the use of electronic health
23 records for quality improvement including through
24 quality measures reporting; and

1 "(10) such other activities as the Secretary may
2 specify.
3 "(e) PLAN.—
4 "(1) IN GENERAL.—A plan described in this
5 subsection is a plan that describes the activities to
6 be carried out by a State or by the qualified State-
7 designated entity within such State to facilitate and
8 expand the electronic movement and use of health
9 information among organizations according to na-
10 tionally recognized standards and implementation
11 specifications.
12 "(2) REQUIRED ELEMENTS.—A plan described
13 in paragraph (1) shall—
14 "(A) be pursued in the public interest;
15 "(B) be consistent with the strategic plan
16 developed by the National Coordinator, (and, as
17 available) under section 3001;
18 "(C) include a description of the ways the
19 State or qualified State-designated entity will
20 carry out the activities described in subsection
21 (b); and
22 "(D) contain such elements as the Sec-
23 retary may require.

1 "(f) QUALIFIED STATE-DESIGNATED ENTITY.—For
2 purposes of this section, to be a qualified State-designated
3 entity, with respect to a State, an entity shall—
4 "(1) be designated by the State as eligible to
5 receive awards under this section;
6 "(2) be a not-for-profit entity with broad stake-
7 holder representation on its governing board;
8 "(3) demonstrate that one of its principal goals
9 is to use information technology to improve health
10 care quality and efficiency through the authorized
11 and secure electronic exchange and use of health in-
12 formation;
13 "(4) adopt nondiscrimination and conflict of in-
14 terest policies that demonstrate a commitment to
15 open, fair, and nondiscriminatory participation by
16 stakeholders; and
17 "(5) conform to such other requirements as the
18 Secretary may establish.
19 "(g) REQUIRED CONSULTATION.—In carrying out
20 activities described in subsections (b) and (c), a State or
21 qualified State-designated entity shall consult with and
22 consider the recommendations of—
23 "(1) health care providers (including providers
24 that provide services to low income and underserved
25 populations);

1 "(2) health plans;
2 "(3) patient or consumer organizations that
3 represent the population to be served;
4 "(4) health information technology vendors;
5 "(5) health care purchasers and employers;
6 "(6) public health agencies;
7 "(7) health professions schools, universities and
8 colleges;
9 "(8) clinical researchers;
10 "(9) other users of health information tech-
11 nology such as the support and clerical staff of pro-
12 viders and others involved in the care and care co-
13 ordination of patients; and
14 "(10) such other entities, as may be determined
15 appropriate by the Secretary.
16 "(h) CONTINUOUS IMPROVEMENT.—The Secretary
17 shall annually evaluate the activities conducted under this
18 section and shall, in awarding grants under this section,
19 implement the lessons learned from such evaluation in a
20 manner so that awards made subsequent to each such
21 evaluation are made in a manner that, in the determina-
22 tion of the Secretary, will lead towards the greatest im-
23 provement in quality of care, decrease in costs, and the
24 most effective authorized and secure electronic exchange
25 of health information.

"(i) REQUIRED MATCH.—

"(1) IN GENERAL.—For a fiscal year (beginning with fiscal year 2011), the Secretary may not make a grant under this section to a State unless the State agrees to make available non-Federal contributions (which may include in-kind contributions) toward the costs of a grant awarded under subsection (c) in an amount equal to—

"(A) for fiscal year 2011, not less than $1 for each $10 of Federal funds provided under the grant;

"(B) for fiscal year 2012, not less than $1 for each $7 of Federal funds provided under the grant; and

"(C) for fiscal year 2013 and each subsequent fiscal year, not less than $1 for each $3 of Federal funds provided under the grant.

"(2) AUTHORITY TO REQUIRE STATE MATCH FOR FISCAL YEARS BEFORE FISCAL YEAR 2011.—For any fiscal year during the grant program under this section before fiscal year 2011, the Secretary may determine the extent to which there shall be required a non-Federal contribution from a State receiving a grant under this section.

"SEC. 3014. COMPETITIVE GRANTS TO STATES AND INDIAN TRIBES FOR THE DEVELOPMENT OF LOAN PROGRAMS TO FACILITATE THE WIDESPREAD ADOPTION OF CERTIFIED EHR TECHNOLOGY.

"(a) IN GENERAL.—The National Coordinator may award competitive grants to eligible entities for the establishment of programs for loans to health care providers to conduct the activities described in subsection (e).

"(b) ELIGIBLE ENTITY DEFINED.—For purposes of this subsection, the term 'eligible entity' means a State or Indian tribe (as defined in the Indian Self-Determination and Education Assistance Act) that—

"(1) submits to the National Coordinator an application at such time, in such manner, and containing such information as the National Coordinator may require;

"(2) submits to the National Coordinator a strategic plan in accordance with subsection (d) and provides to the National Coordinator assurances that the entity will update such plan annually in accordance with such subsection;

"(3) provides assurances to the National Coordinator that the entity will establish a Loan Fund in accordance with subsection (c);

1 "(4) provides assurances to the National Coor-
2 dinator that the entity will not provide a loan from
3 the Loan Fund to a health care provider unless the
4 provider agrees to—
5 "(A) submit reports on quality measures
6 adopted by the Federal Government (by not
7 later than 90 days after the date on which such
8 measures are adopted), to—
9 "(i) the Administrator of the Centers
10 for Medicare & Medicaid Services (or his
11 or her designee), in the case of an entity
12 participating in the Medicare program
13 under title XVIII of the Social Security
14 Act or the Medicaid program under title
15 XIX of such Act; or
16 "(ii) the Secretary in the case of other
17 entities;
18 "(B) demonstrate to the satisfaction of the
19 Secretary (through criteria established by the
20 Secretary) that any certified EHR technology
21 purchased, improved, or otherwise financially
22 supported under a loan under this section is
23 used to exchange health information in a man-
24 ner that, in accordance with law and standards
25 (as adopted under section 3004) applicable to

1 the exchange of information, improves the qual-
2 ity of health care, such as promoting care co-
3 ordination; and
4 "(C) comply with such other requirements
5 as the entity or the Secretary may require;
6 "(D) include a plan on how health care
7 providers involved intend to maintain and sup-
8 port the certified EHR technology over time;
9 "(E) include a plan on how the health care
10 providers involved intend to maintain and sup-
11 port the certified EHR technology that would
12 be purchased with such loan, including the type
13 of resources expected to be involved and any
14 such other information as the State or Indian
15 Tribe, respectively, may require; and
16 "(5) agrees to provide matching funds in ac-
17 cordance with subsection (h).
18 "(c) ESTABLISHMENT OF FUND.—For purposes of
19 subsection (b)(3), an eligible entity shall establish a cer-
20 tified EHR technology loan fund (referred to in this sub-
21 section as a 'Loan Fund') and comply with the other re-
22 quirements contained in this section. A grant to an eligible
23 entity under this section shall be deposited in the Loan
24 Fund established by the eligible entity. No funds author-
25 ized by other provisions of this title to be used for other

1 purposes specified in this title shall be deposited in any
2 Loan Fund.
3 "(d) STRATEGIC PLAN.—
4 "(1) IN GENERAL.—For purposes of subsection
5 (b)(2), a strategic plan of an eligible entity under
6 this subsection shall identify the intended uses of
7 amounts available to the Loan Fund of such entity.
8 "(2) CONTENTS.—A strategic plan under para-
9 graph (1), with respect to a Loan Fund of an eligi-
10 ble entity, shall include for a year the following:
11 "(A) A list of the projects to be assisted
12 through the Loan Fund during such year.
13 "(B) A description of the criteria and
14 methods established for the distribution of
15 funds from the Loan Fund during the year.
16 "(C) A description of the financial status
17 of the Loan Fund as of the date of submission
18 of the plan.
19 "(D) The short-term and long-term goals
20 of the Loan Fund.
21 "(e) USE OF FUNDS.—Amounts deposited in a Loan
22 Fund, including loan repayments and interest earned on
23 such amounts, shall be used only for awarding loans or
24 loan guarantees, making reimbursements described in sub-
25 section (g)(4)(A), or as a source of reserve and security

1 for leveraged loans, the proceeds of which are deposited
2 in the Loan Fund established under subsection (c). Loans
3 under this section may be used by a health care provider
4 to—

5 "(1) facilitate the purchase of certified EHR
6 technology;

7 "(2) enhance the utilization of certified EHR
8 technology;

9 "(3) train personnel in the use of such tech-
10 nology; or

11 "(4) improve the secure electronic exchange of
12 health information.

13 "(f) TYPES OF ASSISTANCE.—Except as otherwise
14 limited by applicable State law, amounts deposited into a
15 Loan Fund under this section may only be used for the
16 following:

17 "(1) To award loans that comply with the fol-
18 lowing:

19 "(A) The interest rate for each loan shall
20 not exceed the market interest rate.

21 "(B) The principal and interest payments
22 on each loan shall commence not later than 1
23 year after the date the loan was awarded, and
24 each loan shall be fully amortized not later than
25 10 years after the date of the loan.

"(C) The Loan Fund shall be credited with all payments of principal and interest on each loan awarded from the Loan Fund.

"(2) To guarantee, or purchase insurance for, a local obligation (all of the proceeds of which finance a project eligible for assistance under this subsection) if the guarantee or purchase would improve credit market access or reduce the interest rate applicable to the obligation involved.

"(3) As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the eligible entity if the proceeds of the sale of the bonds will be deposited into the Loan Fund.

"(4) To earn interest on the amounts deposited into the Loan Fund.

"(5) To make reimbursements described in subsection (g)(4)(A).

"(g) ADMINISTRATION OF LOAN FUNDS.—

"(1) COMBINED FINANCIAL ADMINISTRATION.—An eligible entity may (as a convenience and to avoid unnecessary administrative costs) combine, in accordance with applicable State law, the financial administration of a Loan Fund established under this subsection with the financial administration of

1 any other revolving fund established by the entity if
2 otherwise not prohibited by the law under which the
3 Loan Fund was established.

4 "(2) COST OF ADMINISTERING FUND.—Each el-
5 igible entity may annually use not to exceed 4 per-
6 cent of the funds provided to the entity under a
7 grant under this section to pay the reasonable costs
8 of the administration of the programs under this
9 section, including the recovery of reasonable costs
10 expended to establish a Loan Fund which are in-
11 curred after the date of the enactment of this title.

12 "(3) GUIDANCE AND REGULATIONS.—The Na-
13 tional Coordinator shall publish guidance and pro-
14 mulgate regulations as may be necessary to carry
15 out the provisions of this section, including—

16 "(A) provisions to ensure that each eligible
17 entity commits and expends funds allotted to
18 the entity under this section as efficiently as
19 possible in accordance with this title and appli-
20 cable State laws; and

21 "(B) guidance to prevent waste, fraud, and
22 abuse.

23 "(4) PRIVATE SECTOR CONTRIBUTIONS.—

24 "(A) IN GENERAL.—A Loan Fund estab-
25 lished under this section may accept contribu-

tions from private sector entities, except that such entities may not specify the recipient or recipients of any loan issued under this subsection. An eligible entity may agree to reimburse a private sector entity for any contribution made under this subparagraph, except that the amount of such reimbursement may not be greater than the principal amount of the contribution made.

"(B) AVAILABILITY OF INFORMATION.—An eligible entity shall make publicly available the identity of, and amount contributed by, any private sector entity under subparagraph (A) and may issue letters of commendation or make other awards (that have no financial value) to any such entity.

"(h) MATCHING REQUIREMENTS.—

"(1) IN GENERAL.—The National Coordinator may not make a grant under subsection (a) to an eligible entity unless the entity agrees to make available (directly or through donations from public or private entities) non-Federal contributions in cash to the costs of carrying out the activities for which the grant is awarded in an amount equal to not less

than $1 for each $5 of Federal funds provided under the grant.

"(2) DETERMINATION OF AMOUNT OF NON-FEDERAL CONTRIBUTION.—In determining the amount of non-Federal contributions that an eligible entity has provided pursuant to subparagraph (A), the National Coordinator may not include any amounts provided to the entity by the Federal Government.

"(i) EFFECTIVE DATE.—The Secretary may not make an award under this section prior to January 1, 2010.

"SEC. 3015. DEMONSTRATION PROGRAM TO INTEGRATE INFORMATION TECHNOLOGY INTO CLINICAL EDUCATION.

"(a) IN GENERAL.—The Secretary may award grants under this section to carry out demonstration projects to develop academic curricula integrating certified EHR technology in the clinical education of health professionals. Such awards shall be made on a competitive basis and pursuant to peer review.

"(b) ELIGIBILITY.—To be eligible to receive a grant under subsection (a), an entity shall—

1 "(1) submit to the Secretary an application at
2 such time, in such manner, and containing such in-
3 formation as the Secretary may require;
4 "(2) submit to the Secretary a strategic plan
5 for integrating certified EHR technology in the clin-
6 ical education of health professionals to reduce med-
7 ical errors and enhance health care quality;
8 "(3) be—
9 "(A) a school of medicine, osteopathic
10 medicine, dentistry, or pharmacy, a graduate
11 program in behavioral or mental health, or any
12 other graduate health professions school;
13 "(B) a graduate school of nursing or phy-
14 sician assistant studies;
15 "(C) a consortium of two or more schools
16 described in subparagraph (A) or (B); or
17 "(D) an institution with a graduate med-
18 ical education program in medicine, osteopathic
19 medicine, dentistry, pharmacy, nursing, or phy-
20 sician assistance studies;
21 "(4) provide for the collection of data regarding
22 the effectiveness of the demonstration project to be
23 funded under the grant in improving the safety of
24 patients, the efficiency of health care delivery, and
25 in increasing the likelihood that graduates of the

1 grantee will adopt and incorporate certified EHR
2 technology, in the delivery of health care services;
3 and
4 "(5) provide matching funds in accordance with
5 subsection (d).
6 "(c) USE OF FUNDS.—
7 "(1) IN GENERAL.—With respect to a grant
8 under subsection (a), an eligible entity shall—
9 "(A) use grant funds in collaboration with
10 2 or more disciplines; and
11 "(B) use grant funds to integrate certified
12 EHR technology into community-based clinical
13 education.
14 "(2) LIMITATION.—An eligible entity shall not
15 use amounts received under a grant under sub-
16 section (a) to purchase hardware, software, or serv-
17 ices.
18 "(d) FINANCIAL SUPPORT.—The Secretary may not
19 provide more than 50 percent of the costs of any activity
20 for which assistance is provided under subsection (a), ex-
21 cept in an instance of national economic conditions which
22 would render the cost-share requirement under this sub-
23 section detrimental to the program and upon notification
24 to Congress as to the justification to waive the cost-share
25 requirement.

"(e) EVALUATION.—The Secretary shall take such action as may be necessary to evaluate the projects funded under this section and publish, make available, and disseminate the results of such evaluations on as wide a basis as is practicable.

"(f) REPORTS.—Not later than 1 year after the date of enactment of this title, and annually thereafter, the Secretary shall submit to the Committee on Health, Education, Labor, and Pensions and the Committee on Finance of the Senate, and the Committee on Energy and Commerce of the House of Representatives a report that—

"(1) describes the specific projects established under this section; and

"(2) contains recommendations for Congress based on the evaluation conducted under subsection (e).

"SEC. 3016. INFORMATION TECHNOLOGY PROFESSIONALS ON HEALTH CARE.

"(a) IN GENERAL.—The Secretary, in consultation with the Director of the National Science Foundation, shall provide assistance to institutions of higher education (or consortia thereof) to establish or expand medical health informatics education programs, including certification, undergraduate, and masters degree programs, for

both health care and information technology students to ensure the rapid and effective utilization and development of health information technologies (in the United States health care infrastructure).

"(b) ACTIVITIES.—Activities for which assistance may be provided under subsection (a) may include the following:

"(1) Developing and revising curricula in medical health informatics and related disciplines.

"(2) Recruiting and retaining students to the program involved.

"(3) Acquiring equipment necessary for student instruction in these programs, including the installation of testbed networks for student use.

"(4) Establishing or enhancing bridge programs in the health informatics fields between community colleges and universities.

"(c) PRIORITY.—In providing assistance under subsection (a), the Secretary shall give preference to the following:

"(1) Existing education and training programs.

"(2) Programs designed to be completed in less than six months.

"(d) FINANCIAL SUPPORT.—The Secretary may not provide more than 50 percent of the costs of any activity

for which assistance is provided under subsection (a), except in an instance of national economic conditions which would render the cost-share requirement under this subsection detrimental to the program and upon notification to Congress as to the justification to waive the cost-share requirement.

"SEC. 3017. GENERAL GRANT AND LOAN PROVISIONS.

"(a) REPORTS.—The Secretary may require that an entity receiving assistance under this subtitle shall submit to the Secretary, not later than the date that is 1 year after the date of receipt of such assistance, a report that includes—

"(1) an analysis of the effectiveness of the activities for which the entity receives such assistance, as compared to the goals for such activities; and

"(2) an analysis of the impact of the project on health care quality and safety.

"(b) REQUIREMENT TO IMPROVE QUALITY OF CARE AND DECREASE IN COSTS.—The National Coordinator shall annually evaluate the activities conducted under this subtitle and shall, in awarding grants, implement the lessons learned from such evaluation in a manner so that awards made subsequent to each such evaluation are made in a manner that, in the determination of the National

1 Coordinator, will result in the greatest improvement in the
2 quality and efficiency of health care.

3 **"SEC. 3018. AUTHORIZATION FOR APPROPRIATIONS.**

4 "For the purposes of carrying out this subtitle, there
5 is authorized to be appropriated such sums as may be nec-
6 essary for each of the fiscal years 2009 through 2013.
7 Amounts so appropriated shall remain available until ex-
8 pended.".

9 **PART II—MEDICARE PROGRAM**

10 **SEC. 4311. INCENTIVES FOR ELIGIBLE PROFESSIONALS.**

11 (a) INCENTIVE PAYMENTS.—Section 1848 of the So-
12 cial Security Act (42 U.S.C. 1395w–4) is amended by add-
13 ing at the end the following new subsection:

14 "(o) INCENTIVES FOR ADOPTION AND MEANINGFUL
15 USE OF CERTIFIED EHR TECHNOLOGY.—

16 "(1) INCENTIVE PAYMENTS.—

17 "(A) IN GENERAL.—Subject to the suc-
18 ceeding subparagraphs of this paragraph, with
19 respect to covered professional services fur-
20 nished by an eligible professional during a pay-
21 ment year (as defined in subparagraph (E)), if
22 the eligible professional is a meaningful EHR
23 user (as determined under paragraph (2)) for
24 the reporting period with respect to such year,
25 in addition to the amount otherwise paid under

this part, there also shall be paid to the eligible professional (or to an employer or facility in the cases described in clause (A) of section 1842(b)(6)), from the Federal Supplementary Medical Insurance Trust Fund established under section 1841 an amount equal to 75 percent of the Secretary's estimate (based on claims submitted not later than 2 months after the end of the payment year) of the allowed charges under this part for all such covered professional services furnished by the eligible professional during such year.

"(B) LIMITATIONS ON AMOUNTS OF INCENTIVE PAYMENTS.—

"(i) IN GENERAL.—In no case shall the amount of the incentive payment provided under this paragraph for an eligible professional for a payment year exceed the applicable amount specified under this subparagraph with respect to such eligible professional and such year.

"(ii) AMOUNT.—Subject to clause (iii), the applicable amount specified in this subparagraph for an eligible professional is as follows:

1 "(I) For the first payment year
2 for such professional, $15,000.
3 "(II) For the second payment
4 year for such professional, $12,000.
5 "(III) For the third payment
6 year for such professional, $8,000.
7 "(IV) For the fourth payment
8 year for such professional, $4,000.
9 "(V) For the fifth payment year
10 for such professional, $2,000.
11 "(VI) For any succeeding pay-
12 ment year for such professional, $0.
13 "(iii) PHASE DOWN FOR ELIGIBLE
14 PROFESSIONALS FIRST ADOPTING EHR
15 AFTER 2013.—If the first payment year for
16 an eligible professional is after 2013, then
17 the amount specified in this subparagraph
18 for a payment year for such professional is
19 the same as the amount specified in clause
20 (ii) for such payment year for an eligible
21 professional whose first payment year is
22 2013. If the first payment year for an eli-
23 gible professional is after 2015 then the
24 applicable amount specified in this sub-

1 paragraph for such professional for such
2 year and any subsequent year shall be $0.
3 "(C) NON-APPLICATION TO HOSPITAL-
4 BASED ELIGIBLE PROFESSIONALS.—
5 "(i) IN GENERAL.—No incentive pay-
6 ment may be made under this paragraph
7 in the case of a hospital-based eligible pro-
8 fessional.
9 "(ii) HOSPITAL-BASED ELIGIBLE PRO-
10 FESSIONAL.—For purposes of clause (i),
11 the term 'hospital-based eligible profes-
12 sional' means, with respect to covered pro-
13 fessional services furnished by an eligible
14 professional during the reporting period for
15 a payment year, an eligible professional,
16 such as a pathologist, anesthesiologist, or
17 emergency physician, who furnishes sub-
18 stantially all of such services in a hospital
19 setting (whether inpatient or outpatient)
20 and through the use of the facilities and
21 equipment, including computer equipment,
22 of the hospital.
23 "(D) PAYMENT.—
24 "(i) FORM OF PAYMENT.—The pay-
25 ment under this paragraph may be in the

form of a single consolidated payment or in the form of such periodic installments as the Secretary may specify.

"(ii) COORDINATION OF APPLICATION OF LIMITATION FOR PROFESSIONALS IN DIFFERENT PRACTICES.—In the case of an eligible professional furnishing covered professional services in more than one practice (as specified by the Secretary), the Secretary shall establish rules to coordinate the incentive payments, including the application of the limitation on amounts of such incentive payments under this paragraph, among such practices.

"(iii) COORDINATION WITH MEDICAID.—The Secretary shall seek, to the maximum extent practicable, to avoid duplicative requirements from Federal and State Governments to demonstrate meaningful use of certified EHR technology under this title and title XIX. The Secretary may also adjust the reporting periods under such title and such subsections in order to carry out this clause.

"(E) PAYMENT YEAR DEFINED.—

"(i) IN GENERAL.—For purposes of this subsection, the term 'payment year' means a year beginning with 2011.

"(ii) FIRST, SECOND, ETC. PAYMENT YEAR.—The term 'first payment year' means, with respect to covered professional services furnished by an eligible professional, the first year for which an incentive payment is made for such services under this subsection. The terms 'second payment year', 'third payment year', 'fourth payment year', and 'fifth payment year' mean, with respect to covered professional services furnished by such eligible professional, each successive year immediately following the first payment year for such professional.

"(2) MEANINGFUL EHR USER.—

"(A) IN GENERAL.—For purposes of paragraph (1), an eligible professional shall be treated as a meaningful EHR user for a reporting period for a payment year (or, for purposes of subsection (a)(7), for a reporting period under such subsection for a year) if each of the following requirements is met:

1 "(i) MEANINGFUL USE OF CERTIFIED
2 EHR TECHNOLOGY.—The eligible profes-
3 sional demonstrates to the satisfaction of
4 the Secretary, in accordance with subpara-
5 graph (C)(i), that during such period the
6 professional is using certified EHR tech-
7 nology in a meaningful manner, which
8 shall include the use of electronic pre-
9 scribing as determined to be appropriate
10 by the Secretary.
11 "(ii) INFORMATION EXCHANGE.—The
12 eligible professional demonstrates to the
13 satisfaction of the Secretary, in accordance
14 with subparagraph (C)(i), that during such
15 period such certified EHR technology is
16 connected in a manner that provides, in
17 accordance with law and standards appli-
18 cable to the exchange of information, for
19 the electronic exchange of health informa-
20 tion to improve the quality of health care,
21 such as promoting care coordination.
22 "(iii) REPORTING ON MEASURES
23 USING EHR.—Subject to subparagraph
24 (B)(ii) and using such certified EHR tech-
25 nology, the eligible professional submits in-

formation for such period, in a form and manner specified by the Secretary, on such clinical quality measures and such other measures as selected by the Secretary under subparagraph (B)(i).

The Secretary may provide for the use of alternative means for meeting the requirements of clauses (i), (ii), and (iii) in the case of an eligible professional furnishing covered professional services in a group practice (as defined by the Secretary). The Secretary shall seek to improve the use of electronic health records and health care quality over time by requiring more stringent measures of meaningful use selected under this paragraph.

"(B) REPORTING ON MEASURES.—

"(i) SELECTION.—The Secretary shall select measures for purposes of subparagraph (A)(iii) but only consistent with the following:

"(I) The Secretary shall provide preference to clinical quality measures that have been endorsed by the entity with a contract with the Secretary under section 1890(a).

"(II) Prior to any measure being selected under this subparagraph, the Secretary shall publish in the Federal Register such measure and provide for a period of public comment on such measure.

"(ii) LIMITATION.—The Secretary may not require the electronic reporting of information on clinical quality measures under subparagraph (A)(iii) unless the Secretary has the capacity to accept the information electronically, which may be on a pilot basis.

"(iii) COORDINATION OF REPORTING OF INFORMATION.—In selecting such measures, and in establishing the form and manner for reporting measures under subparagraph (A)(iii), the Secretary shall seek to avoid redundant or duplicative reporting otherwise required, including reporting under subsection (k)(2)(C).

"(C) DEMONSTRATION OF MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY AND INFORMATION EXCHANGE.—

"(i) IN GENERAL.—A professional may satisfy the demonstration requirement of clauses (i) and (ii) of subparagraph (A) through means specified by the Secretary, which may include—

"(I) an attestation;

"(II) the submission of claims with appropriate coding (such as a code indicating that a patient encounter was documented using certified EHR technology);

"(III) a survey response;

"(IV) reporting under subparagraph (A)(iii); and

"(V) other means specified by the Secretary.

"(ii) USE OF PART D DATA.—Notwithstanding sections 1860D–15(d)(2)(B) and 1860D–15(f)(2), the Secretary may use data regarding drug claims submitted for purposes of section 1860D–15 that are necessary for purposes of subparagraph (A).

"(3) APPLICATION.—

"(A) PHYSICIAN REPORTING SYSTEM RULES.—Paragraphs (5), (6), and (8) of subsection (k) shall apply for purposes of this subsection in the same manner as they apply for purposes of such subsection.

"(B) COORDINATION WITH OTHER PAYMENTS.—The provisions of this subsection shall not be taken into account in applying the provisions of subsection (m) of this section and of section 1833(m) and any payment under such provisions shall not be taken into account in computing allowable charges under this subsection.

"(C) LIMITATIONS ON REVIEW.—There shall be no administrative or judicial review under section 1869, section 1878, or otherwise of the determination of any incentive payment under this subsection and the payment adjustment under subsection (a)(7), including the determination of a meaningful EHR user under paragraph (2), a limitation under paragraph (1)(B), and the exception under subsection (a)(7)(B).

"(D) POSTING ON WEBSITE.—The Secretary shall post on the Internet website of the

1 Centers for Medicare & Medicaid Services, in an
2 easily understandable format, a list of the
3 names, business addresses, and business phone
4 numbers of the eligible professionals who are
5 meaningful EHR users and, as determined ap-
6 propriate by the Secretary, of group practices
7 receiving incentive payments under paragraph
8 (1).

9 ''(4) CERTIFIED EHR TECHNOLOGY DEFINED.—
10 For purposes of this section, the term 'certified
11 EHR technology' means a qualified electronic health
12 record (as defined in 3000(13) of the Public Health
13 Service Act) that is certified pursuant to section
14 3001(c)(5) of such Act as meeting standards adopt-
15 ed under section 3004 of such Act that are applica-
16 ble to the type of record involved (as determined by
17 the Secretary, such as an ambulatory electronic
18 health record for office-based physicians or an inpa-
19 tient hospital electronic health record for hospitals).

20 ''(5) DEFINITIONS.—For purposes of this sub-
21 section:

22 ''(A) COVERED PROFESSIONAL SERV-
23 ICES.—The term 'covered professional services'
24 has the meaning given such term in subsection
25 (k)(3).

"(B) ELIGIBLE PROFESSIONAL.—The term 'eligible professional' means a physician, as defined in section 1861(r).

"(C) REPORTING PERIOD.—The term 'reporting period' means any period (or periods), with respect to a payment year, as specified by the Secretary.".

(b) INCENTIVE PAYMENT ADJUSTMENT.—Section 1848(a) of the Social Security Act (42 U.S.C. 1395w–4(a)) is amended by adding at the end the following new paragraph:

"(7) INCENTIVES FOR MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY.—

"(A) ADJUSTMENT.—

"(i) IN GENERAL.—Subject to subparagraphs (B) and (D), with respect to covered professional services furnished by an eligible professional during 2016 or any subsequent payment year, if the eligible professional is not a meaningful EHR user (as determined under subsection (o)(2)) for a reporting period for the year, the fee schedule amount for such services furnished by such professional during the year (including the fee schedule amount for pur-

1 poses of determining a payment based on
2 such amount) shall be equal to the applica-
3 ble percent of the fee schedule amount that
4 would otherwise apply to such services
5 under this subsection (determined after ap-
6 plication of paragraph (3) but without re-
7 gard to this paragraph).
8 ''(ii) APPLICABLE PERCENT.—Subject
9 to clause (iii), for purposes of clause (i),
10 the term 'applicable percent' means—
11 ''(I) for 2016, 99 percent;
12 ''(II) for 2017, 98 percent; and
13 ''(III) for 2018 and each subse-
14 quent year, 97 percent.
15 ''(iii) AUTHORITY TO DECREASE AP-
16 PLICABLE PERCENTAGE FOR 2019 AND
17 SUBSEQUENT YEARS.—For 2019 and each
18 subsequent year, if the Secretary finds that
19 the proportion of eligible professionals who
20 are meaningful EHR users (as determined
21 under subsection (o)(2)) is less than 75
22 percent, the applicable percent shall be de-
23 creased by 1 percentage point from the ap-
24 plicable percent in the preceding year, but

in no case shall the applicable percent be less than 95 percent.

"(B) SIGNIFICANT HARDSHIP EXCEPTION.—The Secretary may, on a case-by-case basis, exempt an eligible professional from the application of the payment adjustment under subparagraph (A) if the Secretary determines, subject to annual renewal, that compliance with the requirement for being a meaningful EHR user would result in a significant hardship, such as in the case of an eligible professional who practices in a rural area without sufficient Internet access. In no case may an eligible professional be granted an exemption under this subparagraph for more than 5 years.

"(C) APPLICATION OF PHYSICIAN REPORTING SYSTEM RULES.—Paragraphs (5), (6), and (8) of subsection (k) shall apply for purposes of this paragraph in the same manner as they apply for purposes of such subsection.

"(D) NON-APPLICATION TO HOSPITAL-BASED ELIGIBLE PROFESSIONALS.—No payment adjustment may be made under subparagraph (A) in the case of hospital-based eligible

professionals (as defined in subsection (o)(1)(C)(ii)).

"(E) DEFINITIONS.—For purposes of this paragraph:

"(i) COVERED PROFESSIONAL SERVICES.—The term 'covered professional services' has the meaning given such term in subsection (k)(3).

"(ii) ELIGIBLE PROFESSIONAL.—The term 'eligible professional' means a physician, as defined in section 1861(r).

"(iii) REPORTING PERIOD.—The term 'reporting period' means, with respect to a year, a period specified by the Secretary.".

(c) APPLICATION TO CERTAIN HMO-AFFILIATED ELIGIBLE PROFESSIONALS.—Section 1853 of the Social Security Act (42 U.S.C. 1395w–23) is amended by adding at the end the following new subsection:

"(l) APPLICATION OF ELIGIBLE PROFESSIONAL INCENTIVES FOR CERTAIN MA ORGANIZATIONS FOR ADOPTION AND MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY.—

"(1) IN GENERAL.—Subject to paragraphs (3) and (4), in the case of a qualifying MA organization, the provisions of sections 1848(o) and 1848(a)(7)

shall apply with respect to eligible professionals described in paragraph (2) of the organization who the organization attests under paragraph (6) to be meaningful EHR users in a similar manner as they apply to eligible professionals under such sections. Incentive payments under paragraph (3) shall be made to and payment adjustments under paragraph (4) shall apply to such qualifying organizations.

"(2) ELIGIBLE PROFESSIONAL DESCRIBED.—With respect to a qualifying MA organization, an eligible professional described in this paragraph is an eligible professional (as defined for purposes of section 1848(o)) who—

"(A)(i) is employed by the organization; or

"(ii)(I) is employed by, or is a partner of, an entity that through contract with the organization furnishes at least 80 percent of the entity's patient care services to enrollees of such organization; and

"(II) furnishes at least 80 percent of the professional services of the eligible professional to enrollees of the organization; and

"(B) furnishes, on average, at least 20 hours per week of patient care services.

"(3) ELIGIBLE PROFESSIONAL INCENTIVE PAYMENTS.—

"(A) IN GENERAL.—In applying section 1848(o) under paragraph (1), instead of the additional payment amount under section 1848(o)(1)(A) and subject to subparagraph (B), the Secretary may substitute an amount determined by the Secretary to the extent feasible and practical to be similar to the estimated amount in the aggregate that would be payable if payment for services furnished by such professionals was payable under part B instead of this part.

"(B) AVOIDING DUPLICATION OF PAYMENTS.—

"(i) IN GENERAL.—If an eligible professional described in paragraph (2) is eligible for the maximum incentive payment under section 1848(o)(1)(A) for the same payment period, the payment incentive shall be made only under such section and not under this subsection.

"(ii) METHODS.—In the case of an eligible professional described in paragraph (2) who is eligible for an incentive payment

under section 1848(o)(1)(A) but is not described in clause (i) for the same payment period, the Secretary shall develop a process—

"(I) to ensure that duplicate payments are not made with respect to an eligible professional both under this subsection and under section 1848(o)(1)(A); and

"(II) to collect data from Medicare Advantage organizations to ensure against such duplicate payments.

"(C) FIXED SCHEDULE FOR APPLICATION OF LIMITATION ON INCENTIVE PAYMENTS FOR ALL ELIGIBLE PROFESSIONALS.—In applying section 1848(o)(1)(B)(ii) under subparagraph (A), in accordance with rules specified by the Secretary, a qualifying MA organization shall specify a year (not earlier than 2011) that shall be treated as the first payment year for all eligible professionals with respect to such organization.

"(4) PAYMENT ADJUSTMENT.—

"(A) IN GENERAL.—In applying section 1848(a)(7) under paragraph (1), instead of the

payment adjustment being an applicable percent of the fee schedule amount for a year under such section, subject to subparagraph (D), the payment adjustment under paragraph (1) shall be equal to the percent specified in subparagraph (B) for such year of the payment amount otherwise provided under this section for such year.

"(B) SPECIFIED PERCENT.—The percent specified under this subparagraph for a year is 100 percent minus a number of percentage points equal to the product of—

"(i) the number of percentage points by which the applicable percent (under section 1848(a)(7)(A)(ii)) for the year is less than 100 percent; and

"(ii) the Medicare physician expenditure proportion specified in subparagraph (C) for the year.

"(C) MEDICARE PHYSICIAN EXPENDITURE PROPORTION.—The Medicare physician expenditure proportion under this subparagraph for a year is the Secretary's estimate of the proportion, of the expenditures under parts A and B that are not attributable to this part, that are

1 attributable to expenditures for physicians'
2 services.

3 "(D) APPLICATION OF PAYMENT ADJUST-
4 MENT.—In the case that a qualifying MA orga-
5 nization attests that not all eligible profes-
6 sionals are meaningful EHR users with respect
7 to a year, the Secretary shall apply the payment
8 adjustment under this paragraph based on the
9 proportion of such eligible professionals that are
10 not meaningful EHR users for such year.

11 "(5) QUALIFYING MA ORGANIZATION DE-
12 FINED.—In this subsection and subsection (m), the
13 term 'qualifying MA organization' means a Medicare
14 Advantage organization that is organized as a health
15 maintenance organization (as defined in section
16 2791(b)(3) of the Public Health Service Act).

17 "(6) MEANINGFUL EHR USER ATTESTATION.—
18 For purposes of this subsection and subsection (m),
19 a qualifying MA organization shall submit an attes-
20 tation, in a form and manner specified by the Sec-
21 retary which may include the submission of such at-
22 testation as part of submission of the initial bid
23 under section 1854(a)(1)(A)(iv), identifying—

24 "(A) whether each eligible professional de-
25 scribed in paragraph (2), with respect to such

organization is a meaningful EHR user (as defined in section 1848(o)(2)) for a year specified by the Secretary; and

"(B) whether each eligible hospital described in subsection (m)(1), with respect to such organization, is a meaningful EHR user (as defined in section 1886(n)(3)) for an applicable period specified by the Secretary.".

(d) CONFORMING AMENDMENTS.—Section 1853 of the Social Security Act (42 U.S.C. 1395w–23) is amended—

(1) in subsection (a)(1)(A), by striking "and (i)" and inserting "(i), and (l)";

(2) in subsection (c)—

(A) in paragraph (1)(D)(i), by striking "section 1886(h)" and inserting "sections 1848(o) and 1886(h)"; and

(B) in paragraph (6)(A), by inserting after "under part B," the following: "excluding expenditures attributable to subsections (a)(7) and (o) of section 1848,"; and

(3) in subsection (f), by inserting "and for payments under subsection (l)" after "with the organization".

1 (e) CONFORMING AMENDMENTS TO E-PRE-
2 SCRIBING.—
3 (1) Section 1848(a)(5)(A) of the Social Security
4 Act (42 U.S.C. 1395w–4(a)(5)(A)) is amended—
5 (A) in clause (i), by striking ''or any sub-
6 sequent year'' and inserting '', 2013, 2014, or
7 2015''; and
8 (B) in clause (ii), by striking ''and each
9 subsequent year'' and inserting ''and 2015''.
10 (2) Section 1848(m)(2) of such Act (42 U.S.C.
11 1395w–4(m)(2)) is amended—
12 (A) in subparagraph (A), by striking ''For
13 2009'' and inserting ''Subject to subparagraph
14 (D), for 2009''; and
15 (B) by adding at the end the following new
16 subparagraph:
17 ''(D) LIMITATION WITH RESPECT TO EHR
18 INCENTIVE PAYMENTS.—The provisions of this
19 paragraph shall not apply to an eligible profes-
20 sional (or, in the case of a group practice under
21 paragraph (3)(C), to the group practice) if, for
22 the reporting period the eligible professional (or
23 group practice) receives an incentive payment
24 under subsection (o)(1)(A) with respect to a
25 certified EHR technology (as defined in sub-

1 section (o)(4)) that has the capability of elec-
2 tronic prescribing.''.

3 **SEC. 4312. INCENTIVES FOR HOSPITALS.**

4 (a) INCENTIVE PAYMENT.—Section 1886 of the So-
5 cial Security Act (42 U.S.C. 1395ww) is amended by add-
6 ing at the end the following new subsection:

7 ''(n) INCENTIVES FOR ADOPTION AND MEANINGFUL
8 USE OF CERTIFIED EHR TECHNOLOGY.—

9 ''(1) IN GENERAL.—Subject to the succeeding
10 provisions of this subsection, with respect to inpa-
11 tient hospital services furnished by an eligible hos-
12 pital during a payment year (as defined in para-
13 graph (2)(G)), if the eligible hospital is a meaningful
14 EHR user (as determined under paragraph (3)) for
15 the reporting period with respect to such year, in ad-
16 dition to the amount otherwise paid under this sec-
17 tion, there also shall be paid to the eligible hospital,
18 from the Federal Hospital Insurance Trust Fund es-
19 tablished under section 1817, an amount equal to
20 the applicable amount specified in paragraph (2)(A)
21 for the hospital for such payment year.

22 ''(2) PAYMENT AMOUNT.—

23 ''(A) IN GENERAL.—Subject to the suc-
24 ceeding subparagraphs of this paragraph, the
25 applicable amount specified in this subpara-

graph for an eligible hospital for a payment year is equal to the product of the following:

"(i) INITIAL AMOUNT.—The sum of—

"(I) the base amount specified in subparagraph (B); plus

"(II) the discharge related amount specified in subparagraph (C) for a 12-month period selected by the Secretary with respect to such payment year.

"(ii) MEDICARE SHARE.—The Medicare share as specified in subparagraph (D) for the hospital for a period selected by the Secretary with respect to such payment year.

"(iii) TRANSITION FACTOR.—The transition factor specified in subparagraph (E) for the hospital for the payment year.

"(B) BASE AMOUNT.—The base amount specified in this subparagraph is $2,000,000.

"(C) DISCHARGE RELATED AMOUNT.—The discharge related amount specified in this subparagraph for a 12-month period selected by the Secretary shall be determined as the sum of the amount, based upon total discharges (re-

gardless of any source of payment) for the period, for each discharge up to the 23,000th discharge as follows:

"(i) For the 1,150th through the 23,000th discharge, $200.

"(ii) For any discharge greater than the 23,000th, $0.

"(D) MEDICARE SHARE.—The Medicare share specified under this subparagraph for a hospital for a period selected by the Secretary for a payment year is equal to the fraction—

"(i) the numerator of which is the sum (for such period and with respect to the hospital) of—

"(I) the number of inpatient-bed-days (as established by the Secretary) which are attributable to individuals with respect to whom payment may be made under part A; and

"(II) the number of inpatient-bed-days (as so established) which are attributable to individuals who are enrolled with a Medicare Advantage organization under part C; and

"(ii) the denominator of which is the product of—

"(I) the total number of inpatient-bed-days with respect to the hospital during such period; and

"(II) the total amount of the hospital's charges during such period, not including any charges that are attributable to charity care (as such term is used for purposes of hospital cost reporting under this title), divided by the total amount of the hospital's charges during such period.

Insofar as the Secretary determines that data are not available on charity care necessary to calculate the portion of the formula specified in clause (ii)(II), the Secretary shall use data on uncompensated care and may adjust such data so as to be an appropriate proxy for charity care including a downward adjustment to eliminate bad debt data from uncompensated care data. In the absence of the data necessary, with respect to a hospital, for the Secretary to compute the amount described in clause (ii)(II), the amount under such clause shall be deemed to

be 1. In the absence of data, with respect to a hospital, necessary to compute the amount described in clause (i)(II), the amount under such clause shall be deemed to be 0.

"(E) TRANSITION FACTOR SPECIFIED.—

"(i) IN GENERAL.—Subject to clause (ii), the transition factor specified in this subparagraph for an eligible hospital for a payment year is as follows:

"(I) For the first payment year for such hospital, 1.

"(II) For the second payment year for such hospital, ¾.

"(III) For the third payment year for such hospital, ½.

"(IV) For the fourth payment year for such hospital, ¼.

"(V) For any succeeding payment year for such hospital, 0.

"(ii) PHASE DOWN FOR ELIGIBLE HOSPITALS FIRST ADOPTING EHR AFTER 2013.—If the first payment year for an eligible hospital is after 2013, then the transition factor specified in this subparagraph for a payment year for such hospital is the

same as the amount specified in clause (i) for such payment year for an eligible hospital for which the first payment year is 2013. If the first payment year for an eligible hospital is after 2015 then the transition factor specified in this subparagraph for such hospital and for such year and any subsequent year shall be 0.

"(F) FORM OF PAYMENT.—The payment under this subsection for a payment year may be in the form of a single consolidated payment or in the form of such periodic installments as the Secretary may specify.

"(G) PAYMENT YEAR DEFINED.—

"(i) IN GENERAL.—For purposes of this subsection, the term 'payment year' means a fiscal year beginning with fiscal year 2011.

"(ii) FIRST, SECOND, ETC. PAYMENT YEAR.—The term 'first payment year' means, with respect to inpatient hospital services furnished by an eligible hospital, the first fiscal year for which an incentive payment is made for such services under this subsection. The terms 'second pay-

1 ment year', 'third payment year', and
2 'fourth payment year' mean, with respect
3 to an eligible hospital, each successive year
4 immediately following the first payment
5 year for that hospital.
6 ''(3) MEANINGFUL EHR USER.—
7 ''(A) IN GENERAL.—For purposes of para-
8 graph (1), an eligible hospital shall be treated
9 as a meaningful EHR user for a reporting pe-
10 riod for a payment year (or, for purposes of
11 subsection (b)(3)(B)(ix), for a reporting period
12 under such subsection for a fiscal year) if each
13 of the following requirements are met:
14 ''(i) MEANINGFUL USE OF CERTIFIED
15 EHR TECHNOLOGY.—The eligible hospital
16 demonstrates to the satisfaction of the Sec-
17 retary, in accordance with subparagraph
18 (C)(i), that during such period the hospital
19 is using certified EHR technology in a
20 meaningful manner.
21 ''(ii) INFORMATION EXCHANGE.—The
22 eligible hospital demonstrates to the satis-
23 faction of the Secretary, in accordance
24 with subparagraph (C)(i), that during such
25 period such certified EHR technology is

connected in a manner that provides, in accordance with law and standards applicable to the exchange of information, for the electronic exchange of health information to improve the quality of health care, such as promoting care coordination.

"(iii) REPORTING ON MEASURES USING EHR.—Subject to subparagraph (B)(ii) and using such certified EHR technology, the eligible hospital submits information for such period, in a form and manner specified by the Secretary, on such clinical quality measures and such other measures as selected by the Secretary under subparagraph (B)(i).

The Secretary shall seek to improve the use of electronic health records and health care quality over time by requiring more stringent measures of meaningful use selected under this paragraph.

"(B) REPORTING ON MEASURES.—

"(i) SELECTION.—The Secretary shall select measures for purposes of subparagraph (A)(iii) but only consistent with the following:

"(I) The Secretary shall provide preference to clinical quality measures that have been selected for purposes of applying subsection (b)(3)(B)(viii) or that have been endorsed by the entity with a contract with the Secretary under section 1890(a).

"(II) Prior to any measure (other than a clinical quality measure that has been selected for purposes of applying subsection (b)(3)(B)(viii)) being selected under this subparagraph, the Secretary shall publish in the Federal Register such measure and provide for a period of public comment on such measure.

"(ii) LIMITATIONS.—The Secretary may not require the electronic reporting of information on clinical quality measures under subparagraph (A)(iii) unless the Secretary has the capacity to accept the information electronically, which may be on a pilot basis.

"(iii) COORDINATION OF REPORTING OF INFORMATION.—In selecting such

1 measures, and in establishing the form and
2 manner for reporting measures under sub-
3 paragraph (A)(iii), the Secretary shall seek
4 to avoid redundant or duplicative reporting
5 with reporting otherwise required, includ-
6 ing reporting under subsection
7 (b)(3)(B)(viii).
8 ''(C) DEMONSTRATION OF MEANINGFUL
9 USE OF CERTIFIED EHR TECHNOLOGY AND IN-
10 FORMATION EXCHANGE.—
11 ''(i) IN GENERAL.—A hospital may
12 satisfy the demonstration requirement of
13 clauses (i) and (ii) of subparagraph (A)
14 through means specified by the Secretary,
15 which may include—
16 ''(I) an attestation;
17 ''(II) the submission of claims
18 with appropriate coding (such as a
19 code indicating that inpatient care
20 was documented using certified EHR
21 technology);
22 ''(III) a survey response;
23 ''(IV) reporting under subpara-
24 graph (A)(iii); and

1 "(V) other means specified by the
2 Secretary.
3 "(ii) USE OF PART D DATA.—Not-
4 withstanding sections 1860D–15(d)(2)(B)
5 and 1860D–15(f)(2), the Secretary may
6 use data regarding drug claims submitted
7 for purposes of section 1860D–15 that are
8 necessary for purposes of subparagraph
9 (A).
10 "(4) APPLICATION.—
11 "(A) LIMITATIONS ON REVIEW.—There
12 shall be no administrative or judicial review
13 under section 1869, section 1878, or otherwise
14 of the determination of any incentive payment
15 under this subsection and the payment adjust-
16 ment under subsection (b)(3)(B)(ix), including
17 the determination of a meaningful EHR user
18 under paragraph (3), determination of meas-
19 ures applicable to services furnished by eligible
20 hospitals under this subsection, and the excep-
21 tion under subsection (b)(3)(B)(ix)(II).
22 "(B) POSTING ON WEBSITE.—The Sec-
23 retary shall post on the Internet website of the
24 Centers for Medicare & Medicaid Services, in an
25 easily understandable format, a list of the

1 names of the eligible hospitals that are mean-
2 ingful EHR users under this subsection or sub-
3 section (b)(3)(B)(ix) and other relevant data as
4 determined appropriate by the Secretary. The
5 Secretary shall ensure that a hospital has the
6 opportunity to review the other relevant data
7 that are to be made public with respect to the
8 hospital prior to such data being made public.
9 ''(5) CERTIFIED EHR TECHNOLOGY DEFINED.—
10 The term 'certified EHR technology' has the mean-
11 ing given such term in section 1848(o)(4).
12 ''(6) DEFINITIONS.—For purposes of this sub-
13 section:
14 ''(A) ELIGIBLE HOSPITAL.—The term 'eli-
15 gible hospital' means a subsection (d) hospital.
16 ''(B) REPORTING PERIOD.—The term 're-
17 porting period' means any period (or periods),
18 with respect to a payment year, as specified by
19 the Secretary.''.
20 (b) INCENTIVE MARKET BASKET ADJUSTMENT.—
21 Section 1886(b)(3)(B) of the Social Security Act (42
22 U.S.C. 1395ww(b)(3)(B)) is amended—
23 (1) in clause (viii)(I), by inserting ''(or, begin-
24 ning with fiscal year 2016, by one-quarter)'' after
25 ''2.0 percentage points''; and

1 (2) by adding at the end the following new
2 clause:
3 "(ix)(I) For purposes of clause (i) for fiscal year
4 2016 and each subsequent fiscal year, in the case of an
5 eligible hospital (as defined in subsection (n)(6)(A)) that
6 is not a meaningful EHR user (as defined in subsection
7 (n)(3)) for the reporting period for such fiscal year, three-
8 quarters of the applicable percentage increase otherwise
9 applicable under clause (i) for such fiscal year shall be
10 reduced by 33⅓ percent for fiscal year 2016, 66⅔ per-
11 cent for fiscal year 2017, and 100 percent for fiscal year
12 2018 and each subsequent fiscal year. Such reduction
13 shall apply only with respect to the fiscal year involved
14 and the Secretary shall not take into account such reduc-
15 tion in computing the applicable percentage increase under
16 clause (i) for a subsequent fiscal year.
17 "(II) The Secretary may, on a case-by-case basis, ex-
18 empt a subsection (d) hospital from the application of sub-
19 clause (I) with respect to a fiscal year if the Secretary
20 determines, subject to annual renewal, that requiring such
21 hospital to be a meaningful EHR user during such fiscal
22 year would result in a significant hardship, such as in the
23 case of a hospital in a rural area without sufficient Inter-
24 net access. In no case may a hospital be granted an ex-
25 emption under this subclause for more than 5 years.

"(III) For fiscal year 2016 and each subsequent fiscal year, a State in which hospitals are paid for services under section 1814(b)(3) shall adjust the payments to each subsection (d) hospital in the State that is not a meaningful EHR user (as defined in subsection (n)(3)) in a manner that is designed to result in an aggregate reduction in payments to hospitals in the State that is equivalent to the aggregate reduction that would have occurred if payments had been reduced to each subsection (d) hospital in the State in a manner comparable to the reduction under the previous provisions of this clause. The State shall report to the Secretary the methodology it will use to make the payment adjustment under the previous sentence.

"(IV) For purposes of this clause, the term 'reporting period' means, with respect to a fiscal year, any period (or periods), with respect to the fiscal year, as specified by the Secretary.".

(c) APPLICATION TO CERTAIN HMO-AFFILIATED ELIGIBLE HOSPITALS.—Section 1853 of the Social Security Act (42 U.S.C. 1395w–23), as amended by section 4311(c), is further amended by adding at the end the following new subsection:

"(m) APPLICATION OF ELIGIBLE HOSPITAL INCENTIVES FOR CERTAIN MA ORGANIZATIONS FOR ADOPTION

1 AND MEANINGFUL USE OF CERTIFIED EHR TECH-
2 NOLOGY.—
3 "(1) APPLICATION.—Subject to paragraphs (3)
4 and (4), in the case of a qualifying MA organization,
5 the provisions of sections 1886(n) and
6 1886(b)(3)(B)(ix) shall apply with respect to eligible
7 hospitals described in paragraph (2) of the organiza-
8 tion which the organization attests under subsection
9 (l)(6) to be meaningful EHR users in a similar man-
10 ner as they apply to eligible hospitals under such
11 sections. Incentive payments under paragraph (3)
12 shall be made to and payment adjustments under
13 paragraph (4) shall apply to such qualifying organi-
14 zations.
15 "(2) ELIGIBLE HOSPITAL DESCRIBED.—With
16 respect to a qualifying MA organization, an eligible
17 hospital described in this paragraph is an eligible
18 hospital that is under common corporate governance
19 with such organization and serves individuals en-
20 rolled under an MA plan offered by such organiza-
21 tion.
22 "(3) ELIGIBLE HOSPITAL INCENTIVE PAY-
23 MENTS.—
24 "(A) IN GENERAL.—In applying section
25 1886(n)(2) under paragraph (1), instead of the

1 additional payment amount under section
2 1886(n)(2), there shall be substituted an
3 amount determined by the Secretary to be simi-
4 lar to the estimated amount in the aggregate
5 that would be payable if payment for services
6 furnished by such hospitals was payable under
7 part A instead of this part. In implementing the
8 previous sentence, the Secretary—
9 ''(i) shall, insofar as data to deter-
10 mine the discharge related amount under
11 section 1886(n)(2)(C) for an eligible hos-
12 pital are not available to the Secretary, use
13 such alternative data and methodology to
14 estimate such discharge related amount as
15 the Secretary determines appropriate; and
16 ''(ii) shall, insofar as data to deter-
17 mine the medicare share described in sec-
18 tion 1886(n)(2)(D) for an eligible hospital
19 are not available to the Secretary, use such
20 alternative data and methodology to esti-
21 mate such share, which data and method-
22 ology may include use of the inpatient bed
23 days (or discharges) with respect to an eli-
24 gible hospital during the appropriate pe-
25 riod which are attributable to both individ-

1 uals for whom payment may be made
2 under part A or individuals enrolled in an
3 MA plan under a Medicare Advantage or-
4 ganization under this part as a proportion
5 of the total number of patient-bed-days (or
6 discharges) with respect to such hospital
7 during such period.

8 "(B) AVOIDING DUPLICATION OF PAY-
9 MENTS.—

10 "(i) IN GENERAL.—In the case of a
11 hospital that for a payment year is an eli-
12 gible hospital described in paragraph (2),
13 is an eligible hospital under section
14 1886(n), and for which at least one-third
15 of their discharges (or bed-days) of Medi-
16 care patients for the year are covered
17 under part A, payment for the payment
18 year shall be made only under section
19 1886(n) and not under this subsection.

20 "(ii) METHODS.—In the case of a
21 hospital that is an eligible hospital de-
22 scribed in paragraph (2) and also is eligi-
23 ble for an incentive payment under section
24 1886(n) but is not described in clause (i)

for the same payment period, the Secretary shall develop a process—

"(I) to ensure that duplicate payments are not made with respect to an eligible hospital both under this subsection and under section 1886(n); and

"(II) to collect data from Medicare Advantage organizations to ensure against such duplicate payments.

"(4) PAYMENT ADJUSTMENT.—

"(A) Subject to paragraph (3), in the case of a qualifying MA organization (as defined in section 1853(l)(5)), if, according to the attestation of the organization submitted under subsection (l)(6) for an applicable period, one or more eligible hospitals (as defined in section 1886(n)(6)(A)) that are under common corporate governance with such organization and that serve individuals enrolled under a plan offered by such organization are not meaningful EHR users (as defined in section 1886(n)(3)) with respect to a period, the payment amount payable under this section for such organization for such period shall be the percent specified in

1 subparagraph (B) for such period of the pay-
2 ment amount otherwise provided under this sec-
3 tion for such period.

4 "(B) SPECIFIED PERCENT.—The percent
5 specified under this subparagraph for a year is
6 100 percent minus a number of percentage
7 points equal to the product of—

8 "(i) the number of the percentage
9 point reduction effected under section
10 1886(b)(3)(B)(ix)(I) for the period; and

11 "(ii) the Medicare hospital expendi-
12 ture proportion specified in subparagraph
13 (C) for the year.

14 "(C) MEDICARE HOSPITAL EXPENDITURE
15 PROPORTION.—The Medicare hospital expendi-
16 ture proportion under this subparagraph for a
17 year is the Secretary's estimate of the propor-
18 tion, of the expenditures under parts A and B
19 that are not attributable to this part, that are
20 attributable to expenditures for inpatient hos-
21 pital services.

22 "(D) APPLICATION OF PAYMENT ADJUST-
23 MENT.—In the case that a qualifying MA orga-
24 nization attests that not all eligible hospitals
25 are meaningful EHR users with respect to an

applicable period, the Secretary shall apply the payment adjustment under this paragraph based on a methodology specified by the Secretary, taking into account the proportion of such eligible hospitals, or discharges from such hospitals, that are not meaningful EHR users for such period.''.

(d) CONFORMING AMENDMENTS.—

(1) Section 1814(b) of the Social Security Act (42 U.S.C. 1395f(b)) is amended—

(A) in paragraph (3), in the matter preceding subparagraph (A), by inserting '', subject to section 1886(d)(3)(B)(ix)(III),'' after ''then''; and

(B) by adding at the end the following: ''For purposes of applying paragraph (3), there shall be taken into account incentive payments, and payment adjustments under subsection (b)(3)(B)(ix) or (n) of section 1886.''.

(2) Section 1851(i)(1) of the Social Security Act (42 U.S.C. 1395w–21(i)(1)) is amended by striking ''and 1886(h)(3)(D)'' and inserting ''1886(h)(3)(D), and 1853(m)''.

(3) Section 1853 of the Social Security Act (42 U.S.C. 1395w–23), as amended by section 4311(d)(1), is amended—

(A) in subsection (c)—

(i) in paragraph (1)(D)(i), by striking ''1848(o)'' and inserting '', 1848(o), and 1886(n)''; and

(ii) in paragraph (6)(A), by inserting ''and subsections (b)(3)(B)(ix) and (n) of section 1886'' after ''section 1848''; and

(B) in subsection (f), by inserting ''and subsection (m)'' after ''under subsection (l)''.

SEC. 4313. TREATMENT OF PAYMENTS AND SAVINGS; IMPLEMENTATION FUNDING.

(a) PREMIUM HOLD HARMLESS.—

(1) IN GENERAL.—Section 1839(a)(1) of the Social Security Act (42 U.S.C. 1395r(a)(1)) is amended by adding at the end the following: ''In applying this paragraph there shall not be taken into account additional payments under section 1848(o) and section 1853(l)(3) and the Government contribution under section 1844(a)(3).''.

(2) PAYMENT.—Section 1844(a) of such Act (42 U.S.C. 1395w(a)) is amended—

(A) in paragraph (2), by striking the period at the end and inserting "; plus"; and

(B) by adding at the end the following new paragraph:

"(3) a Government contribution equal to the amount of payment incentives payable under sections 1848(o) and 1853(l)(3).".

(b) MEDICARE IMPROVEMENT FUND.—Section 1898 of the Social Security Act (42 U.S.C. 1395iii), as added by section 7002(a) of the Supplemental Appropriations Act, 2008 (Public Law 110–252) and as amended by section 188(a)(2) of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110–275; 122 Stat. 2589) and by section 6 of the QI Program Supplemental Funding Act of 2008, is amended—

(1) in subsection (a)—

(A) by inserting "medicare" before "fee-for-service"; and

(B) by inserting before the period at the end the following: "including, but not limited to, an increase in the conversion factor under section 1848(d) to address, in whole or in part, any projected shortfall in the conversion factor for 2014 relative to the conversion factor for 2008 and adjustments to payments for items

and services furnished by providers of services and suppliers under such original medicare fee-for-service program''; and

(2) in subsection (b)—

(A) in paragraph (1), by striking ''during fiscal year 2014,'' and all that follows and inserting the following: ''during—

''(A) fiscal year 2014, $22,290,000,000; and

''(B) fiscal year 2020 and each subsequent fiscal year, the Secretary's estimate, as of July 1 of the fiscal year, of the aggregate reduction in expenditures under this title during the preceding fiscal year directly resulting from the reduction in payment amounts under sections 1848(a)(7), 1853(l)(4), 1853(m)(4), and 1886(b)(3)(B)(ix).''; and

(B) by adding at the end the following new paragraph:

''(4) NO EFFECT ON PAYMENTS IN SUBSEQUENT YEARS.—In the case that expenditures from the Fund are applied to, or otherwise affect, a payment rate for an item or service under this title for a year, the payment rate for such item or service

shall be computed for a subsequent year as if such application or effect had never occurred.''.

(c) IMPLEMENTATION FUNDING.—In addition to funds otherwise available, out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary of Health and Human Services for the Center for Medicare & Medicaid Services Program Management Account, $60,000,000 for each of fiscal years 2009 through 2015 and $30,000,000 for each succeeding fiscal year through fiscal year 2019, which shall be available for purposes of carrying out the provisions of (and amendments made by) this part. Amounts appropriated under this subsection for a fiscal year shall be available until expended.

SEC. 4314. STUDY ON APPLICATION OF EHR PAYMENT INCENTIVES FOR PROVIDERS NOT RECEIVING OTHER INCENTIVE PAYMENTS.

(a) STUDY.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall conduct a study to determine the extent to which and manner in which payment incentives (such as under title XVIII or XIX of the Social Security Act) and other funding for purposes of implementing and using certified EHR technology (as defined in section 3000 of the Public Health

1 Service Act) should be made available to health care
2 providers who are receiving minimal or no payment
3 incentives or other funding under this Act, under
4 title XVIII or XIX of the Social Security Act, or
5 otherwise, for such purposes.
6 (2) DETAILS OF STUDY.—Such study shall in-
7 clude an examination of—
8 (A) the adoption rates of certified EHR
9 technology by such health care providers;
10 (B) the clinical utility of such technology
11 by such health care providers;
12 (C) whether the services furnished by such
13 health care providers are appropriate for or
14 would benefit from the use of such technology;
15 (D) the extent to which such health care
16 providers work in settings that might otherwise
17 receive an incentive payment or other funding
18 under this Act, title XVIII or XIX of the Social
19 Security Act, or otherwise;
20 (E) the potential costs and the potential
21 benefits of making payment incentives and
22 other funding available to such health care pro-
23 viders; and
24 (F) any other issues the Secretary deems
25 to be appropriate.

(b) REPORT.—Not later than June 30, 2010, the Secretary shall submit to Congress a report on the findings and conclusions of the study conducted under subsection (a).

PART III—MEDICAID FUNDING

SEC. 4321. MEDICAID PROVIDER HIT ADOPTION AND OPERATION PAYMENTS; IMPLEMENTATION FUNDING.

(a) IN GENERAL.—Section 1903 of the Social Security Act (42 U.S.C. 1396b) is amended—

(1) in subsection (a)(3)—

(A) by striking ''and'' at the end of subparagraph (D);

(B) by striking ''plus'' at the end of subparagraph (E) and inserting ''and''; and

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

''(F)(i) 100 percent of so much of the sums expended during such quarter as are attributable to payments for certified EHR technology (and support services including maintenance and training that is for, or is necessary for the adoption and operation of, such technology) by Medicaid providers described in subsection (t)(1); and

"(ii) 90 percent of so much of the sums expended during such quarter as are attributable to payments for reasonable administrative expenses related to the administration of payments described in clause (i) if the State meets the condition described in subsection (t)(9); plus"; and

(2) by inserting after subsection (s) the following new subsection:

"(t)(1)(A) For purposes of subsection (a)(3)(F), the payments for certified EHR technology (and support services including maintenance that is for, or is necessary for the operation of, such technology) by Medicaid providers described in this paragraph are payments made by the State in accordance with this subsection of the applicable percent (as specified in subparagraph (B)) of the net allowable costs of Medicaid providers (as defined in paragraph (2)) for such technology (and support services).

"(B) For purposes of subparagraph (A), the applicable percent is—

"(i) in the case of a Medicaid provider described in paragraph (2)(A), 85 percent; and

"(ii) in the case of a Medicaid provider described in paragraph (2)(B), 100 percent.

1 "(2) In this subsection and subsection (a)(3)(F), the
2 term 'Medicaid provider' means—
3 "(A) an eligible professional (as defined in
4 paragraph (3)(B)) who is not hospital-based and has
5 at least 30 percent of the professional's patient vol-
6 ume (as estimated in accordance with standards es-
7 tablished by the Secretary) attributable to individ-
8 uals who are receiving medical assistance under this
9 title; and
10 "(B)(i) a children's hospital, (ii) an acute-care
11 hospital that is not described in clause (i) and that
12 has at least 10 percent of the hospital's patient vol-
13 ume (as estimated in accordance with standards es-
14 tablished by the Secretary) attributable to individ-
15 uals who are receiving medical assistance under this
16 title, or (iii) a Federally-qualified health center or
17 rural health clinic that has at least 30 percent of the
18 center's or clinic's patient volume (as estimated in
19 accordance with standards established by the Sec-
20 retary) attributable to individuals who are receiving
21 medical assistance under this title.
22 An eligible professional shall not qualify as a Medicaid
23 provider under this subsection unless the eligible profes-
24 sional has waived, in a manner specified by the Secretary,
25 any right to payment under section 1848(o) with respect

1 to the adoption or support of certified EHR technology
2 by the professional. In applying clauses (ii) and (iii) of
3 subparagraph (B), the standards established by the Sec-
4 retary for patient volume shall include individuals enrolled
5 in a Medicaid managed care plan (under section 1903(m)
6 or section 1932).

7 "(3) In this subsection and subsection (a)(3)(F):

8 "(A) The term 'certified EHR technology'
9 means a qualified electronic health record (as de-
10 fined in 3000(13) of the Public Health Service Act)
11 that is certified pursuant to section 3001(c)(5) of
12 such Act as meeting standards adopted under sec-
13 tion 3004 of such Act that are applicable to the type
14 of record involved (as determined by the Secretary,
15 such as an ambulatory electronic health record for
16 office-based physicians or an inpatient hospital elec-
17 tronic health record for hospitals).

18 "(B) The term 'eligible professional' means a
19 physician as defined in paragraphs (1) and (2) of
20 section 1861(r), and includes a certified nurse mid-
21 wife and a nurse practitioner.

22 "(C) The term 'hospital-based' means, with re-
23 spect to an eligible professional, a professional (such
24 as a pathologist, anesthesiologist, or emergency phy-
25 sician) who furnishes substantially all of the individ-

1 ual's professional services in a hospital setting
2 (whether inpatient or outpatient) and through the
3 use of the facilities and equipment, including com-
4 puter equipment, of the hospital.

5 ''(4)(A) The term 'allowable costs' means, with re-
6 spect to certified EHR technology of a Medicaid provider,
7 costs of such technology (and support services including
8 maintenance and training that is for, or is necessary for
9 the adoption and operation of, such technology) as deter-
10 mined by the Secretary to be reasonable.

11 ''(B) The term 'net allowable costs' means allowable
12 costs reduced by any payment that is made to the Med-
13 icaid provider involved from any other source that is di-
14 rectly attributable to payment for certified EHR tech-
15 nology or services described in subparagraph (A).

16 ''(C) In no case shall—

17 ''(i) the aggregate allowable costs under this
18 subsection (covering one or more years) with respect
19 to a Medicaid provider described in paragraph
20 (2)(A) for purchase and initial implementation of
21 certified EHR technology (and services described in
22 subparagraph (A)) exceed $25,000 or include costs
23 over a period of longer than 5 years;

24 ''(ii) for costs not described in clause (i) relat-
25 ing to the operation, maintenance, or use of certified

1 EHR technology, the annual allowable costs under
2 this subsection with respect to such a Medicaid pro-
3 vider for costs not described in clause (i) for any
4 year exceed $10,000;
5 ''(iii) payment described in paragraph (1) for
6 costs described in clause (ii) be made with respect
7 to such a Medicaid provider over a period of more
8 than 5 years;
9 ''(iv) the aggregate allowable costs under this
10 subsection with respect to such a Medicaid provider
11 for all costs exceed $75,000; or
12 ''(v) the allowable costs, whether for purchase
13 and initial implementation, maintenance, or other-
14 wise, for a Medicaid provider described in paragraph
15 (2)(B)(iii) exceed such aggregate or annual limita-
16 tion as the Secretary shall establish, based on an
17 amount determined by the Secretary as being ade-
18 quate to adopt and maintain certified EHR tech-
19 nology, consistent with paragraph (6).
20 ''(5) Payments described in paragraph (1) are not in
21 accordance with this subsection unless the following re-
22 quirements are met:
23 ''(A) The State provides assurances satisfactory
24 to the Secretary that amounts received under sub-
25 section (a)(3)(F) with respect to costs of a Medicaid

1 provider are paid directly to such provider without
2 any deduction or rebate.
3 "(B) Such Medicaid provider is responsible for
4 payment of the costs described in such paragraph
5 that are not provided under this title.
6 "(C) With respect to payments to such Med-
7 icaid provider for costs other than costs related to
8 the initial adoption of certified EHR technology, the
9 Medicaid provider demonstrates meaningful use of
10 certified EHR technology through a means that is
11 approved by the State and acceptable to the Sec-
12 retary, and that may be based upon the methodolo-
13 gies applied under section 1848(o) or 1886(n).
14 "(D) To the extent specified by the Secretary,
15 the certified EHR technology is compatible with
16 State or Federal administrative management sys-
17 tems.
18 "(6)(A) In no case shall the payments described in
19 paragraph (1), with respect to a hospital, exceed in the
20 aggregate the product of—
21 "(i) the overall hospital EHR amount for the
22 hospital computed under subparagraph (B); and
23 "(ii) the Medicaid share for such hospital com-
24 puted under subparagraph (C).

1 "(B) For purposes of this paragraph, the overall hos-
2 pital EHR amount, with respect to a hospital, is the sum
3 of the applicable amounts specified in section
4 1886(n)(2)(A) for such hospital for the first 4 payment
5 years (as estimated by the Secretary) determined as if the
6 Medicare share specified in clause (ii) of such section were
7 1. The Secretary shall publish in the Federal Register the
8 overall hospital EHR amount for each hospital eligible for
9 payments under this subsection. In computing amounts
10 under paragraph 1886(n)(2)(C) for payment years after
11 the first payment year, the Secretary shall assume that
12 in subsequent payment years discharges increase at the
13 average annual rate of growth of the most recent 3 years
14 for which discharge data are available per year.
15 "(C) The Medicaid share computed under this sub-
16 paragraph, for a hospital for a period specified by the Sec-
17 retary, shall be calculated in the same manner as the
18 Medicare share under section 1886(n)(2)(D) for such a
19 hospital and period, except that there shall be substituted
20 for the numerator under clause (i) of such section the
21 amount that is equal to the number of inpatient-bed-days
22 (as established by the Secretary) which are attributable
23 to individuals who are receiving medical assistance under
24 this title and who are not described in section
25 1886(n)(2)(D)(i). In computing inpatient-bed-days under

1 the previous sentence, the Secretary shall take into ac-
2 count inpatient-bed-days attributable to inpatient-bed-
3 days that are paid for individuals enrolled in a Medicaid
4 managed care plan (under section 1903(m) or section
5 1932).

6 "(7) With respect to health care providers other than
7 hospitals, the Secretary shall ensure coordination of the
8 different programs for payment of such health care pro-
9 viders for adoption or use of health information technology
10 (including certified EHR technology), as well as payments
11 for such health care providers provided under this title or
12 title XVIII, to assure no duplication of funding.

13 "(8) In carrying out paragraph (5)(C), the State and
14 Secretary shall seek, to the maximum extent practicable,
15 to avoid duplicative requirements from Federal and State
16 Governments to demonstrate meaningful use of certified
17 EHR technology under this title and title XVIII. In doing
18 so, the Secretary may deem satisfaction of requirements
19 for such meaningful use for a payment year under title
20 XVIII to be sufficient to qualify as meaningful use under
21 this subsection. The Secretary may also specify the report-
22 ing periods under this subsection in order to carry out this
23 paragraph.

24 "(9) In order to be provided Federal financial partici-
25 pation under subsection (a)(3)(F)(ii), a State must dem-

1 onstrate to the satisfaction of the Secretary, that the
2 State—
3 "(A) is using the funds provided for the pur-
4 poses of administering payments under this sub-
5 section, including tracking of meaningful use by
6 Medicaid providers;
7 "(B) is conducting adequate oversight of the
8 program under this subsection, including routine
9 tracking of meaningful use attestations and report-
10 ing mechanisms; and
11 "(C) is pursuing initiatives to encourage the
12 adoption of certified EHR technology to promote
13 health care quality and the exchange of health care
14 information under this title, subject to applicable
15 laws and regulations governing such exchange.
16 "(10) The Secretary shall periodically submit reports
17 to the Committee on Energy and Commerce of the House
18 of Representatives and the Committee on Finance of the
19 Senate on status, progress, and oversight of payments
20 under paragraph (1).".
21 (b) IMPLEMENTATION FUNDING.—In addition to
22 funds otherwise available, out of any funds in the Treas-
23 ury not otherwise appropriated, there are appropriated to
24 the Secretary of Health and Human Services for the Cen-
25 ter for Medicare & Medicaid Services Program Manage-

1 ment Account, $40,000,000 for each of fiscal years 2009
2 through 2015 and $20,000,000 for each succeeding fiscal
3 year through fiscal year 2019, which shall be available for
4 purposes of carrying out the provisions of (and the amend-
5 ments made by) this part. Amounts appropriated under
6 this subsection for a fiscal year shall be available until ex-
7 pended.

8 **SEC. 4322. MEDICAID NURSING FACILITY GRANT PROGRAM.**

9 (a) IN GENERAL.—The Secretary shall establish a
10 grant program to enhance the meaningful use of certified
11 electronic health records in nursing facilities. In estab-
12 lishing such program, the Secretary shall use payment in-
13 centives for meaningful use of certified EHR technology,
14 similar to those specified in sections 4311, 4312, and
15 4321, as appropriate. For the purpose of such incentives,
16 the Secretary shall define meaningful use in a manner so
17 as to be consistent with such sections to the extent prac-
18 ticable. The Secretary shall award funds to not more than
19 10 States to carry out activities under this section.

20 (b) ACTIVITIES.—The Secretary shall require a State
21 participating in the grant program to—

22 (1) provide payment incentives to nursing facili-
23 ties contingent on the demonstration of meaningful
24 use of certified electronic health records;

(2) require participating nursing facilities to engage in programs to improve the quality and coordination of care through the use of certified EHR technology, including for persons who are repeatedly admitted to acute care hospitals from the nursing facility and persons who receive services across multiple medical and social services providers (including facility and community-based providers); and

(3) provide for training of appropriate personnel in the use of certified electronic health records.

(c) TARGETING.—The Secretary shall require a State participating in the grant program to target nursing facilities with a significant percentage (but not less than the average in the State) of the facility's patient volume (as estimated in accordance with standards established by the Secretary) attributable to individuals who are receiving medical assistance under title XIX of the Social Security Act.

(d) PRIORITY.—In making grants under this section, the Secretary shall give priority to States with a high proportion of total national nursing facility days paid under title XIX of the Social Security Act.

(e) LIMITATIONS ON USE OF FUNDS.—A State may not make payments to a nursing facility in excess of 90

1 percent of the costs of such nursing facility for the adop-
2 tion and operation of certified EHR technology.

3 (f) APPLICATION.—No grant may be made to a State
4 under this section unless the State submits an application
5 to the Secretary in a form and manner specified by the
6 Secretary.

7 (g) REPORT.—Not later than the end of the 3-year
8 period beginning on the date that grants under this sec-
9 tion are first awarded, the Secretary shall submit a report
10 to Congress on the activities under this grant program and
11 the effect of this program on quality and coordination of
12 care under title XIX of the Social Security Act.

13 (h) APPROPRIATION.—Out of any money in the
14 Treasury not otherwise appropriated, there is appro-
15 priated to the Secretary of Health and Human Services
16 to carry out this section $600,000,000, to remain available
17 until expended.

18 **Subtitle D—Privacy**

19 **SEC. 4400. DEFINITIONS.**

20 In this subtitle, except as specified otherwise:

21 (1) BREACH.—The term ''breach'' means the
22 unauthorized acquisition, access, use, or disclosure
23 of protected health information which compromises
24 the security, privacy, or integrity of protected health
25 information maintained by or on behalf of a person.

Such term does not include any unintentional acquisition, access, use, or disclosure of such information by an employee or agent of the covered entity or business associate involved if such acquisition, access, use, or disclosure, respectively, was made in good faith and within the course and scope of the employment or other contractual relationship of such employee or agent, respectively, with the covered entity or business associate and if such information is not further acquired, accessed, used, or disclosed by such employee or agent.

(2) BUSINESS ASSOCIATE.—The term ''business associate'' has the meaning given such term in section 160.103 of title 45, Code of Federal Regulations.

(3) COVERED ENTITY.—The term ''covered entity'' has the meaning given such term in section 160.103 of title 45, Code of Federal Regulations.

(4) DISCLOSE.—The terms ''disclose'' and ''disclosure'' have the meaning given the term ''disclosure'' in section 160.103 of title 45, Code of Federal Regulations.

(5) ELECTRONIC HEALTH RECORD.—The term ''electronic health record'' means an electronic record of health-related information on an individual

that is created, gathered, managed, and consulted by authorized health care clinicians and staff.

(6) HEALTH CARE OPERATIONS.—The term ''health care operation'' has the meaning given such term in section 164.501 of title 45, Code of Federal Regulations.

(7) HEALTH CARE PROVIDER.—The term ''health care provider'' has the meaning given such term in section 160.103 of title 45, Code of Federal Regulations.

(8) HEALTH PLAN.—The term ''health plan'' has the meaning given such term in section 1171(5) of the Social Security Act.

(9) NATIONAL COORDINATOR.—The term ''National Coordinator'' means the head of the Office of the National Coordinator for Health Information Technology established under section 3001(a) of the Public Health Service Act, as added by section 4101.

(10) PAYMENT.—The term ''payment'' has the meaning given such term in section 164.501 of title 45, Code of Federal Regulations.

(11) PERSONAL HEALTH RECORD.—The term ''personal health record'' means an electronic record of individually identifiable health information on an

individual that can be drawn from multiple sources and that is managed, shared, and controlled by or for the individual.

(12) PROTECTED HEALTH INFORMATION.—The term ''protected health information'' has the meaning given such term in section 160.103 of title 45, Code of Federal Regulations.

(13) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(14) SECURITY.—The term ''security'' has the meaning given such term in section 164.304 of title 45, Code of Federal Regulations.

(15) STATE.—The term ''State'' means each of the several States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

(16) TREATMENT.—The term ''treatment'' has the meaning given such term in section 164.501 of title 45, Code of Federal Regulations.

(17) USE.—The term ''use'' has the meaning given such term in section 160.103 of title 45, Code of Federal Regulations.

(18) VENDOR OF PERSONAL HEALTH RECORDS.—The term ''vendor of personal health records'' means an entity, other than a covered enti-

ty (as defined in paragraph (3)), that offers or maintains a personal health record.

PART I—IMPROVED PRIVACY PROVISIONS AND SECURITY PROVISIONS

SEC. 4401. APPLICATION OF SECURITY PROVISIONS AND PENALTIES TO BUSINESS ASSOCIATES OF COVERED ENTITIES; ANNUAL GUIDANCE ON SECURITY PROVISIONS.

(a) APPLICATION OF SECURITY PROVISIONS.—Sections 164.308, 164.310, 164.312, and 164.316 of title 45, Code of Federal Regulations, shall apply to a business associate of a covered entity in the same manner that such sections apply to the covered entity. The additional requirements of this title that relate to security and that are made applicable with respect to covered entities shall also be applicable to such a business associate and shall be incorporated into the business associate agreement between the business associate and the covered entity.

(b) APPLICATION OF CIVIL AND CRIMINAL PENALTIES.—In the case of a business associate that violates any security provision specified in subsection (a), sections 1176 and 1177 of the Social Security Act (42 U.S.C. 1320d–5, 1320d–6) shall apply to the business associate with respect to such violation in the same manner such

1 sections apply to a covered entity that violates such secu-
2 rity provision.

3 (c) ANNUAL GUIDANCE.—For the first year begin-
4 ning after the date of the enactment of this Act and annu-
5 ally thereafter, the Secretary of Health and Human Serv-
6 ices shall, in consultation with industry stakeholders, an-
7 nually issue guidance on the most effective and appro-
8 priate technical safeguards for use in carrying out the sec-
9 tions referred to in subsection (a) and the security stand-
10 ards in subpart C of part 164 of title 45, Code of Federal
11 Regulations, including the use of standards developed
12 under section 3002(b)(2)(B)(vi) of the Public Health
13 Service Act, as added by section 4101, as such provisions
14 are in effect as of the date before the enactment of this
15 Act.

16 **SEC. 4402. NOTIFICATION IN THE CASE OF BREACH.**

17 (a) IN GENERAL.—A covered entity that accesses,
18 maintains, retains, modifies, records, stores, destroys, or
19 otherwise holds, uses, or discloses unsecured protected
20 health information (as defined in subsection (h)(1)) shall,
21 in the case of a breach of such information that is discov-
22 ered by the covered entity, notify each individual whose
23 unsecured protected health information has been, or is
24 reasonably believed by the covered entity to have been,
25 accessed, acquired, or disclosed as a result of such breach.

1 (b) NOTIFICATION OF COVERED ENTITY BY BUSI-
2 NESS ASSOCIATE.—A business associate of a covered enti-
3 ty that accesses, maintains, retains, modifies, records,
4 stores, destroys, or otherwise holds, uses, or discloses un-
5 secured protected health information shall, following the
6 discovery of a breach of such information, notify the cov-
7 ered entity of such breach. Such notice shall include the
8 identification of each individual whose unsecured protected
9 health information has been, or is reasonably believed by
10 the business associate to have been, accessed, acquired,
11 or disclosed during such breach.
12 (c) BREACHES TREATED AS DISCOVERED.—For pur-
13 poses of this section, a breach shall be treated as discov-
14 ered by a covered entity or by a business associate as of
15 the first day on which such breach is known to such entity
16 or associate, respectively, (including any person, other
17 than the individual committing the breach, that is an em-
18 ployee, officer, or other agent of such entity or associate,
19 respectively) or should reasonably have been known to
20 such entity or associate (or person) to have occurred.
21 (d) TIMELINESS OF NOTIFICATION.—
22 (1) IN GENERAL.—Subject to subsection (g), all
23 notifications required under this section shall be
24 made without unreasonable delay and in no case
25 later than 60 calendar days after the discovery of a

breach by the covered entity involved (or business associate involved in the case of a notification required under subsection (b)).

(2) BURDEN OF PROOF.—The covered entity involved (or business associate involved in the case of a notification required under subsection (b)), shall have the burden of demonstrating that all notifications were made as required under this part, including evidence demonstrating the necessity of any delay.

(e) METHODS OF NOTICE.—

(1) INDIVIDUAL NOTICE.—Notice required under this section to be provided to an individual, with respect to a breach, shall be provided promptly and in the following form:

(A) Written notification by first-class mail to the individual (or the next of kin of the individual if the individual is deceased) at the last known address of the individual or the next of kin, respectively, or, if specified as a preference by the individual, by electronic mail. The notification may be provided in one or more mailings as information is available.

(B) In the case in which there is insufficient, or out-of-date contact information (in-

1 cluding a phone number, email address, or any
2 other form of appropriate communication) that
3 precludes direct written (or, if specified by the
4 individual under subparagraph (A), electronic)
5 notification to the individual, a substitute form
6 of notice shall be provided, including, in the
7 case that there are 10 or more individuals for
8 which there is insufficient or out-of-date contact
9 information, a conspicuous posting for a period
10 determined by the Secretary on the home page
11 of the Web site of the covered entity involved or
12 notice in major print or broadcast media, in-
13 cluding major media in geographic areas where
14 the individuals affected by the breach likely re-
15 side. Such a notice in media or web posting will
16 include a toll-free phone number where an indi-
17 vidual can learn whether or not the individual's
18 unsecured protected health information is pos-
19 sibly included in the breach.
20 (C) In any case deemed by the covered en-
21 tity involved to require urgency because of pos-
22 sible imminent misuse of unsecured protected
23 health information, the covered entity, in addi-
24 tion to notice provided under subparagraph (A),

may provide information to individuals by telephone or other means, as appropriate.

(2) MEDIA NOTICE.—Notice shall be provided to prominent media outlets serving a State or jurisdiction, following the discovery of a breach described in subsection (a), if the unsecured protected health information of more than 500 residents of such State or jurisdiction is, or is reasonably believed to have been, accessed, acquired, or disclosed during such breach.

(3) NOTICE TO SECRETARY.—Notice shall be provided to the Secretary by covered entities of unsecured protected health information that has been acquired or disclosed in a breach. If the breach was with respect to 500 or more individuals than such notice must be provided immediately. If the breach was with respect to less than 500 individuals, the covered entity involved may maintain a log of any such breach occurring and annually submit such a log to the Secretary documenting such breaches occurring during the year involved.

(4) POSTING ON HHS PUBLIC WEBSITE.—The Secretary shall make available to the public on the Internet website of the Department of Health and Human Services a list that identifies each covered

entity involved in a breach described in subsection (a) in which the unsecured protected health information of more than 500 individuals is acquired or disclosed.

(f) CONTENT OF NOTIFICATION.—Regardless of the method by which notice is provided to individuals under this section, notice of a breach shall include, to the extent possible, the following:

(1) A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known.

(2) A description of the types of unsecured protected health information that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code).

(3) The steps individuals should take to protect themselves from potential harm resulting from the breach.

(4) A brief description of what the covered entity involved is doing to investigate the breach, to mitigate losses, and to protect against any further breaches.

(5) Contact procedures for individuals to ask questions or learn additional information, which

shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

(g) DELAY OF NOTIFICATION AUTHORIZED FOR LAW ENFORCEMENT PURPOSES.—If a law enforcement official determines that a notification, notice, or posting required under this section would impede a criminal investigation or cause damage to national security, such notification, notice, or posting shall be delayed in the same manner as provided under section 164.528(a)(2) of title 45, Code of Federal Regulations, in the case of a disclosure covered under such section.

(h) UNSECURED PROTECTED HEALTH INFORMATION.—

(1) DEFINITION.—

(A) IN GENERAL.—Subject to subparagraph (B), for purposes of this section, the term ''unsecured protected health information'' means protected health information that is not secured through the use of a technology or methodology specified by the Secretary in the guidance issued under paragraph (2).

(B) EXCEPTION IN CASE TIMELY GUIDANCE NOT ISSUED.—In the case that the Secretary does not issue guidance under paragraph (2) by the date specified in such paragraph, for

1 purposes of this section, the term ''unsecured
2 protected health information'' shall mean pro-
3 tected health information that is not secured by
4 a technology standard that renders protected
5 health information unusable, unreadable, or in-
6 decipherable to unauthorized individuals and is
7 developed or endorsed by a standards devel-
8 oping organization that is accredited by the
9 American National Standards Institute.

10 (2) GUIDANCE.—For purposes of paragraph (1)
11 and section 407(f)(3), not later than the date that
12 is 60 days after the date of the enactment of this
13 Act, the Secretary shall, after consultation with
14 stakeholders, issue (and annually update) guidance
15 specifying the technologies and methodologies that
16 render protected health information unusable,
17 unreadable, or indecipherable to unauthorized indi-
18 viduals, including use of standards developed under
19 section 3002(b)(2)(B)(vi) of the Public Health Serv-
20 ice Act, as added by section 4101.

21 (i) REPORT TO CONGRESS ON BREACHES.—

22 (1) IN GENERAL.—Not later than 12 months
23 after the date of the enactment of this Act and an-
24 nually thereafter, the Secretary shall prepare and
25 submit to the Committee on Finance and the Com-

mittee on Health, Education, Labor, and Pensions of the Senate and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives a report containing the information described in paragraph (2) regarding breaches for which notice was provided to the Secretary under subsection (e)(3).

(2) INFORMATION.—The information described in this paragraph regarding breaches specified in paragraph (1) shall include—

(A) the number and nature of such breaches; and

(B) actions taken in response to such breaches.

(j) REGULATIONS; EFFECTIVE DATE.—To carry out this section, the Secretary of Health and Human Services shall promulgate interim final regulations by not later than the date that is 180 days after the date of the enactment of this title. The provisions of this section shall apply to breaches that are discovered on or after the date that is 30 days after the date of publication of such interim final regulations.

SEC. 4403. EDUCATION ON HEALTH INFORMATION PRIVACY.

(a) REGIONAL OFFICE PRIVACY ADVISORS.—Not later than 6 months after the date of the enactment of this Act, the Secretary shall designate an individual in each regional office of the Department of Health and Human Services to offer guidance and education to covered entities, business associates, and individuals on their rights and responsibilities related to Federal privacy and security requirements for protected health information.

(b) EDUCATION INITIATIVE ON USES OF HEALTH INFORMATION.—Not later than 12 months after the date of the enactment of this Act, the Office for Civil Rights within the Department of Health and Human Services shall develop and maintain a multi-faceted national education initiative to enhance public transparency regarding the uses of protected health information, including programs to educate individuals about the potential uses of their protected health information, the effects of such uses, and the rights of individuals with respect to such uses. Such programs shall be conducted in a variety of languages and present information in a clear and understandable manner.

SEC. 4404. APPLICATION OF PRIVACY PROVISIONS AND PENALTIES TO BUSINESS ASSOCIATES OF COVERED ENTITIES.

(a) APPLICATION OF CONTRACT REQUIREMENTS.—In the case of a business associate of a covered entity that obtains or creates protected health information pursuant to a written contract (or other written arrangement) described in section 164.502(e)(2) of title 45, Code of Federal Regulations, with such covered entity, the business associate may use and disclose such protected health information only if such use or disclosure, respectively, is in compliance with each applicable requirement of section 164.504(e) of such title. The additional requirements of this subtitle that relate to privacy and that are made applicable with respect to covered entities shall also be applicable to such a business associate and shall be incorporated into the business associate agreement between the business associate and the covered entity.

(b) APPLICATION OF KNOWLEDGE ELEMENTS ASSOCIATED WITH CONTRACTS.—Section 164.504(e)(1)(ii) of title 45, Code of Federal Regulations, shall apply to a business associate described in subsection (a), with respect to compliance with such subsection, in the same manner that such section applies to a covered entity, with respect to compliance with the standards in sections 164.502(e) and 164.504(e) of such title, except that in applying such

section 164.504(e)(1)(ii) each reference to the business associate, with respect to a contract, shall be treated as a reference to the covered entity involved in such contract.

(c) APPLICATION OF CIVIL AND CRIMINAL PENALTIES.—In the case of a business associate that violates any provision of subsection (a) or (b), the provisions of sections 1176 and 1177 of the Social Security Act (42 U.S.C. 1320d–5, 1320d–6) shall apply to the business associate with respect to such violation in the same manner as such provisions apply to a person who violates a provision of part C of title XI of such Act.

SEC. 4405. RESTRICTIONS ON CERTAIN DISCLOSURES AND SALES OF HEALTH INFORMATION; ACCOUNTING OF CERTAIN PROTECTED HEALTH INFORMATION DISCLOSURES; ACCESS TO CERTAIN INFORMATION IN ELECTRONIC FORMAT.

(a) REQUESTED RESTRICTIONS ON CERTAIN DISCLOSURES OF HEALTH INFORMATION.—In the case that an individual requests under paragraph (a)(1)(i)(A) of section 164.522 of title 45, Code of Federal Regulations, that a covered entity restrict the disclosure of the protected health information of the individual, notwithstanding paragraph (a)(1)(ii) of such section, the covered entity must comply with the requested restriction if—

(1) except as otherwise required by law, the disclosure is to a health plan for purposes of carrying out payment or health care operations (and is not for purposes of carrying out treatment); and

(2) the protected health information pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full.

(b) DISCLOSURES REQUIRED TO BE LIMITED TO THE LIMITED DATA SET OR THE MINIMUM NECESSARY.—

(1) IN GENERAL.—

(A) IN GENERAL.—Subject to subparagraph (B), a covered entity shall be treated as being in compliance with section 164.502(b)(1) of title 45, Code of Federal Regulations, with respect to the use, disclosure, or request of protected health information described in such section, only if the covered entity limits such protected health information, to the extent practicable, to the limited data set (as defined in section 164.514(e)(2) of such title) or, if needed by such entity, to the minimum necessary to accomplish the intended purpose of such use, disclosure, or request, respectively.

(B) GUIDANCE.—Not later than 18 months after the date of the enactment of this section, the Secretary shall issue guidance on what constitutes "minimum necessary" for purposes of subpart E of part 164 of title 45, Code of Federal Regulation. In issuing such guidance the Secretary shall take into consideration the guidance under section 4424(c).

(C) SUNSET.—Subparagraph (A) shall not apply on and after the effective date on which the Secretary issues the guidance under subparagraph (B).

(2) DETERMINATION OF MINIMUM NECESSARY.—For purposes of paragraph (1), in the case of the disclosure of protected health information, the covered entity or business associate disclosing such information shall determine what constitutes the minimum necessary to accomplish the intended purpose of such disclosure.

(3) APPLICATION OF EXCEPTIONS.—The exceptions described in section 164.502(b)(2) of title 45, Code of Federal Regulations, shall apply to the requirement under paragraph (1) as of the effective date described in section 4423 in the same manner

that such exceptions apply to section 164.502(b)(1) of such title before such date.

(4) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed as affecting the use, disclosure, or request of protected health information that has been de-identified.

(c) ACCOUNTING OF CERTAIN PROTECTED HEALTH INFORMATION DISCLOSURES REQUIRED IF COVERED ENTITY USES ELECTRONIC HEALTH RECORD.—

(1) IN GENERAL.—In applying section 164.528 of title 45, Code of Federal Regulations, in the case that a covered entity uses or maintains an electronic health record with respect to protected health information—

(A) the exception under paragraph (a)(1)(i) of such section shall not apply to disclosures through an electronic health record made by such entity of such information; and

(B) an individual shall have a right to receive an accounting of disclosures described in such paragraph of such information made by such covered entity during only the three years prior to the date on which the accounting is requested.

1 (2) REGULATIONS.—The Secretary shall pro-
2 mulgate regulations on what information shall be
3 collected about each disclosure referred to in para-
4 graph (1)(A) not later than 18 months after the
5 date on which the Secretary adopts standards on ac-
6 counting for disclosure described in the section
7 3002(b)(2)(B)(iv) of the Public Health Service Act,
8 as added by section 4101. Such regulations shall
9 only require such information to be collected through
10 an electronic health record in a manner that takes
11 into account the interests of individuals in learning
12 the circumstances under which their protected health
13 information is being disclosed and takes into account
14 the administrative burden of accounting for such
15 disclosures.
16 (3) CONSTRUCTION.—Nothing in this sub-
17 section shall be construed as requiring a covered en-
18 tity to account for disclosures of protected health in-
19 formation that are not made by such covered entity
20 or by a business associate acting on behalf of the
21 covered entity.
22 (4) EFFECTIVE DATE.—
23 (A) CURRENT USERS OF ELECTRONIC
24 RECORDS.—In the case of a covered entity inso-
25 far as it acquired an electronic health record as

of January 1, 2009, paragraph (1) shall apply to disclosures, with respect to protected health information, made by the covered entity from such a record on and after January 1, 2014.

(B) OTHERS.—In the case of a covered entity insofar as it acquires an electronic health record after January 1, 2009, paragraph (1) shall apply to disclosures, with respect to protected health information, made by the covered entity from such record on and after the later of the following:

(i) January 1, 2011; or

(ii) the date that it acquires an electronic health record.

(d) REVIEW OF HEALTH CARE OPERATIONS.—Not later than 18 months after the date of the enactment of this title, the Secretary shall promulgate regulations to eliminate from the definition of health care operations under section 164.501 of title 45, Code of Federal Regulations, those activities that can reasonably and efficiently be conducted through the use of information that is de-identified (in accordance with the requirements of section 164.514(b) of such title) or that should require a valid authorization for use or disclosure. In promulgating such regulations, the Secretary may choose to narrow or clarify

activities that the Secretary chooses to retain in the definition of health care operations and the Secretary shall take into account the report under section 424(d). In such regulations the Secretary shall specify the date on which such regulations shall apply to disclosures made by a covered entity, but in no case would such date be sooner than the date that is 24 months after the date of the enactment of this section.

(e) PROHIBITION ON SALE OF ELECTRONIC HEALTH RECORDS OR PROTECTED HEALTH INFORMATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), a covered entity or business associate shall not directly or indirectly receive remuneration in exchange for any protected health information of an individual unless the covered entity obtained from the individual, in accordance with section 164.508 of title 45, Code of Federal Regulations, a valid authorization that includes, in accordance with such section, a specification of whether the protected health information can be further exchanged for remuneration by the entity receiving protected health information of that individual.

(2) EXCEPTIONS.—Paragraph (1) shall not apply in the following cases:

(A) The purpose of the exchange is for research or public health activities (as described in sections 164.501, 164.512(i), and 164.512(b) of title 45, Code of Federal Regulations) and the price charged reflects the costs of preparation and transmittal of the data for such purpose.

(B) The purpose of the exchange is for the treatment of the individual and the price charges reflects not more than the costs of preparation and transmittal of the data for such purpose.

(C) The purpose of the exchange is the health care operation specifically described in subparagraph (iv) of paragraph (6) of the definition of health care operations in section 164.501 of title 45, Code of Federal Regulations.

(D) The purpose of the exchange is for remuneration that is provided by a covered entity to a business associate for activities involving the exchange of protected health information that the business associate undertakes on behalf of and at the specific request of the covered entity pursuant to a business associate agreement.

(E) The purpose of the exchange is to provide an individual with a copy of the individual's protected health information pursuant to section 164.524 of title 45, Code of Federal Regulations.

(F) The purpose of the exchange is otherwise determined by the Secretary in regulations to be similarly necessary and appropriate as the exceptions provided in subparagraphs (A) through (E).

(3) REGULATIONS.—The Secretary shall promulgate regulations to carry out paragraph (this subsection, including exceptions described in paragraph (2), not later than 18 months after the date of the enactment of this title.

(4) EFFECTIVE DATE.—Paragraph (1) shall apply to exchanges occurring on or after the date that is 6 months after the date of the promulgation of final regulations implementing this subsection.

(f) ACCESS TO CERTAIN INFORMATION IN ELECTRONIC FORMAT.—In applying section 164.524 of title 45, Code of Federal Regulations, in the case that a covered entity uses or maintains an electronic health record with respect to protected health information of an individual—

(1) the individual shall have a right to obtain from such covered entity a copy of such information in an electronic format; and

(2) notwithstanding paragraph (c)(4) of such section, any fee that the covered entity may impose for providing such individual with a copy of such information (or a summary or explanation of such information) if such copy (or summary or explanation) is in an electronic form shall not be greater than the entity's labor costs in responding to the request for the copy (or summary or explanation).

(g) CLARIFICATION.—Nothing in this subtitle shall constitute a waiver of any privilege otherwise applicable to an individual with respect to the protected health information of such individual.

SEC. 4406. CONDITIONS ON CERTAIN CONTACTS AS PART OF HEALTH CARE OPERATIONS.

(a) MARKETING.—

(1) IN GENERAL.—A communication by a covered entity or business associate that is about a product or service and that encourages recipients of the communication to purchase or use the product or service shall not be considered a health care operation for purposes of subpart E of part 164 of title 45, Code of Federal Regulations, unless the commu-

nication is made as described in subparagraph (i), (ii), or (iii) of paragraph (1) of the definition of marketing in section 164.501 of such title.

(2) PAYMENT FOR CERTAIN COMMUNICATIONS.—A covered entity or business associate may not receive direct or indirect payment in exchange for making any communication described in subparagraph (i), (ii), or (iii) of paragraph (1) of the definition of marketing in section 164.501 of title 45, Code of Federal Regulations, except—

(A) a business associate of a covered entity may receive payment from the covered entity for making any such communication on behalf of the covered entity that is consistent with the written contract (or other written arrangement) described in section 164.502(e)(2) of such title between such business associate and covered entity; or

(B) a covered entity may receive payment in exchange for making any such communication if the entity obtains from the recipient of the communication, in accordance with section 164.508 of title 45, Code of Federal Regulations, a valid authorization (as described in

1 paragraph (b) of such section) with respect to
2 such communication.
3 (b) FUNDRAISING.—Fundraising for the benefit of a
4 covered entity shall not be considered a health care oper-
5 ation for purposes of section 164.501 of title 45, Code of
6 Federal Regulations.
7 (c) EFFECTIVE DATE.—This section shall apply to
8 contracting occurring on or after the effective date speci-
9 fied under section 4423.

10 **SEC. 4407. TEMPORARY BREACH NOTIFICATION REQUIRE-**
11 **MENT FOR VENDORS OF PERSONAL HEALTH**
12 **RECORDS AND OTHER NON-HIPAA COVERED**
13 **ENTITIES.**

14 (a) IN GENERAL.—In accordance with subsection (c),
15 each vendor of personal health records, following the dis-
16 covery of a breach of security of unsecured PHR identifi-
17 able health information that is in a personal health record
18 maintained or offered by such vendor, and each entity de-
19 scribed in clause (ii) or (iii) of section 4424(b)(1)(A), fol-
20 lowing the discovery of a breach of security of such infor-
21 mation that is obtained through a product or service pro-
22 vided by such entity, shall—
23 (1) notify each individual who is a citizen or
24 resident of the United States whose unsecured PHR
25 identifiable health information was acquired by an

unauthorized person as a result of such a breach of security; and

(2) notify the Federal Trade Commission.

(b) NOTIFICATION BY THIRD PARTY SERVICE PROVIDERS.—A third party service provider that provides services to a vendor of personal health records or to an entity described in clause (ii) or (iii) of section 4424(b)(1)(A) in connection with the offering or maintenance of a personal health record or a related product or service and that accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses unsecured PHR identifiable health information in such a record as a result of such services shall, following the discovery of a breach of security of such information, notify such vendor or entity, respectively, of such breach. Such notice shall include the identification of each individual whose unsecured PHR identifiable health information has been, or is reasonably believed to have been, accessed, acquired, or disclosed during such breach.

(c) APPLICATION OF REQUIREMENTS FOR TIMELINESS, METHOD, AND CONTENT OF NOTIFICATIONS.—Subsections (c), (d), (e), and (f) of section 402 shall apply to a notification required under subsection (a) and a vendor of personal health records, an entity described in subsection (a) and a third party service provider described

in subsection (b), with respect to a breach of security under subsection (a) of unsecured PHR identifiable health information in such records maintained or offered by such vendor, in a manner specified by the Federal Trade Commission.

(d) NOTIFICATION OF THE SECRETARY.—Upon receipt of a notification of a breach of security under subsection (a)(2), the Federal Trade Commission shall notify the Secretary of such breach.

(e) ENFORCEMENT.—A violation of subsection (a) or (b) shall be treated as an unfair and deceptive act or practice in violation of a regulation under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57*a*(a)(1)(B)) regarding unfair or deceptive acts or practices.

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

(1) BREACH OF SECURITY.—The term ''breach of security'' means, with respect to unsecured PHR identifiable health information of an individual in a personal health record, acquisition of such information without the authorization of the individual.

(2) PHR IDENTIFIABLE HEALTH INFORMATION.—The term ''PHR identifiable health information'' means individually identifiable health information, as defined in section 1171(6) of the Social Se-

1 curity Act (42 U.S.C. 1320d(6)), and includes, with
2 respect to an individual, information—
3 (A) that is provided by or on behalf of the
4 individual; and
5 (B) that identifies the individual or with
6 respect to which there is a reasonable basis to
7 believe that the information can be used to
8 identify the individual.
9 (3) UNSECURED PHR IDENTIFIABLE HEALTH
10 INFORMATION.—
11 (A) IN GENERAL.—Subject to subpara-
12 graph (B), the term ''unsecured PHR identifi-
13 able health information'' means PHR identifi-
14 able health information that is not protected
15 through the use of a technology or methodology
16 specified by the Secretary in the guidance
17 issued under section 4402(h)(2).
18 (B) EXCEPTION IN CASE TIMELY GUID-
19 ANCE NOT ISSUED.—In the case that the Sec-
20 retary does not issue guidance under section
21 4402(h)(2) by the date specified in such sec-
22 tion, for purposes of this section, the term ''un-
23 secured PHR identifiable health information''
24 shall mean PHR identifiable health information
25 that is not secured by a technology standard

that renders protected health information unusable, unreadable, or indecipherable to unauthorized individuals and that is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute.

(g) REGULATIONS; EFFECTIVE DATE; SUNSET.—

(1) REGULATIONS; EFFECTIVE DATE.—To carry out this section, the Secretary of Health and Human Services shall promulgate interim final regulations by not later than the date that is 180 days after the date of the enactment of this section. The provisions of this section shall apply to breaches of security that are discovered on or after the date that is 30 days after the date of publication of such interim final regulations.

(2) SUNSET.—The provisions of this section shall not apply to breaches of security occurring on or after the earlier of the following the dates:

(A) The date on which a standard relating to requirements for entities that are not covered entities that includes requirements relating to breach notification has been promulgated by the Secretary.

(B) The date on which a standard relating to requirements for entities that are not covered entities that includes requirements relating to breach notification has been promulgated by the Federal Trade Commission and has taken effect.

SEC. 4408. BUSINESS ASSOCIATE CONTRACTS REQUIRED FOR CERTAIN ENTITIES.

Each organization, with respect to a covered entity, that provides data transmission of protected health information to such entity (or its business associate) and that requires access on a routine basis to such protected health information, such as a Health Information Exchange Organization, Regional Health Information Organization, E-prescribing Gateway, or each vendor that contracts with a covered entity to allow that covered entity to offer a personal health record to patients as part of its electronic health record, is required to enter into a written contract (or other written arrangement) described in section 164.502(e)(2) of title 45, Code of Federal Regulations and a written contract (or other arrangement) described in section 164.308(b) of such title, with such entity and shall be treated as a business associate of the covered entity for purposes of the provisions of this subtitle and subparts C and E of part 164 of title 45, Code of Federal Regula-

tions, as such provisions are in effect as of the date of enactment of this title.

SEC. 4409. CLARIFICATION OF APPLICATION OF WRONGFUL DISCLOSURES CRIMINAL PENALTIES.

Section 1177(a) of the Social Security Act (42 U.S.C. 1320d–6(a)) is amended by adding at the end the following new sentence: ''For purposes of the previous sentence, a person (including an employee or other individual) shall be considered to have obtained or disclosed individually identifiable health information in violation of this part if the information is maintained by a covered entity (as defined in the HIPAA privacy regulation described in section 1180(b)(3)) and the individual obtained or disclosed such information without authorization.''.

SEC. 4410. IMPROVED ENFORCEMENT.

(a) IN GENERAL.—Section 1176 of the Social Security Act (42 U.S.C. 1320d–5) is amended—

(1) in subsection (b)(1), by striking ''the act constitutes an offense punishable under section 1177'' and inserting ''a penalty has been imposed under section 1177 with respect to such act''; and

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

''(c) NONCOMPLIANCE DUE TO WILLFUL NEGLECT.—

"(1) IN GENERAL.—A violation of a provision of this part due to willful neglect is a violation for which the Secretary is required to impose a penalty under subsection (a)(1).

"(2) REQUIRED INVESTIGATION.—For purposes of paragraph (1), the Secretary shall formally investigate any complaint of a violation of a provision of this part if a preliminary investigation of the facts of the complaint indicate such a possible violation due to willful neglect.".

(b) EFFECTIVE DATE; REGULATIONS.—

(1) The amendments made by subsection (a) shall apply to penalties imposed on or after the date that is 24 months after the date of the enactment of this title.

(2) Not later than 18 months after the date of the enactment of this title, the Secretary of Health and Human Services shall promulgate regulations to implement such amendments.

(c) DISTRIBUTION OF CERTAIN CIVIL MONETARY PENALTIES COLLECTED.—

(1) IN GENERAL.—Subject to the regulation promulgated pursuant to paragraph (3), any civil monetary penalty or monetary settlement collected with respect to an offense punishable under this sub-

1 title or section 1176 of the Social Security Act (42
2 U.S.C. 1320d–5) insofar as such section relates to
3 privacy or security shall be transferred to the Office
4 of Civil Rights of the Department of Health and
5 Human Services to be used for purposes of enforcing
6 the provisions of this subtitle and subparts C and E
7 of part 164 of title 45, Code of Federal Regulations,
8 as such provisions are in effect as of the date of en-
9 actment of this Act.

10 (2) GAO REPORT.—Not later than 18 months
11 after the date of the enactment of this title, the
12 Comptroller General shall submit to the Secretary a
13 report including recommendations for a methodology
14 under which an individual who is harmed by an act
15 that constitutes an offense referred to in paragraph
16 (1) may receive a percentage of any civil monetary
17 penalty or monetary settlement collected with re-
18 spect to such offense.

19 (3) ESTABLISHMENT OF METHODOLOGY TO
20 DISTRIBUTE PERCENTAGE OF CMPS COLLECTED TO
21 HARMED INDIVIDUALS.—Not later than 3 years
22 after the date of the enactment of this title, the Sec-
23 retary shall establish by regulation and based on the
24 recommendations submitted under paragraph (2), a
25 methodology under which an individual who is

harmed by an act that constitutes an offense referred to in paragraph (1) may receive a percentage of any civil monetary penalty or monetary settlement collected with respect to such offense.

(4) APPLICATION OF METHODOLOGY.—The methodology under paragraph (3) shall be applied with respect to civil monetary penalties or monetary settlements imposed on or after the effective date of the regulation.

(d) TIERED INCREASE IN AMOUNT OF CIVIL MONETARY PENALTIES.—

(1) IN GENERAL.—Section 1176(a)(1) of the Social Security Act (42 U.S.C. 1320d–5(a)(1)) is amended by striking ''who violates a provision of this part a penalty of not more than'' and all that follows and inserting the following: ''who violates a provision of this part—

''(A) in the case of a violation of such provision in which it is established that the person did not know (and by exercising reasonable diligence would not have known) that such person violated such provision, a penalty for each such violation of an amount that is at least the amount described in paragraph (3)(A) but not

to exceed the amount described in paragraph (3)(D);

"(B) in the case of a violation of such provision in which it is established that the violation was due to reasonable cause and not to willful neglect, a penalty for each such violation of an amount that is at least the amount described in paragraph (3)(B) but not to exceed the amount described in paragraph (3)(D); and

"(C) in the case of a violation of such provision in which it is established that the violation was due to willful neglect—

"(i) if the violation is corrected as described in subsection (b)(3)(A), a penalty in an amount that is at least the amount described in paragraph (3)(C) but not to exceed the amount described in paragraph (3)(D); and

"(ii) if the violation is not corrected as described in such subsection, a penalty in an amount that is at least the amount described in paragraph (3)(D).

In determining the amount of a penalty under this section for a violation, the Secretary shall base such determination on the nature and ex-

tent of the violation and the nature and extent of the harm resulting from such violation.''.

(2) TIERS OF PENALTIES DESCRIBED.—Section 1176(a) of such Act (42 U.S.C. 1320d–5(a)) is further amended by adding at the end the following new paragraph:

''(3) TIERS OF PENALTIES DESCRIBED.—For purposes of paragraph (1), with respect to a violation by a person of a provision of this part—

''(A) the amount described in this subparagraph is $100 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed $25,000;

''(B) the amount described in this subparagraph is $1,000 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed $100,000;

''(C) the amount described in this subparagraph is $10,000 for each such violation, except that the total amount imposed on the person for all such violations of an identical require-

ment or prohibition during a calendar year may not exceed $250,000; and

"(D) the amount described in this subparagraph is $50,000 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed $1,500,000.".

(3) CONFORMING AMENDMENTS.—Section 1176(b) of such Act (42 U.S.C. 1320d–5(b)) is amended—

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

(B) in paragraph (2), as so redesignated—

(i) in subparagraph (A), by striking "in subparagraph (B), a penalty may not be imposed under subsection (a) if" and all that follows through "the failure to comply is corrected" and inserting "in subparagraph (B) or subsection (a)(1)(C), a penalty may not be imposed under subsection (a) if the failure to comply is corrected"; and

(ii) in subparagraph (B), by striking "(A)(ii)" and inserting "(A)" each place it appears.

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to violations occurring after the date of the enactment of this title.

(e) ENFORCEMENT THROUGH STATE ATTORNEYS GENERAL.—

(1) IN GENERAL.—Section 1176 of the Social Security Act (42 U.S.C. 1320d–5) is amended by adding at the end the following new subsection:

"(c) ENFORCEMENT BY STATE ATTORNEYS GENERAL.—

"(1) CIVIL ACTION.—Except as provided in subsection (b), in any case in which the attorney general of a State has reason to believe that an interest of one or more of the residents of that State has been or is threatened or adversely affected by any person who violates a provision of this part, the attorney general of the State, as parens patriae, may bring a civil action on behalf of such residents of the State in a district court of the United States of appropriate jurisdiction—

"(A) to enjoin further such violation by the defendant; or

"(B) to obtain damages on behalf of such residents of the State, in an amount equal to the amount determined under paragraph (2).

"(2) STATUTORY DAMAGES.—

"(A) IN GENERAL.—For purposes of paragraph (1)(B), the amount determined under this paragraph is the amount calculated by multiplying the number of violations by up to $100. For purposes of the preceding sentence, in the case of a continuing violation, the number of violations shall be determined consistent with the HIPAA privacy regulations (as defined in section 1180(b)(3)) for violations of subsection (a).

"(B) LIMITATION.—The total amount of damages imposed on the person for all violations of an identical requirement or prohibition during a calendar year may not exceed $25,000.

"(C) REDUCTION OF DAMAGES.—In assessing damages under subparagraph (A), the court may consider the factors the Secretary may consider in determining the amount of a civil money penalty under subsection (a) under the HIPAA privacy regulations.

"(3) ATTORNEY FEES.—In the case of any successful action under paragraph (1), the court, in its discretion, may award the costs of the action and reasonable attorney fees to the State.

"(4) NOTICE TO SECRETARY.—The State shall serve prior written notice of any action under paragraph (1) upon the Secretary and provide the Secretary with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Secretary shall have the right—

"(A) to intervene in the action;

"(B) upon so intervening, to be heard on all matters arising therein; and

"(C) to file petitions for appeal.

"(5) CONSTRUCTION.—For purposes of bringing any civil action under paragraph (1), nothing in this section shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State.

"(6) VENUE; SERVICE OF PROCESS.—

"(A) VENUE.—Any action brought under paragraph (1) may be brought in the district

court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

"(B) SERVICE OF PROCESS.—In an action brought under paragraph (1), process may be served in any district in which the defendant—

"(i) is an inhabitant; or

"(ii) maintains a physical place of business.

"(7) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION IS PENDING.—If the Secretary has instituted an action against a person under subsection (a) with respect to a specific violation of this part, no State attorney general may bring an action under this subsection against the person with respect to such violation during the pendency of that action.

"(8) APPLICATION OF CMP STATUTE OF LIMITATION.—A civil action may not be instituted with respect to a violation of this part unless an action to impose a civil money penalty may be instituted under subsection (a) with respect to such violation consistent with the second sentence of section 1128A(c)(1).".

(2) CONFORMING AMENDMENTS.—Subsection (b) of such section, as amended by subsection (d)(3), is amended—

(A) in paragraph (1), by striking ''A penalty may not be imposed under subsection (a)'' and inserting ''No penalty may be imposed under subsection (a) and no damages obtained under subsection (c)'';

(B) in paragraph (2)(A)—

(i) in the matter before clause (i), by striking ''a penalty may not be imposed under subsection (a)'' and inserting ''no penalty may be imposed under subsection (a) and no damages obtained under subsection (c)''; and

(ii) in clause (ii), by inserting ''or damages'' after ''the penalty'';

(C) in paragraph (2)(B)(i), by striking ''The period'' and inserting ''With respect to the imposition of a penalty by the Secretary under subsection (a), the period''; and

(D) in paragraph (3), by inserting ''and any damages under subsection (c)'' after ''any penalty under subsection (a)''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to violations occurring after the date of the enactment of this Act.

(f) ALLOWING CONTINUED USE OF CORRECTIVE ACTION.—Such section is further amended by adding at the end the following new subsection:

''(d) ALLOWING CONTINUED USE OF CORRECTIVE ACTION.—Nothing in this section shall be construed as preventing the Office of Civil Rights of the Department of Health and Human Services from continuing, in its discretion, to use corrective action without a penalty in cases where the person did not know (and by exercising reasonable diligence would not have known) of the violation involved.''.

SEC. 4411. AUDITS.

The Secretary shall provide for periodic audits to ensure that covered entities and business associates that are subject to the requirements of this subtitle and subparts C and E of part 164 of title 45, Code of Federal Regulations, as such provisions are in effect as of the date of enactment of this Act, comply with such requirements.

SEC. 4412. SPECIAL RULE FOR INFORMATION TO REDUCE MEDICATION ERRORS AND IMPROVE PATIENT SAFETY.

Nothing under this subtitle shall prevent a pharmacist from communicating with patients in order to reduce medication errors and improve patient safety provided there is no remuneration other than for the treatment of the individual and payment for such treatment of the individual as defined in 45 CFR 164.501. The Secretary may by regulation authorize a pharmacy to receive remuneration that does not exceed their reasonable out-of-pocket costs for such communications if the Secretary determines that allowing this remuneration improves patient care and protects protected health information.

PART II—RELATIONSHIP TO OTHER LAWS; REGULATORY REFERENCES; EFFECTIVE DATE; REPORTS

SEC. 4421. RELATIONSHIP TO OTHER LAWS.

(a) APPLICATION OF HIPAA STATE PREEMPTION.—Section 1178 of the Social Security Act (42 U.S.C. 1320d–7) shall apply to a provision or requirement under this subtitle in the same manner that such section applies to a provision or requirement under part C of title XI of such Act or a standard or implementation specification

adopted or established under sections 1172 through 1174 of such Act.

(b) HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT.—The standards governing the privacy and security of individually identifiable health information promulgated by the Secretary under sections 262(a) and 264 of the Health Insurance Portability and Accountability Act of 1996 shall remain in effect to the extent that they are consistent with this subtitle. The Secretary shall by rule amend such Federal regulations as required to make such regulations consistent with this subtitle.

SEC. 4422. REGULATORY REFERENCES.

Each reference in this subtitle to a provision of the Code of Federal Regulations refers to such provision as in effect on the date of the enactment of this title (or to the most recent update of such provision).

SEC. 4423. EFFECTIVE DATE.

Except as otherwise specifically provided, the provisions of part I shall take effect on the date that is 12 months after the date of the enactment of this title.

SEC. 4424. STUDIES, REPORTS, GUIDANCE.

(a) REPORT ON COMPLIANCE.—

(1) IN GENERAL.—For the first year beginning after the date of the enactment of this Act and an-

nually thereafter, the Secretary shall prepare and submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives a report concerning complaints of alleged violations of law, including the provisions of this subtitle as well as the provisions of subparts C and E of part 164 of title 45, Code of Federal Regulations, (as such provisions are in effect as of the date of enactment of this Act) relating to privacy and security of health information that are received by the Secretary during the year for which the report is being prepared. Each such report shall include, with respect to such complaints received during the year—

(A) the number of such complaints;

(B) the number of such complaints resolved informally, a summary of the types of such complaints so resolved, and the number of covered entities that received technical assistance from the Secretary during such year in order to achieve compliance with such provisions and the types of such technical assistance provided;

(C) the number of such complaints that have resulted in the imposition of civil monetary penalties or have been resolved through monetary settlements, including the nature of the complaints involved and the amount paid in each penalty or settlement;

(D) the number of compliance reviews conducted and the outcome of each such review;

(E) the number of subpoenas or inquiries issued;

(F) the Secretary's plan for improving compliance with and enforcement of such provisions for the following year; and

(G) the number of audits performed and a summary of audit findings pursuant to section 4411.

(2) AVAILABILITY TO PUBLIC.—Each report under paragraph (1) shall be made available to the public on the Internet website of the Department of Health and Human Services.

(b) STUDY AND REPORT ON APPLICATION OF PRIVACY AND SECURITY REQUIREMENTS TO NON-HIPAA COVERED ENTITIES.—

(1) STUDY.—Not later than one year after the date of the enactment of this title, the Secretary, in

consultation with the Federal Trade Commission, shall conduct a study, and submit a report under paragraph (2), on privacy and security requirements for entities that are not covered entities or business associates as of the date of the enactment of this title, including—

(A) requirements relating to security, privacy, and notification in the case of a breach of security or privacy (including the applicability of an exemption to notification in the case of individually identifiable health information that has been rendered unusable, unreadable, or indecipherable through technologies or methodologies recognized by appropriate professional organization or standard setting bodies to provide effective security for the information) that should be applied to—

(i) vendors of personal health records;

(ii) entities that offer products or services through the website of a vendor of personal health records;

(iii) entities that are not covered entities and that offer products or services through the websites of covered entities

that offer individuals personal health records;

(iv) entities that are not covered entities and that access information in a personal health record or send information to a personal health record; and

(v) third party service providers used by a vendor or entity described in clause (i), (ii), (iii), or (iv) to assist in providing personal health record products or services;

(B) a determination of which Federal government agency is best equipped to enforce such requirements recommended to be applied to such vendors, entities, and service providers under subparagraph (A); and

(C) a timeframe for implementing regulations based on such findings.

(2) REPORT.—The Secretary shall submit to the Committee on Finance, the Committee on Health, Education, Labor, and Pensions, and the Committee on Commerce of the Senate and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives a report on the findings of the study under paragraph (1) and shall include in such report

1 recommendations on the privacy and security re-
2 quirements described in such paragraph.
3 (c) GUIDANCE ON IMPLEMENTATION SPECIFICATION
4 TO DE-IDENTIFY PROTECTED HEALTH INFORMATION.—
5 Not later than 12 months after the date of the enactment
6 of this title, the Secretary shall, in consultation with stake-
7 holders, issue guidance on how best to implement the re-
8 quirements for the de-identification of protected health in-
9 formation under section 164.514(b) of title 45, Code of
10 Federal Regulations.
11 (d) GAO REPORT ON TREATMENT DISCLOSURES.—
12 Not later than one year after the date of the enactment
13 of this title, the Comptroller General of the United States
14 shall submit to the Committee on Health, Education,
15 Labor, and Pensions of the Senate and the Committee on
16 Ways and Means and the Committee on Energy and Com-
17 merce of the House of Representatives a report on the
18 best practices related to the disclosure among health care
19 providers of protected health information of an individual
20 for purposes of treatment of such individual. Such report
21 shall include an examination of the best practices imple-
22 mented by States and by other entities, such as health
23 information exchanges and regional health information or-
24 ganizations, an examination of the extent to which such
25 best practices are successful with respect to the quality

of the resulting health care provided to the individual and with respect to the ability of the health care provider to manage such best practices, and an examination of the use of electronic informed consent for disclosing protected health information for treatment, payment, and health care operations.

Subtitle E—Miscellaneous Medicare Provisions

SEC. 4501. MORATORIA ON CERTAIN MEDICARE REGULATIONS.

(a) DELAY IN PHASE OUT OF MEDICARE HOSPICE BUDGET NEUTRALITY ADJUSTMENT FACTOR DURING FISCAL YEAR 2009.—Notwithstanding any other provision of law, including the final rule published on August 8, 2008, 73 Federal Register 46464 et seq., relating to Medicare Program; Hospice Wage Index for Fiscal Year 2009, the Secretary of Health and Human Services shall not phase out or eliminate the budget neutrality adjustment factor in the Medicare hospice wage index before October 1, 2009, and the Secretary shall recompute and apply the final Medicare hospice wage index for fiscal year 2009 as if there had been no reduction in the budget neutrality adjustment factor.

1 (b) NON-APPLICATION OF PHASED-OUT INDIRECT
2 MEDICAL EDUCATION (IME) ADJUSTMENT FACTOR FOR
3 FISCAL YEAR 2009.—
4 (1) IN GENERAL.—Section 412.322 of title 42,
5 Code of Federal Regulations, shall be applied with-
6 out regard to paragraph (c) of such section, and the
7 Secretary of Health and Human Services shall re-
8 compute payments for discharges occurring on or
9 after October 1, 2008, as if such paragraph had
10 never been in effect.
11 (2) NO EFFECT ON SUBSEQUENT YEARS.—
12 Nothing in paragraph (1) shall be construed as hav-
13 ing any effect on the application of paragraph (d) of
14 section 412.322 of title 42, Code of Federal Regula-
15 tions.
16 (c) FUNDING FOR IMPLEMENTATION.—In addition to
17 funds otherwise available, for purposes of implementing
18 the provisions of subsections (a) and (b), including costs
19 incurred in reprocessing claims in carrying out such provi-
20 sions, the Secretary of Health and Human Services shall
21 provide for the transfer from the Federal Hospital Insur-
22 ance Trust Fund established under section 1817 of the
23 Social Security Act (42 U.S.C. 1395i) to the Centers for
24 Medicare & Medicaid Services Program Management Ac-
25 count of $2,000,000 for fiscal year 2009.

SEC. 4502. LONG-TERM CARE HOSPITAL TECHNICAL CORRECTIONS.

(a) PAYMENT.—Subsection (c) of section 114 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110–173) is amended—

(1) in paragraph (1)—

(A) by amending the heading to read as follows: ''DELAY IN APPLICATION OF 25 PERCENT PATIENT THRESHOLD PAYMENT ADJUSTMENT'';

(B) by striking ''the date of the enactment of this Act'' and inserting ''July 1, 2007,''; and

(C) in subparagraph (A), by inserting ''or to a long-term care hospital, or satellite facility, that as of December 29, 2007, was co-located with an entity that is a provider-based, off-campus location of a subsection (d) hospital which did not provide services payable under section 1886(d) of the Social Security Act at the off-campus location'' after ''freestanding long-term care hospitals''; and

(2) in paragraph (2)—

(A) in subparagraph (B)(ii), by inserting ''or that is described in section 412.22(h)(3)(i) of such title'' before the period; and

(B) in subparagraph (C), by striking ''the date of the enactment of this Act'' and inserting ''October 1, 2007 (or July 1, 2007, in the case of a satellite facility described in section 412.22(h)(3)(i) of title 42, Code of Federal Regulations)''.

(b) MORATORIUM.—Subsection (d)(3)(A) of such section is amended by striking ''if the hospital or facility'' and inserting ''if the hospital or facility obtained a certificate of need for an increase in beds that is in a State for which such certificate of need is required and that was issued on or after April 1, 2005, and before December 29, 2007, or if the hospital or facility''.

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective and apply as if included in the enactment of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110–173).

TITLE V—MEDICAID PROVISIONS

SEC. 5000. TABLE OF CONTENTS OF TITLE.

The table of contents of this title is as follows:

Sec. 5000. Table of contents of title.
Sec. 5001. Temporary increase of Medicaid FMAP.
Sec. 5002. Moratoria on certain regulations.
Sec. 5003. Transitional Medicaid assistance (TMA).
Sec. 5004. Protections for Indians under Medicaid and CHIP.
Sec. 5005. Consultation on Medicaid and CHIP.
Sec. 5006. Temporary increase in DSH allotments during recession.

SEC. 5001. TEMPORARY INCREASE OF MEDICAID FMAP.

(a) PERMITTING MAINTENANCE OF FMAP.—Subject to subsections (e), (f), and (g), if the FMAP determined without regard to this section for a State for—

(1) fiscal year 2009 is less than the FMAP as so determined for fiscal year 2008, the FMAP for the State for fiscal year 2008 shall be substituted for the State's FMAP for fiscal year 2009, before the application of this section;

(2) fiscal year 2010 is less than the FMAP as so determined for fiscal year 2008 or fiscal year 2009 (after the application of paragraph (1)), the greater of such FMAP for the State for fiscal year 2008 or fiscal year 2009 shall be substituted for the State's FMAP for fiscal year 2010, before the application of this section; and

(3) fiscal year 2011 is less than the FMAP as so determined for fiscal year 2008, fiscal year 2009 (after the application of paragraph (1)), or fiscal year 2010 (after the application of paragraph (2)), the greatest of such FMAP for the State for fiscal year 2008, fiscal year 2009, or fiscal year 2010 shall be substituted for the State's FMAP for fiscal year 2011, before the application of this section, but only for the first calendar quarter in fiscal year 2011.

(b) GENERAL 4.9 PERCENTAGE POINT INCREASE.—

(1) IN GENERAL.—Subject to subsections (e), (f), and (g) and paragraph (2), for each State for calendar quarters during the recession adjustment period (as defined in subsection (h)(2)), the FMAP (after the application of subsection (a)) shall be increased (without regard to any limitation otherwise specified in section 1905(b) of the Social Security Act) by 4.9 percentage points.

(2) SPECIAL ELECTION FOR TERRITORIES.—In the case of a State that is not one of the 50 States or the District of Columbia, paragraph (1) shall only apply if the State makes a one-time election, in a form and manner specified by the Secretary and for the entire recession adjustment period, to apply the increase in FMAP under paragraph (1) and a 10 percent increase under subsection (d) instead of applying a 20 percent increase under subsection (d).

(c) ADDITIONAL ADJUSTMENT TO REFLECT INCREASE IN UNEMPLOYMENT.—

(1) IN GENERAL.—Subject to subsections (e), (f), and (g), in the case of a State that is a high unemployment State (as defined in paragraph (2)) for a calendar quarter during the recession adjustment period, the FMAP (taking into account the application of subsections (a) and (b)) for such quarter

shall be further increased by the high unemployment percentage point adjustment specified in paragraph (3) for the State for the quarter.

(2) HIGH UNEMPLOYMENT STATE.—

(A) IN GENERAL.—In this subsection, subject to subparagraph (B), the term ''high unemployment State'' means, with respect to a calendar quarter in the recession adjustment period, a State that is 1 of the 50 States or the District of Columbia and for which the State unemployment increase percentage (as computed under paragraph (5)) for the quarter is not less than 1.5 percentage points.

(B) MAINTENANCE OF STATUS.—If a State is a high unemployment State for a calendar quarter, it shall remain a high unemployment State for each subsequent calendar quarter ending before July 1, 2010.

(3) HIGH UNEMPLOYMENT PERCENTAGE POINT ADJUSTMENT.—

(A) IN GENERAL.—The high unemployment percentage point adjustment specified in this paragraph for a high unemployment State for a quarter is equal to the product of—

(i) the SMAP for such State and quarter (determined after the application of subsection (a) and before the application of subsection (b)); and

(ii) subject to subparagraph (B), the State unemployment reduction factor specified in paragraph (4) for the State and quarter.

(B) MAINTENANCE OF ADJUSTMENT LEVEL FOR CERTAIN QUARTERS.—In no case shall the State unemployment reduction factor applied under subparagraph (A)(ii) for a State for a quarter (beginning on or after January 1, 2009, and ending before July 1, 2010) be less than the State unemployment reduction factor applied to the State for the previous quarter (taking into account the application of this subparagraph).

(4) STATE UNEMPLOYMENT REDUCTION FACTOR.—In the case of a high unemployment State for which the State unemployment increase percentage (as computed under paragraph (5)) with respect to a calendar quarter is—

(A) not less than 1.5, but is less than 2.5, percentage points, the State unemployment re-

duction factor for the State and quarter is 6 percent;

(B) not less than 2.5, but is less than 3.5, percentage points, the State unemployment reduction factor for the State and quarter is 12 percent; or

(C) not less than 3.5 percentage points, the State unemployment reduction factor for the State and quarter is 14 percent.

(5) COMPUTATION OF STATE UNEMPLOYMENT INCREASE PERCENTAGE.—

(A) IN GENERAL.—In this subsection, the ''State unemployment increase percentage'' for a State for a calendar quarter is equal to the number of percentage points (if any) by which—

(i) the average monthly unemployment rate for the State for months in the most recent previous 3-consecutive-month period for which data are available, subject to subparagraph (C); exceeds

(ii) the lowest average monthly unemployment rate for the State for any 3-consecutive-month period preceding the period

described in clause (i) and beginning on or after January 1, 2006.

(B) AVERAGE MONTHLY UNEMPLOYMENT RATE DEFINED.—In this paragraph, the term ''average monthly unemployment rate'' means the average of the monthly number unemployed, divided by the average of the monthly civilian labor force, seasonally adjusted, as determined based on the most recent monthly publications of the Bureau of Labor Statistics of the Department of Labor.

(C) SPECIAL RULE.—With respect to—

(i) the first 2 calendar quarters of the recession adjustment period, the most recent previous 3-consecutive-month period described in subparagraph (A)(i) shall be the 3-consecutive-month period beginning with October 2008; and

(ii) the last 2 calendar quarters of the recession adjustment period, the most recent previous 3-consecutive-month period described in such subparagraph shall be the 3-consecutive-month period beginning with December 2009.

(d) INCREASE IN CAP ON MEDICAID PAYMENTS TO TERRITORIES.—Subject to subsections (f) and (g) , with respect to entire fiscal years occurring during the recession adjustment period and with respect to fiscal years only a portion of which occurs during such period (and in proportion to the portion of the fiscal year that occurs during such period), the amounts otherwise determined for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa under subsections (f) and (g) of section 1108 of the Social Security Act (42 U.S.C. 1308) shall each be increased by 20 percent (or, in the case of an election under subsection (b)(2), 10 percent).

(e) SCOPE OF APPLICATION.—The increases in the FMAP for a State under this section shall apply for purposes of title XIX of the Social Security Act and—

(1) the increases applied under subsections (a), (b), and (c) shall not apply with respect—

(A) to payments under parts A, B, and D of title IV or title XXI of such Act (42 U.S.C. 601 et seq. and 1397aa et seq.);

(B) to payments under title XIX of such Act that are based on the enhanced FMAP described in section 2105(b) of such Act (42 U.S.C. 1397ee(b)); and

(C) to payments for disproportionate share hospital (DSH) payment adjustments under section 1923 of such Act (42 U.S.C. 1396r–4); and

(2) the increase provided under subsection (c) shall not apply with respect to payments under part E of title IV of such Act.

(f) STATE INELIGIBILITY AND LIMITATION.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), a State is not eligible for an increase in its FMAP under subsection (a), (b), or (c), or an increase in a cap amount under subsection (d), if eligibility standards, methodologies, or procedures under its State plan under title XIX of the Social Security Act (including any waiver under such title or under section 1115 of such Act (42 U.S.C. 1315)) are more restrictive than the eligibility standards, methodologies, or procedures, respectively, under such plan (or waiver) as in effect on July 1, 2008.

(2) STATE REINSTATEMENT OF ELIGIBILITY PERMITTED.—Subject to paragraph (3), a State that has restricted eligibility standards, methodologies, or procedures under its State plan under title XIX of the Social Security Act (including any waiver under such title or under section 1115 of such Act (42

U.S.C. 1315)) after July 1, 2008, is no longer ineligible under paragraph (1) beginning with the first calendar quarter in which the State has reinstated eligibility standards, methodologies, or procedures that are no more restrictive than the eligibility standards, methodologies, or procedures, respectively, under such plan (or waiver) as in effect on July 1, 2008.

(3) SPECIAL RULES.—A State shall not be ineligible under paragraph (1)—

(A) for the calendar quarters before July 1, 2009, on the basis of a restriction that was applied after July 1, 2008, and before the date of the enactment of this Act, if the State, prior to July 1, 2009, reinstated eligibility standards, methodologies, or procedures that are no more restrictive than the eligibility standards, methodologies, or procedures, respectively, under such plan (or waiver) as in effect on July 1, 2008; or

(B) on the basis of a restriction that was effective under State law as of July 1, 2008, and would have been in effect as of such date, but for a delay (of not longer than 1 calendar quarter) in the approval of a request for a new

waiver under section 1115 of such Act with respect to such restriction.

(4) STATE'S APPLICATION TOWARD RAINY DAY FUND.—A State is not eligible for an increase in its FMAP under subsection (b) or (c), or an increase in a cap amount under subsection (d), if any amounts attributable (directly or indirectly) to such increase are deposited or credited into any reserve or rainy day fund of the State.

(5) RULE OF CONSTRUCTION.—Nothing in paragraph (1) or (2) shall be construed as affecting a State's flexibility with respect to benefits offered under the State Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) (including any waiver under such title or under section 1115 of such Act (42 U.S.C. 1315)).

(6) NO WAIVER AUTHORITY.—The Secretary may not waive the application of this subsection or subsection (g) under section 1115 of the Social Security Act or otherwise.

(g) REQUIREMENT FOR CERTAIN STATES.—In the case of a State that requires political subdivisions within the State to contribute toward the non-Federal share of expenditures under the State Medicaid plan required under section 1902(a)(2) of the Social Security Act (42

U.S.C. 1396a(a)(2)), the State is not eligible for an increase in its FMAP under subsection (a), (b), or (c), or an increase in a cap amount under subsection (d), if it requires that such political subdivisions pay a greater percentage of the non-Federal share of such expenditures for quarters during the recession adjustment period, than the percentage that would have been required by the State under such plan on September 30, 2008, prior to application of this section.

(h) DEFINITIONS.—In this section, except as otherwise provided:

(1) FMAP.—The term ''FMAP'' means the Federal medical assistance percentage, as defined in section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)), as determined without regard to this section except as otherwise specified.

(2) RECESSION ADJUSTMENT PERIOD.—The term ''recession adjustment period'' means the period beginning on October 1, 2008, and ending on December 31, 2010.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(4) SMAP.—The term ''SMAP'' means, for a State, 100 percent minus the Federal medical assistance percentage.

(5) STATE.—The term ''State'' has the meaning given such term in section 1101(a)(1) of the Social Security Act (42 U.S.C. 1301(a)(1)) for purposes of title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(i) SUNSET.—This section shall not apply to items and services furnished after the end of the recession adjustment period.

SEC. 5002. MORATORIA ON CERTAIN REGULATIONS.

(a) EXTENSION OF MORATORIA ON CERTAIN MEDICAID REGULATIONS.—The following sections are each amended by striking ''April 1, 2009'' and inserting ''July 1, 2009'':

(1) Section 7002(a)(1) of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Public Law 110–28), as amended by section 7001(a)(1) of the Supplemental Appropriations Act, 2008 (Public Law 110–252).

(2) Section 206 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110–173), as amended by section 7001(a)(2) of the Supplemental Appropriations Act, 2008 (Public Law 110–252).

(3) Section 7001(a)(3)(A) of the Supplemental Appropriations Act, 2008 (Public Law 110–252).

(b) ADDITIONAL MEDICAID MORATORIUM.—Notwithstanding any other provision of law, with respect to expenditures for services furnished during the period beginning on December 8, 2008 and ending on June 30, 2009, the Secretary of Health and Human Services shall not take any action (through promulgation of regulation, issuance of regulatory guidance, use of Federal payment audit procedures, or other administrative action, policy, or practice, including a Medical Assistance Manual transmittal or letter to State Medicaid directors) to implement the final regulation relating to clarification of the definition of outpatient hospital facility services under the Medicaid program published on November 7, 2008 (73 Federal Register 66187).

SEC. 5003. TRANSITIONAL MEDICAID ASSISTANCE (TMA).

(a) 18-MONTH EXTENSION.—

(1) IN GENERAL.—Sections 1902(e)(1)(B) and 1925(f) of the Social Security Act (42 U.S.C. 1396a(e)(1)(B), 1396r–6(f)) are each amended by striking ''September 30, 2003'' and inserting ''December 31, 2010''.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on July 1, 2009.

(b) STATE OPTION OF INITIAL 12-MONTH ELIGIBILITY.—Section 1925 of the Social Security Act (42 U.S.C. 1396r–6) is amended—

(1) in subsection (a)(1), by inserting ''but subject to paragraph (5)'' after ''Notwithstanding any other provision of this title'';

(2) by adding at the end of subsection (a) the following:

''(5) OPTION OF 12-MONTH INITIAL ELIGIBILITY PERIOD.—A State may elect to treat any reference in this subsection to a 6-month period (or 6 months) as a reference to a 12-month period (or 12 months). In the case of such an election, subsection (b) shall not apply.''; and

(3) in subsection (b)(1), by inserting ''but subject to subsection (a)(5)'' after ''Notwithstanding any other provision of this title''.

(c) REMOVAL OF REQUIREMENT FOR PREVIOUS RECEIPT OF MEDICAL ASSISTANCE.—Section 1925(a)(1) of such Act (42 U.S.C. 1396r–6(a)(1)), as amended by subsection (b)(1), is further amended—

(1) by inserting ''subparagraph (B) and'' before ''paragraph (5)'';

(2) by redesignating the matter after ''REQUIREMENT.—'' as a subparagraph (A) with the

heading "IN GENERAL.—" and with the same indentation as subparagraph (B) (as added by paragraph (3)); and

(3) by adding at the end the following:

"(B) STATE OPTION TO WAIVE REQUIREMENT FOR 3 MONTHS BEFORE RECEIPT OF MEDICAL ASSISTANCE.—A State may, at its option, elect also to apply subparagraph (A) in the case of a family that was receiving such aid for fewer than three months or that had applied for and was eligible for such aid for fewer than 3 months during the 6 immediately preceding months described in such subparagraph.".

(d) CMS REPORT ON ENROLLMENT AND PARTICIPATION RATES UNDER TMA.—Section 1925 of such Act (42 U.S.C. 1396r–6), as amended by this section, is further amended by adding at the end the following new subsection:

"(g) COLLECTION AND REPORTING OF PARTICIPATION INFORMATION.—

"(1) COLLECTION OF INFORMATION FROM STATES.—Each State shall collect and submit to the Secretary (and make publicly available), in a format specified by the Secretary, information on average monthly enrollment and average monthly participa-

tion rates for adults and children under this section and of the number and percentage of children who become ineligible for medical assistance under this section whose medical assistance is continued under another eligibility category or who are enrolled under the State's child health plan under title XXI. Such information shall be submitted at the same time and frequency in which other enrollment information under this title is submitted to the Secretary.

"(2) ANNUAL REPORTS TO CONGRESS.—Using the information submitted under paragraph (1), the Secretary shall submit to Congress annual reports concerning enrollment and participation rates described in such paragraph.".

(e) EFFECTIVE DATE.—The amendments made by subsections (b) through (d) shall take effect on July 1, 2009.

SEC. 5004. PROTECTIONS FOR INDIANS UNDER MEDICAID AND CHIP.

(a) PREMIUMS AND COST SHARING PROTECTION UNDER MEDICAID.—

(1) IN GENERAL.—Section 1916 of the Social Security Act (42 U.S.C. 1396o) is amended—

(A) in subsection (a), in the matter preceding paragraph (1), by striking "and (i)" and inserting ", (i), and (j)"; and

(B) by adding at the end the following new subsection:

"(j) NO PREMIUMS OR COST SHARING FOR INDIANS FURNISHED ITEMS OR SERVICES DIRECTLY BY INDIAN HEALTH PROGRAMS OR THROUGH REFERRAL UNDER CONTRACT HEALTH SERVICES.—

"(1) NO COST SHARING FOR ITEMS OR SERVICES FURNISHED TO INDIANS THROUGH INDIAN HEALTH PROGRAMS.—

"(A) IN GENERAL.—No enrollment fee, premium, or similar charge, and no deduction, copayment, cost sharing, or similar charge shall be imposed against an Indian who is furnished an item or service directly by the Indian Health Service, an Indian Tribe, Tribal Organization, or Urban Indian Organization or through referral under contract health services for which payment may be made under this title.

"(B) NO REDUCTION IN AMOUNT OF PAYMENT TO INDIAN HEALTH PROVIDERS.—Payment due under this title to the Indian Health Service, an Indian Tribe, Tribal Organization,

or Urban Indian Organization, or a health care provider through referral under contract health services for the furnishing of an item or service to an Indian who is eligible for assistance under such title, may not be reduced by the amount of any enrollment fee, premium, or similar charge, or any deduction, copayment, cost sharing, or similar charge that would be due from the Indian but for the operation of subparagraph (A).

"(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed as restricting the application of any other limitations on the imposition of premiums or cost sharing that may apply to an individual receiving medical assistance under this title who is an Indian.".

(2) CONFORMING AMENDMENT.—Section 1916A(b)(3) of such Act (42 U.S.C. 1396o–1(b)(3)) is amended—

(A) in subparagraph (A), by adding at the end the following new clause:

"(vi) An Indian who is furnished an item or service directly by the Indian Health Service, an Indian Tribe, Tribal Organization or Urban Indian Organiza-

1 tion or through referral under contract
2 health services.''; and
3 (B) in subparagraph (B), by adding at the
4 end the following new clause:
5 ''(ix) Items and services furnished to
6 an Indian directly by the Indian Health
7 Service, an Indian Tribe, Tribal Organiza-
8 tion or Urban Indian Organization or
9 through referral under contract health
10 services.''.
11 (3) EFFECTIVE DATE.—The amendments made
12 by this subsection shall take effect on October 1,
13 2009.
14 (b) TREATMENT OF CERTAIN PROPERTY FROM RE-
15 SOURCES FOR MEDICAID AND CHIP ELIGIBILITY.—
16 (1) MEDICAID.—Section 1902 of the Social Se-
17 curity Act (42 U.S.C. 1396a), as amended by sec-
18 tion 3003(a) of the Health Insurance Assistance for
19 the Unemployed Act of 2009, is amended by adding
20 at the end the following new subsection:
21 ''(ee) Notwithstanding any other requirement of this
22 title or any other provision of Federal or State law, a State
23 shall disregard the following property from resources for
24 purposes of determining the eligibility of an individual who
25 is an Indian for medical assistance under this title:

"(1) Property, including real property and improvements, that is held in trust, subject to Federal restrictions, or otherwise under the supervision of the Secretary of the Interior, located on a reservation, including any federally recognized Indian Tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established by the Alaska Native Claims Settlement Act, and Indian allotments on or near a reservation as designated and approved by the Bureau of Indian Affairs of the Department of the Interior.

"(2) For any federally recognized Tribe not described in paragraph (1), property located within the most recent boundaries of a prior Federal reservation.

"(3) Ownership interests in rents, leases, royalties, or usage rights related to natural resources (including extraction of natural resources or harvesting of timber, other plants and plant products, animals, fish, and shellfish) resulting from the exercise of federally protected rights.

"(4) Ownership interests in or usage rights to items not covered by paragraphs (1) through (3) that have unique religious, spiritual, traditional, or cultural significance or rights that support subsist-

ence or a traditional lifestyle according to applicable tribal law or custom.''.

(2) APPLICATION TO CHIP.—Section 2107(e)(1) of such Act (42 U.S.C. 1397gg(e)(1)) is amended by adding at the end the following new subparagraph:

''(E) Section 1902(ff) (relating to disregard of certain property for purposes of making eligibility determinations).''.

(c) CONTINUATION OF CURRENT LAW PROTECTIONS OF CERTAIN INDIAN PROPERTY FROM MEDICAID ESTATE RECOVERY.—Section 1917(b)(3) of the Social Security Act (42 U.S.C. 1396p(b)(3)) is amended—

(1) by inserting ''(A)'' after ''(3)''; and

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

''(B) The standards specified by the Secretary under subparagraph (A) shall require that the procedures established by the State agency under subparagraph (A) exempt income, resources, and property that are exempt from the application of this subsection as of April 1, 2003, under manual instructions issued to carry out this subsection (as in effect on such date) because of the Federal responsibility for Indian Tribes and Alaska Native Villages. Nothing in

this subparagraph shall be construed as preventing the Secretary from providing additional estate recovery exemptions under this title for Indians.''.

SEC. 5005. CONSULTATION ON MEDICAID AND CHIP.

(a) IN GENERAL.—Section 1139 of the Social Security Act (42 U.S.C. 1320b–9) is amended to read as follows:

''CONSULTATION WITH TRIBAL TECHNICAL ADVISORY GROUP (TTAG)

''SEC. 1139. The Secretary shall maintain within the Centers for Medicaid & Medicare Services (CMS) a Tribal Technical Advisory Group, which was first established in accordance with requirements of the charter dated September 30, 2003, and the Secretary shall include in such Group a representative of the Urban Indian Organizations and the Service. The representative of the Urban Indian Organization shall be deemed to be an elected officer of a tribal government for purposes of applying section 204(b) of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1534(b)).''.

(b) SOLICITATION OF ADVICE UNDER MEDICAID AND CHIP.—

(1) MEDICAID STATE PLAN AMENDMENT.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)) is amended—

(A) in paragraph (70), by striking ''and'' at the end;

(B) in paragraph (71), by striking the period at the end and inserting ''; and''; and

(C) by inserting after paragraph (71), the following new paragraph:

''(72) in the case of any State in which 1 or more Indian Health Programs or Urban Indian Organizations furnishes health care services, provide for a process under which the State seeks advice on a regular, ongoing basis from designees of such Indian Health Programs and Urban Indian Organizations on matters relating to the application of this title that are likely to have a direct effect on such Indian Health Programs and Urban Indian Organizations and that—

''(A) shall include solicitation of advice prior to submission of any plan amendments, waiver requests, and proposals for demonstration projects likely to have a direct effect on Indians, Indian Health Programs, or Urban Indian Organizations; and

''(B) may include appointment of an advisory committee and of a designee of such Indian Health Programs and Urban Indian Orga-

nizations to the medical care advisory committee advising the State on its State plan under this title.''.

(2) APPLICATION TO CHIP.—Section 2107(e)(1) of such Act (42 U.S.C. 1397gg(e)(1)), as amended by section 5004(b), is amended by adding at the end the following new subparagraph:

''(F) Section 1902(a)(72) (relating to requiring certain States to seek advice from designees of Indian Health Programs and Urban Indian Organizations).''.

(c) RULE OF CONSTRUCTION.—Nothing in the amendments made by this section shall be construed as superseding existing advisory committees, working groups, guidance, or other advisory procedures established by the Secretary of Health and Human Services or by any State with respect to the provision of health care to Indians.

SEC. 5006. TEMPORARY INCREASE IN DSH ALLOTMENTS DURING RECESSION.

Section 1923(f)(3) of the Social Security Act (42 U.S.C. 1396r–4(f)(3)) is amended—

(1) in subparagraph (A), by striking ''paragraph (6)'' and inserting ''paragraph (6) and subparagraph (E)''; and

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

"(E) TEMPORARY INCREASE IN ALLOTMENTS DURING RECESSION.—

"(i) IN GENERAL.—Subject to clause (ii), the DSH allotment for any State—

"(I) for fiscal year 2009 is equal to 102.5 percent of the DSH allotment that would be determined under this paragraph for the State for fiscal year 2009 without application of this subparagraph, notwithstanding subparagraph (B);

"(II) for fiscal year 2010 is equal to 102.5 percent of the DSH allotment for the State for fiscal year 2009, as determined under subclause (I); and

"(III) for each succeeding fiscal year is equal to the DSH allotment for the State under this paragraph determined without applying subclauses (I) and (II).

"(ii) APPLICATION.—Clause (i) shall not apply to a State for a year in the case

that the DSH allotment for such State for such year under this paragraph determined without applying clause (i) would grow higher than the DSH allotment specified under clause (i) for the State for such year.''.

TITLE VI—BROADBAND COMMUNICATIONS

SEC. 6001. INVENTORY OF BROADBAND SERVICE CAPABILITY AND AVAILABILITY.

(a) ESTABLISHMENT.—To provide a comprehensive nationwide inventory of existing broadband service capability and availability, the National Telecommunications and Information Administration (''NTIA'') shall develop and maintain a broadband inventory map of the United States that identifies and depicts the geographic extent to which broadband service capability is deployed and available from a commercial provider or public provider throughout each State.

(b) PUBLIC AVAILABILITY AND INTERACTIVITY.—Not later than 2 years after the date of enactment of this Act, the NTIA shall make the broadband inventory map developed and maintained pursuant to this section accessible by the public on a World Wide Web site of the NTIA in a form that is interactive and searchable.

SEC. 6002. WIRELESS AND BROADBAND DEPLOYMENT GRANT PROGRAMS.

(a) GRANTS AUTHORIZED.—

(1) IN GENERAL.—The National Telecommunications and Information Administration (''NTIA'') is authorized to carry out a program to award grants to eligible entities for the non-recurring costs associated with the deployment of broadband infrastructure in rural, suburban, and urban areas, in accordance with the requirements of this section.

(2) PROGRAM WEBSITE.—The NTIA shall develop and maintain a website to make publicly available information about the program described in paragraph (1), including—

(A) each prioritization report submitted by a State under subsection (b);

(B) a list of eligible entities that have applied for a grant under this section, and the area or areas the entity proposes to serve; and

(C) the status of each such application, whether approved, denied, or pending.

(b) STATE PRIORITIES.—

(1) PRIORITIES REPORT SUBMISSION.—Not later than 75 days after the date of enactment of this section, each State intending to participate in the program under this section shall submit to the

NTIA a report indicating the geographic areas of the State which—

(A) for the purposes of determining the need for Wireless Deployment Grants under subsection (c), the State considers to have the greatest priority for—

(i) wireless voice service in unserved areas; and

(ii) advanced wireless broadband service in underserved areas; and

(B) for the purposes of determining the need for Broadband Deployment Grants under subsection (d), the State considers to have the greatest priority for—

(i) basic broadband service in unserved areas; and

(ii) advanced broadband service in underserved areas.

(2) LIMITATION.—The unserved and underserved areas identified by a State in the report required by this subsection shall not represent, in the aggregate, more than 20 percent of the population of such State.

(c) WIRELESS DEPLOYMENT GRANTS.—

(1) AUTHORIZED ACTIVITY.—The NTIA shall award Wireless Deployment Grants in accordance with this subsection from amounts authorized for Wireless Deployment Grants by this subtitle to eligible entities to deploy necessary infrastructure for the provision of wireless voice service or advanced wireless broadband service to end users in designated areas.

(2) GRANT DISTRIBUTION.—The NTIA shall seek to distribute grants, to the extent possible, so that 25 percent of the grants awarded under this subsection shall be awarded to eligible entities for providing wireless voice service to unserved areas and 75 percent of grants awarded under this subsection shall be awarded to eligible entities for providing advanced wireless broadband service to underserved areas.

(d) BROADBAND DEPLOYMENT GRANTS.—

(1) AUTHORIZED ACTIVITY.—The NTIA shall award Broadband Deployment Grants in accordance with this subsection from amounts authorized for Broadband Deployment Grants by this subtitle to eligible entities to deploy necessary infrastructure for the provision of basic broadband service or advanced broadband service to end users in designated areas.

(2) GRANT DISTRIBUTION.—The NTIA shall seek to distribute grants, to the extent possible, so that 25 percent of the grants awarded under this subsection shall be awarded to eligible entities for providing basic broadband service to unserved areas and 75 percent of grants awarded under this subsection shall be awarded to eligible entities for providing advanced broadband service to underserved areas.

(e) GRANT REQUIREMENTS.—The NTIA shall—

(1) adopt rules to protect against unjust enrichment; and

(2) ensure that grant recipients—

(A) meet buildout requirements;

(B) maximize use of the supported infrastructure by the public;

(C) operate basic and advanced broadband service networks on an open access basis;

(D) operate advanced wireless broadband service on a wireless open access basis; and

(E) adhere to the principles contained in the Federal Communications Commission's broadband policy statement (FCC 05–151, adopted August 5, 2005).

(f) APPLICATIONS.—

(1) SUBMISSION.—To be considered for a grant awarded under subsection (c) or (d), an eligible entity shall submit to the NTIA an application at such time, in such manner, and containing such information and assurances as the NTIA may require. Such an application shall include—

(A) a cost-study estimate for serving the particular geographic area to be served by the entity;

(B) a proposed build-out schedule to residential households and small businesses in the area;

(C) for applicants for Wireless Deployment Grants under subsection (c), a build-out schedule for geographic coverage of such areas; and

(D) any other requirements the NTIA deems necessary.

(2) SELECTION.—

(A) NOTIFICATION.—The NTIA shall notify each eligible entity that has submitted a complete application whether the entity has been approved or denied for a grant under this section in a timely fashion.

(B) GRANT DISTRIBUTION CONSIDERATIONS.—In awarding grants under this section, the NTIA shall, to the extent practical—

(i) award not less than one grant in each State;

(ii) give substantial weight to whether an application is from an eligible entity to deploy infrastructure in an area that is an area—

(I) identified by a State in a report submitted under subsection (b); or

(II) in which the NTIA determines there will be a significant amount of public safety or emergency response use of the infrastructure;

(iii) consider whether an application from an eligible entity to deploy infrastructure in an area—

(I) will, if approved, increase the affordability of, or subscribership to, service to the greatest population of underserved users in the area;

(II) will, if approved, enhance service for health care delivery, edu-

cation, or children to the greatest population of underserved users in the area;

(III) contains concrete plans for enhancing computer ownership or computer literacy in the area;

(IV) is from a recipient of more than 20 percent matching grants from State, local, or private entities for service in the area and the extent of such commitment;

(V) will, if approved, result in unjust enrichment because the eligible entity has applied for, or intends to apply for, support for the non-recurring costs through another Federal program for service in the area; and

(VI) will, if approved, significantly improve interoperable broadband communications systems available for use by public safety and emergency response; and

(iv) consider whether the eligible entity is a socially and economically disadvantaged small business concern, as defined

under section 8(a) of the Small Business Act (15 U.S.C. 637).

(g) COORDINATION AND CONSULTATION.—The NTIA shall coordinate with the Federal Communications Commission and shall consult with other appropriate Federal agencies in implementing this section.

(h) REPORT REQUIRED.—The NTIA shall submit an annual report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate for 5 years assessing the impact of the grants funded under this section on the basis of the objectives and criteria described in subsection (f)(2)(B)(iii).

(i) RULEMAKING AUTHORITY.—The NTIA shall have the authority to prescribe such rules as necessary to carry out the purposes of this section.

(j) DEFINITIONS.—For the purpose of this section—

(1) the term ''advanced broadband service'' means a service delivering data to the end user transmitted at a speed of at least 45 megabits per second downstream and at least 15 megabits per second upstream;

(2) the term ''advanced wireless broadband service'' means a wireless service delivering to the end user data transmitted at a speed of at least 3

megabits per second downstream and at least 1 megabit per second upstream over an end-to-end internet protocol wireless network;

(3) the term ''basic broadband service'' means a service delivering data to the end user transmitted at a speed of at least 5 megabits per second downstream and at least 1 megabit per second upstream;

(4) the term ''eligible entity'' means—

(A) a provider of wireless voice service, advanced wireless broadband service, basic broadband service, or advanced broadband service, including a satellite carrier that provides any such service;

(B) a State or unit of local government, or agency or instrumentality thereof, that is or intends to be a provider of any such service; and

(C) any other entity, including construction companies, tower companies, backhaul companies, or other service providers, that the NTIA authorizes by rule to participate in the programs under this section, if such other entity is required to provide access to the supported infrastructure on a neutral, reasonable basis to maximize use;

(5) the term ''interoperable broadband communications systems'' means communications systems which enable public safety agencies to share information among local, State, Federal, and tribal public safety agencies in the same area using voice or data signals via advanced wireless broadband service;

(6) the term ''open access'' shall be defined by the Federal Communications Commission not later than 45 days after the date of enactment of this section;

(7) the term ''State'' includes the District of Columbia and the territories and possessions;

(8) the term ''underserved area'' shall be defined by the Federal Communications Commission not later than 45 days after the date of enactment of this section;

(9) the term ''unserved area'' shall be defined by the Federal Communications Commission not later than 45 days after the date of enactment of this section;

(10) the term ''wireless open access'' shall be defined by the Federal Communications Commission not later than 45 days after the date of enactment of this section; and

(11) the term ''wireless voice service'' means the provision of two-way, real-time, voice communications using a mobile service.

(k) REVIEW OF DEFINITIONS.—Not later than 3 months after the date the NTIA makes a broadband inventory map of the United States accessible to the public pursuant to section 6001(b), the Federal Communications Commission shall review the definitions of ''underserved area'' and ''unserved area'', as defined by the Commission within 45 days after the date of enactment of this Act (as required by paragraphs (8) and (9) of subsection (j)), and shall revise such definitions based on the data used by the NTIA to develop and maintain such map.

SEC. 6003. NATIONAL BROADBAND PLAN.

(a) REPORT REQUIRED.—Not later than 1 year after the date of enactment of this section, the Federal Communications Commission shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, a report containing a national broadband plan.

(b) CONTENTS OF PLAN.—The national broadband plan required by this section shall seek to ensure that all people of the United States have access to broadband ca-

pability and shall establish benchmarks for meeting that goal. The plan shall also include—

(1) an analysis of the most effective and efficient mechanisms for ensuring broadband access by all people of the United States;

(2) a detailed strategy for achieving affordability of such service and maximum utilization of broadband infrastructure and service by the public; and

(3) a plan for use of broadband infrastructure and services in advancing consumer welfare, civic participation, public safety and homeland security, community development, health care delivery, energy independence and efficiency, education, worker training, private sector investment, entrepreneurial activity, job creation and economic growth, and other national purposes.

TITLE VII—ENERGY

SEC. 7001. TECHNICAL CORRECTIONS TO THE ENERGY INDEPENDENCE AND SECURITY ACT OF 2007.

(a) Section 543(a) of the Energy Independence and Security Act of 2007 (42 U.S.C. 17153(a)) is amended—

(1) by redesignating paragraphs (2) through (4) as paragraphs (3) through (5), respectively; and

(2) by striking paragraph (1) and inserting the following:

"(1) 34 percent to eligible units of local government–alternative 1, in accordance with subsection (b);

"(2) 34 percent to eligible units of local government–alternative 2, in accordance with subsection (b);".

(b) Section 543(b) of the Energy Independence and Security Act of 2007 (42 U.S.C. 17153(b)) is amended by striking "subsection (a)(1)" and inserting "subsection (a)(1) or (2)".

(c) Section 548(a)(1) of the Energy Independence and Security Act of 2007 (42 U.S.C. 17158(a)(1)) is amending by striking "; provided" and all that follows through "541(3)(B)".

SEC. 7002. AMENDMENTS TO TITLE XIII OF THE ENERGY INDEPENDENCE AND SECURITY ACT OF 2007.

Title XIII of the Energy Independence and Security Act of 2007 (42 U.S.C. 17381 and following) is amended as follows:

(1) By amending subparagraph (A) of section 1304(b)(3) to read as follows:

"(A) IN GENERAL.—In carrying out the initiative, the Secretary shall provide financial

support to smart grid demonstration projects in urban, suburban, and rural areas, including areas where electric system assets are controlled by tax-exempt entities and areas where electric system assets are controlled by investor-owned utilities.''.

(2) By amending subparagraph (C) of section 1304(b)(3) to read as follows:

''(C) FEDERAL SHARE OF COST OF TECHNOLOGY INVESTMENTS.—The Secretary shall provide to an electric utility described in subparagraph (B) or to other parties financial assistance for use in paying an amount equal to not more than 50 percent of the cost of qualifying advanced grid technology investments made by the electric utility or other party to carry out a demonstration project.''.

(3) By inserting after section 1304(b)(3)(D) the following new subparagraphs:

''(E) AVAILABILITY OF DATA.—The Secretary shall establish and maintain a smart grid information clearinghouse in a timely manner which will make data from smart grid demonstration projects and other sources available to the public. As a condition of receiving finan-

cial assistance under this subsection, a utility or other participant in a smart grid demonstration project shall provide such information as the Secretary may require to become available through the smart grid information clearinghouse in the form and within the timeframes as directed by the Secretary. The Secretary shall assure that business proprietary information and individual customer information is not included in the information made available through the clearinghouse.

''(F) OPEN PROTOCOLS AND STANDARDS.—The Secretary shall require as a condition of receiving funding under this subsection that demonstration projects utilize Internet-based or other open protocols and standards if available and appropriate.''.

(4) By amending paragraph (2) of section 1304(c) to read as follows:

''(2) to carry out subsection (b), such sums as may be necessary.''.

(5) By amending subsection (a) of section 1306 by striking ''reimbursement of one-fifth (20 percent)'' and inserting ''grants of up to one-half (50 percent)''.

(6) By striking the last sentence of subsection (b)(9) of section 1306.

(7) By striking ''are eligible for'' in subsection (c)(1) of section 1306 and inserting ''utilize''.

(8) By amending subsection (e) of section 1306 to read as follows:

''(e) PROCEDURES AND RULES.—The Secretary shall—

''(1) establish within 60 days after the enactment of the American Recovery and Reinvestment Act of 2009 procedures by which applicants can obtain grants of not more than one-half of their documented costs;

''(2) require as a condition of receiving a grant under this section that grant recipients utilize Internet-based or other open protocols and standards if available and appropriate;

''(3) establish procedures to ensure that there is no duplication or multiple payment or recovery for the same investment or costs, that the grant goes to the party making the actual expenditures for qualifying smart grid investments, and that the grants made have significant effect in encouraging and facilitating the development of a smart grid;

"(4) maintain public records of grants made, recipients, and qualifying smart grid investments which have received grants;

"(5) establish procedures to provide advance payment of moneys up to the full amount of the grant award; and

"(6) have and exercise the discretion to deny grants for investments that do not qualify in the reasonable judgment of the Secretary.".

SEC. 7003. RENEWABLE ENERGY AND ELECTRIC POWER TRANSMISSION LOAN GUARANTEE PROGRAM.

(a) AMENDMENT.—Title XVII of the Energy Policy Act of 2005 (42 U.S.C. 16511 et seq.) is amended by adding the following at the end:

"SEC. 1705. TEMPORARY PROGRAM FOR RAPID DEPLOYMENT OF RENEWABLE ENERGY AND ELECTRIC POWER TRANSMISSION PROJECTS.

"(a) IN GENERAL.—Notwithstanding section 1703, the Secretary may make guarantees under this section only for commercial technology projects under subsection (b) that will commence construction not later than September 30, 2011.

"(b) CATEGORIES.—Projects from only the following categories shall be eligible for support under this section:

"(1) Renewable energy systems, including incremental hydropower, that generate electricity.

"(2) Electric power transmission systems, including upgrading and reconductoring projects.

"(3) Leading edge biofuel projects that will use technologies performing at the pilot or demonstration scale that the Secretary determines are likely to become commercial technologies and will produce transportation fuels that substantially reduce life-cycle greenhouse gas emissions compared to other transportation fuels.

"(c) FACTORS RELATING TO ELECTRIC POWER TRANSMISSION SYSTEMS.—In determining to make guarantees to projects described in subsection (b)(2), the Secretary shall consider the following factors:

"(1) The viability of the project without guarantees.

"(2) The availability of other Federal and State incentives.

"(3) The importance of the project in meeting reliability needs.

"(4) The effect of the project in meeting a State or region's environment (including climate change) and energy goals.

1 "(d) WAGE RATE REQUIREMENTS.—The Secretary
2 shall require that each recipient of support under this sec-
3 tion provide reasonable assurance that all laborers and
4 mechanics employed in the performance of the project for
5 which the assistance is provided, including those employed
6 by contractors or subcontractors, will be paid wages at
7 rates not less than those prevailing on similar work in the
8 locality as determined by the Secretary of Labor in accord-
9 ance with subchapter IV of chapter 31 of part A of subtitle
10 II of title 40, United States Code (commonly referred to
11 as the 'Davis-Bacon Act').

12 "(e) LIMITATION.—Funding under this section for
13 projects described in subsection (b)(3) shall not exceed
14 $500,000,000.

15 "(f) SUNSET.—The authority to enter into guaran-
16 tees under this section shall expire on September 30,
17 2011.".

18 (b) TABLE OF CONTENTS AMENDMENT.—The table
19 of contents for the Energy Policy Act of 2005 is amended
20 by inserting after the item relating to section 1704 the
21 following new item:

"Sec. 1705. Temporary program for rapid deployment of renewable energy and electric power transmission projects.".

SEC. 7004. WEATHERIZATION ASSISTANCE PROGRAM AMENDMENTS.

(a) INCOME LEVEL.—Section 412(7) of the Energy Conservation and Production Act (42 U.S.C. 6862(7)) is amended by striking ''150 percent'' both places it appears and inserting ''200 percent''.

(b) ASSISTANCE LEVEL PER DWELLING UNIT.—Section 415(c)(1) of the Energy Conservation and Production Act (42 U.S.C. 6865(c)(1)) is amended by striking ''$2,500'' and inserting ''$5,000''.

(c) EFFECTIVE USE OF FUNDS.—In providing funds made available by this Act for the Weatherization Assistance Program, the Secretary may encourage States to give priority to using such funds for the most cost-effective efficiency activities, which may include insulation of attics, if, in the Secretary's view, such use of funds would increase the effectiveness of the program.

SEC. 7005. RENEWABLE ELECTRICITY TRANSMISSION STUDY.

In completing the 2009 National Electric Transmission Congestion Study, the Secretary of Energy shall include—

(1) an analysis of the significant potential sources of renewable energy that are constrained in accessing appropriate market areas by lack of adequate transmission capacity;

(2) an analysis of the reasons for failure to develop the adequate transmission capacity;

(3) recommendations for achieving adequate transmission capacity;

(4) an analysis of the extent to which legal challenges filed at the State and Federal level are delaying the construction of transmission necessary to access renewable energy; and

(5) an explanation of assumptions and projections made in the Study, including—

(A) assumptions and projections relating to energy efficiency improvements in each load center;

(B) assumptions and projections regarding the location and type of projected new generation capacity; and

(C) assumptions and projections regarding projected deployment of distributed generation infrastructure.

SEC. 7006. ADDITIONAL STATE ENERGY GRANTS.

(a) IN GENERAL.—Amounts appropriated in paragraph (6) under the heading ''Department of Energy—Energy Programs—Energy Efficiency and Renewable Energy'' in title V of division A of this Act shall be available to the Secretary of Energy for making additional grants

under part D of title III of the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.). The Secretary shall make grants under this section in excess of the base allocation established for a State under regulations issued pursuant to the authorization provided in section 365(f) of such Act only if the governor of the recipient State notifies the Secretary of Energy that the governor will seek, to the extent of his or her authority, to ensure that each of the following will occur:

(1) The applicable State regulatory authority will implement the following regulatory policies for each electric and gas utility with respect to which the State regulatory authority has ratemaking authority:

(A) Policies that ensure that a utility's recovery of prudent fixed costs of service is timely and independent of its retail sales, without in the process shifting prudent costs from variable to fixed charges. This cost shifting constraint shall not apply to rate designs adopted prior to the date of enactment of this Act.

(B) Cost recovery for prudent investments by utilities in energy efficiency.

(C) An earnings opportunity for utilities associated with cost-effective energy efficiency savings.

(2) The State, or the applicable units of local government that have authority to adopt building codes, will implement the following:

(A) A building energy code (or codes) for residential buildings that meets or exceeds the most recently published International Energy Conservation Code, or achieves equivalent or greater energy savings.

(B) A building energy code (or codes) for commercial buildings throughout the State that meets or exceeds the ANSI/ASHRAE/IESNA Standard 90.1–2007, or achieves equivalent or greater energy savings.

(C) A plan for the jurisdiction achieving compliance with the building energy code or codes described in subparagraphs (A) and (B) within 8 years of the date of enactment of this Act in at least 90 percent of new and renovated residential and commercial building space. Such plan shall include active training and enforcement programs and measurement of the rate of compliance each year.

(3) The State will to the extent practicable prioritize the grants toward funding energy efficiency and renewable energy programs, including—

(A) the expansion of existing energy efficiency programs approved by the State or the appropriate regulatory authority, including energy efficiency retrofits of buildings and industrial facilities, that are funded—

(i) by the State; or

(ii) through rates under the oversight of the applicable regulatory authority, to the extent applicable;

(B) the expansion of existing programs, approved by the State or the appropriate regulatory authority, to support renewable energy projects and deployment activities, including programs operated by entities which have the authority and capability to manage and distribute grants, loans, performance incentives, and other forms of financial assistance; and

(C) cooperation and joint activities between States to advance more efficient and effective use of this funding to support the priorities described in this paragraph.

(b) STATE MATCH.—The State cost share requirement under the item relating to ''DEPARTMENT OF ENERGY; energy conservation'' in title II of the Department of the Interior and Related Agencies Appropriations Act, 1985 (42 U.S.C. 6323a; 98 Stat. 1861) shall not apply to assistance provided under this section.

(c) EQUIPMENT AND MATERIALS FOR ENERGY EFFICIENCY MEASURES.—No limitation on the percentage of funding that may be used for the purchase and installation of equipment and materials for energy efficiency measures under grants provided under part D of title III of the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.) shall apply to assistance provided under this section.

SEC. 7007. INAPPLICABILITY OF LIMITATION.

The limitations in section 399A(f)(2), (3), and (4) of the Energy Policy and Conservation Act (42 U.S.C. 6371h–1(f)(2), (3), and (4)) shall not apply to grants funded with appropriations provided by this Act, except that such grant funds shall be available for not more than

1 an amount equal to 80 percent of the costs of the project
2 for which the grant is provided.

Passed the House of Representatives January 28, 2009.

Attest: LORRAINE C. MILLER,
Clerk.